

TAKING SIDES

Reservation Quotas and Minority
Rights in India

'Analytical as well as compassionate,
forceful yet unpolemical, *Taking Sides*
will stimulate widespread discussion'

RAMACHANDRA GUHA

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TAKING SIDES

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Preface

The Elephant in the Room

How we understand and pursue the vision of a just society has more to do with our mindset than any lack of resources. Richer societies have not always been more just, nor have the poorer been more unjust, though inequalitarian societies are generally unjust in proportion to their social inequalities. In practice, the term *justice* has at times been used as an alibi to protect some rather dubious claims, for the limits of our benevolence (Goodin 1985:1) are rationalized in terms of realism and pragmatism: the prejudgements we start with, the premises that underpin these, the values to which we are committed, the attitudes we have internalized, the preferences and prejudices with which we live. While we can never entirely escape these, we must at least be aware of how they all impact us and others in our quest for justice in society.

The encounter with ‘social justice’ in India today seems very much like that in John Godfrey Saxe’s (1816-87) poetic parody (1873; Schmaltz 2003) of the ‘theologic wars’ in his time, based on the famous Indian legend of the assessment by

... six blind men of Indostan ...
Who went to see the Elephant
(Though all of them were blind)...

Three of them explored a different limb of the elephant—the tusk, the tail, the trunk—and concluded that the whole animal was a spear, a rope, a snake,

respectively. And so

... Though each was partly in the right,
And all were in the wrong!

And yet,

... The disputants, I ween, Rail on in utter ignorance
Of what each other mean,
And prate about an Elephant
Not one of them has seen!

Indeed, justice is like that other figurative elephant in the room: we may pretend it is not there, but we ignore it at our peril. Much of our public discourse on justice might be similarly represented through the allegory of these blind men, making assumptions about the whole when each had explored only a part of the animal. But then, using such an allegory in this case might only trivialize, not clarify, the contrary perspectives involved. Unlike the blind men, so assured by their limited perceptions and so convinced of their pompous assessments, we would do well to go back and critically explore this elephant in a shared encounter, checking each of our perceptions against those of the others—including those of the sighted, before coming to any conclusions.

A ‘just society’ involves our understanding of justice as much as it does our understanding of society. With regard to the term ‘justice’, it is more than a matter of theological or philosophical debate: it must be done and must be seen to be done, not just debated. It demands practical action, not just abstract theorizing or pragmatic activism; it demands praxis, an action-reflection-action process. For any regime that depends on the consent of the governed for its legitimacy, justice is an inescapable political imperative. How far this consensus and legitimacy can be stretched sets the outside limits of our understanding and pursuit of justice. Discovering those limits and stretching them further must define our collective quest for justice. This, precisely, is my principal purpose in writing this book.

Today, our understanding of justice seems to turn on a majoritarian understanding articulated in the public sphere, simplified into sound bites by

the media or included in a regime of rights, individual and collective, all seeking legitimization by law. We need to go beyond mere legalities and address the more basic issues in which our understanding of justice must be grounded. Without this, we put at risk the stability and sustainability of our society, the very foundation for our fundamental rights, especially those of the most vulnerable sections of our people, economically and socially, culturally and religiously: the avarnas and adivasis, minorities and women.

While acknowledging the constraints of practical realities, in this book we shall try to sketch an agenda within the confines of a 'realistic utopia'. Hopefully, that will not be an impossible overdraft on our moral resources, even in this time of ethical meltdown. We cannot be neutral on an essentially ethical issue like justice, yet sorting through the complexities can be challenging. However, lest we get lost along the way in the minutiae of clarifications and qualifications, it seems important to state our viewpoint at the very beginning: while trying to be fair to all the protagonists involved, our especial consideration will be for the weaker, more vulnerable players. Too often their voices are silenced in the public discourse, even by those who claim to speak on their behalf, whether from without or within their group.

Our central concern, then, must be with an inclusively just society, where justice is for individuals and groups, for communities and collectives; even beyond these it must extend to a structural justice in our society, where all citizens are free and equal. For, social justice must be located in a specific society and its structure. This is the context in which a consensus on justice must be situated and from where its constraints come. Justice in a credible democratic regime cannot be dictated by a tyranny of the majority, much less imposed by the hegemony of a dominant elite. It must be premised on liberty, tempered by equality and moderated with fraternity, or what I call here solidarity. Beginning with the European Enlightenment, these three issues have been the collective touchstone of authentic democracy. Now they must be translated into the South Asian context to create a new history, not to repeat the old one.

Hence our primary concern here will be justice for the voiceless and the vulnerable, the socially backward and excluded, the religiously and culturally marginalized. This may well invite strong criticism from those who regard such a stance as politically partial and socially biased. For some among that group, their slogan seems to be ‘Justice for all, appeasement of none’. However, whether by promoting this preferential option or resisting it, politicizing justice in the pursuit of partisan purposes traps us all in a power play that alienates the concerns of justice. Inevitably, then, social justice is sacrificed in a zero-sum political game. At most this brings about a circulation of elites, which privileges only the new elites while still leaving the truly vulnerable defenceless.

A fair critique of this book’s stance would require that the opposing standpoint be made explicit, not left to be deciphered in the maze of hostile comment. However, in clarifying my own position here I do not pretend to anticipate all such lines of criticism. Rather, the hope is to open some common ground on which a consensus can be built to reach out to others—and to reach some higher ground together.

In India, two generations or more after attaining national independence, our ambiguities towards the socially excluded and our vulnerable minorities continue to stare us in the face. Slogans such as ‘Shining India’, ‘Rising India’ or ‘Jai Ho’ cannot meet this basic challenge: the still unfinished business of our freedom struggle, the huge agenda of antiquated inequities and accumulated inequalities that persist. Only a carefully thought out and determinedly implemented process can begin to address these issues. Indeed, they demand a second freedom struggle for Mohandas K. Gandhi’s *purna swaraj*. Unfortunately, our electoral process seems to throw out one set of rascals and usher in another in a repetitive process that seems only to promote such rascality.

Whether collective or individual, violence and repression against vulnerable people is reported with increasing frequency, even as legal redress remains beyond the reach of the less privileged: Dalits and adivasis, women and minorities. Inequalities across social groups and tension between them grow to dangerous proportions, spilling over into ever more frequent

and escalating violence. A just society no longer seems to be the first priority of our ruling elites, who have been the principal beneficiaries of the first freedom struggle. Since Independence, these elites have often pursued a hidden agenda, focused on efficiency and merit. Those excluded from this process of growth can only wonder whether there is more continuity than discontinuity between the old colonial state and our present democratic one.

We need to take stock of our situation and draw a road map out of the chasm we have dug ourselves into, before we fall deeper. There are hard questions we can no longer postpone and must urgently address together as a people. For instance, are we willing to sacrifice an inclusive, tolerant 'swaraj' on the altar of a nationalist, chauvinist swatantrata? Or, drawing on our own Constitution and elsewhere, can we strive for an equitable and egalitarian society, justice for all and equity for each? Have we betrayed Gandhi's *India of My Dreams*?

Unless we can come to a widely supported social consensus on how we can meet these challenges, and then muster the political will to address them, any real equity and equality, any true freedom and security will continue to elude us. Meanwhile, critical issues will become further politicized and polarized. Because politics necessarily concerns the priorities of power, justice must be founded on the pre-eminence of truth, satya (reality), and on rajdharam (political morality), not rajkaran (political pragmatism). Politicizing justice implies bringing it into the public domain—where it indeed belongs—and making people aware of the issues and concerns involved.

This must be a process of raising the critical consciousness of the people, what the Brazilian theorist Paulo Freire called 'conscientisation' in his *Pedagogy of the Oppressed* (1972). But politics too is in the public domain, and when the exercise of power trumps the pursuit of justice, then rajkaran displaces rajdharam. Power will dominate and even dictate truth; might becomes right. Such politicized justice inevitably privileges the powerful. On the other hand, when truth speaks to power, justice can prevail, because only when truth is protected from being subverted by the dominant hegemony, can it protect the most vulnerable people.

In India, Dalits and adivasis, the most backward castes, religious minorities and women are in immediate need of such justice. In a culture that has a long history of hierarchy and feudalism, of caste and patriarchy, this is a daunting task—for many, perhaps even an impossible one, at least without some practical political compromise. Yet those who have borne the burden of this past are still constrained to bear the traumas of the present. It is to them and their hopes that we must address ourselves. To betray their present is to betray our collective future, for we cannot distance ourselves from our own present without diminishing ourselves somehow, or facing the consequences in the form of unrest and riots, terrorism and wars. Indeed, these are already overtaking us and could overwhelm us. Failed states are a tragic testimony to a justice delayed that becomes a justice denied.

The Constitution, which we as a people gave ourselves, confronted these questions squarely and transparently. Since then, the politics of our legislatures and the legalities of our courts have addressed such issues in different ways and have often come to contradictory conclusions. In this context, we explore what an inclusively just society must look like, and how it can effectively include the vulnerable and the marginalized, reaching out to Gandhi's 'least and last' Indian, the talisman he gave us for making our decisions. To do this, however, we need a policy premised on an overlapping consensus, one that so far seems to elude our grasp but hopefully is not yet beyond our reach.

The attempt here is to reach those who are concerned about such inequities and inequalities, who are moved by injustice, motivated by fair play, who agonize about the unlevel playing fields of social structures, and the lawless killing fields of collective violence. It addresses those who desire and are willing to work for an ethically decent and meaningfully just society for all, but especially for the most unprotected and deprived, who are either cultural or religious minorities or socially and otherwise oppressed and marginalized people. What is at stake is our own future as a decent and reasonable society.

This, then, is the standpoint from which the discussion proceeds from here: of a justice that is inclusive of others, especially the discriminated against and the deprived. For, justice must be integral. I cannot want justice for

myself and deny the same to others; justice for some but not for all is unjust. An 'exclusive justice' is a contradiction in terms, a justice premised on injustice! And yet, in every society the rationalizations for exclusions abound, and it is a continuing struggle to unmask and remedy them.

There is no pretence here to treat all the themes discussed comprehensively, or to resolve all the issues raised satisfactorily. Rather, my endeavour is to outline a perspective in which these can be more incisively explored and more effectively pursued. If this attempt succeeds in effectively engaging with the questions, then answers will not be long in coming. This is an invitation to make a committed beginning, rather than a promise of finding any convenient conclusions.

This book is not meant to be a polemic against other contrary positions taken, and not just because there are too many to contend with. Polemicists tend to set up the 'opposing' case and then knock it down, before setting up their own argument on its ruins. A polemical answer repeats the process in reverse: knocking down the position set up by the adversary and then, with some adaptations perhaps, re-emphasizing one's own. Doing so only leads to spiralling into more heat and less light.

I conclude this preface with an overview of the chapters, to which the reader can return in case the plot gets lost in a hurried or staggered reading. The argument is circular rather than linear and goes over the ground in a reiterated process to deepen and strengthen the presentation, which is focused more on perspectives and alternatives than on an abundance of data. There is already a surfeit of data available, and the text makes reference to it only as and where needed. To be more reader-friendly, the text has no footnotes, but for the more academically inclined readers, references are included and followed up in the bibliography.

The [first chapter](#) begins by 'Mapping the Terrain'. 'Exclusive' demands politicize issues and compromise the rights of the 'others'. However, given the uneven lay of the land, levelling the field is a necessary condition for a justice premised on liberty, equality and fraternity as the principle foundation of our Constitution. Such constitutional justice inevitably precipitates a compelling manthan that confronts us with the inescapable paradox of

mobilizing an identity politics—whether based on caste, religion or gender—to transform victimhood into agency in an inclusive compact for a just society.

The [second chapter](#), ‘Including the Excluded’, in a just society takes up a central objective of our Constitution. The present imbroglio is contextualized in its colonial origins. In the early initiatives of colonial policy, affirmative action for the depressed and backward classes was centred on reserved quotas and separate electorates, thus binding the excluded in a divide-and-rule agenda. The census also enumerated communities, crystallizing caste and homogenizing religion, in part resulting in a constructed majority and defensive minority communities. Moreover, gender in patriarchal society was not addressed in the national movement. Such a compartmentalized society was not compatible with the rising expectations of the people. The ambiguities of being excluded and responding to it were addressed by the ‘subaltern’ movements, which left a legacy of liberation ideology in the north, as did the empowerment of the self-respect and self-rule movement in the south. The adivasi question was kept alive by rebellious prophets in messianic rebellions and reformist movements. However, in republican India, all this remains an unresolved dilemma, an unhealed trauma.

[Chapter 3](#), ‘In Quest of Justice’, begins by recognizing injustice as the counterpoint of this quest. Colonial templates have moulded our system of constitutional law and its understanding of justice. These occidental origins were contextualized by oriental complementarities in a regime of rights, though there are multiple divergent discourses validating these rights. Fundamental rights and basic needs ground our constitutional quest for a just society by just means.

‘Understanding Justice’, [Chapter 4](#), works towards a consensus on attaining just ends through just means. Contending concepts of justice are discussed in a fourfold context, of justice as personal virtue, justice as equitable exchange, justice as fair distribution, and justice as social structures. Finally, the perspective of justice as capability takes the discussion beyond the social contract approach to a sounder basis for a just society. This is a rather abstract chapter but a crucial one. The understanding

of justice sketched here is the reference point and constitutes a basic framework for a more concrete critique of caste quotas, minority rights and gender equity. As such, referring back to this chapter will help to clarify the discussion that follows.

[Chapter 5](#), ‘Equality for All, Justice for Each’, focuses the discussion on affirmative-action policies in the context of caste hierarchy. The polarizing polemic in which this is set leads to ambiguities and tensions in the various approaches to caste quotas. The pursuit of social mobility brings into play conflicting interests in competitive politics. Constitutional propriety does impose a compelling responsibility towards our scheduled castes and tribes. But beyond this is the paradox of backwardness, the competing claims of backwardness for inclusion in reserved quotas. In the encounter between the Parliament and the courts, the Constitution must be the reference point to satisfy the legitimacy imperative in the public domain. This requires taking sides to facilitate appropriate policies and their implementation, addressing crucial concerns over criteria for affirmative action, and keeping promises with our constitutional priorities in mind. A silent revolution is changing our society, and cumulative and complex inequalities must be structured so as to neutralize rather than reinforce each other. All this requires that each one’s story has a respected place in our common history and our collective future. Equality with liberty is unattainable without this commitment to our solidarity, our story.

Our constitutional mandate for ‘Equality without Uniformity’ is discussed in [Chapter 6](#). Given the traumas of our communal divides, healing our history is a precondition for finding a pluralism for our plurality. The constitutional context in which minority rights were enshrined was a defining moment for our republic. Since then, the politics of constructing identities and claiming rights has escalated religious conflict. Diverse minorities and different histories all seek their place in the sun. For Muslims, discrimination and marginalization demand redress. For Christians, religious freedom and secular tolerance are urgent issues. Scheduled-caste quotas for Dalit religious minorities have not been extended beyond Sikhs and Buddhists to Muslims and Christians, though their social circumstances are no better and

even far worse, especially in the case of Muslim Dalits. With the growing demand for good schools and colleges, minority educational institutions are a pertinent institutional barometer for minority rights today. The challenge of old pluralities and a new pluralism will demand not just unity in diversity but rather diversity in unity. Constitutional minority rights deal with this paradox of pluralism, which implies equal dignity, unique identity.

[Chapter 7](#), ‘Holding up Half the Sky’, concerns gender equity. Caste hierarchy and feudal patriarchy are mutually reinforcing. The alleged gang rape of Bhanwari Devi in 1992 is a severe indictment of this nexus. When this transforms into paternalism in more liberal societies, the distinction between ‘good’ and ‘bad’ women leaves unresolved questions that reflect a refusal to face relevant gender issues, particularly as to how personal law affects women. Any convergence in a common civil code is stymied when identity trumps justice. However, it is convergence, not uniformity, that will be better able to confront the multiple legal injustices of unreformed personal law. Such changes will require women’s representation to address the dilemma of tokenism and reality. Without women represented at all levels and in all spheres in society, embedded gender insensitivity remains endemic. The immediate controversy over women’s quotas now seems conveniently mired in the false dilemma of the extent of these quotas, with no real attempt at taking even a first step or taking into consideration what the women’s movement has been agitating for during recent decades. Meanwhile, innocent lives are ritually sacrificed to multiple hierarchies and unequal patriarchies. In the final analysis, a sensitively gendered citizenship must be the goal of gender justice and equity.

The [concluding chapter](#) calls for ‘A Second Freedom Struggle’ that returns to the quest for a just society. The anomalies and contradictions in our society demand a democratic inclusion of all the citizens of our republic, supported by an empowered egalitarian participation in our civil society. Our divided society requires an integrative politics that protects community diversity and not one that promotes an assimilative majoritarianism. Breaking the impasse today requires a fraternal solidarity to keep faith with the living, and not live with the wounded history of the dead. Breaking the

impasse demands a just, free and equal solidarity. In our society, a continuing conversation, a process of dialogue and decision, must be an ongoing agenda in opening new horizons to fulfil our constitutional pledge.

This book will attempt to address these challenges, not as a polemical debate but as a quest in which I invite the reader to join in. This is an ongoing agenda we must address collectively. Though we may not be on the same page as yet, we can at least come to the same table; this book is a small attempt to set that table and invite the reader to a many-sided (*anekantavad*) conversation. If persevering readers find themselves confused along the way, this would be an indication that they have begun to understand the problem—not a bad thing for a conversation in progress, for convenient conclusions often have inconvenient consequences. Confusion is best clarified by further and deeper engagement rather than by leaving the table, unless it is to pursue the conversation elsewhere.

Mapping the Terrain

EXCLUSIVE DEMANDS ■ LIE OF THE LAND ■ LEVELLING THE FIELD
 ■ INESCAPABLE PARADOX ■ COMPELLING MANTHAN ■
 VICTIMHOOD AND AGENCY ■ INCLUSIVE COMPACT

EXCLUSIVE DEMANDS

As riots tear Indian society with alarming frequency, it has become apparent that these often involve either religious or caste communities. In an overview of Indian democracy, Rajni Kothari, a seminal political thinker, argues that identity politics, either caste-based or religiously inspired, dominates our society, even as the country is increasingly integrated into a neo-liberal, globalizing world, and strategic issues in South Asia—such as the nuclearization of the subcontinent—become more critical (Kothari 2004: 45–57). Yet, while we are all suitably alarmed, the root causes of this violence are rarely addressed. Such collective violence is not, as is often supposed, a spontaneous response of communal outrage. Rather, it is politically motivated at its start and thereafter manipulated to run its course. The consequent polarization yields a rich electoral payoff for interested parties on both sides (Tambiah 1996; Brass 2003).

In May–June 2007, the Gujjars, once a pastoral community now classified as a backward caste (BC) in Rajasthan, took to the streets demanding scheduled tribe (ST) status (*The Hindu*, 16 June 2007). This is an old grievance over a long-unfulfilled promise. However, it has been opposed by the Meenas, once a dominant community in the state now listed as ST there, who went on a violent counter-offensive. The Gujjars then upped the ante.

The resulting riots left twenty-six dead, paralysing parts of the state and disrupting rail traffic to other parts of the country. This could not be an issue of equal justice for the disadvantaged, since neither community is among the most deprived in the state (Teltumbde 2007). The Gujjar agitation for a re-designation from BC to ST is for access to less competitive reserved quotas; the Meena opposition is a refusal to share what they had already secured for themselves.

A temporary respite has been negotiated by the state government with a commitment to carve out a special quota for the Gujjars. But it is still a precarious truce, since this special backward status given to the Gujjars is likely to be challenged in the courts, if implemented. Whether either of the two communities deservedly qualified for ST status has not been raised. Further, with the change of state government after the legislative assembly elections in 2008, the contentious controversy threatens to surface once again. The probity of the Gujjar demand and the validity of the Meena resistance were too sensitive an issue to be examined by any side of the political spectrum, except from the perspective of immediate electoral advantage.

Also in 2007, on 24 November in Guwahati, adivasi tea garden workers demonstrating for ST status—which they were entitled to in Jharkhand, the state of origin for most of the workers—were attacked by a local mob, leaving two dead and hundreds injured (*Outlook*, 10 December 2007: 72, 74). For these adivasis, the legitimacy of their demand would be justified on the basis of establishing their tribal origins. But neither the state nor the central government has initiated such a process for them in Assam. The local Assamese, fearful of being overtaken by out-of-state migrants, were outraged at the advantage that ST status would bring these newcomers. Yet these adivasis from Jharkhand have laboured in the state's tea gardens for generations, since colonial times, and are still exploited and oppressed by their employers.

Such instances, repeated over and over again, exemplify the larger problem of festering injustices with which we have become so accustomed to. If there is a genuine grievance or a credible claim regarding the listing of scheduled

castes and scheduled tribes, can this be decided by power politics? Can considerations of social justice be excluded? When such conflicts are blatantly politicized for competitive advantage and social mobility, the real issue of justice gets orphaned. Quite obviously, such conflicts represent a self-centred power struggle to find one's own a place in the sun, regardless of who is left in the shadows. At the same time, the real trauma of the atrocities against the vulnerable in our society, the violence done to their human rights, their exclusion and marginalization, does not find enough political purchase to bring justice, except from the perspective of immediate electoral advantage.

LIE OF THE LAND

All this seems to demonstrate that, for too many protagonists, reservation quotas are less a matter of equal justice for all than of upward mobility for themselves. This is a betrayal of the spirit of the original provisions of the Indian Constitution. The clear purpose of those provisions was to level the playing field for all by uplifting the marginalized and the excluded, beginning with the last and least among them. These latter are advantaged by such provisions and see them as a means to assist their own upward mobility, while those not covered by the reserved quotas resent them as an impediment to their own betterment. And so, in the tumult of caste conflicts, the constitutional purpose for a just and egalitarian society is lost.

Thus, the reservations written into the Constitution with the best of intentions have done little to provide relief to the worst off among these disadvantaged groups, while simultaneously antagonizing the upper classes and castes. At best, such reserved quotas have resulted in a positional change for some groups, but they have not brought any real structural transformation in the broader society. At worst, they have created new elites among the disadvantaged and underprivileged communities, little different from those belonging to the old dominant sections except perhaps for the absence of a sense of noblesse oblige, as happens with the newly arrived nouveau riche.

Yet notwithstanding the protective laws in this country, atrocities against Dalits and adivasis are blatantly used to reinforce dividing lines, which were

supposed to dissipate with engineered social change. Such violations of basic human rights are so frequently reported in the media that our sensitivity to these collective crimes is grossly blunted. Yet observers have often commented that most of these violations are under-reported. Repeated government commissions, even statutory ones like the National Commission for Scheduled Castes and Scheduled Tribes, have become a charade to escape from politically difficult and inconvenient decisions, while the primacy of caste politics remains unchanged.

The recommendations of the Mandal Commission (1979–80) for the ‘backward classes’ (representing the castes between the savarna, the twice-born, and the Dalits), first implemented in 1990 and then further extended in 2006, brought multiple violent backlashes onto the streets of Delhi and other large cities. In 2008, the Supreme Court temporarily stayed this extension, referring it to a larger five-judge bench, which approved reserved quotas for Other Backward Castes (OBCs) but excluded the ‘creamy layer’, those least disadvantaged in the group as per some set criteria. There is now a precarious peace on this sensitive matter, a peace based on court judgments and not on consensus.

The politicization of minority rights also obscures the constitutional guarantees that were once seen as a bulwark to protect India’s enriching yet challenging religious and linguistic diversity. The statutory National Commission for Minorities fares no better than other such commissions: they are all quite ineffective. Judicial commissions inquiring into collective violence drag on endlessly, often with no effective redress for the victims. The real culprits in the anti-Sikh massacre of 1984 in Delhi have yet to be brought to book. Small and isolated Christian communities have been repeatedly subjected to mob violence, rationalized as anti-conversion pogroms.

The larger Muslim minority has fared far worse. Since Partition, rioting against Muslims has only increased in frequency and intensity. More recently, following the burning of the train in Godhra on 27 February 2002, what has been described as a genocide of Muslims in Gujarat has stood as a shocking indictment of a majoritarian electorate that, since then, has repeatedly voted

the abetting party and its leadership into power. A new polarizing politics has been launched, with its perpetrators threatening to replicate the same in other states. Anti-Christian collective violence is increasingly frequent and far-flung: the Dangs in Gujarat, Kota in Rajasthan, Mangalore in Karnataka, Kandhamal in Orissa. To add to all this, random terrorist attacks have only further escalated this politics of hate and revenge, of fear and mistrust.

Communal divides are setting the political agenda and further reinforcing an already dangerous polarization of communities, which encourages a chauvinist politics of identity. For all of its short-term gains in the early stages, eventually this can only lead to national disaster. The general and state elections in 2009 seemed to indicate that the point of diminishing returns for this politics of hate had been crossed, but the traumatic experience of some other countries in the subcontinent could still presage India's own future.

Communal violence and religious fanaticism could polarize our society to the point of genocide, spilling over into a 'final solution'. Are we careering into a 'clash of civilizations' on the subcontinent, similar to what Samuel Huntington (1998) defined as the 'West versus the rest'? Will the subcontinent, or rather Indic civilization as we know it, survive this violence, or will it lead to another partitioning?

'Minority appeasement' is still an explosive issue, on which political mobilization yields rewarding electoral returns without effectively addressing the underlying marginalization and alienation of a community beleaguered from without and within. The Sachar Committee (appointed in 2005) emphasized the social differences—economic and political, educational and occupational—that underscore the endemic inequalities and inequities that plague India's Muslim minority. The resulting divisions are further polarized and exploited by jingoistic leaders and entrenched elites across the political spectrum.

Sexual harassment and horrendous crimes against women continue to escalate dangerously. Rather than address at its roots the patriarchal oppression of women, the response from the conservative political establishment has been a 'moral policing' and censorship regime that blames

the victim and rationalizes the worst aspects of this patriarchy. Such patriarchy is internalized in families, which then facilitate and support caste hierarchy in society. For, at every level, women bear the greatest burden of the caste system. Minorities too have their patriarchs, who preserve their own internal hierarchies. This forces multiple burdens on women in such communities.

The patriarchal resistance to empowering women towards greater equality in society is exposed in the charade of the Women's Reservation Bill. After many attempts over more than a decade, in 2007 this bill was finally presented in the winter session of Parliament, amidst much confusion, and passed—only to be sent to a review committee, further postponing its passage into law, while the 'quota within the quota' controversy remains unresolved. The fourteenth Lok Sabha, elected in May 2009, is seized of the issue and will hopefully see it through. It was passed by the Rajya Sabha on 9 March 2010, but its future in the Lok Sabha and the state legislatures is still uncertain.

As yet, Dalits and adivasis are degraded and excluded by caste hierarchies, religious minorities by the dominant religious majority, and women by religious patriarchies. Such sections of people are extremely vulnerable to the injustices of our society, even though it may take different forms in different situations. For, whether it is caste oppression, majority prejudice or gender inequality, the common denominator is injustice against the voiceless and the vulnerable. These are the excluded that our democratic Constitution sought to include through affirmative action and reserved quotas, as well as to protect our rich diversity through minority rights. It is part of a comprehensive understanding so eloquently expressed in the Preamble of our Constitution, of 'justice, social, economic and political' to be secured with liberty, equality and fraternity. Hence, they are best studied together.

Development, once thought to be the solution for such inter-group hostility, has now proved to be part of the problem. India's pattern of development has been a top-down process in which those it was supposed to benefit were not given adequate voice. The trickle-down effect has proved to be a mirage. Hence, both by design and default, the greatest beneficiaries have been the

upper classes and castes. Inequalities have increased across the board: class stratification, caste segmentation, minority alienation, and gender oppression have been accentuated and amplified. Today, the greatest threats to the country's stable and sustainable progress are from within, not without.

Six decades ago, our aspirations as a people were eloquently expressed in the Preamble of the Constitution. At the founding of our 'sovereign, socialist, secular, democratic Republic', we agreed to secure for all Indian citizens the following:

justice, social, economic and political;
liberty of thought, expression, belief, faith and worship;
equality of status and of opportunity;
and to promote among them all,
fraternity assuring the dignity of the individual and the unity and
integrity of the nation.

It was to this end that the Constitution affirmed preferential treatment to the 'weaker sections' of our society. Have we lost the plot in this quest for a more just society? Have we subverted the ideals we gave ourselves? We need to take stock of where we are and set our compass once again. For surely the need to level an increasingly skewed field is greater today than ever before.

LEVELLING THE FIELD

This, then, is the understanding of 'justice' that the discussion foregrounds here. A regime deemed to be just but which eventually leads to injustice is a contradiction in terms, for a truly just social structure cannot lead to or perpetuate unjust social results. If it does, it must forfeit its claim to be called just. Therefore, the sign of a just regime must be in just outcomes, not merely in just procedures. In the complex context of a changing society, this issue is too easily lost sight of, especially with regard to the inequalities and imbalances that a supposedly just regime often precipitates.

Moreover, justice necessarily demands an integrated approach, for justice itself must be integral not only in confronting the contradictions within groups and communities but also the ones between them, and across social strata as

well. In society, justice for one group or for a section within a group cannot amount to a denial of justice to other groups. This seems self-evident: quotas for vulnerable groups must be complementary to the interests of other vulnerable groups. What is given to Dalits must not undermine what is meant for adivasis; nor can what is given to some within the community undermine what is due to other members of the same community.

More specifically, justice in one area must not be a negation of justice in another. Affirmative action and minority rights are meant to level the field and protect vulnerable groups, whether economic, social or cultural. If one contradicts the other, both will be stymied, the promotion of justice in society will be discredited, the vulnerable groups left at odds with each other and, so, worse off for the intervention. Affirmative action that undercuts religious diversity and minority entitlements would be unjust, as would minority rights that contradict the human rights of individuals, in and outside the group.

For, justice to be integral is a crucial test case for any understanding of justice. It must be equally available for and equally applied to all. It cannot be the privilege of some and denied to others. I cannot say, ‘Justice for us, but not for them; for me, not him or her.’ Further, justice as equality argues beyond an *equal justice for all* to a *just equality for each*—political, economic, and social. This, as will be argued, must be the sustainable basis for the pursuit of the other two dimensions of justice: liberty and fraternity or solidarity. A just society must integrate all three.

To grapple with this, a comprehensive and feasible regime of human rights is essential. This must include fundamental rights, civil and political rights, social and economic rights, as well as the corresponding basic duties. For, in the final analysis, justice premised on liberty, critiqued by equality, sought in solidarity is not intended to legitimize a social quest for efficiency, much less for power, but rather to facilitate and privilege a people’s desire for a decent and humane society.

Hence, justice must be spelt out in terms of rights for minorities—who are culturally vulnerable but still socially valuable in the diversity of our pluralist society—as also more generally for the socially excluded. Affirmative action and reservation quotas need to be used as instruments for

their inclusion, and doing so needs to be seen as a way of regenerating society. Figuring out how this can be done without precipitating other injustices to other groups and communities is our most critical challenge today.

A constitutional democracy must work within an understanding of justice, through constitutional rights and procedures, for equity and equality for all its citizens, reconciling freedom and equality, human rights and egalitarian policies. Liberal policies easily create unacceptable inequalities, and egalitarian ones are often critiqued as inefficient. Moreover, while we can more easily articulate a regime of fundamental rights, both political and economic, all too often such rights can become compromised by the compulsions of electoral politics.

A more intractable dilemma here is the contradiction between substantive and procedural democracy, between officially promulgated values and actually practised processes, between what democratic government ought to implement and the compulsions of contemporary democratic elections. For, as with justice, the state too must not only be democratic but also be seen to be so. This is the real epic saga of Indian democracy, the dilemma between the democratic dividend from participative governance and the democratic deficit of electoral politics—i.e., the returns on a political investment and the fallout from election results. Here we will follow the narrative across critical initiatives in our democratic enterprise: reserved quotas and affirmative action for those oppressed by caste and patriarchy; and minority rights for religious and linguistic communities. The first concerns social equality; the second, cultural and religious diversity.

When liberty is compromised and human rights are abridged or even suspended, as is wont to happen in times of collective danger or insecurity, the consequent injustices, especially to the marginalized and those outside the mainstream, often go unnoticed. When our metric of merit stratifies our society into haves and have-nots, inequalities intensify and perpetuate these divisions. Our tolerance of such gross inequalities eventually rationalizes them into a hierarchy, a holy order, and seriously constrains our community sense of fraternal belonging. This only perpetuates injustice. If our sense of

fairness is not anchored in ‘fellow feeling’, the insider–outsider division inevitably becomes an us-versus-them conflict in a zero-sum game. This only compromises and disregards all three republican ideals—liberty, equality, fraternity—and consequently justice as well.

Thus liberty, equality and fraternity are three necessary dimensions of a holistic social justice, three essential characteristics of a just society. Together, the three must guide our understanding and pursuit of justice, or we will settle for a notional freedom, a legalistic equality, a formal fellowship. At the same time, we must accept that liberty and fraternity are difficult to quantify and measure, and so a consensus on optimum levels of these can be elusive and problematic, except at the extremes of injustice, like in the violation of fundamental rights to freedom or violent conflict threatening security and life.

Equality, however, is more amenable to analysis. Indeed, in a democracy, inequalities are the most endemic cause of injustice perceived and justice denied. Justice as equality is the shibboleth of any credible regime of democratic and civil rights, inclusive of the political and the economic, the cultural and the religious domains. However, without liberty, these are meaningless; without fraternity, their sustainability is at risk. Yet building a consensus on equality is a challenging and daunting task, especially an equality that is fair, free and inclusive.

We know that equal outcomes for the engaged parties on every dimension of social interaction is simply not possible, even with the best intentions of equal justice for all. But when these inequalities add up, become cumulative, then inevitably a society becomes stratified into unequal groups of classes, castes, races. The exchange among these will necessarily be skewed. Moreover, as can be documented from a wide range of experiences, unequal social exchange within and across societies becomes self-reinforcing and increasingly pervasive. Whether these are between social groups and categories or geographical regions and economic classes, when left unaddressed, social relationships thus structured will inevitably be oppressive and exploitative.

No matter how much goodwill and charity may exist, unequal exchange amounts to a benevolent paternalism at best and patronizing debilitation at worst. It fails to contend with structural anomalies at the origins.

Downstream effects are never really remedied until upstream causes are tackled. Treating symptoms does not heal the disease. Hence, in any society where economic class, social caste, political power, occupational and educational opportunities, legal access, gender bias or racial privilege are mutually reinforcing, this necessarily leads to increasing inequalities and inevitable injustices.

Justice as equality, where equality is the touchstone of justice, requires that though some inequalities in society might be inevitable, these do not become cumulative and embedded in the social structure or in the interrelationships between and within communities. Rather, equal justice demands that such multiple inequalities are so structured as to neutralize and defuse each other. This is a difficult conundrum for any democracy, but it must be confronted if liberty, equality and fraternity are not to be compromised.

For a society, justice as equality means that equity and equality are not in contradiction. This necessarily implies equitable redistribution of inequalities and assets, of advantages and disadvantages, in order to create a level playing field on which winners are not always winners and no loser always loses. The returns on one's performances must be so structured as not to be self-perpetuating, or the playing field will no longer remain level. As far as possible, this field must be levelled before that can happen. This demands effective protection and promotion of the weaker, more vulnerable sections of society, but not at the cost of the political rights and civil liberties of others.

To constructively confront such a dilemma, this ground must be levelled at the bottom of the climb, not flattened at the top into an 'egalitarian plateau' (Dworkin 1977: 179–83). For, the exclusion of the most disadvantaged at the very start only leaves an ever more exclusive group to compete for scarce opportunities at the peak. This, then, is the understanding of justice on which the argument of this presentation is premised: justice must protect and

promote liberty, it is best measured and authenticated by equality, and it can only be sustained and extended with fraternity. Any critique of affirmative action (whether in terms of reservation quotas or protective discrimination), any discussion of minority rights in terms of constitutional guarantees or Directive Principles of State Policy, must be premised on a justice that is defined by all three elements—liberty, equality, fraternity.

INESCAPABLE PARADOX

On 10 April 2008, a five-member bench of the Supreme Court of India tackled some of the complexities involved in affirmative action, through a path-breaking judgment that was immediately contested in high court, compelling the Supreme Court to reserve the matter to itself for further review. This is but a pause in an ongoing journey that is far from over. A broad-based consensus on this delicate issue still seems to elude us, so there are sure to be further challenges to whatever is proposed.

The run-up to this judgment has been a history of contestations between Parliament and the state legislatures. While the latter have promoted reserved quotas and affirmative action, the courts have tried to restrain this within the limits of the basic structure of the Constitution, beyond the purview of Parliament. Legislative measures and government actions have too often been populist, concerned more with electoral vote banks than with justice and fairness, while the judiciary at certain times has seemed cautiously defensive, at others actively interventionist. It would seem that judicial review is on a collision course with political compulsions, but so far a confrontation between Parliament and the Supreme Court has been averted.

In Article 46, the Directive Principles of State Policy present the state with a constitutional mandate: ‘The state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.’ Affirmative action and reservation quotas are the instruments by which the state can implement this mandate, but these tools must be reconciled and balanced

with the fundamental rights affirmed in Articles 14 to 17 of the Constitution. These are unambiguous regarding equality before the law; the prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth; equality of opportunity in matters of public employment; and the abolition of untouchability. The state as promoter of the Directive Principles and the courts as protectors of the Constitution are still trapped between the horns of this dilemma.

We need a social compact in order to map a constructive way forward, to contain the contradictions and conflicts so inevitable at the level of actual practice on the ground. To be viable, this must be premised on a consensual understanding of justice that foregrounds the disadvantaged and the deprived, while protecting the fundamental rights of all. It is not the strongest but the weakest that need protection and promotion, as these suffer the most injustice in any society.

Identifying those genuinely in need of reservations and affirmative action has become the sticking point. Which groups and communities are to be protected and promoted, and how? There is a wide consensus here regarding the scheduled castes (SCs) and scheduled tribes (STs), but the inclusion and exclusion of specific castes and adivasi groups in the constitutional schedule has all too often been ad hoc and politicized. Groups have taken advantage of democratically weak governments to muscle their ways into the schedule using their political clout and demographic weight. Once included, even if by default, they remain there for political considerations that soon become impossible to override. Rescheduling has so far only expanded the list; there has been no de-scheduling as yet.

As a category, the OBCs cover a broad spectrum and have gained considerable political clout. The Constitution mentions the 'socially and educationally backward', but not the criteria to be used to identify these, nor who will apply that criteria. Both of these issues are still bitterly contested. Official commissions set up to sort this out have not escaped political pressures, and their conclusions and recommendations have been challenged in the courts. Here too, all rescheduling has meant expanding the list, while de-scheduling has become politically unfeasible.

The percentage mandated for reserved quotas and the proportion left over for others has proved most contentious, as has the tricky question of excluding the ‘creamy layer’. The preoccupation with such quotas has displaced effective concern for affirmative policies outside these reservations that could reach the most deprived economically and most excluded socially. These are people beyond any provision of reserved quotas, for they do not qualify to even enter any competitive selection processes—often, they drop out well before it begins. These are the voiceless for whom the better off within their communities speak, and who are mobilized for demands that are too distant to even benefit them. The creamy layers are more vocal about their quotas in super-specialities—e.g., in postgraduate medical specializations or in advanced research institutions—than about basic literacy and good schools for the least and last in their communities. At the end of the day, these latter are considered dispensable, for they fall below the electoral radar.

Gross atrocities against the vulnerable—Dalits and adivasis, minorities, and women—have become so endemic that we seem to be able to live with them. They do not command the same attention and concern in the media, in the political landscape or even from an activist judiciary. For instance, the controversy regarding reservation quotas for super-specialities in professional institutions, including upper-caste student protests in 2006 against this, caught the attention of the political class and made headlines for weeks until finally the Supreme Court issued a stay order on the implementation of this provision. Atrocities against Dalits, adivasis, and women seldom if ever receive such sustained coverage in the media, unless a celebrity is involved.

Even while those better off in a particular community take full advantage of measures in their favour, the neglect of those at the bottom increases the overall inequalities within groups. As such, it promotes individual advancement, not social change, while the endemic social injustices and consequent structural inequalities in our society are left to compound. These have now become the black hole of India’s reservation policy, which must be addressed.

In a situation of competing rights, positive discrimination strives to level the field in favour of the disadvantaged for the sake of the common good. Too often, the fairness or otherwise of the initial disparities is not questioned by the advantaged, while any 'discrimination' that disfavors them, regardless of the social context, is contested. The disadvantaged, too, are now beginning to feel more empowered to aggressively pursue and expand their perceived rights. They are impatient with historical injustices which they are no longer willing to accept. In such a fragmented, contentious situation, the politics of reservations will inevitably displace the ethics of justice; electoral numbers will rule and concerns for equity will inevitably be sacrificed. There must be a just consensus to avoid such polarization, which will eventually only compromise the common good to the advantage of one or the other particular interest.

The constitutional vision of a non-hierarchical, pluralist India, beyond caste distinctions and discriminations, could not have gone uncontested by those who for so long were ensconced at the top, particularly when the upper castes and the upper class overlapped and reinforced systemic social stratification. Such power and privilege is not easily surrendered. Marc Galanter, a legal scholar on the empirical study of South Asian legal systems, in his seminal and comprehensive study, *Competing Equalities: Law and the Backward Classes in India* (1991: xvii) perceptively remarks:

The furore over the Mandal is more than an episode of political warfare; it touches a nerve that connects with India's vision of itself and its future. And though caste and class have been proficient in manipulating liberal democracy to their advantage, the electoral numbers are no longer in favour of this dominant elite.

Thus, writes Manoranjan Mohanty (2004: 22), 'during the 1980s and 1990s there was a reassertion of upper-caste and upper-class power, on the one hand and a regrouping of backward classes, tribals and dalits on the other hand Hence, the realm of politics had become intensely competitive and unstable.' This spawned a 'politics of reservations' that busied itself 'inventing identities of disadvantage' (Jayal 2006: 196) to exploit the competitive advantage of 'backwardness', transforming the electoral politics in ways that our democratic Constitution could not have anticipated.

In spite of the constitutional abolition of untouchability and the social movements against caste, the persistence and increasing salience of caste in Indian society is a story of hopes belied and promises broken. Mohanty (2004: 37) sums up the scenario of the last fifty years in three trends: a consensus for eliminating caste hierarchy, a conscious mobilization of deprived castes, and yet 'the persistence of caste inequality and upper caste dominance in the political economy as a whole'. The glaring contradiction between well-meant intentions and policies and the stark reality of our social inequalities remains a blot on our democracy and whatever it may claim to have achieved over the past six decades. At its root, this contradiction remains a substantive issue of justice that our procedural electoral politics is proving inadequate to effectively address.

This is the grand, inescapable paradox that affirmative action and reservation quotas must confront: how can electoral politics mobilize caste identities so as to overcome caste for a casteless society? Such a task demands a justice founded on liberty, equality and fraternity, as the basis of a social compact for a shared future. For nations-in-the-making, 'a shared sense of common identity and an acceptance of a class compromise will facilitate the creation of a legitimate state authority' (Centeno 1994: 144) that is trusted by all the constituents of society, to give them their due.

Given India's history of caste hierarchies and its reinforcement by class stratification, our social compromise must necessarily have a large component of compensation. But this is only one dimension of affirmative action; the real issue is our shared future as a just and decent society, where all are free and equal, and the identity and dignity of each person and every community is respected and affirmed.

COMPELLING MANTHAN

The separate electorates that the colonial administration introduced with the Government of India Act of 1909, known as the Morley–Minto Reforms, were supposed to ensure proportionate representation. However, this was very much part of the colonial divide-and-rule policy, and had little to do with an appreciation, much less a celebration, of the bewildering plurality of

Indian diversity. Rather, it played on religious differences to project British imperial rule as the protector and arbitrator for all the peoples of the subcontinent. The national freedom struggle successfully challenged the legitimacy of colonial rule as being unrepresentative of the peoples it ruled, but then failed to unite them all into the Indian Union at Independence, which finally came at an enormous price.

We still have to come to terms with the Partition of the subcontinent in 1947. It remains an unhealed trauma imbedded in our collective psyche, etched into our wounded history. The stridency of Hindu nationalism today can be traced back to these painful memories, so alive to this day among many survivors of those unforgotten, unforgiven communal massacres. No less does an extremist Islamism in Pakistan draw on this reservoir of hostility and even hate. Yet today, we continue to blame the ‘foreign hand’ for what we do to ourselves. If we do not learn from the history of the Partition of 1947, or the following one, the secession of Bangladesh from Pakistan in 1971, we may well find ourselves repeating the same history, as tragedy or as farce.

The Constitution was debated in the wake of Partition and finalized in the aftermath of the carnage, which ceased only with the shock of Gandhi’s assassination. Adopted on 26 November 1949, it privileged a secularism that guaranteed religious freedom of belief and practice, and legislated minority rights that affirmed religious and linguistic pluralism. Along with secularism, these rights are today widely considered to be part of the Constitution’s basic structure. However, as with affirmative action and reserved quotas, the identity politics that derived from minority rights could not have been anticipated at the time, and now both are coming to a head.

Language politics has also mobilized linguistic and regional identities, and at times has precipitated language riots. But with the reorganization of states on the basis of regional languages, these disputes seem to have lost their sharp edges. Nonetheless, linguistic identities have not mutated into inclusive multilingual ones as yet. Often they still find expression in exclusivist ‘sons of the soil’ movements, particularly where migrants are perceived as a threat to native livelihoods. The experience with this politics of language makes

evident that when such primal identities are repressed or denigrated in society, a backlash is very likely to erupt in violence, but when they are given their due space they eventually adjust to changing scenarios.

Primal identities cut deeper than political pragmatism, especially when they come to symbolize group dignity. An offence to one person of a group becomes a violation of the others, and thus perceived as unjust to the entire group. In a plural society, how ethnic differences are accepted and integrated in the larger society for the common good must be founded on a justice that is free, fair, and inclusive. But pluralism can and ought to go further than accepting difference and being fair to the other. The challenge is to celebrate difference and to see in the other an enrichment, not a threat. This should not be a pluralism of peaceful coexistence based on a segmentation of diverse groups reinforced by the hegemony of a dominant one, where all are equal but dominant groups are more equal than others; but rather a pluralism that draws on a positive understanding of tolerance for others and is open to a continuing dialogue with them.

The minority rights enshrined in the Indian Constitution are the statutory expression of a guaranteed minimum protection for vulnerable religious and linguistic groups, a baseline for a pluralism that will preserve our diversity. It defines the context in which identity politics must function. But the transition from old hierarchies and persistent hegemonies to an egalitarian and celebratory pluralism does not go uncontested. The tendency of the *Old Societies and New States* in their *Quest for Modernity in Asia and Africa* (Geertz 1963) has been to enforce a brutal uniformity as an imperative for political unity, thus replicating the process that carved out the nation states of the West.

Today, 'the old unity of territory, sovereignty and culture (or identity) that has propelled the development and consolidation of the modern state and provided its historical rationale, is fast disintegrating' (Parekh 2000: 194). However, the idea that 'the sovereignty of the state need not consist of a simple and unitary system of authority as most political theorists since Hobbes have insisted and it might involve several other centres of authority exercising overlapping jurisdiction and reaching decisions through negotiation

and compromise' (ibid.) is gaining ground. This surely is the only viable way forward for multi-ethnic states such as India.

In the tortuous diversity of the developing countries of South Asia, attempts at a forced transformation—from a multi-ethnic society to a unitary nation state—have brought neither development nor unity but rather destructive conflict. Today, this is particularly evident in Pakistan and Sri Lanka. In India, the forced assimilation of our peoples into a uniform national identity is projected by 'cultural nationalists' as the condition for a unified and powerful state. But in their pursuit of 'one language, one religion, one nation', ominously expressed in the slogan 'Hindi, Hindu, Hindustan', they exclude and alienate regional and religious communities; and if these latter resist such assimilation, the political tensions between national interests and community identity are sought to be resolved in favour of the national majority. In such a context, any appeasement of minorities is rejected as pseudo-secularism.

Thus, 'Hindu nationalism emerged successfully in the 1980s as a kind of "conservative nationalism" that mainly attracted more privileged groups who feared encroachment on their dominant positions, but also "plebeian" and impoverished groups seeking recognition from majoritarian rhetoric of cultural pride, order and national strength' (Hansen 1999: 8–9). This 'cultural nationalism' easily develops into a 'tyranny of the majority', while the alienated minorities mobilize in self-defence, degenerating into further contradictions and violent conflict.

Obviously a just resolution of such dangerous social tensions must be in terms of human rights for all and collective rights for each community. Certainly, minority rights for a community must be compatible with fundamental rights in the Constitution. This requires a negotiation between national representatives and community ones. But when the representatives themselves become stridently extremist, they silence the very voices within their respective communities that might make for a sustainable social compact on the basis of both human and cultural rights. A viable context for this requires an understanding of 'human rights in popular consciousness'

(Anderson and Guha 1998: 5), as well as a sensitivity towards minority cultures and their vulnerabilities.

For minority cultures, the process of constructing and affirming new identities is marked by 'the politics of becoming', i.e., 'that conflictual process by which new identities are propelled into being by moving the pre-existing shape of diversity, justice and legitimacy' (Connolly 1999: 10) and, 'to the extent it succeeds in placing a new identity on the cultural field, the politics of becoming changes the shape and contours of already entrenched identities as well' (ibid.: 57). Through such a redefinition of their identities, communities make space for themselves in their societies, whether the inequalities experienced are cultural or religious, linguistic or racial.

In India, this constructing and affirming of new identities is particularly acute with regard to caste and religious communities. This process has been politicized into a great, compelling manthan, a real social churning of our peoples; for better or worse, this is surely transforming our society. The continuing atrocities against SCs and STs, the riots protesting the implementation of the Mandal Commission recommendations, the escalating violence against religious minorities and women are all stark evidence that the transition is neither uncontested nor non-violent. This is the background and context that will frame our discussion on minority rights here.

VICTIMHOOD AND AGENCY

The mass mobilization of women in India's freedom struggle marked their entry into the public space from their domestic confines. Even though the movement could hardly claim to have posed a radical challenge to patriarchy, it did conceive of a greater role for women in the public domain. Once the genie was out of the bottle, there was no putting it back. There was now a legitimacy to women in public and political life; but though the struggle for national independence was won, the battle for gender equality was still in its nascent stage. To the extent that a society is patriarchal, *woman* is still a contested term in 'category politics' today (Bacchi 1996).

In patriarchal society, women are often as idealized in the abstract, even divinized, as they are oppressed, even demonized, in reality. Sexual

harassment, atrocities against women, custodial rape—such crimes are still shamefully prevalent in India and all too often go unreported and unpunished. In a legal system that is crudely insensitive to women, the victims are more readily blamed than their perpetrators are pursued. This vulnerability on the part of women and girls cuts across all categories of class and caste, linguistic and religious communities. Moreover, women's marginalization has crucial implications for their place in society. Hence, they can legitimately claim protection on as firm a basis as any other disadvantaged group in our society, and can demand the special promotion of collective rights like any other vulnerable minority.

In Communist China, Chairman Mao Zedong famously favoured the old Chinese proverb, 'Women hold up half the sky.' Surely, then, a patriarchy that excludes this half of the population from social participation cannot make any pretence to democratic credentials. Its democratic legitimacy is compromised to the extent that women are marginalized from political participation. The central issues for gender justice in a society, then, are equality, representation, and citizenship (Bacchi 1996: 32). These are the concerns that our discussion must address.

Patriarchy makes men the norm and then defines women as inferior because they are different. However, even where gender equality is conceded, gender justice still requires that women's distinctiveness finds its due place in society, much as other minorities do in a diverse and pluralist society. This must not mean or require similarity; equality with the 'other' must also accept the differences of the other and the right of the other to be different. Sensitive to the peculiar condition of women in our society, our Constitution refuses to be gender blind in affirming gender equality. Such supposed neutrality eventually favours the already privileged in the status quo. Rather, Articles 15, 39 and 51 of our Constitution are explicit about protecting women and promoting their rights, thus providing a sound basis for gender justice in India. But there is no special provision of quotas for women.

The courts have strengthened this thrust and regularly included women in the policies and provisions for the 'weaker sections' cited in Article 46,

when they have had the opportunity to intervene. But in a still-prevalent patriarchy that affects our judiciary as well, other than legislative and legal support, gender justice will require women's own agency for truly effective social transformation. For, 'in their critical engagement with legal discourse' (Menon 2004: 3), women have come to understand the rupture between the instruments of justice and daily victimization of women. They have also realized the urgency of becoming 'autonomous agents'—subjects, not objects, of their own history (ibid.: 209).

In 1992, the Seventy-third and Seventy-fourth Amendments to our constitution mandated reservations for a third of the seats in elected local bodies for women. This went unchallenged, but its extension to Parliament and the state legislatures has been stymied on the sticky issue of 'quotas within quotas' on the basis of caste. The preoccupation seems to be protecting vested interests rather than demonstrating a real concern over the woefully inadequate representation of women in our legislatures. Multiple patriarchies, nuanced by overlapping and opposing interests of caste and class, religion and region, are at work among the warring parties.

Mary E. John, a feminist philosopher, underscores the need for a broad-based democratic struggle against multiple inequalities: 'patriarchy in contemporary society is ... a complex articulation of *unequal patriarchies* ... This requires – *linking* rather than opposing – women's rights to rights based on caste, class or minority status in the broader context of a common democratic struggle' (John 2008: 54–55; emphasis in text). Hence, if gender justice must be mainstreamed in all social policies and impact all related social practices (Dahlerup 2006: 9), it must also recognize the other injustices in society, such as those of caste and communalism.

To be effectively liberating, a women's movement must create new spaces for women outside the old social conventions and political orthodoxies, spaces from which they can work towards integration into a more just and egalitarian society. But when women's advocacy becomes assertive, the patriarchs become defensive. Today, women's advocacy groups have acknowledged the need for a more inclusive approach to liberate both our women and men. They have recognized that an effective and authentic

emancipation and empowerment must be inclusive and open-ended, not exclusive and competitive. But here again, our most urgent starting point ought to be the preferential option for the most vulnerable and oppressed women.

INCLUSIVE COMPACT

All societies need some overarching frame of reference to make sense of their world. This is more important in a fast-changing world, where old reference points are lost or become irrelevant. The Age of Reason, in the seventeenth century, and the European Enlightenment in the eighteenth, provided the reference point for the democratic and industrial revolutions that swept through the West. With colonialism, the Enlightenment project became the grand narrative for an Indian renaissance and spilled over with the nationalists into the freedom movement.

The Enlightenment project was essentially an emancipatory one that inspired an Indian renaissance. But in India this has not proved quite adequate to meet the stresses and strains of a changing society. With Independence, we formalized our vision of the new India. Since then, our development process, inspired by Nehruvian modernity, envisioned an enlightened transition from a pre-modern hierarchical society to a modern democratic country. However, the liberty it projected, the equality it promised, the fraternity it celebrated, left large swathes of people outside its ambit, and with increasing marginalization there was an inevitable backlash.

In creating our common future together as a nation—or, rather, as a multi-nation state—the most immediate threat is from internal imbalances and contradictory distortions within our society. The threats from within the country—political extremism of various hues, communal violence in multiple registers—are far greater and more immediate than any comparable ones from across our borders. Indeed, it is our own anomalies and contradictions that make us vulnerable to these others. The critically decisive question is how do we ‘reconcile universality of core values with acknowledgement of different cultures, social interests, individual freedoms?’ (Campbell 2001: 15). Ignoring the accumulating social tensions or imposing an unjust

resolution on these will only exacerbate them later. Even if we are content to contain them for now, we are still sitting on a volcano waiting to erupt.

Some sixty years after Independence, the continuing oppression and exploitation of Dalits, adivasis and OBCs cannot be disputed. Statutory government reports are undeniable testimony to this. The marginalization and alienation of minorities is no less alarming. The Prime Minister's High Level Committee, constituted in 2005 under the chairmanship of Justice Rajinder Sachar, submitted its *Report on Social, Economic and Educational Status of the Muslim Community of India* in 2006, and elaborated how Muslims in India 'carry a double burden of being labelled as "anti-national" and as being "appeased" at the same time' (Sachar 2006: 11). The report was a comprehensive, shocking revelation of the condition of the Muslim community in India, which only the most cussed would dare dispute.

Gender equality and justice is still resisted by the entrenched, multiple patriarchies of caste, class, and religion, for even subjugated patriarchies in society support themselves by subjugating their women. It is not so much a question of debating the undeniable gains that have been made over this period, but of measuring these against where we, as a free and democratic society, ought to be, indeed could have been. As yet, the political elites who have long ruled India have not successfully implemented even a minimum programme that would have effectively brought about some nominal inclusion for the marginalized in the development process of India's much-vaunted economic reforms. Such exclusion negates the legitimacy of a democratic state, because in the final analysis, a liberal political authority must be based on the consent of the governed. With the rising expectations of our people, the tectonic plates of our society have begun to move and the tremors are shaking its foundations.

The big picture of our nationalist project has begun to fray at the edges. An identity politics based on region, religion, or caste is now precipitating the *Insurrection of Little Selves* and *The Crisis of Secular-Nationalism in India* (Nigam 2006). The older dominant national elites find their hegemony challenged and are still searching for effective ways to respond to the upsurge of these communities. The new community-based identity politics

are now a serious challenge to the old nationalist universalisms. We need a pluralism that celebrates diversity and includes distinct identities; otherwise, the continued marginalization of certain communities will only bring further, perhaps irreversible, alienation. But we also need an overarching social compact, premised on a consensus regarding the more universal concerns. This is the polarity within which our understanding of justice and fair play must operate.

Modern constitutions privilege and protect the individual in the political community against any abuse by the state. These do so by enforcing universal norms and values that derive from a particular world view, generally from the point of view of western liberalism, thus de-legitimizing and marginalizing other contesting ways of life. As a world view, it sets itself up as universally 'objective' and validates particular subjectivities; it is an abstract ideal that differentiates between subjective realities. Translating the universal, the ideal, the abstract into the particular, the practical, the concrete is a daunting challenge for any understanding of justice and its implementation.

The Indian Constitution nuances this dilemma 'at the interface of radical political practice and the logic of constitutionalism' (Menon 2004: 1) by offering explicit provisions for the protection and promotion of the weaker sections, even as it affirms a universalist vision of justice and rights. It abolishes discrimination on the basis of caste, sex or religion, but it mandates affirmative action and reservation quotas precisely to address this dilemma. This has led to the grand paradox of caste struggle for a casteless society: identifying and politicizing specific caste communities to create a more universal and inclusive casteless society.

Our Constitution grants collective rights to minorities to protect their language, culture, and religion. But when a secular state gives constitutional recognition to religion, it legitimizes religion in the public domain. This has now led to an inescapable dissonance, which has churned up a uniquely Indian version of secularism: a *sarvadharmā samābhav*, equal respect for all religions in an inter-religious pluralism. But this has left us with a sediment of religious communalism and conflict with which we must deal.

The challenge of gender equality, first inspired in the freedom struggle and confirmed in the Constitution, has now inspired a movement for a more comprehensive regime of gender justice. But as the movement battles the complex patriarchies of class, caste, and religion, if gender rights are pursued in opposition to affirmative action for the weaker sections, or minority rights are privileged over the fundamental rights of women, it may inevitably reinforce the inequalities within these categories and even the gender inequalities across them. Gender justice must add up to a comprehensive integral justice system for women and men, for weaker sections and minorities. For, in their transition from victimhood to agency, the women's movement must not leave behind as many oppressed victims as the autonomous agents they empower.

Electoral compulsions have precipitated an identity politics that has now politicized communities in a rush for upward social mobility. This has subverted rather than reflected the constitutional provisions meant to address the accumulating contradictions in a non-inclusive society. In doing so, the Constitution's makers anticipated the underlying tensions that were waiting to surface and perhaps overtake the democratic enterprise of our multicultural, pluri-religious society. To the extent that our present political priorities have hijacked these constitutional provisions, it is we who fail the Constitution, not vice versa.

All this now confronts us with trenchant questions we can no longer duck. Much as bad money drives out good, exclusivist politics drives out inclusive politics. How do we prevent the politics of hate from overcoming the politics of accommodation? Why do policies and programmes designed to benefit the disadvantaged, poor masses not get the kind of priority that those for the rich and powerful do? Are these people part of our common destiny or do they belong elsewhere? Is this a new internal colonialism with which we are becoming accustomed to live? If so, are we prepared for the repercussions? Why is it that we become angrier at what the seemingly undeserving poor are given than at what the undoubtedly undeserving rich take?

No one can really pretend to have all the answers to such questions, much less to know what policies can effectively address them. Perhaps there are no convincing answers or relevant policies acceptable to all the protagonists. But the questions must be asked, because the issues they raise will not go away. They are a tsunami just beyond our preset horizons, waiting to thunder onto our shores. An exclusivist politics of community and religion, or region and caste, a politics that perpetuates intra-group hierarchies even as it pretends to level inter-group ones, may obfuscate such issues for a time, but eventually the questions will come back in an even more devastating deluge.

This, then, is the inclusive compact that challenges us more poignantly than ever in its depth and breadth: 'how the autonomy and integrity of groups could be combined with the volunteerism and equality that animated India's constitutional regime' (Galanter 1991: 300). In other words, how can the interchange between a free civil society and a constitutional democracy become a symbiosis for constructive change, a virtuous not vicious circle? This is difficult and dangerous terrain. Successfully mapping this terrain has to be a collective effort at cartography, and it just might help to begin the venture by acknowledging our 'bad conscience', for our less-than-adequate response till now.

Including the Excluded

THE PRESENT IMBROGLIO ■ COLONIAL ORIGINS ■ DEPRESSED
AND BACKWARD ■ EARLY INITIATIVES ■ PATERNALIZING THE
EXCLUDED ■ DIVIDE AND RULE ■ ENUMERATED COMMUNITIES ■
CRYSTALLIZING CASTE ■ HOMOGENIZING RELIGION ■
CONSTRUCTED MAJORITY ■ DEFENSIVE MINORITY ■
PATRIARCHAL SOCIETY ■ COMPARTMENTAL SOCIETY ■
EXCLUSION AND RESPONSE ■ BAHUJAN LEGACY ■ LIBERATION
IDEOLOGY ■ SELF-RESPECT AND SELF-RULE ■ REBELLIOUS
PROPHETS ■ REPUBLICAN INDIA

THE PRESENT IMBROGLIO

Though the colonial period sets the more remote context, it is the constitutional legalities and their implications for an electoral democracy that are most directly related to contemporary issues and controversies. The inequalities and injustices inflicted on the weaker sections, which such affirmative action sought to address, have a long and deeply rooted history in our society. Caste hierarchy, religious traditions and patriarchy are the three most ancient and stubbornly resilient social institutions in this land. This historical overview of reservations begins with their first official introduction by the colonial state in India in the nineteenth century to their present evolution in a democratic one. What began as a state policy in pre-independent India and found a place in the Constitution of our republic has not remained the same, in content or intent, or in the provisions or their ramifications for those affected by them.

Any process of social intervention must be studied in its historical context if the trajectory of its evolution is to be properly understood, the more so when this is inspired by a modernist liberalism in a society that remains conservative. The present controversies over reservations for weaker sections and special rights for minorities cannot be discussed only with regard to their current consequences, as much as this preoccupies our political attention today. Before we ask what to do now, we must first answer the question of how we got here. Only then can we chart the course for where we want to go.

The colonial state in India sharpened the contradictions between modern political economic institutions and traditional sociocultural ones. But there was a quantum leap with the post-Independence Constitution, which sought to establish 'a sovereign, socialist, secular democratic republic' (as vividly expressed in the Preamble) in a traditional, hierarchical, religious society. But this inspiring vision is still just a thin liberal crust on the molten subterranean magma of conflicting community interests smouldering beneath.

This is a struggle for including the excluded, and protecting vulnerable minorities from dominant majorities in a just and secular state and a free and equal society. The Constitution sought to do this with affirmative action and reserved quotas for the weaker sections and protective rights for linguistic and religious minorities. Thus, 'through reservations, the law tackles frontally the contrast between the political system and the social structure of India – and one can wonder which of the two comes out more transformed' (Lama-Rewal 2005: 11).

COLONIAL ORIGINS

Affirmative action and protective discrimination, spelt out in reserved quotas and separate electorates, date back to colonial times. Already in the nineteenth century, upwardly mobile non-Brahmin 'backward' communities first agitated against the dominant Brahmins in some of the princely states, such as Mysore. In British India, what began as a token response to petitions of caste associations and minority communities gathered momentum with the Freedom Movement and the electoral process that the promise of Home Rule

brought. The commitment to universal adult franchise that Independence presaged had its own expectations and compulsions, which polarized the electorate even before it had exercised its vote.

As for adivasis, the colonial government sought to protect them from outside exploitation and promote their welfare with especial legislative provisions for 'Backward Tracts' and 'Excluded or Partially Excluded Areas'. However, this did precious little for their advancement or their inclusion in the mainstream. The development model we have now espoused only marginalizes them further.

In response to appeals from apprehensive religious minorities, particularly the Muslims, for protection against a mobilized Hindu majority, the colonial government constituted separate electorates for them. But rather than a means for a more appropriate representation, as was officially purported, this was more a colonial strategy for the government's own self-perpetuation through a divide-and-rule strategy. The communal dynamics of that period still plagues the subcontinent today.

DEPRESSED AND BACKWARD

The term *scheduled caste*, 'first used in 1935, evolved through a variety of philanthropic, administrative and political compromises and considerations' (Chitnis 1997: 94). Already in 1895, Justice M.G. Ranade was referring to 'claims of the aboriginals and untouchables on Hindu society' (Galanter 1991: 24). Ambedkar used *untouchable* as a counterpoint to what he called the 'touchables'. Gandhi privileged the term *harijan*, children of god, but this was rejected as paternalist, and the use of *Dalit* (oppressed) has come into vogue today. All these terms represent nuanced perspectives on the same harsh reality they sought to name and address in a still unfinished process. However, the constitutionally sanctioned term remains *scheduled caste*, whose 'central purpose is clear: to identify the victims of "untouchability"' (Galanter 1991: 154).

The term *backward classes* is less defined, and criteria for identifying them are still contested. The first official use of the term can be traced to the *Fort St George Gazette* in 1895, but it mostly referred to the untouchables of

the Madras Presidency. In the nineteenth century in the princely state of Mysore, the Kannadiga Brahmins protested the overrepresentation in the administration of the Tamil Brahmins from the Madras Presidency. This was taken up by the first Mysore Legislative Council, in 1907 (Manasa 2000: 3849). The Miller Committee, in 1918, for the first time officially identified the 'backward classes' as 'all communities other than the Brahmins, who are now adequately represented in public service' (Galanter 1991: 156). In 1921, the committee's recommendation for preferential treatment was accepted; the Madras Presidency followed the same year.

The government resolution of 1925 in Bombay Presidency defined backward classes similarly: all except Brahmins, Prabhus, Marwaris, Parsis, Banias, Christians (ibid.). The Hartog Committee of 1928 defined the educationally backward to include 'the depressed classes, aboriginals, hill tribes, and criminal tribes' (ibid.). However, the Indian Central Committee of 1929 distinguished the backwards from the depressed classes and the aboriginal (adivasi) population. The Statute Committee followed in 1930, subdividing the backwards into Depressed Classes (used for the untouchables), the aboriginals, Hill Tribes, Other Backward Classes, including nomadic tribes, while renaming the 'backwards' as 'intermediate classes', a term the Parliamentary Statutory Commission, also called the Simon Commission (1928–30), too used. In the United Provinces, the Hindu Backward Classes League, founded in 1929, wanted the term *Hindu Backward* to refer to non-dwija (non-twice-born) Shudras, to distinguish themselves from the untouchables; whereas in Madras, 'backward classes' included only the non-Brahmins who were not untouchables. In Travancore in 1937, these were called 'backward communities' (ibid.: 157–58).

Thus, the term *backward classes* was defined in local contexts and was not employed at the national level. Marc Galanter concludes his review with two emerging usages: '(1) as the more inclusive group of all those who need special treatment; (2) as a stratum higher than the untouchables but nonetheless depressed' (ibid: 159). However, there are still no clear and precise criteria acceptable to all on which a broad consensus could be built to identify 'backwardness'. The social reality underpinning all this

preoccupation with naming and defining was the complex hierarchies reproducing inequalities across the land. The policy of preferential treatment was intended to address these inequalities, but instead it was seized upon and used as an instrument of community advancement.

Responding to local pressures, the colonial government did intervene to address the grievances of these backward classes. But the compulsion to protect its own interests and safeguard British rule, particularly in the aftermath of the Great Uprising of 1857, at best urged caution and compromise, and at worst led to cynicism and betrayal. No wonder, then, that the colonial government 'did not take any comprehensive step to mitigate the evil effects of caste which they openly deplored' (Jaswal 2000: 45). Though they did proclaim noble ideals, for the most part British officials did little more than tinker with the injustices and inequalities of the system with new pieces of legislation: the three Bengal Regulation Acts in 1793, the Bombay Regulation Act II of 1827, and the Caste Disabilities Removal Act of 1850.

The effect of these legislative measures was not to abolish the caste system but to demarcate the areas between the new administration of justice and the control of the caste over the personal behaviour of its members. Thus, caste retained its cultural integrity and was even consolidated by the census survey (Wad 1984: 9). However, the impact of the modern West on a traditional society like India demanded nothing less than real systemic change if postcolonial India were to have any pretensions to modernity.

EARLY INITIATIVES

Directed by the Court of the Directors of the East India Company, a policy of non-discrimination on the basis of caste, religion, and race in government-aided schools was eventually formulated. However, in 1856 a Mahar boy, an 'untouchable', was refused admission to a school in Dharwar in the Bombay Presidency. An appeal to the Bombay Education Department was rebuffed on the pretence that his admission would lead to the exit of the other students. It took two years for the government to announce, in 1858, that it reserved the right to refuse support to schools that denied admission on the basis of caste or race, and that all schools maintained by the government would be open to

all children (Ghurye 1969: 275). However, unaided, non-government institutions were not affected by this new policy.

Thus in spite of the Caste Disabilities Act of 1872, the Hunter Commission of 1882 reports that in the Bombay Presidency even a token opening of the schools to the 'untouchables' was resisted with violence. Decades later, there were 'few, if any, of the Antyaja' (i.e., the lowest caste) in government schools because of 'the Brahminical fear of contamination and the general caste Government educational authorities' (Wilson 1877: 45). By 1902, reservations for backward classes were introduced in the princely state of Kolhapur, and in Mysore in 1921, following the Miller Committee Report of 1918; as well as in the Madras Presidency the same year. In 1931, following the Starte Committee for backward and nomadic communities, the Bombay Presidency introduced reservations, followed in 1935 by the princely state of Travancore (Krishnan 2006: 17).

Preferential treatment in employment was but one aspect of governmental affirmative action; political representation was the other. In 1917, the appeal for reserved seats for the 'depressed classes' in legislative councils was initiated by the Panchama-Kavili Abhivarthi-Abhimana, an association of 'untouchables' in the Madras Presidency, and was recommended by the Franchise Committee (the Southborough Committee) of 1918–19. As a result, under the Government of India Act of 1919, one of the fourteen members nominated by the governor-general to the Central Legislative Assembly was to be from the depressed classes.

But by now, token gestures were not enough for an awakened community. With the Bahiskrit Hitkarni Sabha he had founded in 1924, Ambedkar upped the ante to demand a joint electorate for the 140 elected seats of the Bombay Legislative Council and the twenty-two reserved ones for the depressed classes. The Madras Central Adi-Drawida Mahajan Sabha followed with a very similar demand. Several other appeals did reach the Parliamentary Statutory Commission (the Simon Commission) of 1928, which then suggested ten reserved seats (Jaswal 2000: 35). This raised the question of separate electorates for the depressed classes, which religious and other minorities already had. Ambedkar argued that 'if the nation is not going to be

split up by separate electorates to the Mahomedans and the Sikhs, the Hindu society cannot be said to be split up if the Depressed Classes are given separate electorates' (Ambedkar 1946: 323).

Gandhi, along with the Indian National Congress, vigorously opposed this. When the Ramsey MacDonald Award, in favour of separate electorates, was instituted on 16 September 1932, Gandhi went on a fast unto death, forcing Ambedkar to back down (Heredia 2007: 157 & ff). The compromise announced on 24 September 1932, known as the Poona Pact, provided for a joint electorate in a two-tier system, under which 'untouchables' chose candidates from among whom the general electorate would vote on who would be the Depressed Class Representatives, now doubled from seventy-one to 148 out of a total of 780 assembly seats. This was the basis of electoral reservations provided for in the Government of India Act, 1935. In 1943, job reservations in government services was fixed at 8.5 per cent, and raised to 12.5 per cent in 1946 to reflect the 1931 census figures for these classes (Galanter 1991: 86, n. 9).

Thus, the reservation quotas for the depressed classes (now listed as scheduled castes) rest on the Poona Pact, struck between the father of our country and the father of our Constitution. Separate electorates may have given a different trajectory to our history, but that is now just speculation; the Constitution has abolished them, and there is no going back to them today. This was done in view of the constitutional provisions for the weaker sections of our society, with the purpose of levelling the field for all citizens. Until this is substantially achieved, there must be no reneging on this commitment, either. It would be a betrayal of both Gandhi and his concern for the last and least Indian, and of Ambedkar and the Constitution that he bequeathed to us.

Today, though 'untouchability' has been constitutionally abolished and there are legal sanctions against its practice, the social reality has not gone away. It has merely evolved into more subtle yet still effective forms of deprivation and discrimination. It is not just the ritual significance of 'untouchability' that must be exorcized by law but the prejudicial correlatives of pollution that go with it: the very restricted life chances and

life choices that, even today, are open to these people in reality, despite the laws. As yet, we still have such a long way to go in achieving an egalitarian and just society.

PATERNALIZING THE EXCLUDED

The categorization of peoples outside the jati system in their own indigenous communities presented the colonial census enumerators with less of a challenge than did the categorization of communities within the caste system. The scheduling of the 'tribes' was done 'partly on the basis of habitat and geographic isolation, but even more so on the basis of social, religious, linguistic and cultural distinctiveness' (Galanter 1991: 150). Given the concentration of the habitats of these peoples in hilly, forested, and less-accessible areas, geography was for these tribes a more precise identifier than culture. They were variously classified as *Forest Tribes* in the 1891 census and as *Hill Tribes* in subsequent ones. In the 1931 census they were called *Primitive Tribes*, and finally as just *tribes* in 1941 (Ghurye 1963: 7–8). Today, the constitutional term for these communities is *scheduled tribes*.

In dealing with the adivasis, the colonial administration followed a strategy of excluding them from the purview of ordinary administration, since this could not meet their special requirements. The first instance of this was in 1782, when the Paharias (or Malers) of the Rajmahal Hills in the Bengal Presidency, under the administration of the East India Company, were withdrawn from the jurisdiction of the ordinary courts and put under a sessions court constituted by hereditary leaders called sardars. However, by 1796 this was discontinued and the tract put directly under the collector. After the Kol revolt in 1831 and the more turbulent Santal rebellion in 1855, a new strategy was sought to address adivasi grievance, especially over landholdings (Ghurye 1963: 71–75).

To give effect to the Government of India Act of 1870, the Scheduled Districts Act of 1887 announced special rules and regulations for administering these areas (ibid.: 78). More areas were added to the schedule as the Government of India Act of 1919, Sec 52-An (2), empowered the governor-general (ibid.: 91). The enlarged schedule was then included in the

Government of India (Excluded and Partially Excluded Areas) Order, 1936 (ibid.: 122). However, this expedient of scheduling a district as an excluded area 'has hardly proved itself to be superior to the normal constitutional machinery' (ibid. 1963: 99), for a change in the bureaucratic mindset was still needed to make the difference for adivasi inclusion.

There have been attempts to make a checklist of characteristics to identify adivasi communities, but none have proven adequate. The 'Hindu Method of Tribal Absorption' (Bose 1941), for instance, makes it difficult to clearly distinguish adivasis and non-adivasis in this continuing transition over time. Whether a particular group should be scheduled as 'tribe' or 'caste' could be controversial, and some groups were not included in the schedule, especially among the nomadic adivasi communities. Thus, the Panos in Orissa (now Odisha), whose language is Kui, were returned by the census in 1891 as adivasi Kondh Panos. But because they also suffered the stigma of 'untouchability', they were later scheduled as a caste in the Madras Presidency along with other 'untouchables'. They are now petitioning to be included among the scheduled tribes again (Thurston 1987: 72–75).

The colonial government's approach to adivasi welfare was mainly ameliorative, intended to protect these communities from outside exploitation by isolating them. This is no longer possible in today's world, nor is it desired by the adivasis themselves (Fuchs 1992: 50) as it would amount to an enforced primitivism. However, after Independence the government's policies towards the adivasis were no longer isolationist, but rather were designed to combine 'the twin elements of protection and development. Seen in the perspective of the third world, the Indian Strategy of tribal development, in spite of its limitations, could be described as a unique experiment' (Singh 1985: 250). However, as often happens, the gap between policy and performance is enormous.

Even today, the Constitution nowhere attempts a substantive definition of the term *tribe*. But it did try to set up a method for designating adivasi communities (Mehta 1991: 57). In this regard, what the Commissioner for Scheduled Castes and Tribes underlined in 1952 is still pertinent:

No such uniform test has however, been evolved for classifying Scheduled Tribes with the result that in view of the divergent opinions held by Census authorities and public men from time to time, difficulties have been experienced in determining as to which tribe can rightly be included or excluded from the Scheduled Tribes. I consider that some definite criteria for this purpose must also be devised so that full justice is done at the time of respecification of the 'Scheduled Tribes'. (*Report 1952: 6*)

What we have, then, is an administrative category. No matter how transparent the procedure, it cannot bring real justice without specifying the ethnographic and socio-economic characteristics on which communities qualify for the schedule. Further, if the purpose of their 'exclusion' was to foster development along the adivasis' own distinctive lines, then an empathetic sociocultural understanding, more than bureaucratic categories, was needed to change the mindset of these administrators.

DIVIDE AND RULE

Parallel to these developments regarding affirmative action for weaker sections of caste and adivasi communities, other vulnerable minorities also mobilized to press their demands with the colonial government. Region and language, for instance, also evoke community loyalties in India, but it is religion that has played an increasingly divisive role.

The largest minority, the Muslim community, feared they had the most to lose with Hindu rule, and they were the most vocal. They sought assurances against a brute Hindu majority. Regrettably, most leaders of the national freedom struggle, in their impatience for the transfer of power, failed to assuage the Muslim community of its worst fears. In turn, Muslims trapped themselves in a defensive and adversarial political response. Thus, both majority and minority played into the hands of the colonial government, whose apparent religious neutrality in the circumstances positioned it well for an effective divide-and-rule agenda.

Separate electorates were first introduced in the 1890s as a temporary measure and restricted to the Punjab (Barrier 1968: 538). The Government of India Act of 1909, known as the Morley–Minto Reforms, extended this in response to Muslim demands. Subsequent acts extended the provision to Sikhs, Indian Christians, Anglo-Indians, and Europeans. The Congress and

the Muslim League came together with the Lucknow Pact of 1916, which gave a third of the seats in the Imperial Legislative Council to Muslims. In 1919, 'although the Montagu-Chelmsford report is vehemently critical of separate electorates, it does not follow the logic of its recommendations through', i.e., scrapping them in favour of joint ones (McMillan 2005: 25).

The Government of India Act of 1909, following on these reforms under the guise of legitimating minority representation, entrenched communal representation by retaining such separate electorates. This furthered a divisive and sectarian realpolitik that bedevilled the freedom struggle and climaxed in the horrors of Partition, leaving behind a traumatized subcontinent and giving us a compromised, tainted swaraj in 1947. We have still not quite come to terms with the wounded and unhealed memories of that tragedy.

In pre-colonial times, multiple religious divides in the subcontinent were far too diverse and complex to coalesce in larger aggregations against each other, much less to forge a unity against foreign rule on the basis of religious belonging. For, religious community affiliations were fragmented in terms of caste, religious sect, and other such affinities. There were feudal battles between princes, and wars waged by both Hindu and Muslim monarchs against each other. There were conflicts of economic and political interests, and deep cultural and religious differences that spilled over into violence.

Orientalist perspectives froze religious difference into political divisions and eventual separation. Thus, James Mill's six-volume *History of India*, in 1817, became the standard source for the colonial administration. His periodization of Indian history into the ancient Hindu, the medieval Muslim, and the modern British was an implicit evolutionary perspective that put the colonialists at the top of the pyramid, holding it all together in their 'civilizing mission'. However, more recently, Indian historians (Joshi and Josh 1994), though conceding the religious fault lines that existed between the two major communities, do not find them as having developed into the kind of religious communalism that finally divided the country at Independence and climaxed in the Partition massacres.

Until colonial times, there was no lingering precipitate of historical memory in the consciousness of a people to construct these religious communities into apparently irreconcilable 'nations'. Sanjay Subrahmanyam (1996: 58), reflecting on the 'Sectarian Violence and the State in Pre-colonial India', soberly concludes 'that medieval and late pre-colonial Indian society was violent, and the text and ideological statements produced in the epoch are often suffused with this violence ... Nevertheless, there was relatively little harnessing of devices of collective memory or the recollection of "historical grievances" to orchestrate mass violence.' This last is a more recent phenomenon, fuelled by electoral politics. It now threatens to spiral out of control, but it is not likely to be abandoned as long as it yields political returns.

The long and torturous history of the Indian National Congress and the Muslim League, the roles of Gandhi and Jinnah and those of the other leaders at the time, with all the unresolved ambiguities and unreconciled contradictions, still haunts us. Was this a matter of misunderstanding and mistrust that we could have overcome, or of incompatibility and antagonism that could not but overwhelm us? Without gainsaying the vested interest of the British role, can we escape our own part in the tragedy? What have we learnt from the traumas that convulsed us in 1947? Are we condemned to repeat them, as happened in East Pakistan in 1971?

The subcontinent, once partitioned on the basis of religion into two, is already divided into three on the basis of Bangladeshi identity. Militarization and terrorism in Pakistan, once proudly proclaimed as 'the land of the pure', has left that country dangerously unstable and on the very brink of becoming a failed state or imploding into several smaller ethnic-based ones. Once considered a 'basket case', Bangladesh is not quite out of the woods. In spite of the end of Sri Lanka's civil war, the country's ethnic travails are increasingly worrying, for both the island and the subcontinent as a whole.

In India even today, minority communities are perceived by Hindu nationalists against the backdrop of this wounded history, its unconscious fears and unhealed memories. Every Hindu-Muslim communal riot in our country in some way re-enacts this tragic history, so horrifically expressed in

the chilling slogan, ‘*Pakistan ya kabrastan!*’ (Pakistan or the graveyard!) However, if divide and rule is the response of the ruling classes, unity in diversity is the constitutional alternative expressed in minority rights—and could well be a challenge and an opportunity for enrichment and celebration.

ENUMERATED COMMUNITIES

The colonial census was never just a demographic exercise. After the Great Uprising of 1857, the British in India became convinced that they needed to better understand the people they governed. Inspired by demographers and anthropologists, the government census and its *Gazetteer* were brought in as the official instruments to develop a reliable archive of information on India’s population in order to pave way for stable, long-term governance.

Auguste Comte, the founder of sociology, was well aware of the significance of accurate population estimates when he said ‘demography is destiny’. No wonder many a conflict-ridden country—Lebanon, for instance—has indefinitely postponed its national census. For, official census numbers can legitimize and help to implement a contested political agenda, or motivate and mobilize a new one, creating ‘imagined communities’ (Anderson 1983) and consolidating collective identities (Zuberi 2001). The present controversy on including caste in India’s national census is evidence of such a political agenda, and the jury is still out on the possible consequences of implementing such a caste census.

In the colonial census, enumeration and categorization were but the first steps in enlarging and systematizing the archive of information for the purpose of efficient administration. The government *Gazetteers* were a further elaboration with ethnographic and other information. These had enormous consequences for Indian society, and political leaders were not beyond exploiting them, whether in regard to caste or religion, language or region.

CRYSTALLIZING CASTE

L. Middleton, a superintendent of the census operations in 1921, indicts the British administration's preoccupation with categorizing and enumerating the subcontinental population thus:

We pigeon-holed everyone by caste, and if we could not find a true caste for them, labelled them with the name of a hereditary occupation. We deplore the caste-system and its effects on social and economic problems, but we are largely responsible for the system we deplore ...
Government's passion for labels and pigeonholes has led to a crystallisation of the caste system.
(Punjab Census 1921: 434, cited in Ghurye 1969: 281)

As 'fuzzy boundaries' were constructed into rigidly defined ones between these 'enumerated communities' (Kaviraj 1992: 20–33), political leaders became aware of their potential in democratic elections: they could now be turned into 'vote banks'. Thus began the political mobilization of caste communities premised on a constructed common identity.

There is hardly any comprehensive understanding of caste that is uncontested. Yet whether covertly valorized or openly despised, caste has been perceived from both sides of the divide as overlapping with traditional Indian civilization and culture. But the modern avatar of caste is very much the fallout of the encounter between traditional Indian society and western colonialism (Dirks 2002: 5). The history of caste, from the medieval through the colonial period to its epiphany in contemporary Indian society today, testifies to this. The early understanding, based on ethnographic descriptions written by early missionaries and administrators, was very much a part of the orientalist heritage. This gives way to the compulsion to enumerate and categorize the population as a necessary means for its surveillance and control, an obvious exercise in 'colonial governmentality' (ibid.: 316, n. 6), the organized ways in which governments produce and govern citizens.

This history is finessed with caste-based reservations in independent India, which in turn begins a new trajectory of caste conflict no less divisive than what preceded it. The persistence of caste defies statutory rights and legal sanctions, state policies and government programmes. It remains a powerful political mobilizer in our society. For more than ever, caste has become a contested category for state intervention and governance. Some see this as precisely the consequence of such interventions, though others would

urge these as the only feasible instruments with which to address this conundrum.

The Indian National Congress, under the leadership of Dadabhai Naoroji (1886) and Badruddin Tyabji (1887), favoured winning freedom and not working for social reform, which it saw as the concern of philanthropists, not politicians. But when, in 1911, Census Commissioner E.A. Gait proposed to enumerate the depressed classes separately from the Hindus, the political implications caused enough alarm for the Congress, at its annual meeting in 1917, to pass a resolution urging the ‘removal of all disabilities imposed on the Depressed Classes’. In so doing, however, it omitted the words ‘imposed by religion and custom’, which were in the original submission of the Depressed Classes Mission Society (Galanter 1991: 26–27, n. 27).

As the proposal for legislative representation gained ground, the depressed classes became an active constituency, agitating for their own political space. They were not content to be mere passive recipients of paternalist reform. Identifying them in the complex regional variations across the subcontinent was problematic and disputed, especially in north India, where caste distinctions were fuzzier than in the south. The 1911 census counted the depressed classes at 24 per cent of the Hindu population and 19 per cent of the total country’s. In places in the south, not just ‘untouchability’ but ‘unapproachability’ and even invisibility was enforced—the exclusion of caste groups that could not approach or be seen without causing pollution. In the north, on the other hand, the ‘pollution’ divides were more amorphous between the Brahmins and other upper castes, and more ambiguous among the lower-caste occupations.

The 1931 census commissioner, J.H. Hutton, proposed a set of nine criteria to identify ‘untouchable’ groups (ibid.: 127), but these too were not free of difficulties. When the list was finalized for electoral purposes, in 1936, it ‘reflected definitions of untouchability with an admixture of economic and educational tests and considerations of local politics’ (Galanter 1991: 130). The 1941 census estimated the scheduled castes as 19.15 per cent of the Hindu population and 12.62 of the total.

Once caste identity was perceived to be fracturing the Hindu community and its potential as a vote bank, Hindu nationalists sought to reconstruct it into a pan-national Hindu community. But this marginalized minority religious communities and also failed to subsume lower castes under upper-caste dominance. Lower castes perceived the Hindu nationalist agenda as a continuation of an upper-caste, upper-class dominance, and mobilized outside their ambit of influence to assert their own interests; the Muslim minority, fearing Hindu majoritarianism, was put on the defensive. This process thus politicized pan-Indian community identities.

However, this kind of identity politics, on which weaker sections of our society have relied so much till now, still mobilizes people under sectarian labelling. The result is fractured, precarious coalitions on the national stage, where all issues are seen through sub-national perspectives and priorities. Often, proponents end up settling for short-term gains rather than seriously addressing national issues and concerns. Reservation-related politics and minority communities are readily caught up in this imbroglio and, as always, it is the weakest and the least that come out last and poorest.

HOMOGENIZING RELIGION

Religious communities in the subcontinent reflect a multiplicity of local and regional variations in ethnicity and language, culture and religion, across and within groups. They do not constitute homogenous communities. Among the distinguishing characteristics of the numerous religious communities, there is much overlapping and cross-cutting, giving rise to fuzzy boundaries between multiple identities within the medley of traditions. The Ismaili Khojas from Gujarat and Sindh, for instance, adapted and at times even adopted many Hindu myths and customs; the Kabir panthis belong to many religious communities; and the Guru Nanak panth extends beyond the Sikh Khalsa.

Indeed, the boundaries of many local communities were too porous to allow them to be unambiguously classified as belonging to one or the other of the mainstream religious traditions. Even today, there are communities that are religiously too syncretic to be unequivocally categorized in a mainstream religious tradition, except legally. For, 'every religion ... is in reality a

multiplicity of distinct and contradictory religions' (Gramsci 1996: 420). This is true of most world traditions, but particularly of those in the subcontinent, where religious belonging is as diverse and divided as any other generalized category of people. The colonial census found it easier to categorize people by a single label; however, once such enumerated communities are politicized, they constitute a mass base for leaders that is readily mobilizable.

Homogenization sharpens collective identities and mobilizes an in-group feeling, intensifying an us-versus-them divide, polarizing groups and further strengthening divisions. This dynamic can serve defensive or aggressive purposes. Moreover, constructing a homogenous religious community across these multiple dimensions was crucial to exploiting their vote bank potential. But this means privileging religion as an overriding constituent of identity, levelling all others.

As with any primal identity, when the numbers are right, this risks constituting a 'religious nation' seeking political expression in a separate state. Wars of religion in Europe witnessed the birth of the nation states there. In India, too, the distinctive diversities of our numerous religious traditions are being eroded from within and without, for political and chauvinistic reasons that have little basis in authentic religious traditions and none in our constitutionally defined citizenship.

CONSTRUCTED MAJORITY

From a geographic category used by the Arabs during the seventh century to refer to peoples beyond the Indus, the term *Hindu* went on to be used by the colonial census of 1871, in order to identify a complex multiplicity of religious traditions. Since then, it has become a construction for a multiplicity of diverse religious beliefs and cultural practices. Swami Vivekananda (1863–1902) referred to Hinduism as more a 'parliament of religions' than a single, homogeneous tradition. The overarching dominance of brahminism served as the original legitimating ideology (Kosambi 1962), but this has always been contested by a rich tradition of unorthodox non-brahminical alternatives (Omvedt 1995).

As with caste, the colonial historians constructed an imagined history from above that was overly dependent on brahminical textual sources while neglecting subaltern ones, oral traditions, and archaeological findings. The idea of a homogeneous community of peoples that were identified as 'Hindus' in the colonial census greatly simplified administration, including that of personal law, but this hardly reflected the reality on the ground. Thus, adivasis, classified as animists until the 1931 census, thereafter became 'Hindus'. Moreover, rather than allowing these multiple traditions to evolve on their own from within, they were frozen into a status quo from without, often through the legal instrument of personal law, codified from textual documentation and customary practice (Shodhan 2001). The Meos or Mewatis, a Muslim Rajput adivasi community, are a syncretic sect in the Thar desert that is now being 'Sanskritized' on the Indian side of the border and 'Islamized' on the Pakistani side (Mayaram 1997).

Once again, census enumeration led to a crystallization of 'neatly bounded and mutually exclusive bodies' (Ingold 1994: 330). The administration of personal law premised on textual assumptions tended to freeze the status quo between and within fuzzy communities, homogenizing groups that once consisted of diverse members with multiple identities. In their quest for cultural and political hegemony, Hindu revivalists and religious nationalists seized on this construction of a single religious Hindu community to superimpose their chauvinist interpretations on the past, in order to project their majoritarian politics into the future.

Predictably, this precipitated a corresponding response from the Muslim minority. The clash between the two religious communities cascaded into the two-nation theory, first articulated by V.D. Savarkar in his presidential address to the Hindu Mahasabha in Ahmedabad in 1937. There, he said, 'There are two antagonistic nations living side by side in India' (Savarkar 1971: 24). Later, this same two-nation theory was echoed by Muhammad Ali Jinnah in his presidential address to the Muslim League in Lahore in March 1940. Yet the Indian freedom movement privileged an Indian nationalism that was founded not on religion or birth but rather on territory, and now is

enshrined in the Constitution as ‘a sovereign, socialist, secular democratic republic’.

Faced with the syncretism of multiple beliefs, practices, and even self-definitions, the census commissioner in 1911, E.A. Gait, ordered census enumerators to assign ‘the persons concerned to one religion or other as best he could’ (Sarkar, S. 2002: 225). Thus the census began to constitute these groups as ‘enumerated communities’. The inclusion of the scheduled castes and scheduled tribes within the Hindu fold was not just a practical or a speculative question, but rather an urgent political one with serious electoral consequences.

When Gait, in a circular, proposed to exclude lower castes and others not served by Brahmin priests and not allowed temple entry from being categorized as Hindu, conservatives initially welcomed the move. But later, it was opposed and aborted (Sarkar, S. 2002: 84). By now, the political implications of demography were apparent and reflected in the demand for separate electorates. In 1930, Ambedkar’s submission to the Round Table Conference argued that the Depressed Classes ‘must be regarded as a distinct and independent minority ... We cannot be deemed part of the Hindu community.’ But he moderated his stance to plead for them to be categorized as ‘Protestant Hindus’ or ‘non-caste Hindus’ (cited in Zelliott 1996: 132).

Homogenization into a single ‘Hindu’ community was never complete. Distinct religious traditions are still preserved by people no longer content to be labelled as ‘backward’ or as ‘Hindus’. The increasing number of converts to Buddhism from the scheduled castes is a telling evidence of this. Adivasis are now agitating to have Sarna, their animist religion, officially acknowledged in the census. In the North-east, such communities are choosing to regard their identities as being located at the margins of the Hindu fold, or converting to another religion entirely.

DEFENSIVE MINORITY

From its beginnings, there has been a plurality of religious belief and practice within the ummah, the community of believing Muslims. The original composition of the ummah did not pretend to uniformity. The ethnic diversity

of the Arabian tribal clans prevailed even within the Islamic religious union represented by the ummah. The Shias and the Sunnis are one of the earliest and most enduring divisions in Islam, but there have been numerous other sects and denominations, interpretations and traditions, which have been accepted into mainstream Islam.

Culturally, too, the process of Islamization has allowed for distinct diversities, even in the Middle East, the cradle of Islam. In other places, the process of Islamization has never been quite complete. Muslims in India and Indonesia are remarkably distinct from each other and even more so from Arab Muslims in the Middle East; yet they are extremely diverse within their own countries, as well. The Arabization of Islam is more closely associated with the Wahhabism of the eighteenth century, now promoted and subsidized by oil-rich states such as Saudi Arabia. But this has little to do with the Quranic origins of the ummah itself.

Pan-Islamic fundamentalism, as an international phenomenon, is very much a political reaction to the aggression of the western modern world. A triumphant, confident Islam was far more open to other and newer influences. The great Islamic empires in Iraq, Iran, Spain, India, Turkey, and elsewhere exemplified this. Uniformity was not the inevitable end product of the Islamic principle of unity.

Muslims came to the Indian subcontinent first as traders along the coasts, then as conquerors from the north-west. But the mass of local converts were from the intermediate and lower castes, with some few from the upper-caste elites. Contrary to much popular misrepresentation, Muslims in the subcontinent too are not a homogeneous community. They are as diverse and divided as most other people in the region. Many Muslim sects, especially among the Shias, such as the Ismailis and Khojas, as well as Sufi congregations, are in fact considered heretical by Islamic conservatives elsewhere. But a government census is too blunt an instrument to register such subtle differences.

Historically, other heterodox religious traditions have been welcomed and given space in the subcontinent before being gradually absorbed into its cultural environment. Except for the Portuguese possessions, India is the only

place where the Jews have never experienced persecution or hostility (Israel 1998). Over time, however, even dominant traditions lost their distinctiveness in a process of syncretism and acculturation. This certainly happened with the Islam that Central Asian conquerors brought with them. Indian Islam's abiding concern with orthodoxy can only be read as a reaction to the perceived threat of an all-encompassing Hindu environment, though political dominance certainly helped the kind of ethnic self-confidence and openness needed to engage imaginatively with other local cultures and create a new composite tradition.

In particular, this process took place at the zenith of Mughal rule with Akbar (1542–1605), and was carried even further with Dara Shukoh (1615–59), the eldest and favourite son of Emperor Shahjahan (1628–58). However, expediency at times dictated less enlightened and more chauvinistic policies that were disastrous in the long term. The struggle for succession among Shahjahan's four sons finally ended with the accession of Aurangzeb in 1658, who then imprisoned his father in Agra and executed Dara Shukoh for heresy. Aurangzeb subsequently moved to legitimize his rule with the support of the Muslim clerics. This marked a turning point, ending the inclusiveness of the earlier regime and precipitating eventual divisions and antagonism.

If Akbar's constitutes a positive, even secular, response by a Muslim ruler in a Hindu society, Aurangzeb's reign (1658–1707) epitomizes one of short-term opportunism. Aurangzeb's last letter to his son and heir as he lay dying in Ahmednagar in 1707 is a tragic testimony to the end of a glorious era and his own calamitous part in this:

I came a stranger into this world, and a stranger I depart, knowing nothing of myself, what I am, or for what I am destined ... I have not been the guardian and protector of the empire. My valuable time has been passed vainly. I have a dread for my salvation and with what torments I may be punished. (Holden 1895: 304)

Two centuries later, with the Indian nationalist movement led by the Congress, dominated by Hindus, and promising secularism, the insecurity of Indian Muslims came to a head due to a sense of being engulfed in a Hindu sea and isolated in a secular world. Jinnah's response through the Muslim League was political, protecting the interests of Muslims by mobilizing

Muslim nationalism. The more fundamental religious response of Maulana Syed Abul A'la Maududi (1903–79) and his Jama'at-i-Islami, founded in 1941, was not just a response to the seemingly threatening Hindu environment that might dominate postcolonial India. As much, it was about responding to the challenges posed by modernization and the West.

However, both these religious and political responses were a matter of contention among the Muslims of India. The modernist Syed Ahmad Khan (1817–98) saw the future of India's Muslims in education. In 1875, he established the Muslim Anglo-Oriental College at Aligarh, which in 1920 became Aligarh Muslim University. The ulema (Muslim scholars) may have been religiously conservative, but many did support a united India against Jinnah. Maulana Husain Ahmad Madni (1879–1957), who for decades served as the rector of the Deoband madrasa in Uttar Pradesh, and head of the Deobandi-dominated Jami'at ul-'Ulama-i Hind (The Union of the 'Ulama of India'), opposed the two-nation theory. Basing himself on the Quran, he argued for a 'united nationalism' in his book, *Muttahida Qaumiyat Aur Islam* (United Nationalism and Islam).

However, as the freedom struggle intensified, the confrontation between the various nationalisms—Hindu, Muslim, and Indian—intensified as well. On the opposite side of a Hindu community constructed as a majority, after all, was the parallel construction of other minority communities on a similar religious basis. Census categorization and enumeration facilitated their consolidation as minorities in the same way as it helped construct the majority community. The colonial government encouraged and exploited the subsequent politicization. As Independence came within reach, political competition among the national leaders of these contending communities escalated out of their control.

In the wake of Direct Action Day, launched by Jinnah on 16 August 1946, the point of no return was crossed. Once the Muslim and Hindu communities were constructed as two antagonist nations, the possibility of their inclusion in a single state as equals became extremely tenuous. Jinnah did seem to backtrack on religious nationalism when he addressed the Pakistan Constituent Assembly at its first meeting on 11 August 1947 and dreamed of

the time when ‘Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is a matter of the personal faith of each individual, but in the political sense as citizens of the State’ (Jinnah 1948: 10). But he retracted this olive branch on 25 January 1948 when he assured the Sindh Bar Association, ‘Why this feeling of nervousness that the future constitution of Pakistan is going to be in conflict with Shariat Laws? Islamic principles today are as applicable to life as they were 1,300 years ago’ (*Dawn*, 26 January 1948).

Partition, which had been precipitated by religious and nationalist antagonisms in the subcontinent, however, did not put an end to these antagonisms. We still have to learn from our history what is known in sociology as the Thomas theorem: situations defined as real are real in their consequences (Thomas and Znaniecki 1927).

PATRIARCHAL SOCIETY

The inherent hierarchy of caste is most obviously evident in patriarchy. Indeed, caste as jati or subcaste, is but the extension of the patriarchal joint family into the public domain, where it sustains and reproduces caste hierarchies. The ordered gradation of caste is premised on ritual purity, which then translates into dominance and power in many other social dimensions. Notwithstanding the ideological separation posited by Louis Dumont between purity and power, Brahmin and Kshatriya, in *Homo Hierarchicus* (Dumont 1970), the ritually pure have higher status and more power than the ritually polluting.

Religious nationalism and religious fundamentalism have a close affinity with patriarchy, whether or not they accommodate other social divisions of caste, class, or ethnicity. In colonial India, both social and religious reformers were particularly sensitive to criticism from the West that savaged some of India’s most enduring traditions, like caste and patriarchy, as the greatest cause of the backwardness of the subcontinent’s society. ‘The women’s question was a central issue in some of the most controversial debates over social reform in early and mid-nineteenth century Bengal—the period of the so-called “renaissance”’ (Chatterjee 1989: 233).

Though social reformers and religious revivalists distinguished themselves from each other, to justify their endeavours, both drew on the same sacred scriptures that first legitimize and then reproduce the patriarchal features of traditional society. Being mostly upper caste/class, they did not tap the less macho, more androgynous, Sufi or Bhakti traditions. In many aspects, these social reformers were still quite patriarchal and so not incompatible with Victorian ideals. Often they had an affinity that echoed each other. Paradoxically, defining themselves against the West, Indians have internalized the *Intimate Enemy* they sought to exorcize (Nandy 1983). Indeed, subjugated colonial males tend to reconstruct gender relations more unequally than supposedly liberated democratic males.

In most secular ideologies and religious theologies, women have been defined as ‘culture bearers’. The hand that rocks the cradle rules the world, but men still rule the women who rock the cradle. Men control cultural reproduction, seen as essential for constructing a nascent nationalism, a project defined by men, who also construct feminism in relation to this (Mayer 2000: 16). In nineteenth-century India, patriarchy was not an ideology constructed from below by marginalized peoples, but rather defined from above by upper-class/caste men with little sensitivity to the various ways in which women participate in and benefit from society—or, for that matter, there was no sensitivity shown even to the subalterns whom these men eventually succeeded in mobilizing for their cause. Little wonder, then, that ‘the issue of “female emancipation” seems to disappear from the agenda of the nationalist agitation in the late nineteenth century’ (Chatterjee 1989: 249).

In the twentieth century, Gandhi brings the masses and women into the nationalist movement. Gandhi’s success in mobilizing women in an unprecedented way for the national freedom struggle was premised on a reinterpretation of the scriptures—‘all that is printed in the name of scriptures need not be taken as the word of God or the inspired word’ (CW, vol. 64: 85)—as also on ‘Indian nationalism to be non-violent, anti-militaristic and therefore a variant of universalism’ (Nandy 1995: 14). In rejecting the anti-imperialist, manly hero, Gandhi privileged an idea of masculinity in terms of the more ambiguous, androgynous heroes of Indian

tradition, such as Ram and Krishna (Nandy 1983). Indeed, Gandhi saw women as the stronger of the sexes in terms of a woman's capacity for suffering and self-sacrifice, resilience and courage—in other words, for satyagraha:

To call a woman the weaker sex is a libel; it is man's injustice to woman. If by strength is meant brute strength, then indeed is woman less brute than man. If by strength is meant moral power, then woman is immeasurably man's superior. Has she not greater intuition, is she not more self-sacrificing, has she not greater powers of endurance, has she not greater courage? ('To the women of India', *Young India*, 10 April 1930, CW, vol. 39: 57)

Yet even as he affirmed the autonomy and dignity of women, Gandhi still linked their public activism to their traditional roles. The Gandhian movement resolved the tension between these public and private roles of women by retaining the religious content of nationalism while at the same time turning the movement towards non-violence and imparting to it a gentle, patient, long-suffering, sacrificial ambience particularly appropriate for women (Sarkar, T. 1984). However, in spite of the success of Gandhi's moral appeal and the favourable climate he created for gender equality, gender relations remained unequal. Without a restructuring of women's roles, their presence in the public sphere was unsustainable and, once Independence was attained, they eventually returned to their traditional domestic functions, thus postponing their own agenda for women's liberation.

In 1921, the Bombay and Madras legislative councils were the first to grant women the right to vote, although this was restricted to the educated and propertied. In 1926, Muthulakshmi Reddy became the first woman to be nominated to the Madras Legislative Assembly; she was nominated by the Women's India Association (WIA), 'to represent women's point of view' (John 2008: 36). Later, in 1932, in a memorandum to the Franchise Committee, the All India Women's Organization demanded universal suffrage, but again this was granted (by the Government of India Act of 1935) only to women property owners of a certain level of education, though it did provide for reserved seats for women.

However, the Franchise Committee's Communal Award for separate electorates was rejected by the All India Women's Conference (John 2008:

40), although there was some minority opposition within the AIWC. Even though more nominations of women to various bodies—central, provincial and municipal—was demanded (ibid.), reserved electoral seats for women were rejected as early as 1931 by Sarojini Naidu and J.A. Shah Nawaz, in a letter to the British premier. Later, this rejection was seconded by a joint declaration of the AIWC and the WIA, and again in 1935 by the AIWC, the WIA and the National Council for Women in India (NCWI); they described the idea as ‘pernicious and humiliating’ (Dhanda 2008: 3–10).

Thus, the gender-blind policy adopted in the freedom struggle did little to help the cause of women’s presence in public life. This is most apparent in the stark under-representation of women in public life even today, especially among elected representatives in state legislatures and Parliament. Some women did gain public prominence in the first part of the twentieth century, but these were soon co-opted, while most remained subservient to the nationalists’ agenda. The Government of India Act, 1935,

set the tone for the participation of elite women in Indian politics in the following decades. Yet it is ironic that the very method—reserved seats—by which women were first accepted as part of the Indian parliamentary culture was first vehemently opposed by those nationalist women whom it was later to benefit. The provision for reserved seats for women was abolished at independence. (Pearson 1989: 199)

It was only sometime after Independence that women’s movements brought the question into their own agenda and women’s reservations was made into a national issue.

COMPARTMENTAL SOCIETY

The Jain, Buddhist and Sikh traditions have their own sacred religious scriptures and distinct traditions. They reject the Vedas and caste; they are not *Vedapramanya*, i.e., those who accept the Vedas, and so cannot be considered within the *sanatan dharma* (‘timeless religion’) of Hindu tradition, though the process of syncretism over the centuries has certainly narrowed the divide. In colonial times, the Sikhs, Muslims and Christians, together with Anglo-Indians and Europeans, had separate electorates. This was the basis for Ambedkar demanding the same for the ‘untouchables’. In

post-Independence India, with the consensus of all members of the Constituent Assembly, separate electorates for religious communities were finally abolished and in place came the constitutional guarantee of religious freedom and minority rights.

Historically, all religious traditions have been acculturated and assimilated into the caste system, reflecting many of its features within their religious communities, even though some of their own traditions explicitly deny caste distinctions, as in the case of many Bhakti sects within the Hindu tradition. However, these too eventually formed bounded communities and found their assigned niche in the caste hierarchy, depending on their occupation and local status. Caste was no less internalized among the other minority religious traditions, even though they preached against it. Ambedkar confronted this reality of caste Hinduism when, in 1935, he declared: ‘I will not die a Hindu’ (Gore 1993: 126)—before finally, in 1956, converting to Buddhism, which then had little more than a token presence in most parts of the subcontinent.

Caste and religious groupings overlap, as do tribe and caste ones. Moreover, other loyalties such as language and region complicate the mosaic. But the compartmental community structure of traditional Indian society still defines the collective identities and underpins the cultural affinities of our people. It has survived disruptive change and represents a stabilizing continuity across centuries of tradition. Not that ‘The Compartmental Society’ (Galanter 1991: 7–17) was ever completely static, but its persistence in India is particularly pervasive. It must be factored into any design to construct a national community of citizens across boundaries that continue to redefine themselves around interests and concerns that privilege the community over the individual.

Gandhi understood this better than most secular modernists, such as Nehru. Gandhi saw change in India as a bottom-up process, beginning with the individual and the village and moving up to the nation and beyond to the world. The Nehruvian model of top-down, centralized planning has fallen far short of its socialist purpose. Caste mobilization that challenged this

hierarchically compartmentalized society began with subaltern movements promising a new equality beyond caste and even class.

The establishing of reservation quotas was a strategy within this larger movement. Hindu nationalism was the obverse of this, co-opting the marginalized to upper-caste/class concerns and contesting minority rights. But whatever our own priorities might be, the Constitution is unambiguous on an egalitarian, casteless society, religiously diverse in a secular state, where religious traditions are respected and minority rights privileged.

The historical syncretism that developed in the subcontinent across ethnic and religious divides produced a composite culture for a segmented society within a hierarchical structure. Remarkably, it reproduced this hierarchy within the assimilated groups, even as it found a niche to encapsulate them in the overall system. However, the encounter with modernity that came with colonialism deeply disturbed this arrangement. The nineteenth-century response in India to western colonialism, was a radical interrogation of traditional Indian society, something which the freedom struggle of the twentieth century too endorsed.

The rising expectations taking root in the collective consciousness could then no longer be contained within the old hierarchical structure. The rapidly changing times demanded a new, more democratized and egalitarian structure. Now, the very premises on which the old hierarchy had been based were being fundamentally challenged from below by marginalized communities who were no longer willing to passively accept their place at the bottom of the heap. These premises were also being critically questioned from above by modernized elites for whom caste affinities were a major obstacle to building a national community of patriotic citizens.

However, with rising democratic aspirations to be free and equal, the multidimensional pluralism that could flourish within the constraints of the vertical hierarchy of caste became ever more problematic, especially in the context of horizontal integration across segments and sects. Accommodating the marginalized in such a society demanded some measure of affirmative action on their behalf. The subalterns were no longer willing to wait for

largesse from superiors. Moreover, if diversity was to be preserved, vulnerable minorities would have to be protected with specific rights.

Already in the nineteenth century, the challenge to caste had come from the bahun samaj movement, which began in Maharashtra. Then there was the Dravidian movement in the early twentieth century in Tamil Nadu. By categorizing, identifying and enumerating these communities, the census focused attention on the potential of their struggle in an electoral democracy, where numbers count as votes. The leaders were quick to mobilize their communities, and this momentum has now developed into powerful Dalit and backward-caste movements, sweeping across the land like a tidal wave with little to stop its onward rush. Moreover, minority communities put on the defensive by an aggressive majoritarianism are now mobilizing minority rights as a protective shield. Women's movements too are seizing the initiative over gender justice and reservations. All this presages a great churning of our society from below, which will surely impact the hegemony from above.

EXCLUSION AND RESPONSE

All top-down perspectives become blinkered and miss the many contradictions to which bottom-up perspectives are more sensitive to. This is particularly pertinent in a study of the mass-based non-Brahmin movements; for, an elitist history neglects the 'politics of the people' (Guha 1982: 4) and silences marginalized voices. Hence, such a history does not grasp the cultural formations of protest and revolt. Moreover, a dominant hegemony cannot completely and indefinitely suppress every group conflict or contain all antagonistic interests. The contradictions and cracks in social systems will inevitably reflect the 'complex ways in which relationships of meaning are produced and fought over' (Giroux 1984: 332).

Subaltern groups can exploit these cracks to 'build up zones of resistance as a strategy for survival and political action' (Devalle 1992: 21). The voices of resistance and the modes of protest may seem at times 'non-political or with meanings that appear only as marginal to explicit political

discourses' (ibid.: 236), but these do have the potential for a 'cultural revolt' that acquires economic and political content (Omvedt 1976:2).

Introducing his seminal study of *Social Movements in India*, M.S.A. Rao distinguishes four kinds of these movements: non-Brahmin versus Brahmin in the south, the twice-born dwijas and the backward classes in the north, depressed classes versus forward castes, and adivasi movements (Rao 1978: ix–xxiv). In colonial times, these were all differently configured and regionally confined. By today, these movements have developed into powerful regional players that can be game changers on the national scene. They are also today the driving force in expanding reservation quotas to the OBCs.

The Indian responses to the European colonial challenge were mostly by the modernizing indigenous elites in the colonial period. The bahun samaj, the majority community of the backward castes, were largely excluded from and left behind in this process. The non-Brahmin feudal aristocracy did not challenge this Brahmin dominance, nor did they forge a union with the backward castes. Locked into the lower rungs of the caste hierarchy by the narrow caste/class interests of the elites, peasant folk and rural masses lacked the organization and leadership required to exploit the new opportunities in the changing situation.

After all, much in the 'Hindu tradition' being revived in the name of the 'Indian nation' did not speak to the interests and concerns of these sections of society. However, colonialism eventually 'produced a new elite, among the lower sections of the intelligentsia and the commercial bourgeoisie, with a new relation to the masses' (Omvedt 1976: 65). It was from here that the new non-Brahmin movement came, for, 'precisely this process of individual enlightenment served to integrate them into a new collective—that of the oppressed' (O'Hanlon 1985: 131).

When the reform movement inevitably split along caste lines, Brahmin versus non-Brahmin, this took place due more to the inner contradictions and constraints of the movement than to the divide-and-rule policies of the British. The dual historiography of Chhatrapati Shivaji reflects this divide: as protector of cows and Brahmins, and as the common people's hero. The

first supports revivalist Hindu nationalism dominated by the Brahmins, as in Eknath Annaji Joshi's *The Advice Given to Maharaja Shivaji by Dadoji Kondadev*, written in 1887 (Laine 2003). The second, in its more radical version, becomes an inspiration for the non-Brahmin movement of the bahun samaj, as in Phule's *Chhatrapati Shivajiraje Bhonsale yancha pavaada* (The ballad of Chhatrapati Shivaji Bhonsale), written in 1869. Its more reformist expressions, meanwhile, attempt a more inclusive compromise, as with the account by Rajaramshastri Bhagavat (1850–1908) in 1889.

The consequence of this duality was reflected in a particular division. On the one hand were nationalists who demanded freedom from foreign rule as a priority over social reform, because, in Bal Gangadhar Tilak's (1850–1920) famous words: 'Swaraj is my birthright.' On the other were the social reformists who first sought liberation from internal domination as being more urgent than independence from the British rule. V.D. Savarkar (1883–1966) urging *sangathan* (organization) and *shuddhi* (purification) is a good example of such revivalism seeking political expression in the Hindu Mahasabha, which was inspired by the ideology articulated in his *Hindutva* (Savarkar 1989). Unlike the nationalist Tilak, Jyotirao Phule (1827–1890) wanted social reform to precede self-rule, lest the British Raj be merely replaced by a Brahmin–Bania raj. Hence, he resorted to an aggressive rationalism in a search for alternative truths which could critique the old order and legitimate a new egalitarian one, a quest he crystallized in his *Sarvajanik Satya Dharma* and the Satya Shodak Samaj.

BAHUJAN LEGACY

Jyotirao Phule could well be regarded as the founder of the non-Brahmin movement in north India. He was among the first generation of Indian thinkers who responded to the challenge of the West in Maharashtra. 'With ruthless self-criticism they sought to lay the ground for a total social transformation, to weld science and rationality to Indian culture to recreate India' (Omvedt 1976: 99). With his articulate ideology and inclusive identities, and with his anticipation of feminist and ecological concerns, Phule's subaltern

alternative represents a genuine *Cultural Revolt in a Colonial Society* (ibid.), an unrelenting attack on caste and inequality, superstition and prejudice.

Thus, Phule reads history through his master lens of rationality and equality. These are the core values of his humanist stance. From here, he attempts to redefine a pan-Indian tradition not in terms of 'a Sanskritic and therefore elite basis' but based on 'non-Sanskrit traditions that have as much claim to an all-India spread' (Omvedt 1976: 116). Actually, Phule never even uses the term 'Hindu'. He seems to be distancing himself from the dominant culture to construct a non-Brahmin alternative closer to the bahun masses and their folk traditions.

Identifying a moral religious core for his ideology, he seeks a more universal faith with his *Sarvajanik Satya Dharma* (Public Religion of Truth), basically 'inspired by a theistic humanism' (Gore 1993: 322) or what in Robert Bellah's terms would be categorized as 'civil religion' (Bellah 1970: 168). It would replace *jat bhau* (casteism) in society with *jagbhandu* (universal brotherhood), and *behdniti* (an ethic of discrimination) with *manuski* (humanism) (Gavaskar 1995: 10). Phule's religion was not an otherworldly mysticism, but very much a worldly approach towards a humanist and egalitarian society, an attempt at transformation more than just reform. But it lacked the institutional support of organized ritual and myth, and so remains far too rational to take root in popular religiosity.

There well might be some Christian influence on Phule, but he was even more influenced by the rationalist Enlightenment of the West, as expressed for instance by the dissident writer Tom Paine, with whose writings he was familiar. Thus he distances himself from Semitic patriarchy and a fundamentalist interpretation of sacred text and religious tradition. Rather, he is closer to the heterodox shamanic faith, with its rationalism, and Bhakti cults and their *ekantika dharma* (religion of unity).

Besides reaching out to the Ati-Shudras, the 'untouchables' of his time, Phule is one of the first reformers to insist on greater equality across the gender divide and an end to the patriarchal and authoritarian family that oppressed women of all castes. In his personal life, unlike other reformers,

he was uncompromising on issues affecting women. Indeed, Phule seems to have anticipated the relationship between liberation from familial patriarchy and the suppression of caste hierarchy.

Positing a continuity between the present oppressed Shudras and Ati-Shudras and the pre-Aryan peoples displaced by the Irani Arya-bhats 'was the cornerstone of Phule's attempt to construct a new identity for the lower castes' (O'Hanlon 1985: 161). He does not articulate this in terms of another varna status, but projects it in the imagery and symbols of the toiling cultivator in his *Shethkaryacha Asud* (The Cultivator's Whipcord) and the peasant woman in *Kulambin*.

Phule's political and economic analysis is not very systematic. He saw the primary conflict in his society as one between the peasantry and the *shetji-bhatjis* (merchants and Brahmins). The main focus of his critique was not British rule but Brahmin domination, though at times he did oppose the colonial rulers on specific issues. However, overall, he gave the British a more positive role in the struggle against Brahmin rule, appealing to them to open employment and educational opportunities more decisively to the bahun samaj and to end the near monopoly of the Brahmins over these. In Phule's *Brahmanche Kasab* (Priest Craft), Brahmins are demonized as *gram rakshas* (village devils) and *kalamkasai* (clerical butchers). Indeed, to the very end, his opposition to the Brahmins was unrelenting and his expectation of British support to institute changes against their dominance remained enduring.

Mahatma Phule's work is significant mainly for its cultural critique. He articulated a non-Brahmin ideology and sketched a non-Aryan identity that began as a cultural revolt that had the potential to grow into a revolution. He was one of the first reformers to insist on greater equality across the gender divide and an end to the patriarchal and authoritarian family that oppressed women of all castes. The feminism presaged in his *Kulambin* was taken up by courageous women such as Pandita Ramabai and Tarabai Shinde, who in their writings attempted an alternative construction of 'Hinduism as Patriarchy' (Omvedt 1995: 25). Still, it is only more recently that a woman's movement across the caste/class divide has begun to emerge.

Phule does not evolve a theory of Indian history or culture. However, he does provide a point of view, or rather a point of departure, for rewriting both. His approach is 'unsystematic, sporadic, pictorial rather than discursive, hard-hitting but designed more to shock people into awareness of the situation than to provide an extensive analysis' (Omvedt 1976: 117). His reconstruction of local mythology attempts to de-Sanskritize it and thus 'detach this local tradition from its association with the all-India traditions of Hinduism' (O'Hanlon 1985: 152).

The Satya Shodhak Samaj that Phule founded never quite overcame a certain ambiguity in its assertion of religious independence as implied in its rejection of Brahmin authority. This compromised the ideals of the non-Brahmin movement. For, while members of the society were reluctant to portray themselves as ordinary Hindus, they were even more anxious to avoid declaring that they had actually left the Hindu community (ibid.: 239). Not surprisingly then, the non-Brahmin movement eventually divided into two. The first, more conservative, was best represented by Shahu Maharaj of Kolhapur (1874–1922), comprising mostly the better-off middle castes claiming Kshatriya status and settling for upward mobility within the system. The second, more radical, had as its leader and ideologue Bhimrao Ramji Ambedkar (1881–1956), and comprised the lower castes and Ati-Shudras, seeking the destruction of the caste system.

Phule's greatest contribution has been his cultural critique and the revolt it precipitated. In his attempt to change the consciousness of people, two phases can be distinguished: 'the first saw his efforts to bring about change through social reform focusing on education and service of the down-trodden, including women, in Hindu society ... In the second phase Phule had become bitterly anti-Brahmin' (Gore 1993: 322–23).

Probably because Phule himself concentrated on Maharashtra and wrote almost entirely in Marathi, his influence did not spread outside the Marathi-speaking region. And what political and economic success his movement did achieve accentuated rather than reconciled the inner contradictions and conflicts that divided it. Eventually, the movement was co-opted by the Congress, expanding into rural areas in the 1930s, and was absorbed into the

nationalist struggle. With the dissolution of its organization, however, its ideological heritage was carried forward by *Dr. Ambedkar and the Dalit Movement* (Omvedt 1994) to challenge Hinduism itself.

LIBERATION IDEOLOGY

The theme of Aryan exploitation expounded by Phule in Maharashtra was also voiced by other non-Brahmins, especially by the early Dalit radicals in other parts of the country. Thus, ‘by the 1920s, the new dalit or “adi” movements with an ideological claim to being heirs of a “non-Aryan” or “original Indian” equalitarian tradition, began to take off in many regions of India’ (Omvedt 1995: 35). In the north, we had the Ad-Dharm *qaum* (community) of Mangoo Ram in Punjab; the Adi-Hindu identity of Acchutananda in Uttar Pradesh; and the Adi-Dravida, Adi-Andhra, and Adi-Karnataka movements in the south. Meanwhile, in Maharashtra, Kisan Fauji Bansode (1870–1946), a Dalit leader, sounded the revolt against the ‘Aryans’, in 1909.

However, the Hindu nationalist reinterpretation of caste, stressing Hindu unity, won over many non-Brahmin and even Dalit leaders (such as M.S. Rajah of Tamil Nadu and G.A. Gavai of Vidarbha) to the Hindu Mahasabha (Omvedt 1995: 40). The Congress too began co-opting the Dalits with its Harijan Sewak Sangh, founded by Gandhi in 1932, while the left’s preoccupation with ‘class struggle’ failed to incorporate and respond to the problem of caste conflict with an adequate understanding.

At the turn of the century, two diverging paths were open to the Dalit movement: an integration into a reformed mainstream Hinduism, through a process of Sanskritization; and a rejection of the brahminic tradition with an assertion of autonomy. The first, represented by Bansode and Gavai, drew on the Bhakti traditions; the second, led by Ambedkar, was rooted in the Satya Shodhak movement. The two orientations were not easily reconcilable, for they were driven by opposing forces:

While the basic social oppression and economic exploitation of the Dalits pushed them to a radical autonomy, at the same time there were powerful pressures for absorption: the sheer social and political power of caste Hindus and their organisations, the readiness of reformers to make

concessions, the Hinduistic tendencies that came to dominate even movements opposing class exploitation. (Omvedt 1994: 134)

Thus, the Depressed Classes Mission, founded by Lokmanya Vitthal Ramji Shinde in 1906 for 'untouchability relief', was a campaign of the elite for the political rights of the 'untouchables', a conservative reformist attempt at inclusion. Moreover, there were Mahar leaders, too, who resorted to reformist attempts at inclusion; for instance, Gopal Baba Walangkar and Shivram Janba Kamble petitioned religious leaders and political rulers for better treatment and equal opportunities. But this supposed path of uplift and unity left many Dalits finally disillusioned.

The road to Dalit autonomy required them to organize independently and define their 'option' for a non-Hindu, non-Aryan identity. They needed to articulate their stance on British rule and on the nationalist movement, so as to choose the social group and political allies to work with for their cause. This was no mean task, and the ideology and leadership for it was provided by Ambedkar.

The Dalits were more often labourers than peasants. Usually, however, they were the most exploited among the poor peasants and landless labourers, even as a '*baluntedar* or *watendar*, a village servant whose duty was to the village and whose recompense (*baluta*, or gift in kind, and *watan*, or land) came from the village' (Zelliot 1996: 87). However, in the industrializing urban areas of the Bombay Presidency, especially in Bombay, 'this emerging Mahar working class, however exploited and discriminated against, nevertheless had enough collective concentration to constitute a relatively strong base for a social movement, one with on-going links to villages near and far' (Omvedt 1994: 142).

Rather than restraining the movement, these linkages with their villages provided the social support and pressures that radicalized its leadership, while the reformist non-Dalits helped to legitimize the struggle. Here, two factors constituted the essential context of the Dalit movement: 'one is the basic Maharashtrian social structure; the other the nature of the reformist impulse in that part of Western India' (Zelliot 1996: 46).

A mass movement is never just the creation of a single charismatic leader. The ground realities of a society have a significant, at times even decisive, role to play. The dry Marathi Deccan plateau had 'a relatively equalitarian and less caste-stratified village economy' (Omvedt 1994: 140). The popular mobilization under Shivaji and the Bhakti movements were not entirely stymied by the Peshwas (the Brahmin prime ministers who took control from Shivaji's heirs). In fact, the Maratha Confederacy broadened its power base and even created a new nobility by co-opting other backward castes. The ryotwari settlement instituted by the British made for a vigorous peasant assertion, as evidenced in protests against oppression by revenue collectors and forest department bureaucrats, and even the Deccan riots in 1875 against commercial exploitation by landlords and moneylenders.

Ambedkar did realize that brahminism was not the only oppression suffered by Dalits. Class, as a necessary component of capitalism, was another area of exploitation. Indeed, caste and class inequalities were the fundamental structure of exploitation in Indian society, to which colonialism added a further dimension. One would have expected a natural alliance of Ambedkar's movement with the left, but the Marxist insensitivity to the issue of caste distanced him from them, similar to the issue of religious reformism for Gandhi and the Congress. As it became increasingly clear that neither the 'reformist' Congress nor the caste-blind communists would support the interests of the Dalits, Ambedkar established the Independent Labour Party (ILP, Swatantra Mazdur Paksh) in 1936. But he failed to find allies for this new grouping. The non-Brahmin movements were joining the Congress all over the country, and the left forces too were opting to wage the battle against imperialism by working with and within the Congress.

As with most subaltern leaders, Ambedkar did not make the nationalists' struggle his first priority, and he found himself increasingly marginalized in the freedom movement. He finally wound up the ILP in 1942 and constituted the Scheduled Caste Federation (SCF) at the All India Depressed Classes Political Conference in Nagpur in July 1942. Most of the specific thrusts of the early ILP were continued. The federation was to be an all-India Dalit front, a pressure group within a democratic framework to act as a special

interest group in a capitalist economic structure. This marked a gradual retreat from Ambedkar's radicalism of the 1930s.

Ambedkar was acutely aware of the need for a united front against caste Hinduism and Congress politics. But let alone forge a broader front of non-Brahmins, leftists, and other likeminded people, he could hardly keep together all the many 'untouchable' sub-castes, who replicated the caste hierarchy with a similar one among themselves. At the beginning of and throughout his public life, Ambedkar challenged the institutional structures of his society and precipitated a real rebellion among his people—a rejection of an oppressive tradition and an affirmation of an alternative neo-Buddhist identity. At the end of his life's odyssey, however, the movement he initiated remained incomplete. The exploitative structures still prevail; the dignity of his people is as yet denied. Certainly there were external pressures working against Dalit liberation; and yet, part of the betrayal came from the inner dynamics of the movement itself.

Once again, a subaltern movement of great promise splintered and dissipated, without gaining its forward thrust. Not all Dalits followed Ambedkar when he converted to Buddhism in a dramatic demonstration of rejection of Hinduism. At the time, this would have put them beyond the pale of protective discrimination given to the scheduled castes. The neo-Buddhists mostly were from his own Mahar caste, which also dominated the Republican Party that Ambedkar founded in 1956 to replace the SCF. Already at the end of the 1920s, Ambedkar's movement was 'almost totally based on the Mahar caste' (Omvedt 1994: 158), while the Dalit movement in Bengal was largely dominated by Namashudras, and in the United Provinces by Chamars.

Here again it was caste, rather than class, that was the focus of mass mobilization. After Ambedkar's death, the Republican Party of India was formally constituted as a united front of all the exploited and oppressed. But it was dominated by the neo-Buddhists, mostly from the Mahar caste, and eventually fragmented due to internal factions. Ambedkarism is still to come into its own in Maharashtra, as is evidenced by the disarray of the Republican Party he founded there and which still claims his legacy.

However, the party's ideology is gaining recognition outside the state: in Tamil Nadu, with the Dalits movements there, and in Uttar Pradesh with the Bahujan Samaj Party, thereby inspiring Dalits all over the country.

Babasaheb, or Respected Father, as Ambedkar was affectionately called, is now more than a father figure to the Dalits across the land. He carried forward Mahatma Phule's legacy and developed it into a rich repository of liberal and rational ideology to draw on in the struggle against caste tyranny and revivalist religious fundamentalism, unequal economic classes, and vested political interest. Therein lie the resources to complete the revolution he began in reconstructing the Dalit community, reinventing new traditions for them and mobilizing them on their long march to freedom. This is his real significance, and why Ambedkarism is so much more relevant and urgent today. For, even though his strategic programmes may have seen their day and fallen short of their goal, Ambedkar's ideological contribution and inspiration challenges us to respond to the contemporary avatars of caste and hierarchy by internalizing and promoting his ideas.

SELF-RESPECT AND SELF-RULE

Mahatma Phule's bahujan movement in Maharashtra had repercussions in the mobilization of non-Brahmins in south India. The Dalit leader Pandit Iyothee Thass (1845–1914) was the first recognized anti-Brahmin campaigner in the Madras Presidency. He was an enthusiastic Anglophile who emphatically opposed swaraj and the swadeshi movement; for, like many other non-Brahmin leaders of the time, including Phule, he looked to the liberative possibilities of colonial rule to end centuries of native misrule and oppression.

Beginning by organizing the Todas and other Adivasi groups in the Nilgiri Hills in 1876, he established the Advaidananda Sabha and launched a magazine called *Dravida Pandian* in collaboration with Reverend John Rathnam. Following Phule's lead in rereading history, Thass in his writings reconstructed 'paraiah' identity as Adi-Dravida—the first Dravidians, the original Tamils, whom he claimed were Buddhists; only later were these

peoples degraded and their traditions destroyed by the invading Arya *mlecchas*—Aryan aliens (Geetha and Rajadurai 1998: 97).

In 1891, Thass established the Dravida Mahajana Sabha and urged Dalits to register themselves as ‘casteless Dravidians’ instead of identifying themselves as Hindus. He was the first Dalit leader to become a converted Buddhist. In 1898, he established the Sakya Buddhist Society, also known as the Indian Buddhist Association, with many branches in south India.

There were other constructions of non-Brahmin identity in the south. Thus, the rejection of brahminism in the Shaivite Dravidianism of Maraimalail Adigal (1876–1950) centred on the Vellalars, a landed agriculturalist caste. His major work, *Vellalar Nagarigam*, was first published in 1923. ‘While Thass spoke for the most oppressed untouchables, Adigal celebrated the Vellalars, who constituted the upper crust of non-brahmins’ (Pandian 2007: 141). This was severely criticized and rejected by the Self-Respect Movement, which projected more inclusive concerns, while the non-brahminism of the Dravidian Shaivites was more self-consciously identified with Tamil linguistic identity.

Though Thass may have been forgotten until more recent times, his anti-Brahmin legacy was inherited by the Self-Respect Movement and lived on in the Justice Party—the subaltern movement in south India intricately entwined with the name of E.V. Ramaswamy (1879–1973), the Thanthai Periyar (Noble Father). Ramaswamy started his political career as an enthusiastic member of the Indian National Congress, in which he held various offices and organized several campaigns in the period between 1919 to 1925. Disillusioned with Congress compromises on the caste issue, he founded the Self-Respect Movement in 1925 and joined the Justice Party, established by the South Indian People’s Association in 1916; the party was based on the non-Brahmin manifesto of thirty prominent non-Brahmins in Madras Presidency. It took its name from the English daily it established.

For Ramaswamy, self-respect was emphatically of a higher priority than swaraj: ‘We maintain [that] “self-respect” is a man’s birthright. We must realise that Swaraj is possible only where there is already a measure of self-respect’ (Anaimuthu 1974: 4, cited in Geetha and Rajadurai 1998: 297). In

fact, Ramaswamy 'implicated both colonialism and Brahmins as upholders of Manu Dharma' (Pandian 2007: 192), which legitimized casteism as an ideology supported by the shastras. In direct contradiction, self-respect was possible only with *samadharmā* (egalitarianism) and *manitha* (humanism).

The movement envisioned a community based on rationality and reciprocity, equality and fraternity. But its anti-brahminism was strongly anti-north India and anti-centrist, closely tied to a Tamil linguistic identity. Ramaswamy himself was far more functionalist and pragmatic about such linguistic loyalties: 'If ever I am convinced that Tamil cannot help me realise my ideals, if I cannot make it serve my purposes, I will move on and leave it behind me. Likewise if I ever think my language will not serve my ideals, will not help my people live with honour nor help them progress, I will give up on Tamil' (cited in Geetha and Rajadurai 1998: 505).

As a consciously constructed category, the 'non-Brahmin' identity was fluid and diverse (Pandian 2007: 6). The *samadharmā* of the Self-Respect Movement was the more radical articulation. It sought to create a new subaltern Dravidian identity that would liberate the Adi-Dravidas, critique caste-bound patriarchy, and reject Congress nationalism and its pious ambiguities. However, first it had to construct a political base out of disparate caste and community segments in a society where caste hegemony was pervasive and endemic. Inevitably, it fell short of its own ideals.

As with the subaltern movements in the north, the movement could not contain the complex and uneven inter-caste relationships and dependencies, attractions and antagonisms. It failed to meaningfully include the untouchable Adi-Dravidas in a middle-caste-dominated movement (Anandhi 1995). For a while now, Dalit leaders and intellectuals have been questioning the very relevance of the non-Brahmin movement. Some have even wondered whether Ramaswamy had been a leader of all the oppressed castes or if he had been partial to his Shudra rather than the Panchama constituency.

Within Ramaswamy's own lifetime, the movement he animated and which identified with him began to fragment. In 1933, the leftists in the movement broke away to form the Self-Respect-Samadharmā Party. In 1938, Ramaswamy was elected president of the Justice Party; a few years later, in

1944, he announced the party's withdrawal from politics and converted it into a social organization, the Dravidar Kazhagam (the Dravidian Organization). Subsequently, a few rebels in the Dravidar Kazhagam, led by C.N. Annadurai, formed a political party, the Dravida Munnetra Kazhagam, in 1949. A further split occurred in 1972, with M.G. Ramachandran and his All India Anna Dravida Munnetra Kazhagam. The non-Brahmin Dravidian movement has now further splintered into the Pattali Makkal Katchi (in 1980), a party of the Vanniyar Union, followed by the Makkal Manadu Katchi (in 2005), a pro-Dalit party.

This is not very different from the fragmentation of non-Brahmin movements in the north. Mahatma Phule was a forebear of these subaltern movements in nineteenth-century India. The leaders had envisioned an inclusive community of liberty, equality and fraternity, where reason prevailed and rights were respected—an inspiring vision, but one that still remains a dream. 'In all instances, non-brahmins sought to uphold their claims in the name of an unsullied Dravidian past and attempted to "fit" history to the secular imperatives of the present' (Geetha and Rajadurai 1998: 51).

REBELLIOUS PROPHETS

The non-Brahmin and Dalit movements were within the purview of mainstream caste hierarchies. In spite of being protected in excluded areas, adivasis were inevitably drawn into the mainstream by social processes beyond their control: bureaucratic administration and political subjugation, cultural marginalization, and economic exploitation. The same process of change that first isolated the adivasis, denigrating and negating their dignity, then assimilated them into the lowest social stratum of society. Efforts to reverse this process have often been rendered ineffective or even counter-productive. This is the 'tribal question' that must first be contextualized and then addressed.

Anthropologically, *tribe* has been defined neutrally but rather restrictively as 'a social group, usually with a defined area, dialect, cultural homogeneity, and unifying social organization' (Winick 1960: 546). The veteran

anthropologist Stephen Fuchs categorically affirms that, ‘in fact, there exists no satisfactory definition of the term “tribe” anywhere’ (Fuchs 1974: 24). Anthropologists have fallen back on listing group characteristics to identify a people as ‘tribal’. Often these lists merely illustrate the presumptions and prejudices of the compilers, and make for a tenuous and arbitrary delineation. Many of the scheduled tribes in India would not meet all the criteria, and others not in the list would meet many of them (Pathy 1984: 6).

India’s adivasi communities are in transition, at various stages of development, at different velocities of change. Hence, the anomalies associated with the term *tribe* make it very problematic, and these cannot be ignored. The early Sanskrit references are to *janas* or ‘people’. *Tribe* was not in use ‘until the European perception of Indian reality constructed them and colonial authorities gave them their administrative sanction’ (Devalle 1992: 51). Other terms in use today—*adivasis*, *adimjatis*, *vanyajatis*, *vanvasis*, *girijans*, *pahadias*—are all of Sanskritic origin and coined rather recently by outsiders who worked with these communities.

The British designated these people as ‘tribes’ to distinguish them from Hindus and Muslims. As noted earlier, the British first categorized them in the census as ‘animists’ until 1931, when they were listed as Hindu. In 1916, the Indian Legislative Council decided that ‘criminal and wandering tribes’, aboriginal tribes and ‘untouchables’ be included in the term *Depressed Classes*. The 1931 census separated out a new category of Primitive Tribes instead of Forest Tribes, as in the 1891 census, or Hill Tribes in subsequent ones. In 1941, the census used just *tribes*, and today the Constitution refers to them as *scheduled tribes*. The list notified in 1950 has been repeatedly revised since, but these revisions have been dictated more by political pressures than by truly credible criteria.

From being an ethnographic category, *tribe* ‘has clearly become an ideological concept, a concept which fails to recognize the reality it expresses’ (Pathy 1988: 25). As such, it could be expected that, like *race*, ‘the tribe would become redundant in academic discourse’, except where it has remained politically ‘useful to the powers that be to manipulate divisions and rule over their subjects’ (Pathy 1988: 20). Today, ‘for almost all Indian

researchers a tribe is a tribe which is included in the list of Scheduled Tribes' (Pathy 1988: 22). But such a reduction of the term to a political and administrative category leaves out the cultural dimension, not to mention the economic one as well—a significant truncation of perspective.

Unfortunately, the history of adivasi communities has been merged into mythology (Dube 1975: 107–12). Little effort has been made to use oral history, mostly because of the failure 'of the historian–ethnographer to interpret folklore metaphors and symbols for tracing the past of the people' (Handoo 1992: 39). However, all tribal groups have undergone an evolution, and each has its own history. Some have seen this as a transition from janas to jatis. Yet at the end of the pre-colonial period, the British still found communities outside the caste system, mostly isolated in remote areas, which they called tribes.

All through the pre-British period, 'the forest dwelling people served as bridge or buffer communities between kingdoms' (Roy Burman 1989: 174). Hence, they were able to maintain their distance from caste entities. Once the British had consolidated their power in the subcontinent, they had little need for buffer states, and as their colonial expansion began to open up even the more remote areas, the adivasis were effectively brought under colonial rule. This was no longer an acculturation from contact with a feudal society but an integration into 'a colonial and capitalist matrix' (Desai 1990: 514), and it had far-reaching and drastic effects on adivasi society, particularly with regard to these communities' traditional rights to the land.

Adivasi leadership, co-opted into subservience to the British, enhanced its traditional hold over local communities. The tribal economy was progressively opened up to a host of middlemen, who 'were the chief instruments of bringing the tribal people within the vortex of the colonial economy and exploitation' (Chandra 1988: 45). It is not surprising that 'the tribal people were among the earliest communities in India who fought against the British expansionism' (Pathy 1984: 66). For almost two centuries, from the Paharia rebellion in Bengal in 1772 and continuing into post-Independence India with the Naga war of 1963–71, there have been and still are numerous adivasi uprising against state rule.

Stephen Fuchs makes an impressive catalogue of these movements in *Rebellious Prophets* (Fuchs 1965). Most of these movements, though messianic and reformist in nature, centred around or were precipitated by issues concerning adivasi lands and forests. However, their anti-colonialist perspectives were not well articulated, and they were unable to involve the non-adivasi peasantry or landless labour. They remained restricted, local, and doomed to fail when confronted by the power of the centralized, repressive colonial state. Now in post-Independence India, the 'tribal question' still waits to be resolved effectively with suitable affirmative action and sustainable development.

REPUBLICAN INDIA

The public sphere 'should be imagined as a cultural space in which multiple and contrastive publics came together, collided, colluded or collapsed' (Hasan 2005: 104). In pre-colonial India, there were numerous sites for public discourse and deliberation. The British rulers used an official census to categorize this plurality and administer it through law. The freedom struggle and other reform and subaltern movements also impacted on the colonial government, leaving it with a 'liberal dilemma': granting concessions that could well be used against the colonial government or denying these and losing legitimacy.

A divide-and-rule strategy to contain the dilemma could work only for a while. If the underlying contradictions between people and government, communities and castes, minorities and majorities were not addressed, then inevitably they would spill over into collective violence, as we witness today. Independent India inherited this colonial legacy with all of its ambiguities and contradictions. The statutory measures decided upon by the Constitution were a response to this situation.

Minority communities used separate electorates to protect their interests and promote their concerns. But once politicized, this precipitated a religious antagonism, which Partition did not resolve. Increasingly, religious nationalism and collective violence perpetrated by such a nationalism has made minority protection all the more necessary. The divide-and-rule policy

protected British interests, while the basic issues were addressed with little more than tokenism.

The 'untouchable' castes used legal sanctions and concessions to challenge prejudice and fight deprivation. The excluded adivasis repeatedly revolted against their forced assimilation and the usurpation of their lands. But in spite of the concessions made to the Depressed Classes, the situation of the Dalits and adivasis has improved only marginally. This makes affirmative action for these disadvantaged communities all the more urgent in the face of the gathering opposition from the still-entrenched interests of the upper castes and classes.

In the wake of the mayhem raging all around them at the time of the transfer of power to independent India, the Constituent Assembly met in Delhi (1946–49) to found a modern 'sovereign, democratic Republic ... for all its citizens'. The Forty-second Amendment, in 1976, added the words 'socialist, secular' to further qualify our democratic republic. The remarkable document has become the template for the Indian republic. Against the reality of the threatening chaos at the time of Partition, our founding fathers set a revolutionary agenda for a modern state in a traditional society.

The Constitution's inspiring vision of a political, social and ethical transformation may have dimmed. At times, it has been contested and challenged. But it always remains a defining moment, our founding fathers' bequest to 'We the People of India', something our leaders of today must not betray. Yet true to type, elected representatives are more interested in the concerns of their constituencies than they are committed to the Constitution they are under oath to uphold. Today, the courts are compelled, almost defensively, to safeguard the document's 'basic structure'.

The distance between the legislature and the judiciary is meant to serve a critical democratic purpose. An activist court overextending its jurisdiction to stymie legislation or legislating through case law, or Parliament overusing the Ninth Schedule of the Constitution to place legislation beyond judicial review, can bring about a confrontation that impinges on and blurs the separation of powers on which a democracy is premised. In January 2007, a nine-member bench of the Supreme Court ruled that all laws, including those

in the Ninth Schedule, are open to judicial review if they violate the basic structure of the Constitution.

Further, democratic citizenship must be founded on a regime of rights. These in turn are premised on an understanding of justice, grounded in our Constitution, which definitively envisioned an inclusive, participative citizenry as the subject of these individual and collective rights. It also made provisions for minorities and weaker sections to facilitate their inclusion and promote their participation. However, this is subverted when well-intended provisions are manipulated by divisive and entrenched power politics, with its inevitable conflict of interests over competitive access to scarce resources. Only a commitment to constitutional justice will adequately address such contentious and discordant issues.

Our founding fathers could never have anticipated the ‘million mutinies’ that a ‘revolution of rising expectations’ would bring (Naipaul 1990). Today, our society is *Living in a Revolution* (Srinivas 1992), such is the pace of change overtaking it. But the country’s constitutional structure sets the standard of a regime of human rights, grounded in an understanding of justice that is free, equal and fraternal. It is defined within a framework for an inclusive and participative democratic citizenship for all Indians, especially for those historically excluded and deprived; as also for those discriminated against because they are different and distinct, whether in language or religion, ethnicity or gender.

We must understand this legacy before we can own it and carry forward the founders’ vision of a just society. Anything less would be a betrayal of our tryst with destiny.

3

In Quest of Justice

RECOGNIZING INJUSTICE ■ COLONIAL TEMPLATES ■ OCCIDENTAL ORIGINS ■ ORIENTAL COMPLEMENTARITIES ■ A REGIME OF RIGHTS ■ MULTIPLE, DIVERGENT DISCOURSES ■ FUNDAMENTAL RIGHTS, BASIC NEEDS ■ CONSTITUTIONAL QUEST

RECOGNIZING INJUSTICE

André Malraux, in his *Anti-Memoirs* (1968: 161), remarks how struck he was that India, with Jawaharlal Nehru, was

attempting one of the most profound metamorphoses in the world, in this weakly federated country against which Pakistan was building up its strength—in this capital where the Untouchables squatted on English lawns, and where at night cars skirted the skeletal sacred cows asleep on the asphalt of the triumphant avenues.

Soon after the Bandung Conference in 1955, when Malraux, at the time France's minister of culture, asked Nehru:

‘What is your greatest problem since Independence?’

Nehru's reply was instantaneous, although up to this point he had often spoken softly about India, as if groping in the dark:

‘Creating a just state by just means ...’

And after a brief pause:

‘Perhaps, too, creating a secular state in a religious country. Especially when its religion is not founded on an inspired book’. (ibid.: 160)

How many world leaders would have so spontaneously articulated the problem of transition from a traditional hierarchical society to a modern, democratic nation in such terms? In contrast to the prevalent fast-track models at the time—Stalin’s USSR and Mao Zedong’s China, or even the earlier ones of Mussolini’s Italy or Hirohito’s Japan—Nehru’s response bore the moral stamp of Gandhi’s refusal to separate just means from just ends. Even as our people struggle with themselves and their leaders, in spite of failures, the quest for such a justice remains written into our Constitution and must be the basis of any critique we make of ourselves.

Though the notion of injustice and the struggle against it exists in all societies, the concept of justice is complex. Even when we grasp it intuitively, we struggle to articulate it convincingly. Even more challenging is implementing our understanding of it. When we witness or experience injustice we recognize it as such and deprecate it. In Charles Dickens’s *Great Expectations*, Pip’s recollection is pertinent: ‘In the little world in which children have their existence ... there is nothing so finely perceived and finely felt, as injustice’ (Ch. 9). Before we can even spell our why, our spontaneous response as readers is that this isn’t fair. Most of us can recall such unfairness from our childhood, and the memory still smarts.

We recognize unfairness as more than a matter of procedure that does not always bring a ‘fair’ outcome. For, even in a court of law, meticulously followed judicial procedure may be legal, and yet can be used to delay and deny a just and fair outcome. Paradoxically, we recognize injustice even before we can articulate justice. Our sense of justice demands that we redress remediable injustices even before we have a clear idea of what the alternatives might be. Abolishing ‘untouchability’, as our Constitution has done, is not contingent on a comprehensive agenda for a casteless, non-hierarchical society, for which we must still struggle. However, to effectively remedy such injustice needs some understanding of the justice we seek, or the remedy might end up being worse than the disease.

Consider medical practitioners. Diagnosing a disease and restoring health requires some comprehension of how the human body functions, its delicate intricacies and complex interdependencies. We must have some minimal

medical theory from which medical practice follows. Different theories lead to different practices and even different systems of medicine. So, too, the struggle against injustice and the promotion of justice is contingent on our understanding of justice and human society—in other words, a theory of justice on which its implementation is premised.

As in the parable of the ‘Six Blind Men of Indostan’, referred to in the preface, any understanding of justice is defined by the limitations of our perspectives. But if the concept of justice remains trapped in subjective perceptions, it would be in great danger of becoming mere expediency, ruled by the caprice of the moment or, worse still, by the will of the powerful. It could no longer mediate differences by referring to a common understanding.

Might is not always right, and neither is luck always fair; serious differences between claimants are no longer settled by combat or the toss of a coin. Justice, after all, is more than a matter of social analysis or social engineering. It is about human dignity and mutual respect, an imperative we yearn for and claim. This is the ethical dimension that defines us as human and makes us human; it motivates our quest for justice. As the philosopher Charles Taylor insists, ‘We cannot be without *some* sense of our moral situation, *some* sense of our connectedness to others’ (Taylor, C. 1993: 22, emphasis in text). Ultimately, justice is about how we understand ourselves as human beings; it defines our ethical relationships in society.

Legislating rights and making laws is a pragmatic approach to ensuring justice. But yet again, legislators bring their own subjectivity to the process, and so the law by itself has proved to be no guarantee of justice or fairness. Our own legal system is a stark instance of this: legalities delivered, justice aborted! The conundrum of where justice must be grounded remains a challenge that cannot be ignored, and it becomes all the more acute during times of change and insecurity, more so when injustices multiply and inequalities abound, when liberties are curtailed and relationships break down. Affirmative action policies must seek an equitable balance between equality and liberty (an issue that is examined in detail in [Chapter 5](#)).

However, besides the due process of procedural justice, there is still much controversy over the ‘meaning of substantive justice’, for ‘the concept of

justice is not monolithic' (Rosenfeld 1991: 14). Depending on which aspect is stressed (for instance, rights or duties, individual or community, freedom or equality), the substantive content and due process of justice can be disputed. Thus, the understanding of justice may have the same cultural roots in the West, yet the processes of contesting in Anglo-Saxon courts are quite different from the investigative preferences of those in the European continent. Ecclesiastical courts following canon law would be even more different from Islamic ones bound to Shariat law; though both have religious origins, they are not based on the same premises. However, when community rights cannot trump fundamental rights, then justice is denied. (The relationship between cultural rights and justice is discussed in [Chapter 6](#).)

The bewildering differences and even contradictions prevalent across and within societies make any consensual understanding of justice extremely problematic—and yet all the more necessary. We encounter this less with criminal law when it is grounded in human rights, which are more easily universalized. But with personal law, relating to domestic matters of inheritance and marriage, separation and divorce, which often derive from religious and cultural traditions, this is bedevilling. Thus, a woman's fundamental rights to gender equality and justice are incompatible with some cultural understandings of her place in patriarchal societies. (Gender equity and patriarchy are discussed in [Chapter 7](#).)

Realizing and sustaining justice in such a complex situation is viable only when there is a public consensus. This can only be built through open discussion and active engagement across society with others. Thus, a quest for justice in a society must be a collective process that involves people in a common search. As the political philosopher, Iris Marion Young, insists, justice like 'democracy is not an all or nothing affair, but a matter of degree' (Young 2000: 5) and a continuing endeavour. Without it, the alternatives are so much worse. As Augustine of Hippo in North Africa (354–430 CE) warned us when Rome was sacked by the Visigoths in 410 CE: 'Justice being taken away, what are kingdoms but great robberies?' (*City of God*, Bk 4, Ch. 4).

No society can ever be a completely just society, but all can at least struggle towards becoming less unjust ones. The limited horizon of our present understanding can still provide the starting point for a working consensus to recognize and remedy injustices collectively in a continuing quest that widens our horizons as we endeavour to become an ever more just society. Our quest for justice will always move towards a receding horizon, but it is deepened and enriched as it pursues the ideal, perhaps only dimly perceived in the distance.

This quest is Amartya Sen's *Idea of Justice* (2009), on which our discussion draws. More concretely, the parameters are set by our constitutional ideal of justice, further articulated by India's courts. At a defining moment in our history, that remarkable document laid the foundation of the republic. In 1973, a thirteen-judge bench of the Supreme Court held that the Constitution's basic structure could not be amended. However, any credible interpretation, particularly any effective pursuit of this constitutional justice, needs to be situated in a twofold context: the broader history of the liberal-democratic, secular-socialist perspectives from which it derives; and the contemporary, that of a multicultural, pluri-religious society in which it must be implemented.

The liberal-democratic tradition affirms liberty in a charter of civil and democratic rights guaranteed by the state, equality for all before the state and its laws, and a secularism that distances the state from any particular religious tradition. The democratic-socialist tradition extends the political democracy of the liberal tradition of 'one man, one vote', to the economic democracy of 'one man, one value', as Babasaheb Ambedkar (1978: 47), the chairman of the Constituent Assembly, insisted at the very time of the Constitution's promulgation on 26 January 1950. In practice, this implies a proactive state in the pursuit of equality for all, especially the underprivileged and disadvantaged, as well as the pursuance of an economic policy that privileges the common good over the individual one and balances individual liberties and private enterprise with social equality and public welfare. In so doing, it attempts to contain the free-market distortions as much as constrain governmental overreach.

Both of these democratic traditions have long histories deeply rooted in the West. However, though new to the subcontinent, they are not entirely alien in what they represent, certainly not in terms of the contemporary aspirations of our peoples. Moreover, as these traditions impact each other, they are contextualized and nuanced in unanticipated ways, even enhanced and enriched in the process, setting the parameters of our quest for a just society. Given the confusing complexities and bewildering diversities of our country, the Indian republic might well become a model for others, even for the increasingly multicultural West.

COLONIAL TEMPLATES

When the colonial administration established its bureaucracy and courts, it introduced a whole new administrative and legal system that has transformed, if not displaced, indigenous institutions and jurisprudence. Following the characterization of traditional society by Sir Henry Maine (1822–88) based on ascribed ‘status’, as opposed to modern society premised on voluntary ‘contract’, ‘it was assumed that pre-British shastric jurisprudence was static, linked to highly structured patterns of social stratification and possessed [of] only marginal capabilities for re-adaptive use’ (Dhavan, ed. in Introduction to Galanter 1989: xvi). The rich judicial discourses in the administration of Shariat law were similarly dismissed, while ‘modern law, on the other hand, was seen as constituting a new liberating instrument of change’ (ibid.). Thus the prevalent systems based on the Dharmashastras or the Sharia were marginalized or subsumed under the rubric of personal law.

The history of jurisprudence demonstrates ‘a remarkable instance of the tendency of strong types to supplant and extinguish weak types in the domain of social development’, as is evident with the spread of Roman and Anglo-Saxon law (Bryce 1901: 122). Marc Galanter too is quite emphatic (1989: 36):

... official law of the modern type does not promote the enrichment and development of indigenous legal systems; it tolerates no rivals; it dissolves away that which cannot be transformed into modern law and absorbs the remainder; it creates a numerous class of

professionals who form the connecting links of the nation-state and a vast array of vested rights and defined expectations which disincline those holding them to support or even conceive drastic changes.

The proof of this is in the legal puddings we must eat even though their recipes resist any change.

However, just as a legal system is institutionalized and integrated in a society, so those systems cannot remain distinct from it. Legal concepts will inform cultural understandings even as customary norms set a framework for the interpretation of the law (Thompson 1978: 288). Modern liberal-democratic law institutionalizes a regime of human rights. If these are to be more than legal formalities, they must be grounded in human values that derive from a moral universe very different from the traditional one. This will inevitably impact the conventional self-understanding of a society as it brings a new awareness of social justice and expectations of a just social order.

Although such an impact has the potential to transform tradition, it often leads to ambiguities and tensions that demand astute accommodation, lest the liberative potential is lost in translation across culturally different societies. For,

modern law is not a self-fulfilling prophecy. It has both conspiratorial and non-conspiratorial elements. Faced with the power[ful] asymmetry of modern life, its task is to manage the co-existence of various normative and group orderings without losing its commitment to prevent oppression. (Dhavan, ed. in Introduction to Galanter 1989: lxix)

Colonial jurisprudence, with its succession of Government of India Acts, provided the templates for our Constitution and its vision of society. It is a perspective that is certainly western in its origins. However, the contrary particularities of our society, its hierarchical structures and endemic inequalities, its entrenched traditions and inherent pluralism, have melded the original western template into a peculiarly Indian avatar.

OCCIDENTAL ORIGINS

The understanding of 'justice' is always in the context of a particular society and its traditions. Here we will explore these traditions with Alasdair

MacIntyre, the moral philosopher, who asks *Whose Justice? Whose Rationality?* (1988). His response presents four western traditions, each grounded in its historical–cultural context to show how they are carried forward by later traditions, ending with modern liberalism.

The origins of the discourse on justice in the traditions of the West can be traced all the way back to the ‘Homeric Imagination’ (MacIntyre 1988: 13). During Homer’s era, somewhere around the eighth century BCE, Greek justice, *dike*, was identified with an objective cosmic order that the gods maintain. The just man, *dikaïos*, lived by this cosmic order, striving for the good, *agathos*, with excellence, *arête*. Justice was thus a practical virtue concerned with practical reasoning and living (ibid.: 23). In the context of the warrior ethic of these epics and their warlike heroes’ virtues, especially in battle, this translates into justice as the pursuit of ‘honour’, even over winning, while depriving someone of honour is injustice.

Such an understanding of justice is acceptable within a commonly held world view in which honour and dishonour are generally recognized. Once it is questioned, this justice as virtue will need more of a philosophic than a mythic grounding. There are obvious parallels here with other mythic traditions and their understandings of a cosmic order to which humans must conform, as well as commonalities with other ancient epics with their warrior heroes and codes of honour—including our own epics, but especially the Mahabharata, with the ethical reflections in the Bhagvadgita embedded there.

Following Homer, the Greek philosophic tradition reaches its high point with Aristotle (384–22 BCE), whose cultural context is the Athenian city, the *polis*. For him, this is ‘the locus of rationality’, and as such only ‘the polis could integrate the different systematic activities of human beings into an overall form of activity in which the achievement of each kind of good was given its due’ (ibid.: 141). For Aristotle, the polis ‘must devote itself to the end of encouraging goodness. Otherwise, a political association sinks into a mere alliance ... a guarantor of men’s rights against one another—instead of being as it should be, a rule of life such as will make the members good and just’ (*Politics* Bk 3. 11: 1282b). Thus the purpose of civic life is a life worth

living, the ‘good life’, by which Aristotle means ‘virtuous activity in accordance with reason’ (*Politics*: 1097b22–1098a20). This brings *eudaimonia*, happiness, ‘not as a state of mind but a way of being’ (Sandel 2009: 197).

In this society, the just man lives by righteousness, *dikaiosune*, giving each his or her due in civic life. For Aristotle, this means that ‘persons who are equal should be assigned equal things’ (*Politics* Bk 3, 12: 1282b). Hence, for him, equity consists in equality for equals, inequality for unequals—freemen are equal as citizens; slaves, who are not citizens, and women are considered inferior by nature, and hence unequal to free citizens. For, ‘as some are by nature free, so others are by nature slaves’ (*Politics* Bk 1.5: 1255a). Aristotle grants that ‘not all those who are actually slaves, or actually freemen, are naturally slaves or freemen’ (ibid.: 1255b). However, given his context, he, like many others, fails to ‘understand how domination of a certain kind is in fact the cause of those characteristics of the dominated which are then invoked to justify unjustified domination’ (MacIntyre 1988:105).

St Augustine of Hippo picks up the moral preoccupations of Christianity from its Judaic origins and endeavours to come to terms with the imperial Roman world of his time, which at the time was crumbling into the chaos of the Dark Ages in Europe. This helps to explain his insistence on divine grace as the condition of a just social order and human free will in obedience to this. For Augustine, justice is informed by humility because injustice is rooted in pride (ibid.: 157). Aristotle’s polis is a community of magnanimous citizens rationally pursuing ‘the good life’. ‘The Augustinian Alternative’ (ibid.: 162) to this earthly city of man, *civitas terrena*, was the city of God, *civitas Dei*, where the ideally just society is a community of saints, obeying God’s law and destined to eternal life (ibid.: 163). Augustine’s understanding of society is primarily theological, in sharp contrast to Aristotle’s philosophic one.

The medieval scholastics begin to restore and develop the implicit philosophic content of the earlier Augustinians. The Arab encounter with the Byzantine Christians in the east had preserved Greek philosophy through the

Dark Ages in Europe, where it was recovered only in its medieval period via the Moors of Al-Andalus Spain. Thomas Aquinas (1225–74) discovered Aristotle by way of the Arabic philosophers Abu Ali ibn Sina (980–1037) and Abu al-Wahid Ahmad ibn Rushd (1126–98), known in the West as Avicenna and Averroes, respectively. Aquinas represents the high point of the medieval scholastic venture, bringing together Christian theology and Aristotelian philosophy in a remarkable and enduring construction that came to be called the perennial philosophy, *philosophia perennis*, by the Church.

Aquinas's discussion on justice goes back to the idea of *jus*, right, the foundation of *justicia* in Roman law. This defined the relationship of individuals to each other. The Emperor Justinian I (482–565 CE), who codified Roman law, defined justice as giving one his due, *suum cuique tribuere* (*Institutes*, Bk 1, Ch. 1). Aquinas, in his *Summa Theologica*, takes this further, insisting on justice as giving each one his due, *unicuique*. 'Aquinas unified in a single complex account the definitions of justice provided by Aristotle, Cicero, and Augustine' (MacIntyre 1988: 199). Synthesizing earlier elements, Aquinas identifies justice as a practical virtue, one of the four cardinal virtues along with prudence, fortitude, and temperance. This relational understanding of justice takes the search far beyond personal virtue to interpersonal relationships: to commutative justice in contracts and distributive justice in allotting social goods in society.

However, Aquinas's vast comprehension and insightful understanding is still within the historical context of a European feudal society. Today's intellectual tools to analyse society and uncover its underlying structures were not available to him then. So he makes no incisive critique of the social structures of his time from the perspective of justice. Aquinas accepted the medieval feudal social structure in Europe, just as Aristotle did the one in the Athenian polis.

The rigorous logical methods of medieval scholasticism in Europe were exercised within the confines of a Christian world view. Philosophy was considered to be the handmaid of theology. Within the unity of medieval Christendom, in that Age of Faith when the Catholic Church was a dominant presence, Aquinas's philosophy played a significant role. However, with the

Reformation the 'Christian consensus' broke down; with that process, the basis of the social order and the nature of justice on which it was based was now questioned.

Already with the European Renaissance's discovery of the ancient classics and the celebration of 'man as measure of all things', harking back to Protagoras (490–20 BCE), philosophical inquiry had begun to free itself from religious doctrines and Church control. What followed came to be called the Age of Reason or the European Enlightenment. There are multiple strands in this movement, but they all privileged rational inquiry over social tradition, critical reason over established authority. This was a rationalism that had gained prominence with Rene Descartes (1596–1650), the French philosopher and polymath. In the British Isles, the movement began in Scotland and developed into British liberalism. On the Continent, the Enlightenment precipitated the French Revolution and spread as democratic liberalism.

However, in spite of its presumptions to stand outside all earlier traditions, liberalism belied its free-standing pretensions:

For in the course of that history liberalism, which began as an appeal to alleged principles of shared rationality against what was felt to be the tyranny of tradition, has itself been transformed into a tradition whose continuities are partly defined by the interminability of the debate over such principles (MacIntyre 1988: 335).

Earlier, modernist liberals would fault this lack of certainty; contemporary ones consider such open-endedness a virtue.

In this trajectory, each tradition rejects contrary theses and resolves the contradictions of the earlier ones from its own perspective, even as it carries over and synthesizes elements from these. The more consistent a tradition is internally, the more difficult it is to translate it into another. As John Henry Newman, the Christian theologian, demonstrated in *An Essay on the Development of Christian Doctrine* (1846), each tradition develops through a process of questioning, discovery, and reformulation. However, we are still left with a multiplicity of traditions with rival claims, each with its own practical rationality and understanding of justice. We are back once again with the blind men of Indostan.

However, the hegemonic imposition of any one tradition—if this were at all possible in our plural world—is not an adequate or sustainable response today. It would be one of many possible competing and contested responses. A pluralist society must seek common ground across its contending traditions: ‘finding the common ground is not subsequent to understanding, but a condition of it’ (Davidson 1984: 20), for ‘traditions which differ in the most radical way over certain subject matters may in respect of others share beliefs, images, and texts’ (MacIntyre 1988: 350).

Hence, to get past the pathology of a ‘normlessness’, what the sociologist Emile Durkheim called ‘*anomie*’, we need to enter into traditions with an empathic understanding, what Max Weber, another sociologist, called *verstehen*. This understanding from within enables us to tap the resources available there, to seek common ground across these rival traditions and build consensus.

MacIntyre’s interrogation concludes that ‘the rival claims to truth of contending traditions of enquiry depend for their vindication upon the adequacy and the explanatory power of the histories which the resources of each of those traditions in conflict enable their adherents to write’ (ibid.: 403). The liberal tradition has yet to fulfil the Enlightenment’s promise of an impartial, rational, comprehensive understanding of justice in terms of an agreed-upon, substantive content. However, it has constructed a public sphere, an open arena for free and reasoned debate that today is its defining characteristic (Habermas 1989).

In our postmodern world today, this public sphere provides the common ground for an encounter of rival claims for the many understandings of justice. It is a meeting place for multiple conversations that can define a consensus and then move to a higher ground. This is where contesting traditions must test their explanatory powers and write their histories. In this, we all can participate as writers, not just as readers; as subjects, not just objects; as agents, not victims.

This brief sketch traces the origins of liberal justice to various philosophical traditions in the West. Its history has followed the multiple trajectories of ‘Rival Justices, Competing Rationalities’ (MacIntyre 1988:

Ch. 1). The Scottish Enlightenment in the eighteenth century inspired classical liberalism, and with Adam Smith's *The Wealth of Nations* (1776), it became the legitimizing ideology of industrial capitalism. This developed into free-market liberalism and eventually into contemporary neo-conservatism, which was responsible for the financial meltdown in 2008 and the global recession that has followed.

On the Continent, the European Enlightenment precipitated the French Revolution in 1789, which mutated into the imperial rule of Napoleon Bonaparte (1769–1821). Though the collapse of the *ancien regimes* on the Continent facilitated a democratic transformation of European society, Bonapartism became the implicit model for authoritarian ideologies in the twentieth century, like fascism in Italy and National Socialism in Germany.

The socialist challenge to industrial capitalism began in the nineteenth century, with workers unions seeking a more equitable distribution in society. It reached its most elaborate articulation in Karl Marx. However, the Marxist revolutions in Russia with Lenin and Stalin, and in China with Mao Zedong, paid a horrific price in human lives as they rapidly transformed and modernized their societies. Though none of these had liberal pretensions, their inspiration in the Enlightenment cannot be countered. They represent the shadowy side of the Enlightenment with which rationalists have still to come to terms.

In England, Fabian socialism represented a more benign version of Enlightenment liberalism and became the inspiration of the Labour Party there and elsewhere in the Commonwealth. This travelled to the Continent as democratic socialism, with its emphasis on the welfare state. These movements have now come into mainstream liberalism in many countries, though they have less purchase in the heartland of contemporary capitalism, the United States of America.

In India, their inspiration has been indigenized in our freedom struggle against colonial rule. Further, their influence is very apparent on our democratic, socialist, secular Constitution, which adopted and adapted the colonial jurisprudence it inherited from Anglo-Saxon law to pursue a 'socialistic pattern of society'. Already in our second five-year plan, in

1956, this was spelled out. It also became the basis of the Nehruvian consensus and, while it held, it was the stated goal of India's planning process in all the early five-year plans: growth with equity.

ORIENTAL COMPLEMENTARITIES

Though democratic liberalism has its origins in the West, it has been rather successfully contextualized in the Indian state, despite the many doubters at the time it was constitutionally established. 'Will India survive?' was the question then. 'Will India be a great power?' is the concern now, and for some this is not a question of 'if' but 'when'. Democracy in India is still plagued with endemic hierarchies and unconscionable ambiguities. Yet despite this 'democratic deficit', it has endured to become the world's largest democracy.

For such a large and diverse population, with far-reaching ancient traditions, endemic inequalities and caste hierarchies, massive poverty and mass illiteracy, choosing to develop and modernize within the scope of a liberal democratic state is an enormous challenge that runs counter to most conventional wisdom. Such a successful democratic transition is a very rare exception. However, there is also a potential democratic legacy on which India has drawn.

Amartya Sen traces 'the historical roots of democracy in India' to 'a long tradition of public arguments, with toleration of intellectual heterodoxy' (2005: 12). From abstract philosophic and contested religious differences to divisive social and political issues; from the debates of the Buddhist monks at the time of Emperor Ashoka (304–239 BCE) with Hindu acharyas and Jain munis, to the inter-religious encounters between maulvis, Brahmins, *dasturs* (Zoroastrian priests), Jesuits, and others in the Ibaadatkhana (House of Worship) that Emperor Akbar (1542–1605) built at Fatehpur Sikri, in 1575; from boisterous parliamentary debates among elected leaders, to the passionate political conversations in teashops across the country today, Sen's *The Argumentative Indian* (2005) is a rich complement to liberal democracy, which has been defined as 'government by discussion' (Buchanan 1954: 120).

This tradition of public discourse, giving voice to all in the community, is also found in village and adivasi panchayats and gram sabhas (councils and village assemblies). All have a claim to be heard, though their voices are not equally weighed. Nor is this unique to India. Nelson Mandela's *Long Walk to Freedom* begins with the author as a young boy at the regent's house in Mqhekezweni: 'Everyone who wanted to speak did so. It was democracy in its purest form. There may have been a hierarchy of importance among the speakers, but everyone was heard, chief and subject, warrior and medicine man, shopkeeper and farmer, landowner and labourer' (1994: 21).

Once upon a time, such a tradition was not strange to India's village republics (Maine 1889). This is not to say that liberal democracy, with its regime of human rights, was anticipated in such societies. There was institutionalized inequality in Africa (Fallers 1973) and caste hierarchies in India (Dumont 1970). But then again, democratic Athens and republican Rome had their slaves, and medieval Europe had its three segregated estates—nobility, clergy and serfs—until the bourgeoisie disrupted the ancient regime with the French and the industrial revolutions. Today, urban-industrial society is a bourgeois rather than a liberal democracy, stratified by unequal and divided classes. Ambiguities are always endemic in any society, and the elites use these to protect and perpetuate their vested interests. So, the commitment to public discourse and the acceptance of difference was not the monopoly of, nor unique to, the West.

Henry Maine (1822–88) and colonial administrators after him may well have romanticized Indian villages as 'little republics' (Maine 1889). The village as an organic community, administered by a council of elders (a panchayat), was hierarchical and tradition-bound. However, it did involve a remarkable level of participation, even though this was never quite egalitarian. Gandhi's swaraj (self-rule) was premised on such a swadesh (my country): 'For me, India begins and ends in the villages' (CW, vol. 76, 1979: 45).

Ambedkar rejected this idealization of the village: 'What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism?' (Moon 1989: 62). For Ambedkar, Buddhism was more 'in

consonance with Liberty, Equality and Fraternity, in short Democracy', (Moon 1979: 77) than was Hinduism or Marxism, and the Constitution he drafted was intended to recover this vision of democracy from our lost heritage.

However, it would be naïve if not blindly ethnocentric to negate the downside of our sociocultural traditions and the bulwark they can present against a liberal democracy. Often, these traditions have a religious legitimacy that needs to be interrogated from within the tradition by drawing on other cultural resources. The most effective way of challenging and changing a tradition is through an empathic critique from within; a hostile criticism from without typically only puts people on the defensive, hindering rather than helping change.

Political liberty and social equality were not integral to pre-modern societies, which were premised on structured, hierarchical communities. In Europe, the Reformation in the sixteenth century brought about a transformation. Max Weber, one of the founding fathers of sociology, traces the individualism that eventually brought an *Eclipse of Community* (Stein 1972) to *The Protestant Ethic and the Spirit of Capitalism* (Weber 1930). Robert Nisbet's *The Quest for Community* (1953) in postmodern society is a throwback to an earlier community tradition that is still strong in eastern societies. Certainly, pre-modern communities constrained freedom and sustained inequality, but they also provided a sense of belonging and interconnectedness that could open to a wider, more benign solidarity.

There are complementary qualities in Indian traditions that have indigenized and transformed liberal democracy. Here, people exercise their franchise not so much as individual voters but as community members. This is denigrated as 'vote bank politics', but it allows the community to function as an intermediate structure, moderating the state's impact on the individual even as it allows the individual to impact the state through the community. For in a mass democracy, the individual voters are quite helpless vis-à-vis the centralized state. They are easy prey to powerful lobbies and vested interests, whereas the community both constrains individuals and protects them. Though the limits of individual liberty are set by the group rather than

the state, the discursive traditions of these communities do provide a space for public discourse and social dissent, from where an individual can interrogate hierarchies and challenge inequalities.

This is not to overlook the very real oppressive aspects of patriarchal families or caste communities, or to dismiss Ambedkar's apprehensions about our villages in favour of Maine's idealized village republics. Even today, some of the diktats of caste panchayats and local leaders are shocking examples of such murderous excess, and need a firm response from a responsible state. But neither should we dismiss the positive possibilities for a more localized 'government by discussion' (Buchanan 1954: 120). For Amartya Sen *The Argumentative Indian* (Sen 2005) is so much a part of our tradition.

Certainly, traditional panchayati raj institutions will have to be transformed in a modern democracy, and the state governments will have to facilitate this transformation. But neither can a centralized government be effective at the grass roots without such local self-governing institutions. The synergetic possibilities between central and local governance are now better realized, as evidenced in the Constitution (Seventy-third Amendment) Act of 1992, which devolved state powers to the local self-governing bodies it constituted; and the Constitution (Seventy-fourth Amendment) Act of 1992, which included urban areas; as well as the Panchayat (Extension to Scheduled Areas) Act (PESA), 1996, which extended these provisions to adivasi areas.

A REGIME OF RIGHTS

This tradition of community participation in collective decision-making by discussion is the indigenous social capital on which liberal democracy can build. Thus, a liberal-democratic constitution formalizes a regime of human rights to protect and expand this discursive social space, even as it provides opportunities and resources to change the private individual's social place. Legislation must respect community rights within a constitutional regime of fundamental liberties as it furthers this process of democratizing social and communitarian institutions.

The law must implement and defend both legitimate community and fundamental individual rights. But where fundamental rights are violated or abrogated by community traditions or state legislation, then these fundamental constitutional rights must trump such traditions and legislation. The rule of law must mean the reign of justice, because justice is constitutive of the law, not vice versa.

A fundamental tenet of any schedule of human rights is that all must be treated equally before the law: no is one above the law, nor anyone below it. If all are equal before the law, then the law must be uniformly applied to all. Consequently, in order to be universal, law must have a fixed meaning, which when formalized in legislation becomes difficult to change and adapt to reflect diverse circumstances and diverging discourses regarding rights. Over time, this loss of effective flexibility adds up to a mismatch between the law and the realities on the ground—so well expressed by the exasperated Mr Bumble in Charles Dickens's *Oliver Twist*: the law is an ass. Hence, equity and fairness will demand an appeal to a higher law, which constitutional justice attempts to express. If rights must find their protection in law, the law must be tested against the Constitution, and the interpretation of the Constitution must be authenticated by an understanding of justice.

Our Constitution articulates a modern notion of rights that has the potential to transform our society. However, there is an ongoing tension between the precision and uniformity the law demands and the complexity and open-endedness in the evolution of human rights. These have been categorized into three generation of rights (Vasak 1977): firstly, civil and political rights to liberty and life; secondly, economic, social, and cultural rights for equality; thirdly, solidarity rights expressing a fraternity even beyond national sovereignty, in terms of collective rights—for instance, the right to self-determination, a clean environment, development, etc. The first represents the liberal-democratic model legislating individual liberties as claims against the state; the second derives more from the social-democratic model, emphasizing collective and group rights neglected by the first; the third goes further than both of these to express a solidarity beyond the local and even the national community.

This last point is the most recent in the order of rights. Up against national sovereignty and the constraints of international law, this third generation of rights can only be affirmed as ‘soft law’, as ethical aspirations, but without the formal sanction of law. Formalizing these in a legally binding charter is extremely problematic. For all its urgency, the contemporary debate on climate change deals with this category of commitments, as do international crimes such as genocide and ethnic cleansing.

Rights, as multilayered, complex claims premised on consensual values, have a significance beyond legal entitlements. They derive from a moral universe that may not translate well into culturally different societies with radically dissimilar world views. For instance, the values of a patriarchal, hierarchical society would be in contradiction to those of a democratic, egalitarian one, as is so starkly evident with regard to gender equity. However, though law is a powerful guarantor of rights, it can often be stymied by tradition and custom in civil society.

But if a consensus on rights is eventually to be expressed in the same laws for a specific society, they must protect against the specific injustices of that society in order to narrow down the ‘justice gap’, i.e., ‘between claims for justice and [the] governmental (including legal and juridical) regime of justice’ (Samaddar 2009: 16). Every society, after all, will have its own peculiar shortfall between the formal promulgation of legislated rights and their effective implementation on the ground. Vulnerable groups, like women and children, Dalits and adivasis, need special protection against such institutional injustice. This must be the priority if such rights are to be effective instruments for an inclusive and integrally just society.

MULTIPLE, DIVERGENT DISCOURSES

Different understandings of rights derive from the different values and principles that they are grounded in, leading to multiple approaches to the welfare of a society. The law and the rights it guarantees can be powerful instruments for a just society, but these constitute just one among many agents of change. However, in the same plural society there can be multiple and divergent discourses on rights emphasizing different aspects of justice and

varying versions of modernity. Among the most obvious polarities of viewpoints are those involving individualism and communitarianism.

At one extreme of this debate, Jeremy Bentham (1748–1832) sought to maximize happiness: the greatest happiness for the greatest number, for ultimately happiness was the only natural and useful pursuit. Martha Nussbaum described this as a pure hedonistic Utilitarianism, asserting the supreme worth of pleasure and the badness of pain' (Nussbaum 2007: 339). Bentham attacked rights as 'nonsense, rhetorical nonsense, nonsense upon stilts' (Bentham 1962: vol. 2: 501). Individual freedom was not of serious consequence; utility understood as the means to happiness was. Thus Bentham's 'pauper management' would remove street beggars to the workhouse to increase the happiness of both the public who would be spared the squalid sight and the beggars who would be put to gainful work (ibid., vol. 8: 369–439).

John Stuart Mill (1806–73) is more moderate. His essay *On Liberty* (1974, 1st, 1859) makes a case for individual freedom. As long as one is not harming anyone else, one's 'independence is, of right absolute. Over himself and over his body and mind the individual is sovereign' (1861, 1st, Mill 2001: 11). However, even this freedom is based on 'utility as the ultimate appeal on all ethical questions; but it must be utility in the larger sense, grounded on the permanent interests of man as a progressive being' (ibid.: 12). In his *Utilitarianism* (1861), Mill goes on to distinguish the desire for worthy higher pleasures from base lower ones, but explains desire itself somewhat tautologically: 'I apprehend, the sole evidence it is possible to produce that anything is desirable, is that people do actually desire it' (2001: 35).

Ultimately, Mill remains within a modified utilitarianism: 'happiness is the sole end of human action (ibid.: 39). This comes precariously close to instrumentalizing the beautiful and the good in terms of the useful and desirable. Indeed, without the protection of human rights, utilitarianism sacrifices the individual to 'the greatest happiness of the greatest number'. This is the utilitarian shibboleth that is still used today. Thus, aggregate welfare trumps individual rights.

At another extreme are the libertarians, most recently represented by Robert Nozick (1974), privileging the individual's right to freedom over collective concerns for social welfare and equality. Libertarians are driven by a free-market philosophy that requires a minimal state to enforce freely made contracts between consenting parties: one's freedom is supreme even over one's body, for one owns it. But if mutual adult consent is the only constraint on individual freedom, then the free-market trade in human organs—with someone putting only their own, not another's body at risk—would be legitimate and ethical. Even rejecting consensual cannibalism as 'an extreme form of assisted suicide' (Sandel 2009: 13–14) may be difficult for these libertarians, at least in terms of their own logic of minimal limits on individual freedom, if it does not harm others. Thus, individual freedom trumps the common good.

Bizarre as it might seem, such a case was brought to trial in Germany. In 2001, in the village of Rotenburg, Bernd-Jurgen Brandes, a software engineer aged forty-three, agreed to be killed and eaten by Armin Meiwes, a computer technician aged forty-two. Germany has no law against cannibalism, so Meiwes was sentenced for killing on request, a form of assisted suicide or manslaughter (*New York Times*, 26 December 2003). An appeals court enhanced the eight-and-a-half-year sentence to life imprisonment, where Brandes has reportedly become a vegetarian to protest factory farming as inhumane (*Scottish Daily Record*, 21 November 2007).

Free-market neo-conservatives, meanwhile, claim to privilege individual freedom, though they would sharply contest the permissiveness of libertarians. However, in times of periodic economic recession and financial meltdown, as Karl Marx predicted would happen in market-driven economies, these neo-conservatives readily abandon the market they earlier promoted and suddenly seek hasty bailouts, socializing their corporate losses as readily as they privatized their market gains. The recent financial meltdown and the massive bailouts at public expense are blatant evidence of this.

The most severe indictment of both the utilitarians and the libertarians is made by Immanuel Kant, for whom maximizing welfare or happiness in terms of pleasure and pain is simply following desires that we have not chosen ourselves. This is acting from instinct, not from real freedom. For Kant, ‘making a man happy is quite different from making him good’ (Kant 1964: 442). Freedom must mean freely choosing both the means and the ends of our actions. Moreover, for an action to be moral it must have the right intention: ‘it is not enough that it should conform to the moral law—it must also be done for the sake of the moral law’ (ibid.: 394), in other words, doing the right thing because it is the right thing to do. Thus, choosing the right thing makes the choice rational, not arbitrary; choosing it because it is right makes it moral, not utilitarian. There is no room here for the permissiveness of the libertarians or the calculus of the utilitarians.

Kant gives us two stringent norms for moral action. The first: ‘Act only on that maxim whereby you can at the same time will that it should become a universal law’ (ibid.: 421). For Kant, every exception undermines the moral law. And second: ‘Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end’ (ibid.: 429). For Kant, the dignity of the human person cannot be compromised.

This is a very rigorous and demanding ethical code. Kant makes moral action independent of empirical or extenuating circumstances. He rejects any instrumentalization of human beings and thus establishes human dignity as the basis for a regime of universal and fundamental human rights. A universal moral law demands that all humans must have the same rights. As ends in themselves, and never a means to any other ends, respect for human life and freedom must not be compromised.

For Aristotle, the basis of righteousness, *dikaiosune*, is practical judgement, *epikeia*, for virtue has a purpose, a goal, a *telos*—the good life, *eudaimon*. This makes the practical good more important than the abstract right. For Kant, on the contrary, what is right is always universal and more important than what is good. This has important implications for our understanding of justice. For Kantians, rights cannot be compromised for the

common good because the right is more important than the good. For Aristotelians, the good nuances our understanding of rights. Hence, for Kantians, human rights trump the common good; for Aristotelians, the common good must qualify these rights.

The Marxists present yet another position on rights. Their preoccupation is with capitalist exploitation and the social structures that sustain it. Individual rights in bourgeois society are regarded as legal formalities that legitimize and sustain rather than address and remedy the structural injustices and institutional violence of this society. Marxists insist on economic–political empowerment of the toiling masses, and class struggle as the means to bring about structural change for justice. In this context, the only ‘real rights of the dominated classes’ are ‘material concessions imposed on the dominant classes by popular struggle’ (Poulantzas 1978: 84). Marxists emphasize not so much on fundamental human rights or essential democratic and civil liberties as on the basic needs of people for food, shelter and clothing; and for freedom from hunger, disease and exploitation. For Marxists, then, basic needs must trump legal rights.

For the utilitarians, aggregate collective welfare is the paramount consideration; for the libertarians it is untrammelled individual freedom. To this discourse, Marxists bring a contrary dimension, vital to any schedule of rights premised on social justice. They emphasize social structures as the source of injustice, and they seek to remedy them. They are less concerned with maximizing collective happiness, as utilitarians are, or with individual freedom, as libertarians are. Their concern is to restructure society in order to meet the basic needs of people, an urgent need in poor and developing societies like ours.

In their haste for revolutionary change, however, the Marxists’ dismissal of individual and even collective rights opens the way to violence. Change in the name of justice comes at an enormous price of injustice and violence against enemies of this revolution, whose rights are abrogated and sacrificed to a revolutionary utopia. Eventually, unlike peaceful evolutionary social change that is sensitive to individual rights, violent revolutions devour their own children violently. As Hannah Arendt, the incisive political philosopher,

cautions us: 'The practice of violence, like all action, changes the world, but the most probable change is a more violent world' (1969: 20).

The *Right to be Human* (Baxi 1987) is certainly a fundamental right that demands the satisfaction of basic human needs. But one must not be sacrificed to the other. Situations of severe social stress may well require limitations on individual freedoms and the appropriation of collective resources, especially those of the rich and powerful. Social survival in situations of natural disasters, famine and drought do demand this. Thus, the hierarchy of rights to be respected must be adapted to the degrees of needs to be met; vice versa, degrees of needs to be met must be accommodated within a hierarchy of rights to be respected. Thus, protecting fundamental rights in meeting basic needs must be matched by 'translating justified needs-claims into social rights' (Frazer 1989: 183). This is a domain beyond the first and even the second generation of rights and well into the next one.

In his 'Remarks on Legitimation through Human Rights', Jurgen Habermas, the sociologist and philosopher, suggests a 'working hypothesis': '... standards of human rights stem less from the particular cultural background of Western civilisation than from the attempt to answer specific challenges posed by a social modernity that in the meantime has covered the globe' (Habermas 1986: 121). In our Constitution, this challenge of modernity is faced not by compromising fundamental human rights but by affirming them, together with basic human needs.

CONSTITUTIONAL QUEST

Our constitutional vision of a just society derives from this liberal-democratic tradition, as contextualized in Indian society. Consequently, it will have its own nuanced understanding of justice and the regime of rights premised on this. Thus, the interaction between liberal democracy and Indian society produces its own peculiar avatar. There is a continuing dialectic between rights and needs set up by our Constitution and interpreted by our courts, the most acute expression of which today is in the arena of affirmative action and minorities rights.

The regime of rights in our Constitution and the Directive Principles of State Policy give constitutional sanction to both the entitlements of rights and the compulsion of needs. To hold these together constructively and creatively, we must draw on our ancient tradition of accommodation, protecting the needy by adjusting the rights of the powerful to the needs of the disempowered. Both express similar commitments: the first, of the collective needs of weaker sections of society for protection against prejudicial discrimination due to their social identity and social deprivation; and the second, of the community needs of vulnerable minorities for protection against majority dominance and promotion to counter this dominance. These commitments must be reconciled with the right to equality for individuals from other sections of society and those from dominant communities.

Modern constitutions proffer protection and redress to the individual in the political community against any abuse by the state or other agencies. They enforce universal norms and values, deriving from a particular world view. These are considered to be universally ‘objective’. Other traditional ways of life, incompatible with this world view, are consequently marginalized and de-legitimized as ‘subjective’. However, expressing this abstract, universal ideal in a particular traditional society is a daunting challenge for any administration of justice.

The promulgation of ‘a democratic constitution is a privileged expression in a higher law of the political ideal of a people to govern itself in a certain way’ (Rawls 1993: 232). It sanctions the ‘basic structure’ for a social transformation. Though it can be amended by due process, a constitutional breakdown—or, worse, its abrogation—will necessitate the refounding of the state and the promulgation of a new Constitution. We see this happening time and again in coups d’etat that install new governments seeking constitutional legitimacy.

India was the first country in the non-western world to promulgate a democratic Constitution as the sun set on the British Empire. In spite of a brief intermission with Indira Gandhi’s Emergency, between 1975 and 1977, the popular endorsement of the Constitution explains ‘India’s unusual record as a robust, non-Western democracy’ (Sen 2005: 13). The active and at times

even chaotic participation of *The Argumentative Indian* accounts for ‘the tenacious persistence of that system, in contrast to many other countries where democracy has intermittently made cameo appearances’ (ibid.).

For the Indian Constituent Assembly meeting on 9 December 1946, the challenge was to facilitate the transition from the promise of the Freedom Movement to the new India in the making. The document was approved on 26 November 1949 and was promulgated on 26 January 1950. It expresses that Nehruvian quest: ‘Creating a just state by just means ... a secular state in a religious country’, and attempts a radical reconstruction of Indian society. It is not premised on a sacred view of society. It contests traditional hierarchies. There is no harking back to the Dharmashastras or the Shariat, nor to an ancient golden age. However, the exasperating contradictions of a society in transition makes this collective quest perhaps one of the most difficult and delicate in our history, with no guarantee of success except our own committed and enduring endeavour.

In implementing constitutional justice, there is a necessary fallback to cultural resources. Granville Austin sees crucial support for constitutional jurisprudence in these:

Indians can accommodate such apparently conflicting principles by seeing them at different levels of value, or, if you will in compartments, not watertight but sufficiently separate so that a concept can operate in a different sphere ... With accommodation, concepts and viewpoints, although seemingly incompatible, stand intact. They are not whittled out by compromise but are worked out simultaneously (Austin 1966: 318).

We see this ‘accommodation’ working in our impossibly crowded trains and buses, of constantly making room for others: ‘adjust karo, adjust karo’ (do adjust, do adjust). This process of give and take helps us to survive the hazards of living in this country, with the stresses and strains of the mismatch between scarce supply and overblown demand. In the courts, where the law can be used as a bargaining tool, this ‘theory of accommodation’ (Dhavan, ed. in Introduction to Galanter 1989: lv) often moderates legal entitlements. However, with the traditional understanding of dharma and karma, it has also elicited and internalized the consent of the oppressed in an unjust social order.

Once the source of rights is founded on law, as happened with the colonial judicial system, custom and mores are inevitably marginalized as a basis to claim one's due. But the ambiguities and dilemmas of the law remain, and they need legal interpretation and judicial safeguards against political manoeuvring. These are accentuated 'at the interface of radical political practice and the logic of constitutionalism' (Menon 2004: 1). The Indian Constitution confronted this through explicit provision for the protection and promotion of the weaker sections of society, even as it affirmed a universalist vision of justice and rights.

The Constitution abolished discrimination on the basis of caste, sex or religion and legitimized affirmative action and reservation quotas for 'socially and educationally backward classes'. However, identifying these classes on the basis of caste has led to the grand paradox of caste struggle for a casteless society, thus politicizing specific caste communities to create a more universal, inclusive, casteless society. Further, the Constitution has affirmed the rights of linguistic and religious minorities, envisioning a multicultural and pluri-religious society. But identity politics has used this divisively and has spilled over into linguistic regionalism and religious communalism.

The balance between the individual and the community is always delicate and precarious. Individual and group rights derive from different legal understandings. For Western individualism, the bearer of rights recognized in law is the individual. This has a crucial impact on the significance of personal freedom and dignity. It protects the individual against the collective, whether it be the state or the community, but is less effective in making duties to the community correlative to rights of the individual.

In India, the individual is bound to the community by dharma. In giving communities collective rights, the Constitution affirms the common good of the community and its collective welfare, vis-à-vis the larger society and the state. But without corresponding fundamental rights for the individual, the community and the state could well become coercive and repressive. Thus, individual fundamental rights must trump the community coercion and state oppression of individuals, and community rights must trump the state

violation of communities. Together, these two categories of constitutional rights are the legal and ethical basis for the Directive Principles of State Policy.

This remarkable constitutional innovation addresses the anomalies of the ‘justice gap’ between the formal ‘claims for justice’ and an actual ‘regime of justice’ (Samaddar 2009: 16). Beyond ‘formal justice’ and the letter of the law, a just society recognizes the shortfall between the ideal of an inclusive justice and the reality of its particular social inequities. The Constitution stands as a trustee for the just society—a living, active participant for such claimants in the quest for justice for all.

The Directive Principles mandate an inclusive justice—not by way of legal redress, since they are not contestable in a court of law, but by way of ethical and political pressure on state policies (Basu 1965: 312). Consequent to fundamental rights of individuals are the fundamental duties of citizens. The ten listed in Article 51A of the Constitution are a description of an ideal citizen, but they are not enforceable by legal writ. Consequent to constitutional state sovereignty, the Directive Principles express the moral duties of the state. Their concern is justice for the common good, not legal redress for individual entitlements or even the affirmation of the sovereign authority of the state. This area of constitutional propriety and political demands for rights has increasingly become a tug of war between the legislature and the judiciary, as is very apparent with regard to reservation quotas and minority rights.

Western civilization represents one model of modernity, the most pervasive one at present. But it is also deeply implicated in the crises that engulf the world today: affluent consumerism, financial mismanagement, ecological destruction, climate change, and others. We need to look for other models of modernity in our postmodern world to cope with and protect us from such crises. This will demand a fraternal solidarity, which must be premised on an equality based on liberty. The schedule of rights privileged by our Constitution holds together each of these three: liberty, equality, fraternity. Hence there is a constitutional basis for the challenges in the contemporary interface between affirmative action for our socially and

economically vulnerable people, minority rights to protect our multicultural, pluri-religious communities, and gender equity for our women. Indeed, they can be shown to derive from its fundamental structure.

It may be a tautology to say that a just society must be premised on a realizable understanding of justice and a credible regime of human rights. Yet given the multiple understandings of justice, deriving from diverse visions of a just society, this will be a very challenging quest. But before we set out on this venture, if we are unable at least to recognize injustice, we may well end up replacing one injustice with another. No one grasped this issue better than Nehru, when he articulated the challenge for the new India: a just society by just means; a secular state in a religious society.

Understanding Justice

JUST ENDS THROUGH JUST MEANS ■ FOURFOLD CONTEXT ■
 JUSTICE AS PERSONAL VIRTUE ■ JUSTICE AS EQUITABLE
 EXCHANGE ■ JUSTICE AS FAIR DISTRIBUTION ■ JUSTICE AS
 SOCIAL STRUCTURE ■ JUSTICE AS CAPABILITY ■ THE JUST
 SOCIETY

JUST ENDS THROUGH JUST MEANS

In the [preceding chapter](#), we have tried to situate Nehru's quest for a just society through just means in the contemporary Indian context. However, without arriving at a consensus on our understanding of justice, our pursuit of a just society will not converge in a united and cooperative endeavour. Rather, we would get stuck in endless controversy and stymie one another's efforts, in spite of all the goodwill we might bring to this challenge. As indicated in the last chapter, the concept of justice has complex origins and problematic consequences, all the more so when justice must be implemented in rapidly changing, difficult, and diverse social situations. Moreover, the assumptions and priorities, the values and concerns in which our various understandings of justice are grounded are not only different and dissimilar, many are even contradictory and incompatible.

As we have seen, the constitutional understanding of justice derives primarily from the western liberal tradition. But within the multiplicity of this tradition, it draws on the liberal-democratic, secular-socialist stream. Furthermore, our constitutional agenda, especially as expressed in the Directive Principles of State Policy, has been impacted by multiple historical

contexts: colonial and pre-colonial, modern and traditional. This has nuanced our understanding of justice and rationalized its implementation. Our Constitution draws on diverse sources to codify justice in a regime of rights, while our legislation endeavours to apply these to complicated social issues and our courts struggle to balance conflicting agendas as applied in complex human situations.

Contending concepts concerning justice, with their rival claims to truth, often diverge. Mapping a minimal common ground across these is a daunting task, for justice in a society must be founded on a consensus of moral values and implemented fairly by agreed-upon procedures. While the substance of justice must be premised on these values, just procedures must follow due process. However, some viable consensus on both is essential, for then a credible substantive understanding of justice can be spelled out in realizable procedures. This will not result in a comprehensive agenda in our quest for a just society; but in our quest for just ends through just means, it will address and narrow the ‘justice-gap’ (Samaddar 2009: 16) between the formal claims for and the practical implementation of justice. In this chapter, we will try to unravel the four levels of justice to find a viable consensus for common ground, lest once again we regress to where we started with the ‘Six Blind Men of Indostan’.

FOURFOLD CONTEXT

If justice is to be understood as credible and seen as implementable, we need to look at it in the context of its distinct but not separate dimensions: individual behaviour; exchange transactions; the distribution of social goods and services; and institutional structures and relationships. In common parlance a ‘just’ person is generally one who does no wrong, fulfils his or her duties, violates no one’s rights, thus conforming to some generally and locally accepted standard of rectitude or righteousness. This perception of *justice as virtue* pertains to individual virtue. It implies personal integrity and respect for others. It is what we mean when we call someone ‘just’. In interrelations between individuals, we expect the just person to be fair—i.e.,

impartial and reasonable, respectful of the freedom of others, giving each their due. This is *justice as equitable exchange*.

However, it is not only personal relationships that mediate how each one's dues are met. This happens in the larger context of social institutions.

Through its institutional structures, a society distributes social rewards and sanctions, privileges and burdens, rights and duties. In a particular society, the returns received and contributions made follow institutional norms.

Distributive justice demands a correlation among these, the proportionate distribution of rewards for contributions in accordance with the roles people play in society. The more difficult and demanding tasks must receive correspondingly more value and sought-after rewards. For instance, a fair distribution of wages should correspond to the difficulty of work and scale of responsibilities involved.

However, institutions in society often limit the life chances and life choices of people, as happens to Dalits in India's hierarchical and caste-ridden society, the minorities in a majoritarian democracy, or to women in a patriarchal society. Here, justice demands a restructuring of such social institutions for the creation of a relevantly just society. *Social justice* refers to such structural equity.

An understanding of justice that emphasizes merely one of these four dimensions to the neglect or negation of others, rather than a balanced integration of all four, will inevitably be truncated and eventually unjust. Liberals and libertarians, who privilege individual freedom over other considerations as long as it does not violate others' freedom, stress justice as an individual virtue that at most extends to interpersonal relations. In this, they abdicate responsibility for other levels of justice—equitable exchange, fair distribution, and just social structures. As Margaret Thatcher, the British premier (1979–90), remarked in an interview: 'There is no such thing as society. There are individual men and women, and there are families' (*Women's Own Magazine*, 23 September 1987). Such an individualist perspective legitimates the kind of neo-liberal initiatives that have precipitated the recent financial meltdown.

At the opposite end are revolutionaries, whose urgency for structural change in order to bring about justice trumps even the right to life. For these, one death is a tragedy; a million deaths is a statistic. From the Reign of Terror during the French Revolution through Stalin's gulags and Mao's Cultural Revolution to Pol Pot's Cambodia, there is a trail of blood and horror. In India, too, though our quest for justice may well be less bloody, the marginalization of our poor in our pursuit of development has not been without bloodshed and terror, as the 'red corridor' in central India so tragically testifies.

Less extreme would be communitarians, who sacrifice individual freedoms to community rights; and welfare socialists, concerned with fair distribution, not personal virtue and the work ethic that once went with it. But state welfare brings in big government, and its womb-to-tomb policies can displace community structures, atrophy local initiative, and sap individual potential. However, in countries such as India, community identities can be more part of the problem of injustice and violence, as happens with dominant castes and religious fundamentalists.

Particularly in times of social change, old norms for standards of justice, whether as virtue or equity, distributive or social, may well become out of sync and even unjust, as emerging contexts demand renewed relevance and standards of fairness. Our understanding of justice, then, cannot be static. Changed situations need new norms and procedures for justice. Moreover, our understanding of justice must also be inclusive of the fourfold context discussed in this chapter. The virtue of the righteous person must carry over into equitable relationships, which in turn must sustain this virtue. Together, these must facilitate just distributive social institutions and set the norms and values for just social structures, even as these social structures must be expressed in fair distribution and just institutions, sustained by equitable relationships and personal virtue.

JUSTICE AS PERSONAL VIRTUE

In the classical Aristotelian tradition, righteousness, *dikaiosune*, giving each his due, was the defining characteristic of the just man in the Athenian city

state, the polis. This tradition was carried further by the medieval scholastic philosophers in Europe, such as Thomas Aquinas, for whom justice was one of the four cardinal virtues, along with prudence, temperance and fortitude. Most religious traditions stress righteousness as a virtue that emphasizes duties, rather than rights.

In the Biblical tradition, there is a twofold understanding of justice. One is more focused on the personal, *sedaqah*, righteousness, as when the just fulfil all of their duties and obligations to God and humans. The second is more concerned with the social, *misphat*, right judgement, as when ‘I do unto others as I would they do unto me’. The rabbinical tradition developed the concept of *tzedakah*, which Jonathan Sacks, chief rabbi of the United Hebrew Congregations of the Commonwealth, characterizes as more than charity and compassion—it is rather about helping a person in need to become self-sufficient. For, ‘a society must ensure equal dignity—the Hebrew phrase is *kavod habriyot*, “human honour”—to each of its members’ (Sacks 2002: 120).

Amartya Sen distinguishes the Sanskrit term *niti* as referring to ‘organizational propriety and behavioural correctness’, while ‘*nyaya* stands for a comprehensive concept of realized justice’ (Sen 2009: 20). The first is more an ethical virtue; the second, a social condition. Both come together in the concept of dharma, as representing the duties of one’s life situation. Fulfilling these obligations makes one righteous, or dharmic (often loosely and not quite correctly translated as ‘religious’). In Buddhism, dhamma is a universal ethical law. In Islam, a ‘Muslim’ in Arabic is one who submits to god, and from this supreme duty all else follows. In the Judaic tradition, Yahweh demands fidelity, in the Christian one the emphasis is on the obligations to love God and neighbour.

In general, religious traditions stress our duty to God, or to some universal ethical principles or ultimate reality. Our duties to one another derive from these. The religious concept of rights is primarily derived from our relationship to this divinity or principle and the implication it has on our other relationships. This correlation between rights and duties is critical to any further understanding of justice. But, for justice to be a practised virtue,

rights and duties cannot remain formal abstractions. They must be grounded in a community (common unity) bound together by a sense of common union (communion). Even as a personal virtue, this solidarity is essential to the practice and understanding of justice.

Justice as an ethical virtue is founded on two crucial premises. Humans are moral and therefore responsible, rational and free; and further, they are social, interrelated and interdependent. Without these premises, it is not possible to construct or participate in any understanding of justice. A just society is necessarily contingent on the righteousness of its members. Obvious as this may seem, it is more remarkable how easily these are at times forgotten or violated. Yet these must be essential elements in our understanding of justice if any interaction between human beings is to be moral and rational, free and interdependent. However, the inevitable dilemmas and tensions between even virtuous and righteous individuals must be considered at another level of equity in exchange.

JUSTICE AS EQUITABLE EXCHANGE

The interactions between individuals and groups in any society are ruled by norms codified in customary law or formalized in legal systems. Exchange relationships and binding agreements are based on these. *Commutative justice* refers to such transactions. For these to be just, the exchange partners must be equal: equally informed and equally free agents. Such considerations must go beyond the requirements of customary or formal law for an equitable exchange based on principles of fairness.

For the political philosopher John Rawls (1921–2002), ‘justice as fairness’ is defined by ‘the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association’ (Rawls 1999: 10). These principles are presumed to be fair if all the affected participants choose them from behind a ‘veil of ignorance’ in an ‘original position of equality’ (ibid.: 11). From this, he derives two fundamental principles:

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all. (ibid.: 53)

For Rawls, 'injustice, then, is simply inequalities that are not to the benefit of all' (ibid.: 54), such as gross inequalities that inevitably lead to unequal exchange and undermine people's self-respect and their exercise of equal rights. Inequalities are not unjust if they work for the 'common good, that is, maintaining conditions and achieving objectives that are similarly to the advantage of all' (ibid.: 205), but not necessarily to the equal advantage of each.

However, the idea of free agents rationally pursuing their interests in fairness seems an idealized understanding of humans. For the political philosopher Thomas Hobbes (1588–1679), 'the life of man, solitary, poore, nasty, brutish, and short' (Hobbes 1991: Ch. 8) characterizes 'The Natural Condition of Mankind', wherein humans pursue an aggressive self-interest, 'a perpetual and restless desire of Power after power, that ceaseth only in Death' (ibid.: 70). This necessitates a social contract, enforced by a sovereign authority. Later, more liberal social contract theorists, such as John Locke (1632–1704), modified this into a less obviously aggressive, more 'enlightened' self-interest that prioritized broader, more rational interests over narrower more immediate ones for a more humanizing life.

For many liberals, however, individual self-interest remains the basic explanation of social relations. Yet such individualism can hardly be a sound basis for human social solidarity and the pursuit of the common good as the good of all, individually and collectively. It is very far from Aristotle's understanding that 'man is by nature a political animal' (*Politics* 1253 a1) and even further from the virtuous citizen in Aristotle's polis. Adam Smith (1723–90), in *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776), legitimized this individualized self-interest with his 'invisible hand', which makes the selfishness of each work for the good of society. Free-market capitalism is founded on this understanding. However, weaker parties and more vulnerable partners in such free-market exchanges are at a perpetual disadvantage vis-à-vis the stronger and more powerful

players, for whom the supposed efficiency of the market works best. But unequal exchange inevitably becomes unfair, if not paternalist.

This is not a self-correcting process, and if the pursuit of self-interest is unregulated, oppressive inequalities and injustices will accumulate relentlessly. When this happens for generations, it inevitably leads to exploitative and oppressive relationships of dominance and dependence. Such a situation is neither just nor sustainable. Without adequate protective and remedial measures, the outcomes can only become increasingly skewed and dangerously unstable. Moreover, ignorance cannot validate or justify an exchange agreement, even if made on the basis of genuine ethical commitments. Howsoever inadequate, this information must be equally available to the transacting parties, or once again the imbalance will give one an unfair advantage over another. In this context, as in many others, knowledge is power and the powerful prevail.

In a free, unregulated market, the sellers will generally know more about what they are selling than the buyers will about what they are buying. The economist George Akerlof's Nobel Prize-winning essay on the used-car market, 'The Market for Lemons' (1970), so convincingly argued this that the used-car salesman has become the epitome of unfair deals. Marketing is all too often more a manipulative than an informative process. Yet trying to do away with the market and replacing it with a command economy controlled by the state has proven to be economically wasteful and uncompetitive—and eventually, disastrous. One set of oppressions is replaced by an even more extensive one, market capitalism by state capitalism. This means more equality but decidedly less freedom, more material security but muted human rights. This cannot be a just society.

From the days of barter, markets have been necessary social institutions for the exchange of goods and services. But they must be regulated for the common good of all. A one-sided dependency makes for unequal exchange and the inevitable consequences that follow. Social Darwinism, with its espousal of survival of the fittest by natural selection, may seem biologically efficient, but this is certainly incompatible with a just and egalitarian society. In a world where the weak and strong live together, 'predatory capitalism'

thrives on the unregulated free market. Speculative markets for profit buy and sell risk; they do not create real wealth for the commonweal. This ‘casino capitalism’, with its unregulated speculation, inevitably precipitates periodic financial crises in varying degrees of severity. Such unbalanced social exchange cannot be equitable.

Of the ‘two traditions’ in studies of *Social Exchange* (Ekeh 1974), anthropologists have shown how, in pre-capitalist societies, exchange was often less for economic profit than to establish social solidarity through extended networks of exchange. Often, the exchanges involved had little or no economic value, as with the Kula ring in the Trobriand Islands (Malinowski 1922). Across thousands of miles of ocean, red-shell necklaces were traded to the north, circling clockwise, for white-shell armbands traded in the southern direction, circling anti-clockwise. This was a continuing process of exchange—‘once in Kula, always in Kula’ (Damon, 1980: 282)—a generalized movement of gifts, with no direct use value, between one group of islanders and another.

On the other hand, many sociologists have focused on the individual actor in their theories to explain *Social Behavior: Its Elementary Forms* (Homans 1974) or *Exchange and Power in Social Life* (Blau 1964). Individual choice dictated by self-interest is assumed in interactions between individuals that then become structured into networks of exchange. These models of individual exchange are then projected to explain social exchange. But the behaviourist psychology, and the calculus of rational actors on which such individual choices are premised, misses the critical aspect of group exchange for social solidarity that the anthropologists have found. We need to recapture this group dynamic for equitable exchange in the larger context of society.

Already in 1945, Karl Polanyi, the Hungarian philosopher, had warned of the dangerous dislocation of the capitalist market from social control when not embedded in social relationships—where the economic laws of supply and demand, and profit and loss are allowed to operate independently of other more human social considerations (Polanyi 1957). However, classical liberals see any restrictions on individual exchange as a violation of

individual freedom. The only legitimate constraint can be the respect due to the corresponding freedoms of others.

Hence, only the minimum constraints needed to make market exchange function is acceptable. But for whom and how the market functions—these are questions of equity that libertarian free-marketeers do not raise. For them, commutative justice implies only the enforcement of minimal legal requirements. Such market liberalism rejects the welfare state as paternalistic in favour of a minimalist one (Sandel 2009: 58); the economic individual displaces the social person. In such a context, justice as equity becomes a chimera.

The unregulated free market does not result in fair exchange. Whatever its economic efficiency, it cannot get out of the repeated cycles of boom and bust, of growth and recession for which those at the bottom of the heap pay the highest price. This challenges the assumption that the self-interests of various actors in the marketplace are inherently complementary. The catastrophic meltdown in 2008 of the financial markets on Wall Street, the Mecca of capitalism, was one more slap-in-the-face wake-up call for neo-liberal free-marketeers, who still seem to dominate such markets.

Equitable exchange demands interdependent and equal partners. However, the inevitable and endemic inequalities in society make an evenly balanced exchange difficult and rare, even when it is possible in some instances. It is not necessary that the exchange partners be friends for an exchange to be fair; but if friendship must find or make equals, as Aristotle argues in his *Ethics*, *Book Eight*, then so too must fair exchange find or make equal partners. Otherwise, unequal exchange in society inevitably reproduces and skews further the starting inequalities. This issue of equality for equitable exchange carries over into and must be addressed at the next level of justice as fairness in distribution.

JUSTICE AS FAIR DISTRIBUTION

The concept of distributive justice goes back through Thomas Aquinas and the medieval philosophers to Aristotle. But we have some intuitive grasp of what it entails. As when Sissy Jude, the circus girl in Charles Dickens's

Hard Times, is asked by her teacher whether her class, imagined as a nation, would not be prosperous and thriving if it had ‘fifty millions of money’, a tearful and confused Sissy answers that it would depend on ‘who has got the money, and whether any of it is mine’. The perceptive girl had grasped that aggregated figures of wealth are meaningless till we know of their distribution. Justice in distribution must mean a proportionate correspondence between returns received and contributions made by individuals and groups in society according to some principles of fairness.

The distribution principle—to each according to their contribution—is based on the natural and social endowment of individuals. As Karl Marx so perceptively observed long ago, ‘it tacitly recognizes unequal individual endowment and thus productive capacity as natural privileges. It is, therefore, right of inequality, in its content’ (Marx 1970: 320). Where opportunities are unequal, this inevitably allows inequalities to accumulate, and these increase rather than decrease with growth. Hence, a just distribution must be proportionate, but even more it must be equitable. This was once the stated goal of India’s five-year plans, ‘growth with equity’. But this seems to have been displaced by a new imperative: growth now, equity at leisure.

Utilitarian social distribution would maximize collective welfare even at the cost to individuals, while libertarians would minimize restrictions on individual freedoms regardless of the consequences for individuals. For Aristotle, the purpose of society was to make humans good and just. Hence, a just distribution should serve civic life by rewarding the virtues and abilities of citizens who contribute to this ‘good life’ in the polis. Distributive justice must include all this and more: respect individual dignity and personal freedom, reward personal righteousness and civic virtue, and consider the common good.

Unjust social institutions—caste or class, race or patriarchy—do not evenly balance costs and benefits for all in society. Such institutions are more concerned with protecting vested interests of the status quo, and tend to compromise with regard to more vulnerable groups. A fair distribution must consider at least ‘three conflicting interpretations of justice which may be

summarized in three principles: to each according to his rights, to each according to his deserts, to each according to his needs' (Miller 1976: 27). Each affirms an aspect of distributive justice. The conundrum is to hold them all together.

Privileging rights and entitlements serves to preserve the status quo, especially when the insistence is on law and order. But when these are unjust or inadequate, they must be challenged and changed in favour of a more just distribution based on other principles. As a minimum, a just society must convincingly guarantee fundamental rights for all (such as the rights to liberty and life, identity and dignity) as well as equal democratic and civil rights (such as free speech and legal redress) for each. Moreover, the effective exercise of these rights depends on the corresponding distribution of resources. For those without adequate resources, these remain nominal. When the distribution of resources is skewed, this inevitably compromises those with less than the wherewithal to exercise their rights.. This is especially so if there is a clash of rights, and comparative priorities between competing rights are set by the more powerful for the less fortunate.

However, rights imply duties, and freedom goes with responsibility. Hence, fairness will require that this free exercise of rights has corresponding rewards and sanctions according to each one's deserts. How this merit is defined and by whom, how the measure for comparative selection on this basis is set and enforced, must also be fair in order for the consequent distribution to be just. Vested interests in the status quo have often used their interpretation of 'merit' to perpetuate their own advantages. Outside this charmed circle, the opportunity for merit is meaningless without access to the resources that enable one to gain merit.

Hence, fairness in distribution based on one's deserts demands not just formal equality of opportunity, which is too often a mere legal fiction, but real equality of access to the means necessary to earn such merit. This may well require a redistribution of resources and a restructuring of access in the prevailing status quo to level the playing field, for only when the game is fair can there be fair outcomes that merit just rewards or sanctions.

Even when the field is levelled, a game is only as fair as its rules and regulations. And even when the rules are fair and refereed impartially, any game will have winners and losers. Where such outcomes are based on training and effort, they could well be fair. But many outcomes on the playing field and in society may not be due to such commitments. Natural ability and talent, even accidental circumstances and luck, can play deciding roles. There can hardly be real personal merit in this, for talent is inherited and luck is arbitrary. Tall players have the advantage in basketball; in cricket, Test matches are sometimes decided by the weather.

Even the qualities of character for developing talents and making the most of luck is contingent on accidents of birth, over which none has any control—the family one is born into or the place one grows up in. None of us bear any personal responsibility for these characteristics, nor can we claim personal credit for them; yet for better or worse, their consequences affect all of us. Distribution on the basis of such ‘unearned merit’ can only result in ‘undeserved rewards’. Yet it is extremely difficult to distinguish and separate what is meritoriously earned and what undeservedly rewarded.

Whether because of some disability, inherited or acquired, a lack of natural talent and inadequate access to resources, or because of some abuse of their rights, people are often disadvantaged through no fault of their own. In fairness, such people should not be penalized but rather compensated for, and enabled to overcome these adversities not of their own making. No one would require, for instance, able-bodied and disabled persons to compete in the same sport.

Meeting diverse kinds and degrees of need, however, demands differing types and levels of assistance. Needs are not similar or equal; they are specific to individuals and situations, as are the social resources required to meet them. Needs are a matter of greater or lesser necessity, and hence a question of justice: the greater the need, the greater the injustice when it is neglected. Moreover, since resources are not unlimited, a just distribution on the basis of needs must still set priorities in allocating resources to individual and collective needs, which requires a further fine-tuning.

Meeting basic needs is the minimum necessary for a dignified human life. As a matter of justice, this must have the same priority as fundamental rights (Baxi 1987) and the first priority over other needs, including the non-basic needs of others. Depending on the availability of resources and the urgency of the need, other needs also become a matter for distributive justice. But how these are assessed and resources allocated to meet them must also be fair, in order for the distribution to be just. Further, we must distinguish need, as a matter of necessity, from desire, which concerns a greater level of comfort, and from greed, which involves satiation beyond even comfort. Obviously, fulfilling desires in a comfort zone cannot be as urgent a matter for distributive justice as unmet basic needs, and indulging greed is more often the cause of real injustice.

Even though they may seem to be at odds with each other, each of the three criteria of distribution—rights, deserts, needs—answers to an aspect of a just society that must be considered for distributive justice. But when one is overemphasized, the others become unduly displaced, and the distribution is truncated and skewed. At one extreme are neo-liberal free-marketeers, who insist that the right to free choice be respected, and people who make the choices be held responsible for them, regardless of how the outcomes are distributed. Here, only justice in initial holdings and in transfers is to be considered (Nozick 1974: 207). But in conditions of social inequality, this formal justice inevitably is decided upon by the more powerful, just as official history is always written by the victor.

At the other extreme are Marxists, disregarding democratic rights and civil liberties with their distributive principle: from each according to ability, to each according to need (Marx 1970: 5). In between and leaning to the right, a liberal democracy favours a distribution according to deserts and emphasizes fair equality of opportunity to make this just; while leaning to the left, a social democracy privileges social equality (even restricting free choice) and social welfare (even risking unwarranted dependencies on the state). Liberals would allow ‘equal opportunity to become unequal’ (Barry 2005: viii) in the exercise of freedom, as socialists would impose an equality through redistribution, thereby restricting freedom.

The anarchist Mikhail Bakunin expressed this dilemma in his famous dictum: 'We are convinced that freedom without Socialism is privilege and injustice, and that Socialism without freedom is slavery and brutality' (Maximov 1953: 269). John Rawls seeks the middle ground with his 'difference principle', which modifies his second fundamental principle of fairness referred to earlier: 'Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit to the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity' (Rawls 1999: 72). Since for Rawls, only 'undeserved inequalities call for redress', this is not a 'principle of redress. It does not require society to even out handicaps as if all are expected to compete on a fair basis in the same race' (ibid.: 86).

However, rather than ignore the distribution of 'natural talents' and 'common assets', 'the basic structure can be arranged so that these contingencies work of the common good' (ibid.: 87). For Rawls, 'the difference principle expresses a conception of reciprocity. It is a principle of mutual benefit' (ibid.: 88), and hence 'it provides an interpretation of fraternity' (ibid.: 90). Certainly, the principle of difference is Rawls's most significant contribution to *A Theory of Justice* (1999). But it is still based on self-interest, albeit mutual and reciprocal, as will also be the 'fraternity' it provides and the solidarity premised on this.

If an interchange is required to be mutually beneficial to both partners, then the worst off, the most unequal, the severely handicapped, or any others who have too little to offer in such an exchange are excluded. For, 'we live in a world in which it is simply not true that cooperating with others on fair terms will be advantageous to all' (Nussbaum 2007: 273). The inclusion of the worst off in such an exchange would not be a matter of justice based on right, but one of largesse based on generosity. This is a serious limitation on Rawls's difference principle.

As implied in the earlier discussion on equitable exchange, a just society must steer between the oppressive inequality of the free market on the one hand, and the repressive restrictions of an authoritarian regime on the other. But the dilemma itself cannot be wished away. It comes back to haunt most

understandings of justice, liberal and socialist. The distribution involving any of these criteria—rights, deserts, needs—is not made on an initial equality of access to them, except in the imaginary ‘original position’ behind a ‘veil of ignorance’ as posited by Rawls (1999: 11). Moreover, given the qualitative difference between them, these criteria are not congruent. A proportional allocation on one cannot by itself result in an equitable distribution in regard to the others.

This creates a conundrum at the very heart of our understanding of a just society. Equitable exchange demands free and equal partners, which, even if possible, might well lead to unequal results. An exchange that may begin with equality may not necessarily end with it. These inequalities in exchange must then be addressed by distributive justice. However, a proportionate distribution begins with equal access to the criterion applied, which, even if probable, does not end up with equal outcomes even on every criterion used, especially when free choice is exercised. Moreover, no single criterion of distribution will yield equal results on other equally valid and necessary criteria.

Achieving some accommodation between multiple criteria of distribution and addressing their uneven results is not just a matter of the distributive principles but also of the social structures involved. The ‘affirmative action debate is an instance of the application of the distributive paradigm of justice ... and fails to bring into question issues of institutional organization and decision making power’ (Young 1990: 193). This carries over into and must be addressed by the next level of social institutions.

JUSTICE AS SOCIAL STRUCTURE

The criteria for social distribution define the distributive paradigm for a society. Social institutions are the means through which this is done. But even when the criteria are fair, for a distribution to be just both the prior and consequent institutional structures must also be just. Social justice concerns the institutional structures in a society, just as distributive justice involves its criteria of distribution. The two are distinct but not quite separate, though the terms have been used interchangeably (Miller 1999: 2).

For Rawls, ‘underwriting an agreement on the proper distributive shares ... are the principles of social justice; they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social co-operation’ (Rawls 1999: 4). This does not discriminate between structures that pattern and assign rights and duties in society, and criteria that determine the distribution of benefits and burdens. Though Rawls grants that the ‘primary subject of justice is the basic structure of society’ (ibid.: 10), he does not distinguish the structural aspect of justice in society from its distributive paradigm (Miller 1999: 269, n. 1).

An authoritarian society is unjust not because of improper distributive shares, but because it excludes and disempowers its members. Plato’s *Republic* (written around 380 BCE) is one of the earliest examples of this idea. Hierarchical and patriarchal, as well as casteist and racist societies are structured to exclude people on the basis of ascribed status, and so are unjust regardless of the distributive paradigms they enforce. There is an obvious correlation between institutional structures and distributive criteria in any society, but both these are not identical though they must be distinguished.

Social institutions are collectively constructed, and so justice demands that they be collectively mediated. Hence, ‘social justice includes all aspects of institutional rules and relations insofar as they are subject to potential collective decisions’ (Young 1990: 16). Who decides and how, is prior to, not consequent on, the distribution of goods and services in society, whatever the criteria used. To come back to young Sissy Jude in *Hard Times*, who gets what, and how much of the ‘fifty millions of money’ is hers, depends not just on the distributive criteria used but even more so on who decides the procedures and who does the distributing.

Social justice requires that participation and inclusion in the structure and process of social institutions be both equal and equitable. However, to be effective these must be functional. This implies a division of labour, where roles are differentiated in their functions but not unequal in their status. Everyone cannot be doing everything and deciding on everything. Even in very simple societies, different roles are specified for men and women, for

old and young, for chiefs and tribespeople. No urban-industrial social order is possible without a high degree of functional specialization. But specialized roles necessarily imply different kinds and degrees of participation.

These differences in participation in a society across such roles and statuses often reinforce each other. To prevent advantages and disadvantages from aggregating into a 'cumulative inequality' (Dahl 1961: 85–86) will require a restructuring of social roles and statuses. Hence, justice in a complex society requires a correspondingly 'complex equality', i.e., 'a diversity of distributive criteria that mirrors the diversity of social goods' (Walzer 1983: 18) so that advantages and disadvantages neutralize and do not reinforce each other.

If it is to respect responsibility and freedom, any division of labour presents a dilemma between equal participation in society and the functional allocation of roles in it. Forcing inclusion in doing a task for which one is not competent would be as unfair as choosing exclusion from bearing a burden for which one is responsible. Equitable inclusion must respect rights and duties so as to be responsible and free. This is the dilemma of equal and functional, free and responsible social inclusion. The institutional structures and public policies that address these dilemmas are precisely the domain of social justice.

But libertarians such as Friedrich Hayek, the Nobel laureate in economics, would leave market forces to resolve such dilemmas and dismiss *The Mirage of Social Justice* (Hayek 1976). For Marx, 'the division of labour and private property are, after all, identical expressions' (Marx 1976: 52), and in the Communist utopia, both would be abolished so that one would be able 'to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticise after dinner, just as I have a mind to' (ibid.: 53).

Stable social interactions in society create enduring interrelationships. Social structure represents the pattern of such interrelationships, fashioned by the interactions underlying them. But interaction between humans is not just dictated by interests; they are also premised on moral values. These become embedded in social structures and institutionalized social processes.

Thus, the structures of hierarchical societies preserve the status quo of established privileges and obligations; while democratic structures founded on a regime of rights prioritize liberty, equality and solidarity. These are the substantive values on which social justice must be premised and critiqued. Certainly, a minimum consensus on these values must first be negotiated, before they are made operational through just structures in due processes. But a just society would require that all three values be balanced and integrated so as to ensure a just commonweal.

This substantive justice—as liberty, equality, solidarity—is somewhat different and more nuanced than Rawls’s ‘justice as fairness’, where the free-standing consensus rests on the principles that are rationally interest-driven, not ethically value-premised. Such a model of justice based on a hypothetical ‘social contract’ can be traced back to ‘the “contractarian” mode of thinking that Thomas Hobbes had initiated, and which was further pursued by John Locke, Jean-Jacques Rousseau and Immanuel Kant’ (Sen 2009: 6). More recently, ‘Rawls has pursued the implications of the contract idea more rigorously and completely, perhaps, than any thinker yet’ (Nussbaum 2007: 11).

But *The Idea of Justice* must be authenticated by ‘going well beyond the limited—and limiting—frame of the social contract’ (Sen 2009: xi), for ‘we limit our pursuit of it too much when we think of it as the outcome of a contract for mutual advantage, however morally constructed and constrained’ (Nussbaum 2007: 90). Social justice is more than a question of individual virtue, or of fair exchange and just distribution; rather, a just society is defined by its core values and the efficacy with which these impact its institutional structures and public policies.

JUSTICE AS CAPABILITY

Amartya Sen proposes a way of relating the values of justice to its structural implementation. His ‘capability approach’ in labour economics was developed into the predominant paradigm for human development that inspired the United Nation’s Human Development Index in 1990. Sen used the same approach in *Development as Freedom* (1999) and articulated it

further, not as a ‘transcendental institutionalism’, that seeks a comprehensive approach to justice. But rather as a ‘realization-focused comparison’, a comparative approach that pursues a more just, or rather a less unjust, society (Sen 2009: 7). Sen’s ‘social choice theory’ elaborates the basis of such rational choices people make (ibid.: 91). What the UN’s Development Index does for developmental comparisons across countries, Sen’s *Idea of Justice* (2009) attempts to do for social justice. Martha Nussbaum’s *Frontiers of Justice* (2007) takes this further in regard to ‘disability, nationality, species membership’. In Sen’s somewhat awkward terminology, ‘capability’ represents ‘the alternative combinations of things a person is able to do or be—the various “functionings” he or she can achieve’ (Sen 1993: 30). More simply, ‘since a capability is the power to do something, the accountability that emanates from that ability—that power—is a part of the capability perspective, and this can make room for demands of duty’ (Sen 2009: 19). How a person is able and chooses to function actualizes one’s capabilities, and hence one’s duties follow from this. Entitling someone to choose does not make one able to do so, but even one able to choose must be allowed freedom of choice. People must have both ‘Voice and Choice’ (Sen 2009: 87). This is critical in assessing real equality of opportunity for the disadvantaged people in society.

Justice in this approach then requires equitable access to enabling resources and freedom in choosing among these. Hence, premising justice on such a ‘capabilities approach denies that principles of justice have to secure mutual advantage ... It is always very nice if one can show that justice is compatible with mutual advantage, but the argument for principles of justice should not rest on this hope’ (Nussbaum 2007: 89). As we shall see, this is crucial to the discussion on affirmative action and minority rights.

Moreover, Nussbaum includes even the severely disabled and disadvantaged within the *Frontiers of Justice*, arguing that

the capabilities approach is able to include benevolent sentiments from the start in its account of people’s relation to their good. This is so because its political conception of the person includes the ideas of a fundamental sociability and of people’s ends as including shared ends ... Prominent among the moral sentiments of people so placed will be compassion, which I conceive as

including the judgement that the good of others is an important part of one's own scheme of goals and ends. (Nussbaum 2007: 91)

Extending this, in a 'reanalysis of our social responsibilities', Robert E. Goodin, the philosopher, argues for our obligation of *Protecting the Vulnerable* (1985). He grounds the duties of parents to their children not merely in affinity and affection, or even parental responsibility for their children's birth, but rather in the enormous significance that parents have for their children's lives. This creates dependencies of children on their parents, which they have an obligation to meet, for 'defending one's own is the rule even before justice becomes an issue' (Bok 1978: 147). Thus, 'duty, even more than charity, begins at home' (ibid.: 8). But this must extend generally to interdependencies in society, which also creates obligations that must be met, for 'both sorts of duties derive from the same moral conditions' (ibid.: 11).

Goodin then specifies the dependencies at the level of the individual and of groups, and across these levels as well. The priority of the corresponding obligation is then contingent on the depth of the dependency. What this means in practice is preventing exploitable vulnerabilities in society—i.e., no one should be forced into dependencies that are one-sided, as for instance in the case of exclusive discretionary control over resources. This demands protective rights for such vulnerable groups; making groups less vulnerable requires affirmative action in their favour.

In any society there are interdependencies, and these must create mutual obligations and corresponding duties and rights that will apply to all four levels of justice: personal, interpersonal, distributive and social. Thus, besides such sentiments as benevolence and compassion, especially in diverse and complex societies, social interdependencies create corresponding binding obligations that are imperative for an inclusive solidarity.

To ground justice as capability, the comparative approach lists human capabilities based on 'a conception of the dignity of human beings, and of a life that is worthy of that dignity' (Nussbaum 2007: 74). A compelling foundation for this human dignity is Kant's uncompromising principle, quoted

in an earlier chapter, of the person always as an ends, never as a means (Kant 1964: 429). A life worthy of this will require basic human capabilities. Beginning with a consensus based on people's rational and free choice, lists of such capabilities can then be created. Such lists will have to be open-ended, accommodating various points of view and revised periodically to include new ones.

Nussbaum's list 'reflects changes made after my discussions with people in India' (Nussbaum 2000: 78, n. 82). Her elaborated list of *The Central Human Capabilities* (Nussbaum 2007: 78–81) includes the following: life; health and bodily integrity; use of the senses, imagination, and thought; emotions; practical reason; affiliation, living with others with self-respect; living with other species; play; and control over one's environment, political and material. Some items here—life and bodily integrity, reason and affiliation—are more basic than others, such as emotions and play. Though they are 'separate components', with each 'a distinctive good is sighted' (Nussbaum 2000: 81). Taken together, the list represents an overlapping consensus that has found wide acceptance regarding human dignity and a life worthy of it.

However, 'the capabilities approach is not intended to provide a complete account of justice' (Nussbaum 2007: 75). Rather, it focuses on realized outcomes, not practical procedures, as so often happens when a criminal trial proceeds according to due legal process but still returns an unjust verdict. These realized outcomes are intended to bridge the 'justice-gap' (Samaddar 2009: 16) between comprehensive justice and a realizable one, where social structures and institutional norms must be designed and arranged to facilitate 'voice and choice' for each person, for at least an effective minimum to live a decent and dignified life.

THE JUST SOCIETY

Beyond the inevitable limitations of justice based on social contract, a credible understanding of social justice must be premised on an integration of social values, among which liberty, equality and solidarity are definitive as necessary conditions for a just society. This goes beyond the righteousness

of individuals and fairness in society, whether in exchange or distribution, to provide a structural framework for fundamental rights and basic needs as essential entitlements for human identity and dignity. Basic needs represent the minimum required to live with some dignity, and fundamental rights underwrite the human agency needed to affirm one's identity. Both of these must be guaranteed and extended in a just society.

All too often, the injustices in a society are the unintended and unanticipated consequences of ill-adapted institutional structures and, consequently, a skewed implementation of justice. However, intended or not, untoward outcomes must be addressed—if not in anticipation, at least in retrospect. For, implementing an idea of justice that eventually brings injustice in practice is a cruel contradiction. A stable and sustainable justice must carry over from the ideal to the actual.

Liberty, equality and solidarity are the three essential dimensions in an integral understanding of justice. This applies to each of the four levels of justice articulated earlier: personal virtue of individuals, equitable exchange in transactions, fair distribution through institutions, and structural equity in society. These dimensions and levels of justice are complementary, and so must be integrated and balanced in a society for it to be just. This demands a justice premised on liberty, critiqued by equality, and affirmed in solidarity, so that an inclusive solidarity provides the context for social equality which is respectful of civil liberties and democratic rights. In other words, this is a fraternal solidarity, a co-responsibility towards each other in a commitment to a life of dignity and identity for all. But this is still a vision for a just society, not a blueprint for its social structures.

The previous chapter's 'Quest for Justice' sketched the context of India's constitutional ideal of a liberal-democratic, secular-socialist society. This chapter has focused on 'Understanding Justice' as holistic, integrated, and balanced across four levels in society: personal, interpersonal, institutional and social. Beyond the limitations of a comprehensive description of 'justice as fairness', as John Rawls does in his *Theory of Justice*, the focus has been on real outcomes with Sen's 'capability approach', which is premised on enabling people's 'voice and choice' to live a life worthy of human dignity.

This provides a comparative approach for a consensus, based on social choices, on outcomes that make for a more worthy and dignified human life. Based on this, Martha Nussbaum derives a list of human capabilities that extends the *Frontiers of Justice* to include the excluded. However, to anticipate and address unintended consequences of some outcomes, the pursuit of a sustainable justice must converge towards the values of liberty, equality and solidarity, as definitive of human dignity and identity in a just society.

This holistic understanding of justice is best able to integrate and balance the levels at which justice must be exercised and the values on which it must be based. The emphasis on agency implied in giving people voice and choice is well suited to the concerns of responsible liberty, but it cannot be the freedom that trumps equality or solidarity. The focus on outcomes is adequately able to address the issues of an equitable equality, but it cannot be an equality that trumps liberty or solidarity. The consensus on capabilities for a dignified life goes beyond the preoccupations of mutual benefit in order to affirm an inclusive solidarity, but not a solidarity that trumps liberty or equality.

Our understanding of justice, then, is not truncated, but is attempting to steer the difficult course past libertarians, socialists and communitarians, who privilege one or the other dimension of justice at the cost of the others. For, 'justice is our critic, not our mirror' that calls us to 'always ask of some settled institutional scheme whether it is fair' (Dworkin 1985: 219). A vision of justice is not meant to mirror back to us the way we are, but to critique it and challenge us to be the way we ought to be. This cannot be decided by majoritarian opinion or even by majority vote, for then might would become right, whereas justice must speak truth to power in the public domain. This is the understanding of justice with which we will critique issues of affirmative action and reserved quotas, of minority rights and gender justice in the following chapters.

Equality for All, Justice for Each

POLARIZING POLEMIC ■ AMBIGUITIES AND TENSIONS ■
 CONSTITUTIONAL PROPRIETY ■ COMPELLING RESPONSIBILITY ■
 PARADOX OF BACKWARDNESS ■ LEGITIMACY IMPERATIVE ■
 TAKING SIDES ■ CRITICAL CONCERNS ■ KEEPING PROMISES ■
 SILENT REVOLUTION ■ CUMULATIVE AND COMPLEX
 INEQUALITIES ■ OUR SOLIDARITY, OUR STORY

POLARIZING POLEMIC

The polarizing polemic that affirmative action has precipitated, with its reservation quotas, might well be a re-enactment of the story of Ekalavya in the Mahabharata, but with a twist in the tale for today. In the original legend, Dronacharya, the guru of the Pandavas and the Kauravas, rejects the self-taught Ekalavya, though he had equalled if not excelled over Arjuna, the guru's favourite pupil, in archery. As gurudakshina, the offering a shishya makes to his guru, he asks for the boy's right thumb. Still a good chela to his idolized but repudiating guru, the boy follows his dharma and accedes to the unusual and unfair request. This eliminates competition and restores the status quo: the adivasi boy goes back to the forest, and the Kshatriya princes go on to become great warriors. In the story, retold endlessly in many Indian schools, Ekalavya is idealized as an exemplary student, obedient to his guru and his dharma. But what if Ekalavya had refused and instead gone on to mobilize his own adivasi community with his newly acquired expertise?

This is the challenge that the disadvantaged and the deprived represent in our society: they would be agents, not victims. Affirmative action comes

down on their side not just to open up the competition but to level the field, as well. For the English economic historian, R.H. Tawney (1880–1962), social equality depends ‘not only on an open road, but also on an equal start’ (Tawney 1952: 109). If fair equality is the legitimate purpose of affirmative action, then to be just, it must be free and inclusive. This means a just equality must not violate the liberty of others, and must embrace solidarity, a feeling of togetherness that expresses itself in mutual concern and care. But such ‘equality is the endangered species of political ideals’ today (Dworkin 2002: 1). However, ‘Equality for all, justice for each’ is a quest we cannot postpone and in which we must not falter. That said, this will only be possible in solidarity, i.e., the togetherness of fellowship.

Perhaps few other issues bring into such sharp focus the dilemma between the quest for equality and the demands of justice as do reserved quotas for the disadvantaged. In other programmes of affirmative action, the cost is more diffused through society at large. No one is directly disadvantaged by welfare benefits or price concessions for the poor or disadvantaged, as are those excluded from a reserved quota. For these latter, competition for what is left unreserved is made that much more stringent, and dissatisfaction mounts as some are displaced by others less competent, which seems unfair. But are such approaches actually unfair in an iniquitous and unequal society? Does not such preferential treatment help to level the playing field?

One of the most rigid and elaborate hierarchical systems ever devised by any society has been caste in the subcontinent. Since Independence, ‘India’s system for preferential treatment for historically disadvantaged sections of the population is unprecedented in scope and extent’ (Galanter 1991: 1). We have one of the most far-reaching and comprehensive affirmative-action programmes (Sahoo 2001). However, in an increasingly competitive society, especially in the aftermath of the Mandal Commission in 1980, this has precipitated a many-sided battle, not just of words but of politically instigated mob violence.

Parliamentary posturing and vote bank politics perpetuates the war while the courts attempt to mediate a constitutional resolution that is acceptable to the contestants concerned. But with little give-or-take on the part of any side,

a proactive judiciary and a politicized Parliament could well be set on a collision course. A former chief justice of India, J.S. Verma, warned that ‘inappropriate judicial intervention results in judicial ad hocism or judicial tyranny’ (*Indian Express*, 6 April 2007). So, too, when Parliament uses ‘the power of amending the constitution’ like a ‘*brahma astra* (the ultimate divine weapon) of democracy’ to overturn Supreme Court judgments, it ‘is abdicating its constitutional role to a conspiratorial consensus without real discussion. If this is not majoritarianism, it is difficult to say what is’ (Dhavan 2008: 40).

With the release of the Mandal Commission report in 1980, the controversy crossed a dangerous threshold. For,

the furore over Mandal is more than an episode of political warfare; it touches a nerve that connects with India’s vision of itself and its future. Mandal and its reception recapitulate the unresolved tensions in the Constitutional scheme of compensatory preference to modify India’s social structure. These tensions in turn resonate with the conflicting and paradoxical notions of the equality that India has embraced so decisively in defining itself as a nation. (Galanter 1991: xvii)

Whether as ‘the core symbol of community in India’ or as ‘a defining feature of India’s social organisation’ (Dirks 2002: 5), caste has not yet been abrogated. In an India aspiring to be truly democratic and effectively egalitarian, it has merely transmuted into other, more subversive and politicized avatars. Today, caste is not so much a matter of ritual entitlement but a common and effective basis for political mobilization. We see ‘its apotheosis in the debates over the use of caste for social welfare in the post-Independence context of “reservations”, quotas, and affirmative action’ (ibid.: 6).

The struggle to include the excluded has a long history in this country. But it still has a very long way to go, and has become increasingly contentious. The origins of this struggle can be traced back to the colonial past, though the government’s intentions were rather different then. Separate electorates for minorities, formalized by the Government of India Act of 1909 to give them adequate representation, have now been replaced by constitutionally guaranteed minority rights for their protection from majoritarianism.

Reserved seats for SCs and a joint electorate, agreed to in the Poona Pact of 1924, have been retained and extended to STs after Independence.

The Directive Principles of State Policy mandate affirmative action for 'other weaker sections'. When reserved quotas for SCs and STs in educational institutions and government employment began to be effectively implemented, however, the earlier consensus began to fray. This was extended to the OBCs by the Mandal Commission in 1980 and implemented by the central government in 1990; later, in 2006, this OBC quota was implemented in educational institutions at all levels, though this move was appealed against and then somewhat moderated by the Supreme Court in 2008. But any court-imposed truce cannot hold for long unless endorsed and supported by civil society within an inclusive social compact.

After more than half a century, independent India has not universalized adult literacy, let alone primary education. Other countries that began with less promise at the end of their colonial period have managed to do more on such basics, while 'shining India' still has a literacy rate well below other developing countries that started further behind. Moreover, the percentages are even lower among our excluded and marginalized peoples, especially in rural areas, in the case of SCs and STs, Muslims and women. According to the 2001 figures, the overall and women's percentages in these communities respectively were: overall for all India, 64.8, Indian women, 53.7; overall in rural areas, 58.7; for rural women, 53.7; overall for SCs, 54.69; for SC women, 41.90; overall for STs, 47.10; for ST women, 34.76; overall for Muslims, 59.1; for Muslim women, 53.7.

Surely the collective responsibility for this situation must be laid at the door of our caste–class elite, whether in the bureaucracy or the political establishment that has ruled the country for decades. Numerous other significant and direct indicators of a people's progress could be considered, such as: poverty levels, malnutrition, child labour, and women's empowerment. In spite of whatever other political and social upheavals have taken place, there can be no credible rationale for such culpable neglect of the vulnerable and deprived.

Yet the implications of this stark reality do not seem to have any impact on the self-righteous opposition of some to reservations on the grounds of efficiency and fairness, even though they already have a competitive edge. Is it time to throw the rascals out for such self-righteousness? But then, another set of the same or perhaps an even worse lot may replace them. The present controversies are careering into a polarization between an unabashed quest for social mobility and a determination to preserve privilege.

Obviously, if reservations are to be a matter of social justice, to redress and remedy the structural injustice that hierarchy, religion and patriarchy have embedded in our society, they cannot be merely a matter of individual mobility in the name of compensation or disadvantage. It must be a concern for a more egalitarian and just society, for the common good, and not a right to better oneself or one's own community, leaving others behind, perhaps even worse off. Those who benefit from reservations must be sensitive to this. Otherwise, in spite of good intentions, reservations may yield only positional change, not structural transformation. One set of elites would replace another to reproduce the same structure. And so, the remedy may perpetuate the disease. *Plus ça change, plus c'est la même chose*: the more things change, the more they stay the same.

In a competitive society, reservations are resisted with what Tawney parodied as 'tadpole philosophy': survivors among the vulnerable tadpoles who now 'croak addresses to their former friends on the virtues by means of which tadpoles of character and capacity can rise to be frogs' (Tawney 1952: 108). But those who benefit due to reservations in such societies are as easily motivated by the same underlying logic of competitive advantage. The established elites croak their praise for a system that got them there, and so resist changing it; the aspiring others hope to get there and laud a system that will help them to arrive. But neither seems to care for the unfortunates left behind who must still face the struggle for survival and for those who have not survived.

These are some of the dilemmas and contradictions underpinning the popular discourse on affirmative action, polarizing it into a no-win polemic. Justice as liberty, equality and solidarity must be the critical concern of an

authentic reservation policy: to neutralize the competitive disadvantage of individuals and groups in society, in favour not of a more competitive but rather of a more cooperative society.

AMBIGUITIES AND TENSIONS

Different countries have different terms for the programme that addresses social discrimination and backwardness: it is called 'affirmative action' in the United States, 'positive discrimination' in the United Kingdom, and 'reservations' in India. In essence, such programmes are meant to address the discrimination and inequalities that result from the social prejudice and the consequent community deprivation this brings. More importantly, they are designed to target not so much individual prejudice or personal deprivation as institutional discrimination and structural injustice. Hence, they must be implicitly premised less on individual and more on collective rights.

However, 'the debate over affirmative action will be inherently misguided so long as it treats affirmative action as if it were a unitary concept, whereas it can take many forms to achieve many different goals' (Chemerinsky 1997: 87). For instance, these forms could involve remedying past discrimination, enhancing diversity, empowering the deprived, providing role models, or improving welfare services. The debate has multiple aspects in terms of policies and programmes that must be specified before they are critiqued. These may refer to specific constituencies of the deprived, the marginalized, or those discriminated against, identified on the basis of race or caste, ethnicity or religion, gender or language, or some other collective marker. They may have different purposes: remedying past discrimination, protecting against present prejudice, enhancing future empowerment, etc. They may use different strategies: preferential consideration or reserved quotas in representative bodies and institutions, in employment and educational opportunities, or special welfare programmes and social services. They may address different needs: severe deprivation, endemic poverty, educational and social backwardness.

However, there are at least five aspects that must be teased out in the discussion on affirmative action: when is it permissible; how such decisions

are to be evaluated; what kind of proof is needed to establish discrimination; how it is to be enforced; and to what constituencies must it apply (Taylor, B. 1991: 14–16).

This is evident, for instance, in respecting a community's collective right to its language and religion. The United Nations International Covenant on Civil and Political Rights of 1966 recognized such collective rights, and in many countries these are often positively affirmed and even legally protected. But this does become problematic when there are antagonistic ethnic or religious divisions. However, when it comes to preference in the areas of education or employment, deprivation and discrimination tend to be perceived more as a matter of individuals who need personal assistance to overcome their difficulties, rather than of communities that need resources to develop in society. Still, prejudice in society is not just an individual matter but a collective issue, and social discrimination is not just personal but structural. Hence, these issues cannot be adequately resolved on the basis of individual rights alone—to effectively redress them demands an appeal to collective rights.

The moral imperative for remedial action becomes the more compelling where the inequalities are cumulative, where discrimination is structural, and deprivation is embedded. In situations where injustices are reproduced over generations, without social intervention they will only be further compounded and perpetuated. The human person is obviously the primary subject of fundamental rights, but human communities do have collective rights, such as to their culture and identity, their language and religion. Without acknowledging such rights, policies to address issues of social and structural injustice remain truncated and inadequate, as the trajectory of affirmative action in the United States illustrates.

The term *affirmative action* in its present sense was first used in the US by President John F. Kennedy on 6 March 1961 in his Executive Order 10925, to ensure that hiring and employment was free from racial bias. On 17 September 1965, President Lyndon Johnson extended this to minorities with his Executive Order 11246, and included gender bias, on 13 October 1967. The US Supreme Court's split judgment, five to four, in the Bakke case on 28

June 1978 imposed limitations on affirmative action as it found that it leads to reverse discrimination against individuals. Where justice is colour blind, 'positive discrimination is not a matter of institutional discretion; it is a question of competitive rights, namely the right to freedom of access to higher education and of a right to equality' (Rajan 1998: 177). With the state of California banning discrimination and preferential treatment, when its Proposition 209 became law on 3 November 1997, the backlash against affirmative action gained momentum as the ban spread to other states. In the United States today, quotas would be illegal. However, on 23 June 2003 the US Supreme Court ruled, six to three, that race can be one of many factors in selecting students when it furthers 'a compelling interest in obtaining the educational benefits that flow from a diverse student body' (123 S. CT. 2325).

What began as a policy to address the social injustices and inequalities of racial discrimination came to be perceived as reverse discrimination, violating individual rights as it was extended and implemented, and so was banned. The diversity preference eventually permitted was in view of institutional not personal considerations. This was hardly the result of the success of the policy leading to its being phased out; rather, it was a backlash gaining momentum and prevailing. The judicial discourse premised on individual rights could not stymie this. Race is still a hugely unresolved issue in the United States. But it cannot be resolved on the basis of individual rights alone, because it involves institutional biases, not only personal ones. It needs to be structurally addressed precisely because it is not merely individual prejudice but group discrimination that collective rights must redress.

Indeed, 'affirmative action is controversial largely because it represents and reflects several of the most critical unresolved moral conflicts within Liberal culture. Some of these problems are grounded in the unresolved problems of nineteenth-century Liberalism' (Taylor, B. 1991: 6). Many of its key tenets are alive and well among the laissez-faire neo-liberals even today, who believe that rights are inherent within individuals ruled by self-interest, and that competition is the guarantor of economic and political freedom

(ibid.). However, what is at stake is not just a matter of competing political and economic interests; at a deeper ethical level, ‘the controversy over affirmative action is a battle ground for conflicting values. The outcome of the battle may be decisive in determining which principles of distributive justice will guide public policy’ (ibid.: 10).

CONSTITUTIONAL PROPRIETY

An early authority on the Indian Constitution, Granville Austin, insisted that it ‘is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement’ (Austin 1966: 50). The Constitution promulgated a formal equality before the law, prohibiting ‘discrimination on grounds of religion, race, caste, sex or place of birth’ (Article 15), while the Directive Principles of State Policy mandated the government to mitigate the prevailing economic and social inequalities. But it made a

massive and singular exception ... to remedy the accumulated disabilities suffered by those at the bottom of the caste hierarchy (the Scheduled Castes) and at the margins of Indian society (the Scheduled Tribes). The explicit provision for these groups is the core of the policy of compensatory discrimination that is one of the distinctive themes of the Indian Constitution. (Galanter 1991: xvii)

Article 46 directs that ‘the State shall promote with special care the educational and economic interests of the other weaker sections of the people, and, in particular, of the Scheduled Castes and Tribes, and shall protect them from all forms of injustice and social exploitation’. Article 15 (3) included ‘women and children’ in this mandate. Indeed, ‘India’s policy of compensatory discrimination is remarkable in its sustained commitment to remedy past injustice. Appreciating the capacities and frailties of the tools at hand remains the first step to accomplishing what is possible with them’ (ibid.: xxii).

In 1951, Clause (4) was added to Article 15 in order to extend reservation quotas in governmental and state-aided institutions to ‘any socially and educationally backward class of citizens’. Similar enabling clauses were

added at various times to Article 16, mandating equal opportunity in public employment. In the Constitution, *backwardness* qualifies the term *classes*, not *caste*. But already since the first Backward Classes Commission in 1953, the two were inflated so that ‘backwardness’ was interpreted in terms of ‘caste’ status. This seemed more a throwback to the colonial ‘backward castes’ than the constitutional ‘backward classes’. However, the courts have insisted that other relevant criteria besides caste be used in determining the backwardness of a class.

Reservations quotas have since been progressively extended, first in the states and then with the Mandal Commission to the central government. In some states, the total of the reversed quotas now exceeds 50 per cent. This has brought a backlash against all caste-based reservations, and it has already spilled over into violence on our streets, threatening the legitimacy of protecting and promoting the most excluded and marginalized for whom the original constitutional mandate is intended—i.e., the ‘untouchables’ and the adivasis. Thus, ‘the reservation device becomes not an exceptional tool of inclusion but a scheme of communal allotments’ (ibid.: xxii). Inevitably, this will reverse the very purpose of reservations, which is to include those at the bottom of the caste hierarchy and at the margins of our society.

In pre-independent India, special consideration for SCs and STs in various policies and programmes of the colonial government was rather limited in scope and purpose and not always unambiguous. Thus, the conditions promulgated for the ‘Excluded Areas’ was more a policy of containment and restriction than one of protection and development. The adivasis have been in continuing conflict with the government over their traditional rights to land and forests. Beginning with the first Forest Act, 1865, colonial forest legislation progressively alienated these rights. This has continued to be so in independent India, where now their very livelihoods are threatened by unsustainable development.

The ‘untouchables’, left by and large to their traditional status and occupations, were unable to take effective advantage of the new facilities and opportunities opening up in colonial India. The Gandhi–Ambedkar Poona Pact of 1932 was a reluctant compromise on political reservations for

joint, not separate, electorates. It was meant to bring the ‘untouchables’ into national life as equal partners. But this has served less for the advantage of these communities than to co-opt both SCs and STs to the purposes of other political players.

At the time of Independence, it was evident that these STs and SCs were still very much among the last and the least. Without special consideration, they would be condemned to stagnate at the bottom of society. The Constituent Assembly’s members were sensitive to the tension between the universal rule of equality they had proposed and the particular exception they went on to make. Ambedkar insisted that ‘we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State’ (CAD 1950, vol. 7: 702). The colonial government had listed SCs and STs, and the Constitution specified the procedure for their notification (Articles 341 and 342). But the draft Constitution left backward communities ‘to be determined by each local Government’ and it would be up to the courts to constrain local or state governments that did not act in ‘a reasonable and prudent manner’ (ibid.).

However, in leaving *backward classes* undefined, the Constituent Assembly left fertile ground for conflict between the political compulsions of the government and the constitutional propriety of the courts. This still-unresolved tension cuts to the heart of the conflict: on what constitutional principles are scarce resources to be allocated to backward and weaker sections in our society? What are the political limits of reservations? These are more than questions of constitutional legality; they concern the very values and purposes on which the founding fathers promulgated our Constitution, so eloquently expressed in the Preamble: ‘to secure for all its citizens: justice ... liberty ... equality ... and to promote among them all, fraternity assuring the dignity of the individual and the unity and integrity of the nation.’

The Constitution imagined an egalitarian, caste-free society. Reservations and quotas, preferential treatment and affirmative action for the backward and weaker sections of society were a means to this end. With the

fundamental right of all to non-discrimination (Article 15), the Directive Principles mandated special care for the weaker sections (Article 46), but did not specify any particular method to implement this policy. Ambedkar saw this as a necessary exception to the universal rule. But if overextended, he warned the exception made in favour of reservations ‘will ultimately eat up the rule altogether. Nothing of the rule will remain’ (ibid.). There is a delicate balance here that must be maintained. Thus, Article 334 limited the time period for reserved electoral seats and special representation, to ten years. Constitutional amendments have extended this period because the intended purpose has not yet been achieved, rather than make it a permanent feature.

In establishing ‘Equality of Opportunity in matters of public employment’, the Constitution grants wide discretionary powers to the state to make ‘any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State’ (Article 16.4). However, in balancing ‘equal treatment and compensatory discrimination’ it relies ‘primarily on the discretion of the politicians and administrators of the future rather than on the courts, to effect such a reconciliation’ (Galanter 1991: 533). Ambedkar was relying on ‘the Federal Court and the Supreme Court’ to decide whether ‘the reservation is of such magnitude that the rule regarding equality of opportunity has been destroyed’ (*CAD* 1950, vol. 7: 702).

Unfortunately, the compulsions of competitive politics in the pursuit of social mobility have often prevailed over the constitutional propriety in quest of a just and egalitarian society. Parliament has not hesitated to use constitutional amendments when the Supreme Court has come in its way. The judiciary may well be blamed for being unresponsive to the needs of ‘weaker sections’, but neither does politicizing justice result in fairness and equity. We need an understanding of justice that goes beyond legalisms, even constitutional ones, and it should be able to contain partisan interests, especially vested ones. We need a justice able to keep this fine balance between equality and preference by including the excluded, enabling them to

find their place in our society and make their contribution to the common good without alienating others. This is our understanding of justice as liberty, equality and solidarity which was sketched in the [last chapter](#).

COMPELLING RESPONSIBILITY

Articles 341 and 342 of the Constitution provide a slew of protective and promotional measures for the Scheduled Castes and Tribes, and specify the process for scheduling or de-scheduling communities. The list in place before Independence became the basis for the constitutionally approved one, and it was not contested at the time. Under Articles 332 and 339, the Constitution provides for proportionately reserved seats in legislative assemblies and Parliament respectively, and after the Seventy-third and Seventy-fourth Amendments (passed in 1992), this has been extended to village panchayats, zilla parishads (village and district councils) and urban municipalities. They have posts reserved in central and state government departments. Article 17 prohibits 'untouchability' and makes its practice punishable by law. The Untouchability Offences Act, 1955, was amended further by the Protection of Civil Rights (PCR) Act, 1976, which entailed more severe punishments, and then made more comprehensive by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In addition, there are special allotments for these communities in the five-year plans and many specific welfare schemes for them.

But overall, the protection of their rights and the promotion of policies for their welfare have not had the desired effect because of poor implementation by the government and owing to the practice of continuing social discrimination. Hence, though many of these were meant to be time-bound policies and programmes that would be phased out once their goal was achieved, their duration has had to be repeatedly extended; indeed, because there is still a long way to go and, as yet, the end of such extensions is nowhere in sight. The voluminous reports of numerous government commissions testify to this. And although media reports from time to time do shock us, our outrage seldom carries over to effective redress and protection for the victims.

While on the one hand there has been some relief to their acute state of deprivation, on the other, in comparison with other classes in society, they are falling further behind. This is the case in their percentages among those below the poverty line, however so it is measured: in their relative levels of nutrition; the proportion of malnourished and underweight children; in their comparative literacy and educational levels; in their occupational status and income levels; etc. These figures must be read in the context of the continuing discrimination that adivasis and Dalits experience—as evidenced by the official statistics of development-induced displacement in adivasi areas—of atrocities and violence against them due to political complicity, police complacency and judicial leniency.

On 29 September 2006 in Khairlanji, a remote village in Maharashtra, an upper-caste mob murdered a Botmange Dalit family of six after raping the mother and seventeen-year-old daughter. The entire village watched the attacks for over two hours, while the father hid behind a tree and watched helplessly. The Botmanges had some land in the village, the children were educated, and they were trying to build a house to replace their hut before this gruesome event took place. They went on to wage an eighteen-year-old court battle with the village upper castes. The father pursued the case with the help of human rights activists, in spite of an attempted police cover-up (*The Hindu*, 17 September 2006). In September 2008, six individuals were sentenced to death, and two to life imprisonment. The Central Bureau of Investigation (CBI) appealed against the leniency of the life sentences, but in July 2010 the High Court commuted even the six death sentences to life imprisonment (*Times of India*, 14 July 2010), on the ground that it was not one of the ‘rarest of the rare’ cases. The case will now go on appeal to the Supreme Court.

Khairlanji is not an exception; there are innumerable such stories from all over the country. Those who resist or challenge their brutalizing conditions are beaten back into place, and what little progress they may make is reversed. These inhuman atrocities are used as public rituals of boundary enforcement against those who dare to outgrow their assigned space, as civil society looks on and the state looks away (Tambiah 1996: 310–11). The

traditional savarna castes still expect the lower castes to submit to their dharma in the social hierarchy.

Thus, the vulnerability and dependence of these sections function 'to produce a psychology of passive acceptance of inferiority' (Ray 1987: 737). People who have not been subjected to such continuing humiliation cannot quite grasp what this does to individual and collective self-identity, reproducing the dominance–dependence trap. Many Dalits perceive caste reformists, even someone like Gandhi, in this context, as speaking to their oppression from outside their situations, not from an experience of the degrading effect it has on their minds, bodies and souls.

Such deprivation and discrimination add up to a compelling moral responsibility on the part of the state to protect the violated rights and promote the neglected cause of the downtrodden. These communities are still subjected to dehumanizing discrimination and degrading deprivation. That said, the constitutional propriety of preferential treatment for SCs and STs has not been contested so far. Even amidst all the contentious controversies of the day, there is no real challenge to its legitimacy. It remains a social compact that we as a people have formally accepted, but on which we have not really delivered. As yet, SC and ST reserved quotas are not substantial enough to challenge or subvert the whole system of competitive selections on which the upper castes and classes justify their present advantages and privileges.

In January 2002, at a Dalit conference organized by a Congress chief minister, the Bhopal Declaration made the following demands, among others: an extension of reservations to the private and corporate sector, and to the judiciary and defence forces; economic affirmative action for a more equitable distribution of land, resources, and wages; and a democratization of capital through budgetary measures to enable Dalits to enter into the market economy. But perhaps the most significant demand was for compulsory, free and high-quality education for all Dalits through scholarships and accessible infrastructure. This represented a 'new Dalit consciousness emerging', according to Gail Omvedt writing in *The Hindu* (12 June 2003)—not just for protected quotas in educational institutions and

government employment but for socio-economic agency beyond that in their own right.

Meanwhile, the massive adivasi resistance to an alienating development regime continues to gather momentum. In spite of suffering a setback in the Narmada Bachao Andolan, it is strengthening in the new mining regions of Chotanagpur. In 2007, Prime Minister Manmohan Singh described the Maoist 'red corridor' in the adivasi belt as India's 'single-largest internal security threat', and the home minister in 2009 announced Operation Green Hunt against the Maoists. As we have seen thus far, the development projected for these areas excludes and marginalizes its indigenous peoples; the development activity only worsens their situation the closer it comes to their villages and the more it overtakes their lives. The real need is for a more environmentally sustainable and culturally compatible development, or these communities will be further marginalized and become more rebellious. To stymie their aspirations will up the ante on their anger, which is already on the boil.

SCs and STs need affirmative action for their inclusive development. Reservations can only be one element in a more comprehensive policy; alone, reservations can achieve little more than upward mobility for some individuals. This will not directly or immediately stop atrocities against the marginalized sections, preserve their culture or protect their land. Affirmative action does not constitute a panacea for all that needs to be done and undone. A more comprehensive affirmative policy is needed to break the vicious cycle that traps these communities in misery; only then can they be agents of their own *Development as Freedom* (Sen 1999), making their own history, together with others and not against anyone else. This is the compelling responsibility confronting us and from which we must not escape.

However, the state's commitment to and effectiveness in implementing policies and programmes for the SCs and STs leaves us with crucial and unresolved issues of justice. In our transition from a traditional hierarchical society to a more egalitarian and equitable one, these must be addressed with a critical sensitivity towards the last and least among us. Neglecting their growing grievances can only provoke more Dalit anger and adivasi

rebellion. Maoist extremism is already spreading like a red blot across the districts of the most neglected adivasi areas—the People’s War Group branching out of Andhra and the Maoist Coordination Centre in southern Bihar. Violent suppression, rather than responding to the underlying causes in terms that are understood and relevant to these people, can only presage more of the same on both sides.

PARADOX OF BACKWARDNESS

Unlike the SCs and STs, the category of ‘socially and educationally backward class of citizens’ (Article 16.4) is not defined in the Constitution. The long and convoluted history of the term *backward community* is still plagued with ambiguities. Once the 1901 census ranked jatis according to their varna, caste associations lobbied for a higher precedence in the census. In 1911, sixteen castes and in 1921 another twenty did petition for this in north India, including the Kurmis, Gadariyas, Kacchi, Lodhs and Ahirs (Blunt 1969: 227).

Today, on the contrary, the pressures are reversed. Even powerful landed castes lobby to be included among the OBCs. In 1999, the Jats in Rajasthan were classified as backward by the central government on the recommendation of the statutory National Commission on Backward Classes (NCBC). Ironically, then, preferential treatment of ‘socially and educationally backward has created a vested interest in being classified as “backward”, and in some states even “most backward”. Marathas, who once agitated and got Kshatriya status in pre-Independent India, and have dominated the state’s politics since, are now agitating for OBC inclusion’ (Kumar 2009).

Since Independence, this has become a constitutional imbroglio. In using the word *classes* and not *castes*, the Constitution indicates something more than ascribed caste status. The Constitution’s intention is rather to eliminate caste in favour of a more egalitarian society, not to politicize it with a new lease of life in an inverted hierarchy. Backward Class Commissions of state and central governments have progressively expanded the list of castes identified as ‘socially and educationally backward classes’ to include all but

the traditional upper castes. Some of the latter are now agitating to be listed as 'backward'. The six million 'Brahmins in Rajasthan have demanded reservation, claiming that the community is without adequate resources and needs at least a 15 per cent quota in jobs and education to come up on par with others' (*The Hindu*, 19 January 2003). Has the exception eaten up the rule, as Ambedkar feared? Those excluded from preferential treatment have now precipitated a backlash not just against these excesses but against the whole policy of reservations. Even quotas for the SCs and STs, so unambiguously affirmed in the Constitution, are in danger of losing legitimacy.

To rationalize the melee of backward castes recognized by the colonial government, the central government set up the first Backward Classes Commission in 1953 under the chairmanship of a Gandhian, Dattatreya Balkrushna (Kaka) Kalelkar. The commission drew up a list of 2,239 castes representing 32 per cent of the population on the basis of four criteria: low position in the caste hierarchy; lack of general education; inadequate representation in government service; and inadequate representation in trade, commerce and industry. It recommended 70 per cent reservations for these castes in technical schools and 40 per cent in central and state government administrations. But of the eleven members of the commission, five dissented, for differing reasons, including the chairman, who stated that caste was being used as a key criterion for identifying backwardness.

The report was criticized for its caste bias and vagueness when it was tabled in Parliament in 1955, and it was sent back to the states for further investigations. When it was taken up again in 1965, the identification of OBCs was left to the states. This failure to centralize the policy left the issue open to further confusion and politicization. Under pressure from the now politically mobilized backward castes, state-appointed commissions expanded the list until the Supreme Court put a 50 per cent limit on reservation in 1963, enforced with another judgment in 1993. The states have now complied with the exception of Tamil Nadu, which had Parliament place its Tamil Nadu Reservation Act, 1994, in the Ninth Schedule of the Constitution, beyond the purview of the judiciary.

The issue of backward caste reservations in the central government came up again in 1978, with the Janata government's five-member Backward Classes Commission, under the chairmanship of B.P. Mandal. Of the eleven indicators used to identify backward communities, the commission assigned three points to each of the four social indicators, two to each of the three educational ones, and one each to the four economic ones. Caste groups that scored a total of twenty-two points or more were identified as backward. This marginalized economic considerations, since backwardness could be identified merely on social and educational criteria. On this basis, 3,743 castes were listed, representing 52 per cent of the population, estimated on a projection of the 1931 census when castes were previously enumerated.

Not to exceed the 50 per cent limit that the Supreme Court had put on the total quantum of reservations, the commission recommended a 27 per cent quota for OBCs in all central and state undertakings, as well as in state-aided private ones. Only one member, L.R. Naik, dissented. He wanted a 15 per cent quota for the Denotified and Nomadic Tribes, since they were as, if not more, disadvantaged than those that had been scheduled. The commission's emphasis on social and educational indicators identified Backward Classes in terms of caste, leaving out the other backward classes among the religious minorities. The commission's report was tabled in 1980 but saw no government action until 1990, when the Janata Dal announced its partial implementation in the area of central government recruitment.

The backlash erupted in violence on the streets and the recommendations were challenged in court. The Supreme Court eventually accepted the commission's legitimacy but disallowed some of its recommendations—for instance, regarding quotas for promotions, while it also excluded the 'creamy layer' among the OBCs. But then, constitutional amendments were used to bypass the court's restrictions. When Parliament further extended the commission's recommendations in 2006, once again there were violent demonstrations. The Supreme Court's five-bench judgment in 2008 accepted quotas in national institutions of higher specialization and excellence, but once again insisted that caste not be used as the only measure of backwardness in identifying OBCs. It reiterated its earlier exclusion of the

creamy layer, 'however, it does not settle the issue of how the creamy layer would be identified. On both reservations in private unaided institutions and the application of creamy layer exclusion for SCs and STs, the Court thought it best to remain silent' (Krishnaswamy and Khosla 2008: 63).

So far, there has been a stand-off between the Parliament where compulsions of 'quota politics' drive reservations and the courts which make legal pronouncements based on interpretation of the Constitution. But this is at best a temporary stand-off. The underlying paradox of achieving social equality through preferential treatment of those less equal, and the ambiguities of using caste as the basis of identifying backwardness, is far from resolved. In fact, 'from its inception the commitment to these "Other Backward Classes" has been haunted by a series of persistent and unanswered questions: How wide a layer of Indian society is included? How are they to be selected?' (Galanter 1991: xvi). However, in spite of the violent backlash periodically released against reservation quotas, we are witnessing a 'silent revolution' as power is transferred 'from upper castes elites to various subaltern ones' (Jaffrelot 2003: 493).

The process has been incremental and the gains of the lower castes have been uneven. Such incremental gains are not irreversible, and the disunity between the bahunan OBCs and the Dalits SCs could stymie them along the way. Even within these communities, the divisions along caste and ethnic lines strengthen separate communal identities, replacing old hierarchies with new ones—another circulation of elites, a new balance of power. This is positional rather than structural change. Upper caste/class elites co-opt new emerging subaltern ones and establish new vested interests which once again leave the lowest and the least behind, where they were and where they remain. With the liberalization of the economy and the privatization of education, the upper castes have recovered the ground they lost in government administration and state-aided educational institutions.

These are critical issues that a mere expansion of quotas does not address, and which the opposition to the exclusion of the creamy layer seeks to avoid. The thirst for political power betrays the hope for equity, just as the pursuit of social mobility corrupts the promise of equality, unless these are contained

within an understanding of justice and restrained by a commitment to social solidarity. Ultimately, reservation quotas will be constitutionally legitimate only when they are an expression of the constitutional understanding of justice and when there is an attempt to achieve a delicate balance between universalizing equality and particularizing preference.

LEGITIMACY IMPERATIVE

The colonial policy of reserved quotas for minorities and backward castes did little to address the real issues of representation in governance for religious minorities, and social equity for those socially deprived or under-represented in government. Rather, it has precipitated an identity politics that divided the two major religious communities and mobilized competitive political vote banks. In the aftermath of the trauma of Partition, the Constitution attempted to anticipate and stymie this unfortunate downside of our democratic politics. The minority rights and preferential treatment sanctioned were meant to protect and promote vulnerable minorities, linguistic and religious, as well as the weaker sections of society, especially SCs and STs.

However, the encounter between the legislature and the judiciary has triggered a gradual transition from ‘general supportive policies of positive action to enhance capacities’ of the vulnerable and the deprived into ‘specific solutions in the form of quotas to ensure “seats” and “jobs” in educational institutions and civil services’ (Dhavan 2008: 3). This is the reverse of the trajectory that affirmative action went through in the United States, where now universities and businesses have become its supporters and have even pleaded the institutional and social advantages of diversity in court.

In India, the preoccupation is still with reserved quotas, which have an obvious appeal and an immediate benefit. But ‘quota politics’ is now entangled in legal challenges and judicial compromise, which has deflated any real concern for capacity building and empowerment of the backward and weaker sections. Such enabling empowerment would have had a more deferred but more permanent impact on both, the self-reliance of the

beneficiaries and the enrichment of society at large. Ambedkar urged his followers to ‘educate, agitate, organise’ (Moon 1979: 15). Yet those who are already educated agitate and organize under the rubric of quota politics, and the creamy layer becomes the *crème de la crème*! Meanwhile, the uneducated are left behind with the whey.

From 1951 to 2006, the Constitution was amended ninety-four times. Of these amendments, seventeen concerned preferential provisions for weaker sections. The very first, in 1951, protected these special provisions from legal challenges based on their being discriminatory (Article 15.4). Five amendments extended the statutory period for reservations, which as of this writing stands till 2010. Four amendments, from 1984 to 1992, extended ST status to four states in the North-east; a separate one in 2000 exempted Arunachal Pradesh from SC reservations in panchayati raj institutions; another one, in 2003, gave ST status to the Bodos in Assam. All these were largely in response to popular movements reflecting political realities on the ground.

The other six amendments were responses to Supreme Court verdicts. In 1994, as noted earlier, the Seventy-sixth Amendment placed the Tamil Nadu Bill, providing a total of 69 per cent reservations, in the Ninth Schedule and hence beyond the jurisdiction of the courts. But in 2007 a nine-bench court ruled that the Ninth Schedule too was subject to judicial review, if enactments there violated the basic structure of the Constitution. In response to a batch of petitions, on 13 July 2010 the Supreme Court asked the Tamil Nadu government to revisit its legislation on reserved quotas, while allowing the limit of 69 per cent to continue for another year.

Four additional amendments have followed. In 1995, the Seventy-seventh Amendment protected reservations in job promotions for SCs and STs (Article 16 [4A]); in 2000, the Eighty-first Amendment removed the court-imposed 50 per cent limit when filling up the backlog of reserved seats for new appointments (Article 16 [4B]); again in 2000, the Eighty-second Amendment permitted a relaxation in qualifying marks for SCs and STs, extending Article 15 (4A); in 2001, the Eighty-fifth Amendment protected their seniority in promotions, again extending Article 16 (4A); in 2005, the

Ninety-third Amendment enabled reservation in government-run and -aided educational institutions as well as privately run unaided ones, other than minority institutions (Article 15 [5]).

All these amendments bypassed Supreme Court judgments restricting further extension of reservations. Collectively, they 'represent a massive upset of judicial decisions by Parliament' (Dhavan 2008: xvii). The court's last word for now was formulated in 2008, in *Takkur v. the Union of India* (AIR 2386, 1988 SCR[1] 512), often referred to as the OBC Education Case. These were four lengthy judgments by a five-judge bench. The judgments issued agreed on two points: first, reiterating the validity of the Ninety-third Amendment in regard to the reservations specified but not ruling on those in privately run unaided institutions, since this had not been raised in the petition (though one judge considered these unconstitutional); second, upholding the exclusion of the creamy layer from the OBC quota, with a majority recommending a review of the continuing need for such reservations after five years.

In trying to retrieve some lost ground, the court affirmed the principle of excluding the creamy layer and suggested criteria to identify it. This would be a test for individuals in the quota 'to ensure the worst off among them are not eclipsed by the better off' (Dhavan 2008: 232). Though this case did not concern the SCs and STs, there is in principle no reason to exclude the creamy layer here from reservation. Four judges suggested this; only the chief justice explicitly affirmed there was no creamy layer in this quota.

An overview of the Supreme Court's jurisprudence on the issue of caste-based reservations underlines two principle concerns. First, caste as an identity maker would get entrenched with a vested interest in 'backwardness'; and second, the benefits would not go beyond a creamy layer to the worst off in the targeted group. Both of these subvert the original intent of the special provisions made in the Constitution for backward and weaker sections, meant to promote a caste-free, egalitarian and pluralist society. On the other hand, particularly in regard to the provisions for the OBCs, Parliament has not hesitated to bypass the Supreme Court with constitutional amendments when constrained by the court.

Fali Nariman, a constitutional expert, bemoans ‘how ineffectively our MPs have discussed vital Constitutional Amendment Bills that shaped (and shook) the very fabric of our governance’ (Dhavan 2008: xi). There is precious little debate on the real issues of how backwardness was to be identified and what the quantum of reservations ought to be. Thus, the judges are seen as insensitive to the needs of the ‘socially and educationally backward classes’, while politicians are accused of quota politics. But so far, a constitutional crisis, precipitated by a confrontation between the Supreme Court and Parliament, has been avoided.

Article 15 prohibits ‘discrimination on grounds of religion, race, caste, sex or places of birth’ in order to assure equal justice. Article 16 affirms ‘equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state’. A formal equality of opportunity that satisfies liberals does not address the realities of enormous inequalities in a society such as ours. Centuries of deprivation and discrimination have marginalized and excluded a large proportion of our people. Without special provision, they will never be able to participate, let alone compete in society at large. Putting the hobbled and the hale on the same starting line makes a mockery of the equal-opportunity principle. Affirmative action is meant precisely to assist the disadvantaged, so that the equality can be fair and participation meaningful.

Insofar as reserved quotas do not ‘reproduce within the beneficiary class the same kind of clustering that the reservation is meant to remedy’ (Galanter 1991: xix), the Supreme Court has affirmed their constitutional legitimacy. Moreover, the court accepts caste as one of the indicators of backwardness for OBCs, though not the only one. Identifying SCs and STs through our present constitutional mechanisms is less contested. But because quotas are intended to neutralize the competitive disadvantage of groups, not individuals, they ‘create new discontinuities’ among the beneficiaries. Hence, the ‘paradoxical limits of compensatory preference’ (Galanter 1991: xx) remains: too much becomes discriminatory; too little is ineffective. Thus, Galanter suggests

that, in a regime of formal equality and open competition, members of a previously victimized group, burdened by accumulated disabilities, will fall further behind (or gain too slowly). The solution is to draw a line between the realm of formal equality and a separate zone of compensatory preference. In this protected zone, the former victims can nourish their accomplishments and enlarge their capabilities until the day that the protective barrier can be lowered and the special protections abandoned. (ibid.)

But identifying the victims, especially among the OBCs, and defining the parameters of this separate zone is still an area of bitter contestation, especially where competition is stiff, resources scarce and returns large. This is not just a matter of equitable distribution, whether it is based on needs, merits or deserts. It is about the kind of society we want to be and how we get there. To come back to our earlier discussion of understanding justice, the crux of the issue is one of social not merely distributive justice, much less of interpersonal exchange or personal virtue, though these do help to lend an overall legitimacy.

Preferential treatment must be perceived as legitimate, not simply in terms of parliamentary majorities or Supreme Court judgments. These can only provide political and legal justifications. On an issue as contested as reservations, conflicting interests and perceptions are not reconcilable without reference to our constitutional values as expressed in its basic structure. No political party dares to challenge this or the fundamental human rights enshrined there.

Affirmative action is the site of two competing constitutional values: universal equality for all and protective preference for the backward and the weak. Both have constitutional justification, which is the final legitimacy for our courts and Parliament, and the ultimate arbitrator for resolving contested issues between them. However, when interest groups, political or otherwise, unashamedly compete for scarce resources, they risk a continuing and irreconcilable confrontation in which the most unfortunate casualty is likely to be the very constitutional framework in which they must be reconciled. In a working democracy, a certain 'constitutional patriotism' (Habermas 1992: 6–7) is indispensable. Hasty and ill-advised amendments by Parliament do not demonstrate this patriotism.

Constitutional amendments are legitimately used when these update the Constitution to be more relevant to changing circumstances that could not have been anticipated at the time of its formulation. Using authoritarian majorities to pass amendments without serious debate undermines the very Constitution that gives Parliament its legitimacy. By almost unanimous consent, today everyone condemns the abuses that took place during the national Emergency. While the Supreme Court and the doctrine of the basic structure of the Constitution do impose some limits on such abuses, the ultimate safeguard must be the prudence and good sense of parliamentarians and judges themselves. However, both have failed the Constitution and the citizenry at critical times.

If political majorities could abrogate the human rights guaranteed by the Constitution, the same could happen with bahun caste majoritarianism abridging the rights of other caste minorities, or with religious majorities mobilized against minority rights. The courts, too, must have public credibility to decide on constitutional matters or else their interpretations will be further contested. Parliamentary majorities then feel justified in bypassing them with amendments as their means of last resort to respond to the people they claim to represent.

Reservations are but one of the many strategies of affirmative action for a more egalitarian society. It is tempting to overextend them as a panacea for all the many inequalities in society. Galanter perceptively observes that, in India today,

reservation is a crude device that is inherently incapable of eliminating all the effects of unearned privilege and undeserved handicap ... the policy of protective treatment for disadvantaged groups cannot be universalized to address all of the arbitrarinesses and unfairnesses of life ... But generalizing protective treatment to all groups dissolves the original and distinctive national commitment to the core beneficiary groups, the Scheduled Castes and Tribes. (Galanter 1991: xxi)

Thus, ‘from being an instrument of egalitarianism, reservation policy is now seen as the most blatant expression of what has come to be known as “vote-bank politics”’ (Bhushan 2009: 131). This is particularly so in regard to reservations for the OBCs in the post-Mandal scenario, where the most

contentious controversies are centred. It is precisely here that affirmative action seems to be falling short. Addressing one injustice or inequality at the cost of causing others will only politicize society further, not make it more equitable or egalitarian. Both Parliament and the Supreme Court must critique reservation policies and legislation from a constitutional understanding of inclusive and integral justice, as earlier chapters attempted to outline.

TAKING SIDES

During the virulent controversies in the 1990s around the Mandal Commission recommendation, it was impossible to find parents who were neutral on the issue of reservations, if their children were facing the anguish of a public examination on which admission into a select career depended. We still submit our children to such ‘trials by ordeal’ as the best metric of merit procedures. Numerous studies have established that the underlying assumptions on which these tests are premised are highly questionable, and their grading is poorly related to predicting future performance (Jencks et al. 1972). Rank holders of yesterday are not recognizable among high achievers of today; they are more likely to be among the mediocrities of tomorrow. Yet the myth of examinations as impartial and reliable means for the selection of candidates prevails, supposedly for lack of better alternatives, even as they drive our children towards suicide. No wonder, then, that concessions on examination performance made to those in the reserved quota are perceived to be unfair and unjust.

A class of first-year IIT (Indian Institute of Technology) students at one of their most selective campuses, Powai, Mumbai, were unanimous in vociferously denouncing reservations. (On a personal visit as a guest lecturer, I also noted a few silent ones, who were probably from the reserved quota.) We have achieved our place, they claimed, through a difficult and impartial examination by dint of sheer hard work and talent; these others are undeserving free riders who displace more meritorious candidates. I nonchalantly asked them: to whom would you give the most credit for your recent achievement, of which you are rightly so proud? After some

discussions, their conclusion was equally unanimous: but for our parents' support, encouragement, discipline and motivation, we would never be here today.

I drew a simple moral from their stories: children, choose your parents very carefully! The class ended in sullen silence, not a word of thanks to me. It was very unsettling for them to accept that the circumstances of their birth were the most crucial advantage—one that they could not claim to deserve. But for an accident of birth, they would not have got to where they were today.

But these students are hardly exceptional. They are like many of us who never factor in the advantages that family and resources, circumstances and connections have on the chances and choices of our lives. Without these unmerited accidents of birth, talent or the opportunity to develop it could lie dormant in children, waiting on some other accident for their latent potential to be identified and developed. Such lucky accidents do happen, but is it fair to expect children to wait on them?

So, if such crucial advantages are unmerited by children lucky to be born into the right families, the corresponding disadvantages of children unfortunate to be born into the wrong families are undeserved as well. In a world of limited opportunities, expanding those for the undeservedly disadvantaged often means restraining those of the unmeritoriously advantaged. However, such a redistribution of life chances and choices is seen as retributive by the privileged when it takes away from their own. This is the crux of the reservation conundrum, and all too often decides which side we take.

Creeping reservations restrict the unreserved space for open competition. Further, those eligible in a reserved category are not counted there if they qualify in the unreserved one. This understandably causes great resentment among those who must compete for unreserved places. Constitutional amendments expand and multiply quotas, compromise open merit selection, and facilitate job promotion for reserved quotas. This has been decried as being insensitive to equal opportunity rights of those without any reservations, and as violating Article 335, which requires that claims for

reservations 'shall be taken into consideration, consistently with maintenance of efficiency of administration, in making appointments in services and posts in connection with the affairs of the Union or of a State'.

But those who cry foul do not appreciate enough the context of our disempowering inequalities in which the backward and weaker sections of our people find themselves trapped. Neither do they consider sufficiently that the states, which have had the larger reserved quotas and for the longer time (as in the south), are in fact more egalitarian and better administered than those that have resisted reservations till recently.

The core argument against preferential treatment and reserved quotas rejects such considerations as compromising individual rights and liberties, which for liberals are restricted only by the reciprocal rights and liberties of others. However, individual rights and collective requirements must be compatible. No citizen right is ever absolute, after all; its priority is contingent on the human context in which it is exercised. This happens in social crises and emergencies, when group survival and due order is under threat and rights have to be curtailed for the survival of the group.

In *Taking Rights Seriously* (1977), Dworkin makes a helpful distinction between two kinds of rights that citizens have:

The first is the right to *equal treatment*, which is the right to an equal distribution of some opportunity or resource or burden. Every citizen has an equal right to vote in a democracy The second is the right to *treatment as an equal*, which is the right not to receive the same distribution of some burden or benefit, but to be treated with the same respect and concern as anyone else. (ibid.: 227)

Thus, in a liberal democracy, equal treatment is universal, as with equal opportunity. In an unequal society, treatment as an equal requires preferential treatment if all are to enjoy equal respect and concern. Thus, the sickly have a greater claim than the healthy to a limited availability of tonic.

Dworkin contests the right to equal opportunities in institutions, like educational ones. Rather, he sees an obligation on institutions to select candidates in the function of their own legitimately chosen institutional goals, in context with their larger social obligations:

So affirmative action, in pursuit of either or both of the twin goals of student diversity and social justice, in no way compromises the principle that student places should be awarded only on the basis of legitimate and appropriate qualifications. No student has a right to a university place in virtue of past achievements or innate virtues, talents, or other qualities. (Dworkin 2002: 404)

Though institutional opportunities, whether educational or occupational, are utilized by individuals, they are always created and distributed in a social context. Further, representing the diversity of people in an institution meant to serve them, whether public or private, may be critical for its effectiveness and efficiency—e.g. a legislature or a business. Hence, a regime of individual and community rights must balance both individual needs and community good. In cases of persistent inequality and exclusion, social equality and inclusion must be urgent goals that demand a policy of social intervention.

CRITICAL CONCERNS

The constitutional argument for reserved quotas is that including the excluded, advancing the backward, and protecting the vulnerable are compelling concerns in establishing the society we envisioned at the founding moment of our nation. The national consensus that was once obtained in this regard is now contested. We need a renewed consensus premised on the logic and syntax of our Constitution. More than legislative amendments and court verdicts, we need a larger national discussion before further polarization leads to quota politics premised on vote banks, where elites co-opt their own people and exclude others even as leaders jockey for position and power.

In a social crisis precipitated by some major disaster or threat, individual rights are often curtailed, at least temporarily, to assure social survival and preserve some functional social order. When a state of emergency is declared in times of famine, flood or war, this is legitimated by a compelling national interest that demands exceptional measures in extraordinary conditions. However, beyond such out-of-the-ordinary circumstances, there are other social concerns that are equally compelling, especially when there is a national consensus in their regard. For instance, equal opportunity does

not become a matter of contention when preferential treatment is given to war veterans or widows, the elderly or women, the young or handicapped. There is a sense of gratitude and obligation to others that constitutes us as a community, which, at times, takes a priority over our own individual claims.

In the West, the privileging of the individual over the community was marked by the transition over some four hundred years from medieval feudalism to modern individualism. However, today we would want such first-generation individual rights to civil and political liberty to be contextualized by second-generation human rights of sociocultural and economic equality and third-generation ones for fraternal solidarity and inclusive community. We need an understanding of justice as liberty, equality and solidarity to navigate this matrix of rights and duties, both individual and collective.

While it is evident that individuals are the subject of fundamental human rights, our Constitution has been innovative in sanctioning a regime of collective rights as well. This is the foundation for preferential treatment for religious and linguistic minorities and for reservation quotas for caste and adivasi groups. Libertarians want individual rights to trump collectively held community ones; communitarians want collective rights to override individually exercised ones.

Reconciling the two is not just crucial to any group-based privilege that can be challenged on the grounds of being discriminatory to individuals outside the group; it is also critical to individuals within the group whose fundamental rights must not be compromised for community ones, as happens in our country with women in matters of personal law.

Depending on whether individual or community rights are privileged, arguments for and against reserved quotas stack up on either side. Those privileging individual rights want to address inequalities at the individual level. Economic criteria are most commonly urged—e.g. a means test—which would be completely neutral to collective characteristics. But being ‘blind’ with regard to race, ethnicity, caste, religion or gender is never being neutral, especially when the cause of the disabling inequality is beyond individual and even group control, such as institutionalized prejudice and

social discrimination. Such disadvantage and deprivation are embedded in a larger context that cannot be tackled at the individual level. It requires a more comprehensive institutional and social intervention.

All social inequalities are embedded in the structures that reproduce them. To imagine that these can be effectively addressed merely at an individual level is an enormous oversimplification, if not a deliberate obfuscation. It reduces justice to a question of individual virtue or interpersonal relations. Expecting the poor to 'pick themselves up by their bootstraps' is a cruel irony when many of the poor do not have shoes! Moreover, such an approach fails to ask why the poor are poor in the first place, or why they do not have adequate access to livelihoods that would have kept them out of poverty before they got there.

In June 2010, the court verdict on the devastating gas leakage in Bhopal of 1984 was shockingly inadequate with regard to the justice deserved by the thousands of dead and the thousands more maimed—and this after twenty-six years. Government complicity at the highest level and unconscionable multinational clout are being admitted only now. For anyone attempting such an individual approach, Galanter has a sobering caution from these victims:

Those who are attracted to an 'economic test' of backwardness should reflect on the government's inability to cope with the task of identifying the Bhopal victims. For all its complexities, looking for traces of a single event in the population of a delimited area is less demanding than ascertaining the wealth or income of all the candidates for backward-class status. It can fairly be concluded that for the time being the government has no capacity to implement such a policy in an effective way. (Galanter 1991: xix)

Our government's inability to address the skewed distribution of economic assets and income in spite of years of planning a socialist pattern of society, or to impact those below the poverty line in spite of numerous welfare schemes, underscores the ineffectiveness of such policies, particularly to reach the poorest among the excluded and the marginalized. The enormous percentage of SCs, STs, the most backward castes (MBCs), and some minorities below the poverty line is a witness to this failure. Numerous anti-poverty programmes still fail significantly in reaching the poor for whom they are intended.

Moreover, poverty is not the only inequity that afflicts a society. Much as we may pretend otherwise, prejudice and discrimination are also endemic in Indian society, and in fact are the cause of so much poverty and oppression. This cannot be addressed merely in terms of economic redress for individuals; it concerns our social institutions and systems. Individual ‘choices are socially constrained in ways that are simply overlooked by those who play up the role of personal responsibility’ (Barry 2005: viii). To address inequality at the level of the individual is to reduce justice to a question of virtue and interpersonal exchange. This is a very truncated understanding of justice and quite inadequate to cope with embedded social inequalities, which call for equitable distribution and just social structures. These are matters not just of distributive but especially of social justice, as discussed in the last chapter.

Thus, economic institutions that generate poverty, social hierarchies that perpetuate caste, ethnic or religious majorities that discriminate against minorities, and sexist patriarchies that negate gender equality—these are all the concerns of distributive and structural social justice. Affirmative action seeks a more just distribution of social goods, like resources and opportunities, and so endeavours to structure a more egalitarian, less hierarchical, more diverse, less majoritarian, more gender sensitive, and less sexist society. Reservation quotas for disadvantaged groups and communities are an instrument of policy in this larger programme. Their constitutional legitimacy is not in question; rather, appropriate policy implementation is.

KEEPING PROMISES

Reserved quotas are most contested in two areas, where the selections are most sought after and most competitive: in tenured government employment, and in specialized and professional higher educational institutions, as in engineering and medical colleges. Where the availability of seats is limited, reserved quotas further reduce the number of unreserved seats, intensifying competition. Quotas are even more resented when they are perceived to be given to ‘undeserving’ categories and individuals, like the creamy layer and

dominant castes among the OBCs, or when selection criteria are reduced for reserved candidates.

The legitimacy of quotas for the SCs and STs is accepted as part of the constitutional compact to give them their long denied place in our country's mainstream, a still-unfulfilled promise. In the ongoing controversy, some are now contesting even these. Yet, 'in the mind of both the public at large and also Untouchables themselves, reservation of government jobs is the most important of the various concessions to the Scheduled Castes' (Mendelsohn and Vicziany 2000: 133). This applies to the STs, too.

However, political reservations for the legislature are not particularly contested, except if the SC/ST status of the candidate in the reserved constituency is a disputed one. Joint electorates require these candidates to make a wider appeal, even compromising the representation and pursuit of their people's real interests. Thus, 'reserved seats afford a measure of representation in legislative settings, though the use of joint electorates deliberately muffles the assertiveness and single-mindedness of that representation' (Galanter 1991: 548). Moreover, as party candidates, they must serve party interests over those of their own people. Besides, the benefits that have accrued to successful candidates till now have not done much to challenge vested interests that compromise their people's collective concerns, nor to change the status quo in any radical manner. Thus in practice, political reservations have been absorbed and tamed by the system.

Yet the symbolic importance of political reservations has an enormous potential. As a 'politics of presence' in the legislature and the executive 'for the political inclusion of groups that have come to see themselves as marginalised or silenced or excluded' (Phillips 1995: 5), the role of political reservations can be decisive. The election of Barack Obama for African-Americans in the United States, or of Manmohan Singh for the Sikhs, or Pratibha Patil for women, are each pertinent examples. Although these were not based on reservations, they vindicate how emphatically the politics of presence affirms political inclusion for the excluded: African-Americans in the United States, Sikhs and women in India.

Unfortunately, the fissiparous proclivities within the SCs and STs and their inability to project their demands play into the divide-and-rule strategy of the elites outside their communities, and easily allows the co-option of the elites within their own communities by elites outside. This prevents them from leveraging the collective influence they could have had. Ambedkar surely wanted a more collective agency for his people beyond reservations, and Jaipal Singh, the adivasi leader in the freedom movement, certainly intended another development paradigm for the Jharkhand he had already envisioned then.

SILENT REVOLUTION

The OBCs first successfully claimed political power and legitimated reserved quotas for themselves in the south. The process predated Independence and has been further consolidated by democratic majorities till recent times. The original non-Brahmin movement there, inspired by E.V. Ramaswamy, has splintered into particular caste movements. How far it can now claim the inclusiveness of the Periyar-inspired movement is very much a moot point today.

Since the abolition of the zamindari system during the 1950s, we are now witnessing *India's Silent Revolution: The Rise of the Low Castes in North Indian Politics* (Jaffrelot 2003). Here, too, demographic weight and political clout have served to manoeuvre some caste communities among the OBCs into dominant positions in rural areas, to form regional parties and capture power in the state. The mainstream national parties, once dominated by upper castes, today have powerful proactive OBC lobbies, and the parties are likely to suffer severe electoral losses if they push an agenda at odds with these lobbies' interests. OBCs have also formed alliances across party lines to protect their interests, and get constitutional amendments sanctioned in Parliament without much debate.

As reservations in educational institutions and government employment have helped consolidate their dominance in the south, the process is being repeated in the north in what is now being called a 'Shudra revolution in the offing' (*Organiser*, 1 May 1994). Rammanohar Lohia's (1910–67) socialism

brought 'kisan politics' and 'quota politics' together to serve the interests of the lower castes (Jaffrelot 2003: 305). Lohia wanted to target caste inequality directly. Subverted by vested interests, Nehru's socialism had failed to do this. The Communists at the time were in denial with regard to caste. Lohia wanted 'class organisations' to be made into 'instruments to abolish caste', for he felt that 'caste is the most overwhelming factor in Indian life' (Lohia 1979: 20, 79). He was convinced that 'to make this battle ground a somewhat equal encounter, unequal opportunity would have to be extended, to those who have so far been suppressed' (ibid.: 96).

However, Lohia was acutely aware how 'ever and ever again, the revolt of the down-graded castes has been misused to up-grade one or another caste', at the cost of others lower down the hierarchy (ibid.: 59). Whether 'Mandal politics' is a projection or a betrayal of Lohia's socialism can be seriously contested today. Certainly, more than an obsession with caste and quota politics, Lohia would have wanted a coalition of all the bahujans against caste.

Now, after decades of reservations, who has benefited from them and how much? These, of course, are factual questions separate from discussions over their legitimacy. 'Does it work?' is not the same as 'Is it fair?' (Dworkin 2002: Chs 11, 12). The general argument against the effectiveness of affirmative action is that it creates dependencies and undermines self-reliance, in individuals and more so of groups: 'reservations are a palliative not a curative' (Anand 1987: 390). Reservations perpetuate a mentality of victimhood and do not break through to an ethic of agency.

However, this depends on how such programmes are designed and implemented. A well-targeted, nuanced and time-bound programme is what we ought to be looking for. Or else the danger will be of levelling one end of the field while eroding the other. Affirmative action must address the deprivation and discrimination from which backward and vulnerable communities suffer, and not merely provide for individual advantage or social mobility. This is precisely the constitutional purpose articulated in the Directive Principles of State Policy, a promise we must not betray.

The OBCs are a grab bag of middle-level communities, enormously differentiated among themselves. Some of the most backward of these should really be scheduled with the SCs or STs, but it is only the more politically influential among them who have succeeded in getting on the schedule after Independence. The prominent Meenas were given ST status in 1954 in Rajasthan; the Gujjars have been agitating for it since 1981, but have not managed to change their OBC status. If scheduling a community's status is now so difficult, de-scheduling has proved impossible. The B.N. Lokur Committee report of the Advisory Committee on the Revision of the Lists of Scheduled Castes and Scheduled Tribes, 1965, recommended de-listing several SCs and STs, but the government's 1967 bill included them all (Galanter 1991: 137–38). The continuing pressure to inflate the OBC list in the states has certainly not ended with the Mandal Commission list; the controversy over the data on which it is based is merely shelved, not settled.

A revealing study by the Tata Institute of Social Studies in 2009 uses data from the fifty-fifth, sixty-first and sixty-second rounds of the National Survey Organization, together with the National Family Health Survey for 2004–05. The study concludes: 'Unless and until the inequalities that exist in terms of access to quality elementary education are not removed the need for reservation policy which compensates these inequalities will always be there' (Parasuraman et al. 2009: 86). Yet the sharpest controversies about reservations and the most vigorous demands for them are not at the low end of elementary education, but for high-end specializations and, more recently, even super-specializations.

While it is true that the competition intensifies as one goes higher up the selection pyramid, the little interest in levelling the field at the bottom indicates the scarce concern of the elites and creamy layers on the top for those trapped below, whether these are from their own community or not. An integral justice must embrace these hapless unfortunates with far more vigour, if it is to have any pretensions of inclusiveness or fairness. Otherwise, reservations will mean breaking promises to others far worse off in order to keep promises to oneself, no matter how well advantaged. And

unfortunately, ‘reservation politics’ is now being reduced to exactly this state of affairs.

CUMULATIVE AND COMPLEX INEQUALITIES

In the Tour de France, the riders begin with a twenty-pound pack. Through the month-long race, at the end of each stage, the packs of the leaders are lightened and those of the rest made heavier according to the time taken to complete their stages. Although the race begins with an equal start, over the stages the differences accumulate. As the order of precedence becomes progressively entrenched, it becomes increasingly difficult for the losers to compete.

Imagine what might happen if the differences were carried over to the next year, at the end of the race. The probability of winning or losing would be settled before the race even began. Or imagine if the winners were allowed to give their advantage to another rider for a price—money might dominate the contest, rather than cycling prowess. Would it be a fair race then? Or would it be a race between bankers and sponsors? A case could well be made to change the rules of the game and give it back to the cyclists.

Surely there are some inequalities that cannot be eliminated in many personal and social interactions. But when the consequences are allowed to accumulate and reproduce over generations, we have a self-perpetuating structural problem. An adequate response calls for changing the conditions of interaction. Moreover, if advantages in one social arena transfer to another, reinforcing them both, the differences can create a permanent divide between the advantaged and the disadvantaged in the society as a whole. Thus, a family’s economic assets can bring political power and vice versa. So it is with other dimensions, like educational access and occupational opportunity—this surplus advantage can transfer across multiple dimensions, even increase and multiply along the way.

Similarly, disadvantages too travel across social arenas and reinforce each other. Economic and political marginalization, educational and occupational deprivation, religious and gender discrimination—all reinforce each other. Thus, multiple inequalities add up to a person’s ‘equity deficit as

the amount or degree by which he has less than he would have, or is otherwise in worse circumstances than he would be, under an ideal egalitarian distribution in his community' (Dworkin 2002: 164).

This becomes further entrenched in a cumulative inequality. From this, there is no exit unless the rules of the game are changed; otherwise, those trapped in urban slums and deserted villages are bound to lose, as happens to the early losers in the Tour de France through accumulating differences. Such 'a system of cumulative inequalities' (Dahl 1961: 85–6) adds up to a 'cumulative backwardness' (Galanter 1984: 240–43; 1991: Ch 8 c). So, without proactive affirmative interventions, only a very few lucky exceptions break free.

In this country, the upper castes and classes have easier access to education and consequently to remunerative occupations, which confirm them in their social status and give them political and other kinds of influence. This is the charmed circle of increasing advantage uncritically attributed to merit and talent. The obverse of this is the vicious circle of cascading disadvantages of entrapping lower castes and ethnic outsiders, religious minorities and women. This has been called the 'Matthew Effect' (Merton 1996: 153–61), with reference to the Book of Matthew: 'to him who has, more will be given ... but from him who has not, even what he has will be taken away' (Mt 13: 12).

Such 'configurations of inequality express this complex set of relationships between economic restructuring and gender, class, and racial inequality' (McCall 2001: 58). To prevent inequalities from accumulating at the bottom and privileges at the top require a nuanced response that targets both. Otherwise, the quest of those at the bottom for upward social mobility will be trapped in *Competing Equalities* (Galanter 1991) among themselves, while the privileged protect their accumulating advantage at the top.

Restructuring inequalities and surpluses so that they do not accumulate but instead cancel out each other demands a 'complex equality' (Walzer 1983: 18) in which advantages and disadvantages neutralize and do not reinforce each other. In other words, inequalities in economic wealth are prevented from translating into discrepancies in political power. Such restructuring will

demand more than Adam Smith's 'invisible hand' and the consequent laissez-faire policy that focuses on formal procedures with little consideration for substantive outcomes.

Individual rights may legitimately pursue a personal good, but not at the cost of the collective ones. At the same time, just social policies must be in the function of a collective good, but not negate individual rights. However, this becomes an unresolvable conundrum if individual rights are assumed to be more important than the community good. Such individualism negates the social context in which all individual rights are exercised and in which all individual goods are pursued. An interventionist social policy for the common good is premised on the individual and community as complementary, and on rights having corresponding duties.

Hence, reservation policy must position itself neither in contradiction to our human rights nor in denial of the related duties, individual or collective. Instead, it must be situated in pursuit of social equality as a common good for all. To do this effectively, reservations must intervene on behalf of the less than equal and prioritize scarce resources for social equality rather than social efficiency. This inevitably undermines the privileges of the more than equal, but it does not violate their rights since they are already privileged and so have far less claim to scarce resources than those less privileged.

One way to level the field and to re-initiate social interactions would be to structure a transfer of advantages from those that have them to those that do not. Of course, this would be seen as punitive retribution for historical wrongs for which the present generation cannot be held guilty. But since the disadvantages in this generation persist due to past injustices, assistance to overcome their handicaps should not be seen as unfair. Reservation quotas are meant to address these historical inequities, and protect the backward and weaker sections from the competition for which they are as yet unprepared. Inevitably, this threatens the quasi-monopoly of scarce resources and opportunities that upper castes and classes have enjoyed in the past. Inevitably, too, the over-extension or misuse of reservations fuels resentment and precipitates a backlash.

An incisive review of reservation policy by Galanter (1991: 548) concludes that ‘at the cost of enormous wastage, there has been a major redistribution of educational opportunities to these groups. (Of course not all this redistribution can be credited to these preferential policies, for some fraction would presumably have occurred without them.)’ Other government anti-poverty programmes too have had a role—employment and educational guarantee schemes, vocational training, SC and ST sub-plans, etc. And yet the cumulative effect of all this has neither eliminated the cumulative inequalities and competing equalities endemic in our society, nor controlled the accumulating privileges and self-perpetuating power of their elites.

More generally, affirmative-action policies are intended to provide a safety net and an empowerment platform, not just to individuals but more so for the good of their communities. They can be targeted towards the weaker sections and reach the least among them without violating the legitimate rights of the privileged. The Directive Principles of State Policy mandate Special Provisions Relating to Certain Classes in Part XVI of the Constitution. But such policies have not really been implemented efficiently or effectively, and privileged and powerful constituencies have largely cornered state resources. The shameful neglect of universalizing literacy and primary education, let alone making available to weaker sections quality secondary and vocational schools, should fill us with remorse. The Right to Education Act, 2010, took us sixty years to pass, and already there are difficulties in its execution. How long will it take to implement it effectively throughout the country?

Moreover, a proactive education policy, providing endemically poor rural and urban areas with the basic infrastructure of sanitation and health, transport and communications, would go a long way in levelling the field. These are all matters for policymakers, which need no constitutional amendments or court contestations, but just the political will to transfer resources from the haves to the have-nots. And there’s the rub. It is much easier to tinker with reservations in educational institutions and government employment at the high end of privilege that benefits the creamy layer as long as the truly privileged can remain at the top.

Our quest for equality lacks credibility when it neglects such affirmative-action policies and relies so heavily on reserved quotas, which inevitably favour the better off in the beneficiary group:

There is evidence of substantial clustering in the utilization of these opportunities. The clustering appears to reflect structural factors (e.g., the greater urbanization of some groups) more than deliberate group aggrandizement, as is often charged. This tendency, inherent in all government programs—quite independently of compensatory discrimination—is aggravated by passive administration and by the concentration on higher-echelon benefits. Where the list of beneficiaries spans groups of very disparate condition—as with the most expansive list of OBC—the ‘creaming’ effect is probably even more pronounced. (Galanter 1991: 548)

Galanter makes a strong argument for the exclusion of the creamy layer. Without doing so, reservations would never be phased out because the worst off in the beneficiary group would never be reached, while the better off there extend the programme to benefit themselves. Since ‘all affirmative action programmes must proceed from a vision of the “good”’ (Frazer and Lacey 1993: 87), it would be difficult to claim constitutional legitimacy in favour of forming an elite among the weaker sections to shepherd the whole community. Rather, in isolation from other effective affirmative-action policies, ‘reservations serve essentially as tools for the absorption of the privileged section of the lower castes in the ruling classes’ (Chaudhury 2005: 305).

The Constitution does not directly recommend reserved quotas. But as long as these are within the purview of the delicate balance implied there, between universalizing equality and particularizing preference, they are constitutionally compatible: an equal justice for all, a just equality for each. How *The Truly Disadvantaged* (Wilson W. 1987) in our society are to be identified and by what criteria is precisely what the present controversy rages around. It has been opportunistically politicized, and more of the same is not likely to lead to a viable and credible resolution. Nor will the continuing encounter between Parliament and the Supreme Court result in a stable and sustainable compromise. Any outcome is likely to be endlessly contested if it does not bring all the constituents on board. And only a constitutionally inspired national compact can be equitable and fair: equality for all, justice for each.

OUR SOLIDARITY, OUR STORY

The Constitution we gave ourselves as a people is a defining moment in our common history. But it remains a legal document unless our personal stories connect with it. I belong to my people when I read my story as part of theirs, not apart from our collective history. Our social solidarity, our belonging together in mutual care and concern, is grounded in this common story that creates a community, for the ‘story of my life is always embedded in the story of those communities from which I derive my identity’ (MacIntyre 1981: 205). My story derives from other older stories, entangled in the past, even as it now meshes with the stories of those with whom I connect today—and with them we reach out together for our tomorrow.

When we are implicated in a common past, we can have a common destiny together. In owning responsibility for this past, we affirm our solidarity and our belonging together. This is why historical injustices must be addressed together in solidarity. To disown our involvement in them is to deny our historical past, to negate our identity that is embedded there. To imagine we can begin our lives with our slate wiped clean is to pretend that we can begin from nowhere.

We are not, and cannot be like the ‘Nowhere Man’ in the Beatles’ song. Identity is socially constructed in both a personal and a historical context. ‘No man is an island / entire of itself,’ wrote the poet John Donne. ‘Who I am is embedded in where I come from, and where I am going and with whom.’ Moreover, any real story must have a plot. It follows a path. It begins somewhere and goes someplace, or it remains a mere sequence of events, perhaps just ‘a tale told by an idiot full of sound and fury, signifying nothing’. But when we discover the plot of our stories, we realize how intertwined and interdependent our lives really are. If this interdependence becomes competitive and conflicting, however, our togetherness will be contentious and hostile, our solidarity instrumental and utilitarian—a solidarity for mutual advantage, not one in shared care and concern.

However, the more expansive and inclusive our story, the more intense and deeper our solidarity and belonging can be. For this, we have a rich tradition to draw on: the ancient Indic ideal of *vasudhaiva kutumbakam* (the whole

world is one family); the Islamic *al-khalq-u-'ayalullah* (entire creation is Allah's family); the openness of the Sufi pirs' *wahdat-al-wujood* (the essential oneness of existence); the bhakti sant-kavi's (saint-poet's) *sarva bhut daya* (compassion for all living things); the Christian heritage of unconditional love and service; etc. All of this is embedded in popular traditions of the subcontinent, though rather dormant at times. Regrettably, much of this is at the periphery of our lives today, exiled by the competitive pursuit of scarce consumer goods and comfort zones claimed by right.

In a competitive world, the preoccupation with upward social mobility for oneself and one's own precludes a solidarity with those beyond the fold. Caste, with its patriarchal hierarchy, and our religious traditions with their superstitions and blind faith do divide us into closed communities, at times in opposition and even in conflict with each other. Yet we have a rich folk culture and a sophisticated intellectual heritage to draw on and open our sense of solidarity to wider horizons, to reconstruct our social structures into a more cooperative and inclusive society.

The present public controversies and conflicts over reservation quotas must be resolved in a historical context that legitimates a threefold justice: reparatory for the past, compensatory for the present and restorative for the future. The encounter between Parliament and the Supreme Court risks running aground in the shallows of a cynical realpolitik of quota politics and judicial compromise. The basic structure of our Constitution does provide constraining limits to both sides of this contest, but ultimately the collective realization of our solidarity must provide the moral justification for preferential treatment of the weaker and vulnerable, the last and least among us. As one people, together, we owe each other such care and concern. To negate this solidarity is to disown our Constitution premised on it.

The story of our struggle for independence brought alive this sense of collective identity and solidarity. In the Constitution, we attempted to formalize and articulate this collective commitment. Without such an overarching framework of solidarity, we cannot contain the paradoxes of affirmative policies and the ambiguities of reserved quotas. After all, the basic social equalities mandated by the Directive Principles of State Policy

and the protection of the fundamental individual rights and liberties enshrined in our Constitution are viable and sustainable only with an explicit and transparent commitment to an understanding of justice as liberty, equality and solidarity.

Here we have positioned this discussion in such a holistic and integral quest for justice, and we continue this discourse in our presentation on minority rights and gender in the chapters that follow.

Equality Without Uniformity

HEALING OUR HISTORY ■ CONSTITUTING THE CONTEXT ■
 CONSTRUCTING IDENTITIES, CLAIMING RIGHTS ■ DIVERSE
 MINORITIES, DIFFERENT HISTORIES ■ DISCRIMINATION AND
 MARGINALIZATION ■ RELIGIOUS FREEDOM, SECULAR
 TOLERANCE ■ DALIT RELIGIOUS MINORITIES ■ INSTITUTIONAL
 BAROMETER ■ OLD PLURALITIES, NEW PLURALISM DIVERSITY IN
 UNITY ■ PARADOX OF PLURALISM ■ EQUAL DIGNITY, UNIQUE
 IDENTITY

HEALING OUR HISTORY

Saadat Hasan Manto's short story 'Toba Tek Singh' is a powerful indictment of the convulsive insanity we visited on ourselves when India was partitioned in 1947. As people caught on the wrong side of the Indo-Pakistani border began the tragic crossover, the confused inmates in the mental asylums of Manto's story are also being relocated according to their religion. 'But they had no idea where Pakistan was,' Manto writes:

That was why they were all at a loss whether they were now in India or in Pakistan. If they were in India, then where was Pakistan? If they were in Pakistan, how come that only a short while ago they were in India? How could they be in India a short while ago and now suddenly in Pakistan?

Whence the change when they had not moved? Bhishen Singh, once a landowner in Toba Tek Singh, resisted relocation but was forcibly taken and left on the border. Manto leaves us with a searing image: Toba Tek Singh, as he was called in the only home he had for the last fifteen years (the asylum),

straddling the border as he collapses on the narrow strip of no-man's land, refusing to cross over. The irony of the certified insane defying the insanity of the supposedly sane is a stark illustration of how the vulnerable and undefended fared in the aftermath of Partition.

The horrendous record of *Ethnonationalist Conflicts and Collective Violence in South Asia* (Tambiah 1996) would seem to confirm our worst fears of a local *Clash of Civilizations* (Huntington 1996) engulfing the subcontinent. The two nations born in the trauma of Partition were already three by 1971. Insurgencies and ethnic conflicts continue, threatening to unsettle the borders of the nation states in this region. The brutality with which the government put an end to almost thirty years of civil war in Sri Lanka only leaves future violence gestating in the resentment of outraged Tamils and the chauvinism of the victorious Sinhalese. India's North-east and Kashmir are seen by the locals as territories garrisoned by the Indian Army, while the Indians see these pieces of land as appropriated by the insurgents. Pakistan's northwest frontiers are convulsing in suicide bombings that are now engulfing the whole country. Bangladesh has its own home-grown ethnic conflicts with the Chakma, also known as the Changma, and other non-Muslims, which spill across the country's borders. The ethnic tensions in the mountainous interiors of Myanmar are being suppressed by a ruthless military dictatorship, but the Karen and other tribes are not quite subdued as yet.

In a large country like India, internal ethno-religious conflicts leave the minorities wounded and traumatized. The poisoned legacy of the divide-and-rule policy of the colonial government seems to have acquired a new dynamic with a momentum of its own. *The Deadly Ethnic Riot* (Horowitz 2001) has become a means by which to polarize a community for the electoral gains of extremist leaders on both sides. In attempting to enforce majority dominance, it precipitates minority consolidation. Such communal violence becomes an instrument of appropriating public space for essentially communal group purposes (Freitag 1990). Among the *Competing Nationalisms in South Asia* (Brass and Vanaik 2002), the most volatile tectonic fault line is between the Hindu and Muslim communities. Little

wonder that *The Production of Hindu–Muslim Violence in Contemporary India* (Brass 2003) becomes one more systematic manipulation of electoral politics within a procedural democracy. However, religious violence is not confined just to these communities. The Sikhs in 1984 and the Christians in Orissa (Odisha) over the past decade have been subjected to pogroms by Hindu extremists and others.

Yet however much we may blame the colonial divide-and-rule policy for the majority–minority divide in India today, we must ourselves own responsibility for the continuing communal violence after Independence, which so dramatically underscores the unresolved issues of Partition. As a people, we have not yet come to terms with that trauma. Its festering memories and contested history play into a politics of hate that mobilizes vote banks and consolidates antagonistic identities. The deepest roots of the communal divide lie in the sense of treacherous betrayal that people still attribute to that tragedy. As with the origins of many nation states, especially multinational ones, ‘history is a source of resentment and division between national groups, not a source of shared pride ... To build a sense of common identity in a multination state probably requires an even more selective memory of the past’ (Kymlicka 1995: 189), for wounds fester if they do not heal.

The Constituent Assembly of India made an honest attempt to break with this divisive past and the failure of the freedom movement to subdue or suppress the birth of two countries in the unified state once envisioned. In putting an end to separate electorates for religious communities, it sought to premise the new secular state on a territorial citizenship based on democratic rights and universal suffrage, civil liberties, and due process. This was an emphatic statement of equal human rights for all. However, the Constitution mandated special concern for the backward and the weak as a particular responsibility of the state. This found expression in affirmative-action policies and reserved quotas, as discussed in the previous chapter.

Following the same logic of protective discrimination, the Constitution guaranteed specific rights to minorities as reassurance against their fears of being overwhelmed by a ‘tyranny of the majority’ (Tocqueville 1862: 330).

Though separate electorates and reserved seats for religious minorities would be an anomaly in a secular state, protective rights for religious and linguistic minorities would be an expression of the principle of unity in diversity, a valued tradition in Indic civilization and culture. It also underscored another, more contemporary ideal, which the Constituent Assembly unambiguously endorsed: equality without uniformity.

In the midst of these genocidal paroxysms, the assembly's unanimous approval of minority rights was an extraordinary reassurance of solidarity and goodwill, and an emphatic negation of the two-nation theory. Any abridgement of these rights by the majority or any abuse by the minorities would betray the trust on which these were first premised. Doing so would play into the two-nation theory once again and undermine our constitutional secularism. Extremists on both sides seem to ignore this. For all these reasons and more, the courts have now treated minority rights as part of the basic structure of our Constitution.

Yet today these rights are under severe strain. On the one side, they are contested by those promoting a cultural nationalism, who challenge minority concessions on the ground of appeasement, and deride state secularism as 'pseudo'. On the other, they are stretched by minority communities, who oppose these rights' collective concerns to the common good, and impose their personal laws and social traditions on members, even in violation of their fundamental rights. There are escalating controversies over the legitimate interpretation of these rights: the parameters of state intervention for promotion and protection, reform and control; limits of autonomy for religious institutions and authority structures.

Fundamentalists and extremists on either side of the political divide now have increasingly divergent perspectives on such issues. The courts can only set legal limits to the controversy and hope the contestants respect them. They cannot resolve the underlying causes of the tensions in which the conflicts are rooted. This requires a proactive policy by the state to bring a constitutional justice to bear, so that the exercise of minority rights does not infringe on legitimate concerns of the majority but celebrates our diversity in an affirmation of the common good.

We need to find a pluralism for our plurality. Within our national borders, we have a bewildering number of distinct religious traditions and sects, as well as of written languages and oral dialects, of traditional mores and contemporary customs, of practised ethics and ascribed ethnicities. Any attempt to homogenize all these, even if such an act were feasible, is a recipe for disaster. To co-opt them into hierarchies of dominance–subservience would be blatantly unjust, if not perverse. A passive accommodation might bring a peaceful coexistence for a while. For, in contemporary society when communities are interdependent and interactive, their boundaries will be porous and shifting. The status quo cannot be maintained, especially in times of rapid social change.

Rather, we need an overarching ideology that respects group differences while not dissolving their distinctiveness. The Constitution is inspired by such a pluralism. But lest this position remain an empty legal formality, we need to authenticate it with a civic consensus on an understanding of pluralism and its implications for our society. But the starting point must be the historical context of minority rights enshrined in our Constitution itself.

CONSTITUTING THE CONTEXT

The tensions and conflicts between the subcontinent's two largest religious communities have been the focus of the 'minority question' for at least a century. This has escalated from the time of the introduction of separate electorates by the Government of India Act, 1909 (popularly called the Morley–Minto Reforms), to the tabling of the Report on Social, Economic and Educational Status of the Muslim Community of India by the Prime Minister's High Level Committee in 2006, chaired by a retired chief justice of the Delhi High Court, Rajinder Sachar, and still continue to do so.

Partition marked a critical turning point in this conflict, but it was hardly the denouement its proponents had expected it to be. For Pakistanis, it was the final acceptance and fulfilment of the two-nation theory that legitimized their state. Affirming the Pakistani identity as 'Muslim' meant constructing the other side as 'Hindu'. But for independent India, Partition was rather a

secession from the extended family and the rejection of a common inheritance.

Pakistan's contentious history has its taproot in the polarized and politicized religious identities that brought it to birth. Mounting a sleeping tiger is easier than dismounting without being mauled once it awakens. In India, too, proponents of such identity politics have been slow to learn this lesson. Culpability for the past is readily projected in the present onto the demonized 'other'. Little wonder, then, that the Pakistani and Indian versions of their national origins are unrecognizable to each other. They seem to record the story of another time, on some other continent. Such scapegoating becomes addictive, seeking newer demons and even creating them. If accessible devils cannot be found outside the community, they will be identified within. The subsequent history of the subcontinent re-enacts this self-destructive process, with wars between the two countries and genocidal clashes between religious communities within.

The Constituent Assembly of India was elected by the provisions for separate electorates at the time. It first convened in undivided India on 9 December 1946, under the darkening shadow of communal rioting across the land. Establishing a religiously neutral secular state in such a situation would mean coming to terms with the two largest religious communities which were in hostile confrontation with each other. The Cabinet Mission plan of 16 May 1946 had stipulated that 'the cession of sovereignty to the Indian people on the basis of a constitution framed by the assembly would be conditional on adequate provisions being made for the protection of minorities' (Shiva Rao 1967, vol. 5: 745–6).

Once Jinnah's Muslim League boycotted the Constituent Assembly, its demands were no longer on the agenda. Separate electorates were now perceived as the cause of division and antagonism. But with Partition, the Muslim minority 'left behind' in India was even more in need of reassurance. Their approximate proportion now was down from about a quarter of the overall population to about a tenth. They feared being dominated by the Hindu majority once universal suffrage made numbers decisive for an elected

government. They needed constitutional safeguards in terms of religious freedoms and protective rights.

In earlier committee reports and draft proposals, minority groups were included in the provisions for political reservations and reserved quotas. But following various amendments, they were left out in the final draft (Bajpai 2000: 1837). Thus, the Report of the Subcommittee on Minorities of 27 July 1947 (Shiva Rao 1967, vol. 3: 396), recommended reserved seats with joint electorates, reservations in public services and the appointment of independent officers by the President and provincial governors to report on the working of minority safeguards. This report was accepted by the Advisory Committee on 8 August 1947 (*ibid.*: 411) and adopted by the Constituent Assembly on 27–28 August. In February 1948, the recommendations found their way into the draft Constitution in Part XIV, Articles 292 and 296.

However, in the aftermath of Partition the feeling of the House had changed, and these recommendations were either amended or dropped. On 25 May 1949, Vallabhbhai Patel, after ascertaining the views of minority communities, concluded in the Constituent Assembly: ‘The time has come when the vast majority of the minority communities have themselves realized after great reflection the evil effects in the past of such reservation on the minorities themselves, and the reservation should be dropped’ (*CAD* 1950, vol. 3: 311). Religious parties were now on the defensive and in disarray, but the nationalist mood was unaccommodating. Religion was perceived to be divisive and communal. The assembly feared that religion-based political concessions might revive old antagonisms, and so they should have no place in a democratic secular state, which was the guarantor of religious freedom, social equality and cultural autonomy.

After Partition, the assembly was concerned with the integrity of the Union of India; religious diversity could not be at the cost of national unity. Since religion had been the basis of the country’s dismemberment, political safeguards for religious minorities might undermine national unity still further. A Constitution that envisaged ‘the elimination (or minimisation) of caste and religious groups as categories of public policy and as actors in

public life' (Galanter 1991: 559) could not compromise on concessions that undermined its vision. Reservations were therefore conceded as an exception only for those who historically had suffered from prejudicial discrimination and social deprivation, and even then as a temporary measure to bring them on par with others.

The secular state was perceived to bring equality to socially oppressed classes and to protect religious freedom for all. Hence, social backwardness, not religion, was the acceptable basis for reservations. However, to help preserve their community identity, religious and linguistic minorities were given the fundamental right to conserve their 'distinct language, script or culture' (Article 29.1) and 'to establish and administer educational institutions of their choice' (Article 30). In the assembly, K.M. Munshi had argued that 'this minority right is intended to prevent majority control legislatures from favouring their own community to the exclusion of other communities' (*CAD* 1950, vol. 4: 367).

Personal law was also retained, though the Directive Principles mandated the state to 'endeavour to secure for the citizens a uniform civil code for citizens throughout the territory of India' (Article 44). This represented a compromise between two extremes that still have to be reconciled in a common civil code, not necessarily a uniform one, but one that is sensitive to the cultural peculiarities of a community and is also respectful of the human rights of individuals.

There is a marked difference in the proposed pre-Partition concessions to minorities and the final outcomes in the Constitution. Whereas religious freedom became a justiciable fundamental right, minority rights became 'negative liberties': minorities were permitted to preserve their language and culture, but the state was not positively obliged to protect or promote them. In effect, the minorities were asked to trust the nationalist secular elites and the good sense of the majority community, rather than to claim enforceable protective rights or seek assurance on promotional policies.

As Sardar Patel, chairman of the Advisory Committee, had urged when moving the amendment to drop political reservations for minorities: 'Nothing is better for the minorities than to trust the good sense of and the fairness of

the majority, and place confidence in them' (*CAD* 1950, vol. 3: 272). Amidst the ruins that the Partition had visited on the country, this was a leap of faith. It must be reaffirmed and honoured today in the wake of the escalating communal violence haunting this land today.

The founding vision of the Constitution—of fundamental rights and democratic freedoms, of civil liberties and minority rights, of secular commitment and affirmative action, of linguistic diversity and religious pluralism—was a remarkable achievement in the context in which the Constituent Assembly debated these provisions—though the emphasis inevitably was on national unity within which minority diversity would be accommodated. As Sardar Patel emphatically affirmed in the assembly on 28 August 1949: 'We are building a nation and we are laying the foundation of one Nation, and those who choose to divide us again and sow the seeds of disruption will have no place, no quarter here' (*CAD* 1950, vol. 1: 271).

This was said in response to the demands for political safeguards for religious minorities. It is equally pertinent today as an indictment of the extremists in all communities, who play with identity politics of whatever kind, religious or linguistic, caste or regional. Given the history of separate electorates, politicizing these identities will only perpetuate religious and ethnic divisions and ignite violence. In the final analysis, the constitutional compact between communities can only be premised on trust. A betrayal of such trust feeds into pre-Partition fears and anxieties; but majority and minority communalisms thrive on keeping these alive. This is now a serious threat to the democratic secular state—'We the people'—founded with our Constitution.

CONSTRUCTING IDENTITIES, CLAIMING RIGHTS

Claims to preferential treatment for oppressed and deprived communities must be premised on criteria that identifies the basis of the social discrimination against these communities. There are multiple criteria on which such communities are categorized and at times negatively stereotyped and then socially disenfranchised. When such collective discrimination

becomes institutionalized in a society, whether formally or informally, then collective claims for affirmative action for such communities are justified.

Assuming a level field for all communities is perhaps as unjustifiable as assuming the same for all individuals. If preferential treatment is needed for vulnerable and disadvantaged individuals, surely they are also as needed for communities that suffer from prejudice and discrimination. But just as the more positive justification for affirmative action is a commitment to social equality and equity, so too is protecting and promoting minorities a commitment to social pluralism and diversity.

Caste, religion and language are three categories that most commonly identify communities in India. Caste is the most obvious basis of social prejudice in our society, though today communalism seems to overtake it. Our Constitution targeted caste when it sanctioned preferential treatment for SCs. The judiciary extended this in allowing a caste-based identification of 'backward classes'. STs, too, were given constitutionally sanctioned preferential treatment because of their extreme marginalization in our society.

To protect other vulnerable communities of religious and linguistic minorities, the Constituent Assembly legislated minority rights. Among the fundamental rights, our secular Constitution sanctioned the 'right freely to express, profess, practise and propagate religion' (Article 15) and 'the freedom to manage religious affairs' (Article 26). This implies specific individual and collective rights for religious communities. However, to subsume minority rights into universal human rights, even fundamental ones, does not guarantee the special protection vulnerable minorities need. Universal human rights are too general unless specified adequately in the context of minority needs.

This leads to the relevance of the constitutional guarantee that 'All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice' without any discrimination in state aid (Article 30). But no constitutional provision was made for collective political representation through separate or joint electorates, or for reserved quotas in public employment or educational institutions on the basis of religion or language. However, where

discrimination is prevalent in either of these, the negative liberties that such rights provide are plainly insufficient for an inclusive society in which diverse communities participate as social equals and are accepted as culturally different.

The constitutional basis and the judiciary's justification for caste-based reservations are precisely the collective discrimination and deprivation these caste communities suffer. But such discrimination and deprivation does not respect religious boundaries. Now, Muslims and Christians are justifying their demands for reservations on the same basis. There is no denying that in India collective discrimination has impacted upon religious communities far more drastically than on constitutionally recognized linguistic sections.

The lower strata in these religious communities experience a double discrimination, both religious and social, and so often suffer as much if not more deprivation as backward and scheduled castes. Indeed, since reservation quotas were extended to former Sikh SCs in 1954 and neo-Buddhists ones in 1990, religious minorities today see little justification in not extending these benefits to them as well on the same basis.

Now, even reservation quotas for the socially and educationally backward classes have become as divisive and contentious an issue as minority rights. Both are resented in India today by those who feel their rights are thereby diminished. The most exclusive and antagonistic collective identities are based on caste and religion. Yet as much as reservations are the only viable policy for our endemic hierarchy, respecting minority rights is the only reasonable response to our bewildering diversity. Both are different aspects of our quest for an egalitarian and pluralist society: affirmative action for economically and socially unequal communities, preferential treatment for culturally and religiously diverse minorities. Both are categories of vulnerable people who need collective support for an equality without uniformity.

One of the earliest threats to national unity was linguistic nationalism in south India, with the Dravidian movement's demand for Dravidistan. The movement's members perceived north Indian 'fundamentalism'—expressed in the emotive slogan 'Hindi, Hindu, Hindustan'—as 'Delhi Rule' and a

threat to their 'separate linguistic identity' (Omvedt 2003: 256). This fuelled anti-Hindi riots in Tamil Nadu. Allowing space for regional languages defused this threat.

After the States Reorganization Commission Act, 1956, linguistic diversity has come to be accepted as a source of national enrichment, in which each language will have its place. We now have twenty-two official languages, and Hindi and English are among them. The demand to impose Hindi as our national language does surface occasionally with the claim of exorcizing the hegemony of the English-speaking upper classes, but to non-Hindi speakers this is a very thinly veiled threat of replacing one hegemony with another, both equally alien to the South.

Unlike other secular nationalisms, India has not used a national language to promote a linguistic uniformity in their societies. Today, linguistic regionalism does express itself in a 'sons of the soil' chauvinism, but it is no longer a threat to national unity. Rather, we celebrate the phenomenal linguistic diversity that the *People of India* (Singh, ed., 1993–96, 6 vols) project documented as evidence of our unique diversity. But there is a crucial lesson in the way we as a multicultural nation state defused linguistic jingoism by respecting democratic language rights. This could be an inspiration to other linguistically diverse democracies, but closer to home it has critical implications for the way in which we treat our religious minorities.

Language and religion are both intrinsic dimensions of a people's identity and culture. Imposing an alien language on a free people will provoke opposition, and violent repression only compromises legitimate democratic rights. Without a vigorous multilingualism and a vibrant religious pluralism, the cultural and religious diversity of a society will not survive. Religious nationalism and fundamentalism seek to revive and impose their religious traditions on their own and on others. These are now a greater threat to our national solidarity and political unity than linguistic diversity ever was.

For historical reasons, the sticking point of minority rights has been religion, not language, and the most sensitive arena is Hindu–Muslim relations, which have become ever more contentious. History is reread to

project contemporary concerns into interpretations of the past and then demonize the 'other'. With electoral democracy, majoritarian politics has inevitably precipitated a minoritarian one. Once before, such communal politics cascaded into the two-nation theory, which finally resulted in the partition of the subcontinent.

Articulated in 1937 by V.D. Savarkar and espoused by Jinnah in 1940, the divisive politics premised on such a theory still remains a continuing agenda of an unresolved history and a dangerous presage for the future. Inevitably perhaps, these tensions can spill over into neighbouring Muslim countries and come back to India through cross-border terrorism. We must resolve this conundrum for ourselves, but first take responsibility for our part in this ballooning crisis.

Our secularism has been understood not as negation or as marginalization of religion from public life, but as a religious pluralism premised on substantive equality and mutual respect. However, a majoritarian 'cultural nationalism' aggressively seeks to impose a hegemonic uniformity by consolidating Hindu identity. A defensive Muslim community reacts similarly by militantly projecting a united Islamist front. Each provokes the other in an escalating cycle whose real beneficiaries are the extremists on either side.

Hindu communalists see themselves as nationalist and denigrate minority communalism as subversive. They project Muslims as the 'other' of the Indian nation, even as crypto-Pakistanis. Muslim fundamentalists demand religious freedoms from the secular state but are less sensitive to the freedoms of others, even their own coreligionists. The imposition of fatwas is a glaring instance of this. Both sides need to produce and reproduce enemies in spiralling tensions that severely compromises the common good of both the nation and their communities. This adds up to dangerous confrontations in communal violence that rampage through the land.

To conflate Hinduism with Hindutva is to obfuscate the difference between an ancient religious culture and a recent political ideology that seeks to gain popular religious legitimacy for a partisan, chauvinist politics. To reduce Islam to the terrorism of some jihadis is to blacken a whole religion with the same broad brush and stereotype its followers with the fanaticism of a few.

To identify India as Hindu, or Indian Muslims as aliens, negates a millennium-old tradition of Indo-Islamic culture, besides the numerous other cultural streams that have flowed into and vitalized the rivers of Indian civilization.

Today, Hindu ‘cultural nationalists’, once marginalized in the freedom movement, are back with their unfulfilled quest for cultural and political hegemony in Akhand Bharat, undivided India, and are upping the ante with their politics of divisive religious identities. Indian Muslims are retreating into a conservative and even aggressive fundamentalism. This is a replay of the two-nation theory, with the majority community aggressively asserting dominance and the minority one reacting aggressively as well to the fear of their enforced subservience.

The escalating religious conflict thus precipitated has been stayed by the better common sense of the ordinary Indian voter in two recent general elections, in 2004 and 2009. It has put extremists of all hues—saffron, green and red—on the back foot. The present parliamentary coalition, the United Progressive Front, promises greater stability than earlier ones, but we still know our politics is strewn with broken promises and hopes belied. Violent religious confrontations seem to be yielding diminishing returns, though unresolved differences on the legitimacy and scope of minority rights still simmer below the surface and threaten to erupt through the fault lines between these two religious communities.

All claims to individual and collective rights are demands by the claimants to have their identity recognized and their dignity affirmed. The denial of one or the other, as often happens to low castes or to religious groups in communal and sometimes even in secularized societies, is perceived as a threat of annihilation, whether intended or not. Inevitably, this generates dangerous political passions that construct and feed on exclusive, totalizing, solidary identities. Religious nationalism and fundamentalism thrive on such a negative politics of identity. Once, this precipitated the partitioning of the subcontinent. The memories of the massacres and displacement that followed are still very much part of the burden of history that we carry. To redeem that history and heal our trauma, respecting the

rights of minorities and the freedoms of others is a necessary condition, but not a sufficient one.

A democratic pluralism is written into the basic structure of our Constitution. This has been confirmed by an eleven-judge constitutional bench in 2002, which upheld previous major judgments on the principle of *stare decisis* (to stand by decided matters), going by the constitutional scheme. It affirmed minority rights in the context of constitutional secularism and pluralism:

The essence of secularism in India is the recognition and preservation of the different types of peoples. With diverse languages and different beliefs, and placing them together so as to form a whole united India. Articles 29 and 30 do not do more than to seek to preserve the differences that exist, and at the same time, unite the people to form one strong nation. (2002 8 SSC 481, para. 160)

Further clarifications were made specifically in regard to educational quotas and aided minority institutions, by a five-judge bench in 2003 (2003 6 SCC 697) and a seven-judge bench in 2005 (2005 6 SCC 537). These linguistic and religious communities need not doubt the courts as effective legal guardian of their rights as minorities.

However, we must extend the juridical discourse beyond the negative liberties of minority rights, to affirmative action policies that address the underlying causes which still sustain this divide. As with our languages, here too we need a pluralism to contain our diversity, wherein our diverse religious communities can freely participate as respected partners, equal but different, in an inclusive and pluralist society. For this, vulnerable minorities will need the protection of special rights and the support of affirmative action. But more pertinently, we must all construct fluid, multiple, inclusive identities, and defuse, if not disown, solidary, singular, exclusive ones based on religion and caste.

DIVERSE MINORITIES, DIFFERENT HISTORIES

Inevitably, the Hindu right's misguided attempts 'to erase the presence of religious or ethnic particularisms from the domains of law or public life and to supply, in the name of "national culture", a homogenized content to the

notion of citizenship provokes a defensive backlash from minorities' (Chatterjee 1994: 1768). In response to this, the right 'seeks to project itself as a principled modernist critic of Islamic or Sikh fundamentalism and to accuse the "pseudo-secularists" of preaching tolerance of religious obscurantism and bigotry' (ibid.).

Hindu–Muslim relations are still the persistent axis of communal violence in the subcontinent. The history of the four other recognized national minorities, Christians, Sikhs, Buddhists and Parsis, has been very different. They are too dispersed or constitute too small a proportion nationally to be a credible or sustained threat to the majority community. They are positioned differently in society. Christians and Sikhs do not have the kind of 'development deficit' that Muslim or neo-Buddhists suffer from. Parsis do not have a lower-caste stratum as do Christians and Sikhs. Buddhists and Sikhs are accepted as indigenous religious communities, unlike Christians and Parsis, who are classified as non-indigenous along with the Muslims. This despite the fact that all have been here for centuries, if not a millennium, and certainly longer than the neo-Buddhists, whose origins date to the conversion of Ambedkar in 1956 with his *navayana* (new vehicle, a contextual interpretation of traditional Buddhism adapted to the Dalits) and the Jat Sikhs founded by Guru Nanak (1469–1538) and its evolution into the Khalsa with Guru Gobind Singh later in 1699.

Faced with an increasingly militant majoritarianism, minorities today have their concerns and preoccupations in the hurly-burly of national life, for the construction of the 'hostile other' can be quite unpredictable. Dominant elites often establish and perpetuate their hegemony by demonizing the other and polarizing society into antagonistic communities. Thus, much in the same way as dominant majorities are constructed, 'minoritization' creates new minorities, a process from which no community is completely safe (Gupta 1999: 76–77).

The Parsis were originally Zoroastrian immigrants from Persia, who landed on the coast of Gujarat at Sanjan, near Bombay, in the tenth century. They have been prominent in our civic and national life, and have escaped minoritization. Today, their community may be too minuscule to create any

civil disturbance, yet in the nineteenth century, multiple Parsi–Muslim riots were recorded in Bombay city, in 1851, 1857 and 1874 (Palsetia 2001). As for the neo-Buddhists, they are subjected to collective violence, though this is caste-based rather than religious, between Dalit converts and dominant castes.

At the time of Partition, the Punjab was one of the bloodiest sites of the massacres. The Sikhs were the ‘sword arm’ of Hinduism, the militant defenders against Muslim marauders and avengers of Sikh honour. After Independence, first the demand for Punjabi Suba and their own state in the 1960s, and then the Khalistani secessionism in the 1970s, polarized a Hindu–Sikh divide and violently foregrounded Sikh religious and linguistic identity. This marked the beginnings of cross-border terrorism against India, maintained with Pakistani support and Canadian asylum. In an attempt to deal a fatal blow to the Khalistani movement, the Indian Army’s assault on the Golden Temple, the holiest of Sikh shrines, alienated even those Sikhs who were loyal to the Indian state. The 1984 pogrom against them in Delhi, following Indira Gandhi’s assassination by her Sikh bodyguards, brought back the terrors of the Partition massacres, from which the Sikhs had once fled to Delhi as refugees.

If the Hindu–Sikh divide has not festered into a permanent communal hostility, it is less due to state intervention than the healing balm of civil society’s involvement at many levels. Human-rights groups, voluntary agencies, people’s movements—all reached out to heal the wounded Sikh psyche. Today, the Sikhs are restored to their place in the national mainstream, symbolically expressed in the elevation of a Sikh as prime minister of the nation. As a self-reliant community, they have generally not depended on the state, and even in their greatest time of post-Partition tragedy, it was not the state so much as civil society that supported them against their tormentors. Surely, this is a lesson in communal relations to which we must return: the challenge to create a national community of communities, where each has its space and freedom, its identity and dignity.

Ashutosh Varshney, in his study of *Ethnic Conflict and Civic Life* across three pairs of cities—Aligarh and Calicut, Hyderabad and Lucknow,

Ahmedabad and Surat—asked:

‘What accounts for the difference between communal peace and violence?’ Though not anticipated when the project began, the pre-existing local networks of civic engagement between the two communities stand out as the single most important proximate cause. Where such networks of engagement exist, tensions and conflicts were regulated and managed; where they are missing, communal identities led to endemic and ghastly violence. (Varshney 2002: 9)

DISCRIMINATION AND MARGINALIZATION

The traumatized Muslim community in post-Partition India was quite leaderless, after their elites had emigrated to Pakistan. Their presence on the national scene was drastically diminished. Muslims were seen as having carved out a homeland from undivided India, and those who remained in India were demographically an even smaller minority. As a community they were on the defensive, still haunted by the burden of the past and its unhealed memories of a wounded history. With the growth of the Hindu right, they face increasing discrimination and prejudice. Communal politics has provoked and escalated communal violence against them, and they have reacted with a defensive fundamentalism, encouraged by a defensive leadership. This is the vicious circle of the marginalization of the Muslim community in a secular India. It is still the unfinished agenda of the ‘minority question’ that the Constituent Assembly sought to revolve.

The core recommendations of the Mishra Commission on Religious and Linguistic Minorities, constituted in 2004, identify minorities as eligible for reservations in terms of their pre-conversion caste origins. Such backward caste religious communities have been included in OBC quotas, but listing non-Hindu religious communities as SC has been problematic. Dalit Sikhs (in 1956) and neo-Buddhists (in 1990) were scheduled—the Constitution defines them as Hindus by default and places them under Hindu personal law, formulated in the Hindu Code Bills of 1955–56.

The Mishra Commission reflects the recent momentum for a further extension of the Scheduled Caste list, as demanded by Muslims and Christians. But this still has constitutional and political hurdles to cross. Reservation quotas on the basis of religion alone have been struck down by

the courts. The general welfare measures for minorities recommended by this commission are commendable. However, like other affirmative action recommendation for minorities, they still await implementation.

Using credible and extensive data, the Sachar Committee report convincingly exposes the systematic neglect of Muslims as a community. It crystallizes a new approach to the ‘Muslim question’, freeing it from the post-Partition syndrome that defined it for so long. It is a ‘Call for Inclusion’ (*Economic and Political Weekly*, 16 December 2006: 5096) premised not on particular minority rights, but on the universal democratic right of all to equal and participative citizenship, so as to preserve the Indian Muslim’s identity and cultural traditions.

Affirmative action is required to address the community’s ‘development deficit’—i.e., ‘deprivation in practically all dimensions of development. In fact, by and large, Muslims rank somewhat above SCs/STs but below Hindu OBCs, Other Minorities and Hindus (mostly upper castes) in almost all indicators considered’ (Sachar 2006: 237). This data exposes the hidden agenda of fulminations about minority ‘appeasement’. If data disaggregated by caste were available (i.e., Ashrafs as equivalent to Hindu upper castes, Ajlafas to OBCs and Arzals to SCs), many of the comparative differences would be even more stark.

Moreover, Muslims ‘carry a double burden of being labelled as “anti-national” and as being “appeased” at the same time’ (ibid.: 22). Without positive measures, as the country’s growth rate quickens, the relative differences will only widen. However, rather than falling back on religion-based reservations, the committee proposes some overarching ‘Perspectives and Recommendations’ (Ch. 12) in education, with scholarships and other social-welfare initiatives. Among the more significant are the creation of a reliable database (ibid.: 251), an Equal Opportunity Commission (EOC) ‘to look into the grievances of the deprived groups’ (ibid.: 254) as some other countries have, and measures to encourage diversity (ibid.: 255).

The Action Taken Report on the Sachar Committee’s findings submitted to Parliament focused on geographic targeting in order to provide basic amenities to 90 per cent of the districts with a substantial Muslim population.

According to the 2001 census, out of the 626 districts in India, eleven have more than 50 per cent Muslims, thirty-eight more than 25 percent—together covering a third of the Muslim population—while 47 per cent live in 182 districts where they make up 11 to 25 per cent of the population. Even before the report was submitted, the prime minister had proposed a fifteen-point programme for Muslims and, after its submission, a seven-member high-level committee to oversee its implementation.

There has been a remarkable change in ‘The Contemporary Muslim Situation in India’ (Alam 2010). This has gone from identity politics to inclusive civics, from religious exclusion to secular alignments, from cultural conservatism to political awareness. There has also been an evolution from the traditional community leadership (mostly clerics and feudal elites that represent the Ashraf hegemony) to new political formations such as the All India Muslim OBC Organization (AIMOBCO), which held its national convention in New Delhi in 1996—much to the discomfiture of the older leadership, who accused the AIMOBCO of further dividing the Muslim community on caste lines. In 2009, the AIMOBCO, which speaks for the Ajlafs and Arzals, decided to launch a nationwide Muslim Reservation Empowerment Movement.

The marginalization of the Muslim community illustrates the worst in identity politics; the Muslim community has been caught in the vicious circle of an aggressive Hindutva demonizing them, and their own defensive response, thus isolating themselves. This becomes a self-fulfilling prophecy. Now, there is a new politics at work, ‘A Different Jihad’ (Ahmad 2003), a Battle for Equality, *Masawat ki Jung* (Anwar 2001). The Babri Masjid–Ram Janmabhoomi feud epitomized the old politics; the Sachar report defines the terms of this engagement for the new. Implementing its recommendations could redefine the Muslim question and majority–minority relations as well.

RELIGIOUS FREEDOM, SECULAR TOLERANCE

The sticking point for communal tensions with the Christian minority has been religious conversions (Heredia 2007). In independent India, this has boiled over into riots and pogroms against defenceless Christians. Many

incidents of communal violence still go unnoticed by the national press. The Sangh Parivar, with its Hindutva inspiration, has been upping the ante on the level of violence against Christians, and evangelical Christians, with their proselytizing, provide a ready excuse as well. More recently, the brutal atrocities and savage intimidation of Christian adivasis in the Dangs of Gujarat, in 1998 and 1999, were a 'rehearsal' for the pogrom against Muslims in the state on a far larger scale after the Godhra train burning on 27 February 2002. Kandhamal, Orissa, in 2008 was a 'repeat performance' in almost the same sinister detail, but did not yield the same electoral dividend to the perpetrators as did the genocide in Gujarat.

As yet, Christians have not been seriously accused of fomenting a third nation on the subcontinent. The numbers just do not add up. Though such apprehensions were expressed in the Madhya Pradesh Report of the Christian Missionary Activities Enquiry Committee of 1956 (popularly called the Niyogi Report). Proselytization by Christian missionaries among adivasis would eventually create an 'agitation for Adivasisthan ... with a view to forming a sort of corridor joining East Bengal with Hyderabad, which could be used for a pincer movement against India in the event of a war between India and Pakistan' (Niyogi Report, Ch. 1: 9). Ironically, in 1971, East Bengal seceded from Pakistan as Bangladesh, and it was the BJP-led National Democratic Alliance (NDA) that established Chhattisgarh (1 November 1999) and Jharkhand (15 November 1999) as states.

Post-colonial Christianity is still conflated with western imperialism, much as post-Independence Islam is with foreign conquerors. Their *punyabhumi* (holy land) is abroad, so Bharat cannot be their *pitrubhumi* (fatherland). This is a throwback to the *Hindutva: Who is a Hindu?* (1989) of V.D. Savarkar, first articulated in 1923 and now revived as the cultural nationalism of the BJP (Bharatiya Janata Party). But this is anti-constitutional, because citizenship in our Constitution is premised not on ethnicity but on territory.

The debate on conversions was settled in the Constituent Assembly. Though the final version of the draft Constitution (Clause 13) included 'the right to freely profess, practise and propagate religion', the word *propagate*

was sought to be modified by specifying that conversions ‘brought about by coercion or undue influence shall not be recognized by law and the exercise of such coercion or influence shall be an offence’ (Shiva Rao 1967, vol. 2: 174). However, *undue influence* was considered too vague and the clause unnecessary, and so finally it was dropped. Underlying the Constituent Assembly’s consensus was a non-justiciable compact that implied Christian restraint and transparency as well as Hindu openness and tolerance. But with the anti-conversion laws, euphemistically called Freedom of Religion Acts, the consensus has been faulted; with riots and pogroms, it is now in urgent need of reconstruction.

In 1954, the Indian Converts (Regulation and Registration) Bill was proposed. But due to Nehru’s opposition, it was rejected on 2 December 1955. Following the Niyogi Report, the Orissa Freedom of Religion Act, 1967, and the Madhya Pradesh Dharma Swatantrya Adhiniyam (Freedom of Religion Act), 1968, were passed. In 1972, however, the Orissa Act was found to be *ultra vires* (beyond the powers) of the Constitution by the high court there, though in 1974 the Madhya Pradesh chief justice did uphold the Madhya Pradesh Act. Finally, in 1977 the Supreme Court sided with the Madhya Pradesh High Court and ruled that what Article 25 (1) ‘grants is not the right to convert another person to one’s own religion, but to transmit or spread one’s religion by an exposition of its tenets’ (AIR, Supreme Court, 1977: 908–12). Similar legislation followed in Arunachal Pradesh in 1978, in Gujarat in 2006, in Himachal Pradesh in 2006, and in Rajasthan in 2008, some of these even during Congress rule.

The Supreme Court affirms the constitutional right to propagate one’s religion, and the freedom of conscience in choosing one’s religion, and consequently the freedom to be converted. But it negates any fundamental right to convert another. In other words, the right to freedom of conscience implies the corresponding duty to respect the conscience of others. However, a community’s right to protection for their religion must be weighed against a member’s right to freely choose or change one’s religion. The sensitivity and openness this requires cannot be a matter for the law; it is best dealt with in civil society. This is where our constitutional secularism becomes crucial.

In 1976, the Constitution was amended to include *socialist* and *secular* in the definition of the Republic of India as 'sovereign' and 'democratic'. As part of the Constitution's fundamental structure, this cannot be changed even by Parliament. It was meant to stymie the Hindu right and other fundamentalist religious groups. Though the Constitution has not defined these terms, Indian secularism has acquired its own special features. It is not just the western separation of church and state, expressed in the Nehruvian *dharma nirapekshata* (equal distance from all religions) but more the Gandhian *sarvadharmā samābhava* (equal respect for all religions). The first is a negative understanding of secularism in which religion would have only a marginal role, if any, in public life. The second is more positive in demanding religious tolerance while allowing religion into the public domain, though not necessarily into the political one.

This gives religion a respected role in civil society but not any political one in the governance of the state. When a religious community projects a religious agenda onto a political one, religious tolerance will be the first casualty and religious conflict inevitable in a pluri-religious society. Most religious differences and conflicts are best settled by the institutions of civil society. Once they are dragged into the political arena, the compulsions of vote banks will inevitably escalate any conflict.

Religious tolerance is the precondition for any religious practice or presence that impinges on the public domain. Indeed, the necessary condition of legitimate freedom is respectful tolerance. But in any civilized society, the limits of tolerance must be set by the individual and collective rights of citizens. The constitutional debate on religious conversion and freedom of conscience must be placed in this context (Heredia 2007). The Gandhian 'sarvadharmā samābhava' is pertinent to all religious traditions.

Numerous violent conflicts between religious communities are testimony enough, if it were needed, that tolerance is not the privilege of any community. Rather, a sustained struggle is needed to maintain some minimum level in the rush and tumble of our politics. Only when there are diminishing electoral returns for engaging in religious polarization will political leaders cease to invest in this divisive and dangerous game. The general elections in

2004 and 2009 are indicators that the point of diminishing returns may well have been reached.

DALIT RELIGIOUS MINORITIES

In his pre-conversion quest to find a place of acceptance and equality for the Dalits he planned to lead out of the Hindu fold, Ambedkar sounded out the leaders of other religious communities, some of whom had invited him to join them with his followers. However, he found all of them to be caste-ridden, and there could be no real assurance of equality for his followers in any of them. So he chose to embrace Buddhism, which was all but defunct in India, and to create a neo-Buddhist community.

Ambedkar was very aware that conversion at the time would deny his people the advantages of SC reservations, which were not available to Buddhists then. The 'untouchable' castes were scheduled because they had been subjected to this dehumanizing practice in Hinduism. The constitutional abolition of 'untouchability' by itself does not change the material conditions of discrimination and deprivation such caste communities suffer; hence, preferential treatment for these ex-'untouchable' Hindus was sanctioned.

The Constitution envisaged two kinds of inclusive policies for an egalitarian, participative democracy: for caste groups at the bottom of the social hierarchy that were excluded and deprived; and for minority religious and linguistic communities that felt marginalized and vulnerable by the majority. The question of overlap between such caste and religious categories was not raised in the Constituent Assembly. But sooner rather than later it had to surface, for caste is a core category in all the religious communities in the subcontinent, even among those with explicit egalitarian teachings. The prevalence of caste among minority communities, particularly Muslims, Christians and Sikhs in India exemplifies this anomaly.

The first SC order, in 1936, was based on 'untouchability' and restricted to Hindus, the understanding being that this was not a practice in other communities. The Presidential Order of 1950 re-enacted the list (Galanter 1991: 132, 144) and retained the religious restriction: 'no person professing a religion different from Hinduism shall be deemed a member of a Scheduled

Caste' (Constitution, Scheduled Caste Order, 1950: no. 2). Given the Presidential Order, 'the courts have upheld exclusion of non-Hindus without reaching the broader question of religious discrimination. Nor have they addressed the factual question of the effect of conversion in dissipating the conditions that lead groups to be listed as Scheduled Castes' (Galanter 1991: 144).

Thus, in 1950, Dalit Sikh castes (Mazhabis, Ramdasias, Kabirpanthis and Sikligars) were put on the schedule, and the remaining Dalit Sikh castes were added in 1956. Though the Supreme Court has rejected the inclusion of Buddhists in the meaning of 'Hindu' (AIR 1965 SC 1179), in 1990 neo-Buddhists were included. But Muslim and Christian Dalits are still waging their struggle for inclusion.

The Sikh religious teachings do not sanction caste, nor is 'untouchability' endorsed. The community meal, the *langar*, served in the gurudwara is meant precisely as a negation of caste pollution. Since Sikhs were under Hindu personal law as formulated by the Hindu Code Bills of 1955–56, they are legally 'Hindu' by default. So, including Sikh Dalits as SCs on this basis while excluding others would mean that 'SC reservations are in effect a system of reservation for Hindus' only (Mukul Kesavan in *The Telegraph*, 13 January 2007).

Political compulsions were involved in addressing the Sikhs' fear that these Dalits would leave their religious fold to benefit from SC reservations. Similar political compulsions would hold for the neo-Buddhists. Since their conversions were far more recent, the danger of relapse was perhaps less; the compulsions were more to win political favour with the neo-Buddhist community.

'Untouchability' as an indicator of ritual pollution translates into ever more complex and subtle practices of discrimination and exclusion in the changing conditions of today. Using ritual 'untouchability' as the primary criteria for listing SCs in such circumstances misses the real issue of social oppression and backwardness that similarly place caste communities' experiences. All our religious traditions are infected with such caste oppression. Converts often continue to suffer the same or even worse caste

oppression as they did in their Hindu community of origin. Whatever else their conversion may mean, it does not change the material reality of their social situation. It is on this basis that Muslim and Christian Dalits are now demanding inclusion in the schedule. Their situation is clearly not different from that of the Sikh and Buddhist Dalits.

An argument can be made that these communities, with their egalitarian religious beliefs, are not on the same page as Hindu SCs. They should draw inspiration from their religious faith rather than expect their upliftment to come from outside their community. But this does not hold water. Hinduism today, except for a few traditional and conservative leaders, no longer affirms caste hierarchy as a matter of religious faith. Indeed, some deny it ever was. Yet where there is such a disjuncture between belief and practice, it cannot be ignored or wished away. The same is true of gender equality. Moreover, Sikh and Buddhist Dalits were scheduled less in response to the demand of these Dalits themselves than as an initiative from others in that religious community and in society outside. Christian and Muslim Dalits have initiated their mobilization for SC status, and this makes their demand that much more pertinent and poignant, particularly because of a double discrimination due to their religion and their caste.

Unfortunately, neither the legislation nor the politics are in place as yet to realize these demands, but the movements for SC status are gaining momentum, spearheaded by the resurgence of Dalit consciousness among Christians and Muslims. The arguments are well founded, and the political clout to make them effective is being mobilized. Christian Dalits have the official, explicit support of the All India Christian Council (AICC), and the Catholic Bishops Conference of India (CBCI), and their campaign has intensified since the 1990s. The National Commission for Minorities (NCM) status report on Dalits in Muslims and Christian Communities reflects the greater 'extent of mobilisation and political consciousness amongst the Dalit Christian community in comparison to Dalit Muslims, although the latter have also been organising of late' (NCM 2008: 67). In fact, Muslim Dalits are 'unquestionably among the worst off Dalits, in both the rural and specially the urban sector' (ibid.: 79).

In a case filed by a Tamil Christian Dalit against the discriminatory exclusion of benefits to his community, the Supreme Court ruled:

It is not sufficient to show that the same caste continues after conversion. It is necessary to establish further that the disabilities and handicaps suffered from such a caste's membership in the social order of its origin—Hinduism—continue in their oppressive severity in the new environment of a different religious community (AIR 1986 SC 73).

This is the data that needs to be mustered, now that 'the Courts seem to have been quite willing to concede the point that caste survives conversion, and that despite professing faith in a religion which has no scriptural sanction for caste distinctions, may continue to be identified and treated as a member of the original caste' (NCM 2008: 65).

In 1996, the Congress attempt to bring a bill giving Dalits equal rights regardless of their religion was thwarted in Parliament by procedural manoeuvres. By 2002, the opposition to the inclusion of Muslims and Christians in the SC list had strengthened with the BJP-led National Democratic Alliance in power. Hindu SCs fear competition by better-educated Christian Dalits once they are included in the schedule. However, the real question of the deprivation and discrimination of Muslim and Christian Dalits must be addressed with reliable and credible evidence. Today there is more than enough data available to be used for this purpose.

The National Sample Survey Organization report for 2004–05 estimates that Muslim and Christian Dalits together were 'under three million, constituting about one-and-a-quarter per cent of all rural Dalits and two-and-a-quarter per cent of all urban Dalits' (NCM 2008: 82). A convincing case is made by the National Commission for Minorities report:

There can be no doubt whatsoever that DMs and DCs [Dalit Muslims and Dalit Christians] are socially known and treated as distinct groups within their own religious communities. Nor is there any room for disputing the fact that they are invariably regarded as 'socially inferior' communities by their co-religionists. In short, in most social contexts, DMs and DCs are Dalits first and Muslims and Christians only second. (NCM 2008: 78)

The commission emphatically concludes:

[The] body of evidence when taken as a whole is unambiguously clear on the fact that *there is no compelling evidence to justify denying SC status to DMs and DCs*. If no community had

already been given SC status, and if the decision to accord SC status to some communities were to be taken today through some evidence-based approach, then it is hard to imagine how DMs and DCs could be excluded. Whether one looks at it positively (justifying inclusion) or negatively (justifying non-inclusion), the DMs and DCs are not so distinct from other Dalit groups that an argument for treating them differently could be sustained. In sum, the actual situation that exists today—denial of SC status to DMs and DCs, but according it to Hindu, Sikh and Buddhist Dalits—could not be rationally defended if it did not already exist as a historical reality. (NCM 2008: 81; emphasis in text)

Earlier, the Mishra Commission report, tabled in 2007, had mooted such an inclusion. The Sachar Committee was more cautious, but the far-reaching data it collected establishes a watertight case for vigorous affirmative action for Muslims. The data on the Christian community is less official but not less credible or extensive. The Muslim and Christian Dalit movements are determined to put the politics in place so that the legalities and, if necessary, even constitutional amendments can follow. The reluctance of the state and the courts to extend Dalit reservations to Muslims and Christians on the basis of their religion, while granting the same to other non-Hindu Dalits, is an anomaly in a secular state. Rather, the decision as to who should qualify for affirmative action needs to be based on the reality of their deprivation and marginalization, not their religious affiliation or, for that matter, their caste origins, except when these are markers of the oppressive realities from which they suffer.

INSTITUTIONAL BAROMETER

The Mohammedan Anglo-Oriental College was founded in 1875 by Sir Syed Ahmad Khan (1817–98); in 1920, it was recognized and established by the colonial state as Aligarh Muslim University. However, the Aligarh Muslim University Act, in 1981, granting the institution minority status and allowing it to reserve 50 per cent of its seats for Muslim students, was struck down by the Allahabad High Court in 2005. On appeal, the Supreme Court in 2006 struck down Section 1 and Section 5 (2) (c) of the AMU Amendment Act, by which the status of minority institution was accorded to the university, observing that these provisions were ultra vires of the Constitution. It agreed with the single judge of the Supreme Court in the Ajeez Basha case in 1968,

which had taken the view that AMU was not a minority institution and that enactment of a law by Parliament could not overrule the judgment. The bench in 2006 made it clear that admissions for the 2006–07 session ‘will be free to all’. However, granting limited relief, it said that students admitted earlier under a quota system would continue to study in the university (*The Hindu*, 6 January 2006). And there the matter still stands. Religion-based quotas for universities established and funded by the state were not recognized by the court.

Article 30 of the Constitution gave to ‘all minorities, whether based on religion or language ... the right to ‘establish and administer educational institutions of their choice’. Since then, various judgments of the courts and Acts of Parliament have reaffirmed and spelt this out. In 2002, an eleven-judge bench left the matter of specification of minorities to the states. A majority religious or linguistic community in a state would not be a minority there, though it may be one at the national level.

More recently, in the post-Mandal initiatives on extending reserved quotas, judicial review and government legislation have put minority educational institutions beyond the purview of such reservations, even though these institutions are state-aided. But contentious issues still arise. Minorities at times overextend their rights, and this can lead to excesses and abuse of minority rights. But there have also been unfair restrictions and prejudicial interference in the administration of these institutions by governmental agencies.

To oversee and assist these institutions, the central government constituted the National Commission for Minority Educational Institutions, in 2004. Its mandate was further amended in 2006, and in 2009 another amendment was proposed. These are meant to fine-tune the mandate of the commission not just vis-à-vis the minority community itself but also against a certain majoritarian antipathy to and the impatience of some secular rationalists with these institutions. Minorities then react defensively and turn inwards.

How educational institutions qualify for minority status is still a much contested classification. These have been founded by their communities with much sacrifice and administered at great cost to serve their communities.

Giving their community a priority is reasonable and legitimate; however, to focus only on their own and neglect the service they do for society at large, and the goodwill thus gained, would be a disservice to their own community itself. Such exclusivity would isolate their people from society and close them off from the opportunities opening up there for them. Fortunately, there is now a certain sensitivity in society towards minority educational institutions. The service they do, not just for their own communities but for society as a whole, is better recognized and appreciated. Indeed, the acceptance and treatment of minority educational institutions is a good barometer of minority rights in a country.

OLD PLURALITIES, NEW PLURALISM

In the bilingual state of Bombay, the Shiv Sena, then a fledgling ‘sons of the soil’ political party, once targeted Gujaratis there in order to mobilize the support of the local ‘Marathi *manoos*’ for the formation of their own state. After the bilingual Bombay state was divided, South Indians in the suburbs were attacked. Eventually, the Sena came together with the Hindutva brigade of the BJP to target Muslims during the 1980s, and this alliance was voted to power in 1995. But as electoral returns for such jingoist politics diminished and the alliance lost power, the Sena itself split.

The breakaway Maharashtra Navnirman Sena (MNS) found an easy target in north Indian migrants to the city—taxi drivers from Uttar Pradesh, Bihari hawkers, and mostly those involved in occupations that unemployed Shiv Sainiks consider beneath their dignity. The parent Shiv Sena could oppose this only at the risk of losing their Marathi vote bank, or support it at the risk of losing their BJP allies, who depend on Hindi-speaking north Indians in the city for support. The MNS was only using the same identity politics that had worked so well for its parent body.

The Congress government watched gleefully from the sidelines as the saffron alliance in Maharashtra came under real threat. But through all this political *naatak* (drama), the Marathi *manoos* still feel marginalized in the city. The short-lived electoral gains do not resolve the inherent contradictions of such chauvinist politics.

The bewildering diversities of our society were once contained and managed by a feudalist caste hierarchy, where each group had its place and kept to its niche. This was precisely why caste was so pervasive and resilient. Individuals were constrained in their communities, and communities constrained in a hierarchical society. Mobility for individuals was within their group, and for groups within the hierarchy. Modernization has now precipitated a drastic upheaval with the systemic change it brings. It is quite possible that caste and feudal structures may actually mutate for the worse. A democratic, socialist, secular India now needs a new overarching consensus to facilitate the participative inclusion of communities and individuals, in an equality without uniformity, where each community can keep its own identity and dignity.

The challenge is not just from fundamentalists who would privilege their own community over all others, but also from modernists who would meld diverse communities into one amorphous national amalgam. For, ‘the furnaces of modern national and empire building either absorb cultural difference in their alchemy or expel them’ (Young 2007: 17). Rather, we now need a new liberal pluralism for our old traditional plurality, where equal dignity and unique identity is the norm. To be sure, our diverse traditions are at times contrary and contested, and often carry an unsavoury burden from the past. But rather than becoming imprisoned in them, much less glorifying them, we need to critique, reconstruct and carry forward the best in our heritage to challenge the modernist pathologies.

Gandhi did this with ahimsa and satyagraha, in confronting the contemporary violence and contradictions of colonialism, just as Rabindranath Tagore’s deep humanism is grounded in the soil of India. Today, the Jain concepts of *anekantavada* (the many-sidedness of truth) and *syadvada* (the interrelatedness of all things), the Buddhist outreach in *sarvabhutadaya* (universal compassion), the advaitic relativizing of *mayavada* and *avidya* (literally, illusionism and ignorance respectively) the Indic ideal of *vasudhaiva kutumbakam* (the universal family)—all this must be reconciled and synthesized with the materialistic rationalism of Charvaka,

and with the religious pluralism and cultural syncretism of our Sufi–Bhakti heritage.

Our Constitution defines the contours for such a consensus, but the real challenge is to draw

upon available and still surviving traditions of togetherness, mutuality and resolution of differences and conflict—in short, traditions of a democratic collective that are our own and which we need to build in a changed historical context. This is the basic political task facing Indians—the creation of a civil society that is rooted in diversity yet cohering and holding together. (Kothari 1991: 29)

In fact, ‘the willingness to accept diversity and to be favourably disposed to considering frameworks of multicultural accommodation constitute the basic minimum, without which issues of development, and at times even survival, of democracies in the region may be seriously jeopardized’ (Mahajan 2005: 310).

However, the BJP, with its majoritarian ‘cultural nationalism’, dismisses both the Nehruvian and Gandhian interpretations of constitutional secularism as ‘pseudo’. Instead, it proposes its own ‘positive secularism’ expressed in the slogan ‘justice for all, appeasement of none’, an obfuscation that hides more than it reveals. The BJP is the political arm of the RSS, after all, which has its origins in the narrow communal ideology of V.D. Savarkar’s Hindutva.

This is the antithesis of liberal pluralism, which is the ultimate ideological safeguard for minorities in a nation state. It is also quite alien to the popular religiosity of our people, with its multiplicity of religious traditions and broad civilizational world views. It smacks of a nativism that manipulates Hindu hurt and upper-caste/class anxiety in order to mobilize a pan-Indian Hindu majoritarianism towards partisan ends. However, such biased ideologies are always open to ever narrower appeals, whether based on region or language, religion or caste. In our multicultural, pluri-religious society, such an aggressive and intolerant politics of identity easily becomes a politics of hate. And soft targets are not hard to find.

The heterogeneity of Indic civilization once served as a common meeting ground for diverse historical or religious traditions, of different regional caste, and language groups of the subcontinent. It is now under severe threat from an exclusivist and partisan identity politics. A rationalist modernity would homogenize such identities into a national one. To enforce this, modern states negate vernacular diversities that come in the way with an 'ethnocide', the destruction of distinctive ethnicity. Indeed, national languages replacing regional ones are but one instance of this. All across north India, official Hindi has reduced regional languages such as Maithili, Magadhi, Bhojpuri, Avadhi and Rajasthani to mere local dialects.

With pluralism, 'societal diversity enhances the quality of life, by enriching our experience, expanding cultural resources' (Falk 1988: 23). But we need to look beyond the responsibility of the state to protect diversity. Emperor Ashoka (265–32 BCE) spread his stone edicts enjoining tolerance all over the land. Akbar the Great (1556–1605) held inter-religious discussions in his *ibaadatkhana* (house of worship) to defuse religious tensions and promote social harmony in his empire. But this was in the context of the relevant Buddhist and Sufi–Bhakti traditions in those societies, for pluralism and tolerance cannot be legislated in an intolerant and hostile social context. Rather, they must be facilitated by a deeper civic consensus.

Indic civilization was hardly the creation of a political state. It certainly could not have been created by a nation state. We must recapture that vision, and not just preserve but promote and even celebrate our diversity, threatened as it is today by a homogenizing nationalism and segregating communalism. However, in a multi-nation state, 'what really matters is not that people share a national identity, but that they can share a "public culture"' (Miller 1993: 212, n. 26). No legislation can anticipate how cultures can be 'deeply oppressive in ways that neither involve minority rights nor formally violate political and civil liberties because of the values or social roles they inculcate' (Post 1997: 36).

A 'plural' society is one that includes diverse groups and communities in some minimal social order. 'Pluralism' as a response accepts this plurality, integrating it into a larger unity, not reducing it to a uniformity. Traditional

hierarchies managed such diversity by imposing a dominant social perspective or world view that was internalized and accepted. Open dissenters were deviants or heretics.

Given the complexity and scale of modern societies, this is no longer possible. It would bring instability and tension that will require even more violent levels of suppression to contain, and the escalation may spiral out of control. Pogroms and genocides are testimonies to this. A liberal-democratic society must be premised on consensus, not coercion. The deeper the commitment to such a consensus, the more stable and sustainable will it be; the more comprehensive this consensus, the more viable and even creative will be the pluralism premised on it.

Once it is accepted that ‘societal diversity enhances the quality of life, by enriching our experience, expanding cultural resources’, then protecting minority cultures ‘is increasingly recognized to be an expression of overall enlightened self-interest’ (Falk 1988: 23). Unfortunately, some still consider pluralism a necessary evil, to be tolerated since it cannot be dismissed. But this is to value uniformity over unity. Rather, in giving space for diversity with dignity, pluralism provides a higher level of unity. The richly diverse religious and cultural traditions of this land are a remarkable witness to this.

‘Unity in diversity’ is the official policy in India, providing the basis for minority rights. But if Indic civilization is to be the historical and cultural foundation for the Union of India, then we will need a ‘diversity in unity’—foregrounding diversity as the necessary, though not the sufficient, condition for our unity and national identity, not vice versa. However, a liberal-democratic pluralism as an alternative to a traditional hierarchic one is easily manipulated for narrow political gains or subversive communal interests, especially in the context of the people’s rising expectations sweeping through the land.

PARADOX OF PLURALISM

The politics of interest, situated in the domain of political economy, mobilizes people around what they want. The politics of identity, located in religio-cultural traditions, motivates them on the basis of who they are. In any

society, the two impact each other, for better or worse. Collective identities mobilize group interests, and these interests in turn consolidate corresponding identities and their concerns.

If legitimate interests are not addressed, and if the distribution of and access to wealth and power becomes increasingly unequal and oppressive, then discontent will fester and spill over into the religio-cultural domain. If real concerns are not met, if group differences are not respected and their distinctive identities go unaffirmed, then the politics of identity becomes a fertile ground for the collective violence of communalists as a favoured vehicle for redress. The neglect of addressing legitimate interests and real concerns escalate in tandem and conceal each other.

In a multi-nation state, mediating this political imbroglio creates a paradox too often unacknowledged by nationalists of all kinds, modernist or traditionalist, religious or secular. After all, the same state, as the guarantor of individual and collective rights, is also charged with constraining the violations of its own impositions, which often are not just against the interests of diverse communities but also a threat to their identities as well. This is the paradox of pluralism: 'finding a way to liberalise a cultural community without destroying it' (Kymlicka 1989: 170).

In India, identity politics mobilized around caste and religion have now become the most violent and dangerous threat to our cultural diversity and our national unity. A uniform national identity, whether secular or religious, cultural or ethnic, would further exacerbate the problem by suppressing rather than subsuming diversity identities into an enriching unity. This is what pluralism must mean in practice.

Religious violence and caste conflicts severely undermine an integrative pluralism, polarizing society for immediate electoral gains. This further multiplies the divides and deepens the fissures in society. For, when multiple individual identities are subsumed into an exclusive and totalizing collective one, opposed to other groups and their identities, this sounds the death knell of any kind of cultural pluralism in society.

A liberal democracy is prone to this subversion by religious nationalisms and fundamentalisms of various hues. Moreover, in a democracy, legal

prohibitions play into the victim syndrome of such groups and are generally ineffective. If such legality is carried too far in a democracy, they can undermine its liberal basis. Instead, the real issues underlying grievances must be defused and resolved in civil society.

A long-term perspective demands a ‘politics integration’ that will bring together diverse communities in a social solidarity, which is premised on a civic consensus to sustain a viable pluralism. It calls for inclusive, multiple identities, both for individuals and groups, identities that are layered and prioritized according to the context, around a core identity that gives stability and continuity to the person and the group. This will demand flexible identities and overlapping, porous group boundaries. Gandhi himself is a remarkable example of such an open yet rooted person: ‘I do not want my house to be walled on all sides and my windows to be stuffed. I want the cultures of all the lands to be blown about my house as freely as possible. But I refuse to be blown off my feet by any of them’ (*Young India*, June 1921: 170).

Such non-defensive openness and self-confident rootedness is unsustainable without inclusive identities of the self and complementary constructions of the ‘other’. Exclusive identities and negative perceptions of the other often create *The Illusion of Destiny* (Sen 2006) that pretends to exceptional privilege on which to seek violent domination. Dominant castes and colonizing races, exclusivist religions and assimilative traditions, conquering nations and imperialist powers—all project themselves in this way.

EQUAL DIGNITY, UNIQUE IDENTITY

Identity answers to the question, ‘Who am I?’; dignity to, ‘What respect am I due?’ The affirmation or the negation of one carries over to the other. The right to identity must include the right to dignity. Identity is never developed in isolation, but in interaction with significant others. ‘I discover myself, my horizon of meaning and value, with and through others.’ ‘Who I am’ is always reflected off and refracted through others. ‘What I am due’ is always in a social context mediated by them, and denial of this violates ‘my dignity’.

So, if 'Who I am' is belittled, it abrogates 'What I am due'. Denying 'What I am due' undermines 'Who I am'. 'And one has fundamental rights to both 'my dignity' and 'my identity'.

The 'other' is always a question to one's self. When the other is different, the question can be disconcerting, even threatening. When one cannot ignore the question any more, one may even be tempted to destroy the questioner. But the questioning will not be silenced. Rabbi Heschel rightly insists: 'To meet a human being is a major challenge to mind and heart' (Heschel 1991: 7). Every human being is different, unique in each one's own way. History bears witness to how dominant persons and groups have sought 'final solutions' to eliminate or subordinate others through genocide and ethnocide, cultural assimilation and religious conversion. Most of these attempts have failed.

When 'confronted with modernity, all the human tribes are endangered species, their thick cultures are subject to erosion' (Walzer 1994: 72). The rapid and radical change it precipitates disorients individual and community identities, and unravels the personal and collective security these once provided. The consequent anxiety and uncertainty calls for urgent reassurance and affirmation, which is then sought in group solidarity. Such collective identities become 'vehicles for redressing narcissistic injuries, for righting of what are perceived as contemporary or historical wrongs' (Walzer 1994: 52). Confirmed in their self-righteousness, leaders manipulate and mobilize groups, to claim their own identity and dignity while ignoring, even opposing, that of others. This construction of an opposition between 'us', as the 'in group' and 'them', as the 'out group' is an invitation for volatile antagonisms to spiral into collective violence.

Thus, in exorcizing what we disown and reject in ourselves, we project it onto and demonize the other. What is desirable in the other is denied and appropriated for oneself. We are non-violent, tolerant, chosen, pure; the other is violent, intolerant, polluted, damned. They may seem strong, compassionate, devout, but they are aggressive, devious and fanatical. In all this, ground realities become irrelevant, and 'non-recognition', or worse, 'misrecognition', becomes oppressive and distorting.

Such misrepresentations are consequent on the construction of exclusive group identities. These increase the sense of narcissistic well-being and attribute to the other the disavowed aspects of one's self (Kakar 1992: 137). They emphasize difference and set up oppositions and polarities with the other. Inclusive identities, on the other hand, are inclined to affirm similarities and complementarities with the other. These are not premised on an antagonistic and hostile 'them'-versus-'us' divide and so make for tolerance and flexibility.

Extremist fundamentalism of all kinds, religio-cultural or economic-political, thrives in this scenario. As Anthony Giddens, one of the foremost British sociologists, observes: 'Fundamentalism originates from a world of crumbling traditions' (Giddens 1999: 4). Such reactions threaten minority rights from two apparently opposite sides: rational secular fundamentalists, who are not reconciled to having religion in the public domain; and religio-cultural nationalists, who consider such rights to be unwarranted concessions that compromise national interests. Pluralism defuses such extremist collective passions by recognizing and affirming the identity and dignity of both individuals and communities, integrating into unity without assimilating into uniformity.

Any understanding of pluralism in the country cannot ignore the impact of the politics of caste and religious identities, and how these now undermine democratic institutions and threaten the constitutional fabric. Pluralism premised on multiple inclusive identities will be non-discriminatory and accommodating, and will be able to sustain an egalitarian and participative 'politics of pluralism' that becomes a 'politics of integration'. This not only affirms the Constitution and the 'social revolution' it envisaged (Austin 1966: 50); it strengthens democratic and civic institutions, enabling them to defuse and resolve caste and religious conflicts.

Fundamental rights were enshrined in our Constitution not to homogenize cultural and religious diversities but rather to protect individuals from violations wherever they came from, including their own communities. An affirmation of minority rights must be within a quest for justice that 'must respect two constraints: minority rights should not allow one group to

dominate other groups ... equality between groups, and freedom and equality within groups' (Kymlicka 1995: 194), each complementary to the other. Hence, no particular community's right can be privileged against the universal fundamental rights of individuals, on the basis of religious or cultural absolutes. Or, 'in other words, we want universals that are facilitative rather than tyrannical' (Nussbaum 2000: 59). And so 'to sum up: We want an approach that is respectful of each person's struggle for flourishing, that treats each person as an end and as a source of agency and worth in her own right' (ibid: 69).

For Gandhi, a country's claim to civilization was measured by how it treats its minorities. Others have underscored the same. In a lecture in 1877 on *The History of Freedom in Antiquity*, Lord Acton, the liberal historian, remarked: 'The most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities.' In the explosive situations in which the clash of rights occurs, our courts have tried to work out a delicate balance between political compulsions and constitutional claims. The rights of minority educational institutions are an apt illustration of this.

As has been discussed earlier in this chapter, the courts have tried to balance reasonable state demands with the legitimate rights of minorities. In matters of personal law, the controversies they have focused on are gender justice and religio-cultural practices, which we will explore in the next chapter.

Holding Up Half the Sky

CASTE HIERARCHY, FEUDAL PATRIARCHY ■ THE GANG RAPE OF BHANWARI DEVI ■ GOOD WOMEN, BAD WOMEN ■ UNRESOLVED QUESTIONS ■ THE LAW AND THE LADY ■ A COMMON CIVIL CODE ■ IDENTITY TRUMPS JUSTICE ■ CONVERGENCE, NOT UNIFORMITY ■ TOKENISM AND REALITY ■ MATHURA'S STORY ■ TOO MUCH? TOO LITTLE? ■ MULTIPLE HIERARCHIES, UNEQUAL PATRIARCHIES ■ ROOP KANWAR'S SATI ■ GENDERED CITIZENSHIP ■ BEYOND THE STALEMATE

CASTE HIERARCHY, FEUDAL PATRIARCHY

In favouring the old Chinese proverb, 'Women hold up half the sky', Mao Zedong was making a statement for gender equality. In fact, revolutions have come and gone but patriarchy seems to go on forever. In every country, patriarchy still prevails; the difference is only a matter of degree. On an index of life expectancy, wealth or education, the UN's Human Development Report 1997 finds that no country treats its women as well as it does its men (UN Development Programme 1997: 39). However, the more traditional and hierarchal a society is, the more patriarchal it is likely to be.

The 'Beijing Declaration and Platform for Action' at the United Nations Fourth World Conference on Women (FWCW: Art. 181) held in 1995, affirmed the link between gender equity and democracy:

Achieving the goal of equal participation of women and men in decision-making will provide a balance that more accurately reflects the composition of society and is needed in order to strengthen democracy and promote its proper functioning ... Without the active participation of

women and the incorporation of women's perspective at all levels of decision-making, the goals of equality, development and peace cannot be achieved.

Now, this under-representation is a serious concern everywhere. An international study on gender equations in Scandinavia, the Balkans, the Arabian Peninsula, western Europe, North America, Australia and New Zealand, South Asia, East Timor, Afghanistan and Iraq, found that

around 40 countries have introduced gender quotas in elections to national parliaments, either by means of constitutional amendments or changing the electoral laws (legal quotas). In more than 50 other countries major political parties have voluntarily set quota provisions in their own statutes (party quotas). Even if quota provisions are often controversial, the use of the quota tool to make historical leaps or jumpstarts in women's representation is becoming a global trend. (Dahlerup 2006: 3)

Caste hierarchy and feudal patriarchy reproduce each other, and the nexus is very difficult to break. But if any ground is to be gained, then both must be confronted together. The story of Bhanwari Devi is a significant indictment of just how deep this nexus runs in our society and how difficult it is to exorcize it (Narula 1999: 176). It typifies the extrajudicial retaliation used in hierarchical and feudal societies to punish and marginalize women who defy the writ of male leadership, and how the response of the judicial process can be even more shocking.

THE GANG RAPE OF BHANWARI DEVI

Bhanwari Devi, a Dalit woman in Bhateri, was a grass-roots worker, a *saathin* (woman companion), appointed in 1985 in the Rajasthan government's Women's Development Programme (WDP). In April 1992, she reported a child marriage in a Gujjar family, which the police tried to but failed to stop. On 22 September that year, she was gang-raped by the members of the higher-caste Gujjar family concerned, in the presence of her husband. When, in 1994, the rapists offered her compensation to withdraw her case, she retorted: 'Tell our village elders you raped me, restore my dignity' (*The Hindu*, 4 March 2001). In 1995, a judge acquitted the five accused on the grounds that 'rape is usually committed by teenagers, and since the accused are middle-aged and therefore respectable, they could not

have committed the crime. An upper-caste man could not have defiled himself by raping a lower-caste woman' (*Kali's Yug*, New Delhi, November 1996: 20).

A countrywide appeal for justice resulted in the Rajasthan High Court giving the case a single hearing on 27 February 2007, when two of the five accused were already dead. The court refused to fast track the case, which now, for all practical purposes, seems moribund. Bhanwari Devi is still boycotted in her village, but she has refused to leave, and keeps her job with the state government. She says she will not be cowed down by those who have tried to rob her of her dignity. In 2000, a Bollywood movie directed by Jag Mundhra, *Bawander* (Sandstorm), with Nandita Das in the title role, dramatized her story.

This is not the first time that a court has used such 'untouchable logic' and ordered acquittals for 'lack of evidence'. The conviction rate for rape has been consistently lower than for petty crimes such as burglary and theft (ibid.). Such caste and gender biases infect not only village elders, but runs through the law-enforcement agencies, abetted by the judiciary, though extrajudicial penalties by caste panchayats and honour killings are now more frequently reported and are beginning to attract political sympathizers.

In Haryana, which has one of the most skewed sex ratios in the country, the Jat khaps (caste panchayats) rule the village. On 25 May 2007, Manoj and Babli, of Kaithal, defied the khap by marrying within their *gotra* (clan), an endogamous marriage forbidden by tradition. In spite of being given police protection, on 18 May they were murdered on order of the khap; though five persons have been sentenced to death, and the leader of the panchayat given life imprisonment, the khaps remain defiant. Rather than show remorse, it is demanding a change in Hindu personal law to forbid marriages that go against the traditional gotra rules, and now some political leaders, including a young Congress MP, have come out in their support.

This is not an isolated case of rural panchayats cruelly enforcing their now-threatened authority. To suggest that dissenting young couples can marry under the Special Marriage Act legitimizes the demands of such regressive caste panchayats, who are desperately seeking to reaffirm their authority over

their youth in the changing scenario of social relationships among young people today. The law must provide protection from, not come to the rescue of such domination. But the guardians of law seem less concerned with defending the law and rescuing the victims than in consolidating their convenient vote banks.

All this demonstrates how deeply caste and patriarchy are still embedded in our society, even in the twenty-first century, more than half a century after our Constitution proclaimed gender equality and freedom of choice as fundamental rights. Any critique of or deviance from the traditional norms, unless it be to adapt them more effectively for today, is seen as treacherous betrayal of family and society. Honour killings are horrendous examples of this, when families turn against their own with the silent acquiescence, and at times the vocal approval, of others. As always, it is the women who must bear the burden of tradition and pay the price for violating it. Women are thus subdued, marginalized and silenced. Any public status or power they may have is projected onto empowered goddesses, whom they must be devoted to but not replicate.

GOOD WOMEN, BAD WOMEN

When women do attain a national leadership role, it is often because they have inherited the mantle from their fathers or husbands, rather than as persons in their own right. They are then projected as matriarchs, part of the joint family, complementary to the patriarchy rather than a challenge to it. However, we can also see in the violent defensiveness of patriarchs an indication of their control fraying at the edges. Brutal atrocities against women who dare to cross traditional limits are but a desperate attempt to reassert 'dominant male' power by re-enforcing boundaries. Caste and patriarchy are far from defunct in our society, and modernity by itself is no guarantee that they will be weakened in the foreseeable future. Unless equality and equity in gender relations are vigorously pursued, patriarchy, as we saw with caste in an earlier chapter, will adapt and transmute into new and more disguised forms.

The more subtle of these mutants, even in mature liberal societies, is paternalism, the apparently benign ‘fatherly’ care and protection that controls people gently but firmly—finally undermining their independence. It easily gives men a ‘certificate of conscience’ for the responsibilities they so generously accept for their women, who are thus domesticated as idealized icons and guardians of their culture, the upholders of family honour and moral values. In effect, this idolizes women, puts them on a pedestal and confines them to safe familial and supportive roles, from which tradition forbids them to break out. Mae West (1893–1980), the famous American actress but less known as a playwright, hit this paternalism on the head with one of her famous one-liners: ‘Every man I meet wants to protect me. I can’t figure out what from.’

‘Good women’ must submit to the protection of ‘good men’—their fathers, husbands, and, in India when widowed, their sons. Otherwise, they become ‘bad women’ who want to rule their own lives, and so are vulnerable to despoliation by ‘bad men’. They lose their virtue, dishonour themselves and their families, and are a danger to society. If they will not allow men to protect them from themselves, then men must protect families and society from them. Mae West rejected such submissive protection. Not surprisingly, she was sentenced on 27 April 1927 to ten days in jail for corrupting the morals of youth with her play, *Sex*, though she received two days remitted for good behaviour while in detention!

Women’s movements today are resisting such protectionism. Rather than equality as similarity, they are now demanding equality of life chances and freedom in life choices. Rather than a token presence in politics through male largesse, they want more effective political participation through preferential representation in political assemblies. Rather than confined domesticity, they seek an influential role in the public sphere. These, then, are the issues that an incisive understanding of gender justice in this country must address: gender equality, political representation, civil liberties.

But first, such issues must be situated in the history of the women’s movement. There is a ‘multiplicity of cultural, social and political intersections in which the concrete array of “women” are constructed’

(Naffine 1994: 11, n. 10) as a category. Hence, 'women' cannot be referred to by a single unified and coherent designation derived from some ahistoric, mythic archetype. It must be set in the concrete historical and cultural context to which it refers, with all the ambiguities and anomalies found there.

UNRESOLVED QUESTIONS

Except among some marginalized groups, most nationalist leaders gave 'political swaraj as a birthright' a clear priority over social reform. In spite of their unprecedented mass mobilization by Gandhi in the freedom movement, which brought women into political life and the public domain, women's liberation was never quite central to the movement's agenda. The nationalist movement's split between the cultural and the political did not make space for the politicization of women's emancipation, and hence 'the seeming absence of any autonomous struggle by women themselves for equality and freedom' (Chatterjee 1989: 250). Though the issues of reform had been raised by the early reformers of the nineteenth century, 'The Nationalist Resolution of the Women's Question' (ibid.) had failed to politicize women's issues.

After Independence, in spite of the promulgation of constitutional equality, universal suffrage and the path-breaking legislation that followed (i.e., the Special Marriage Act of 1954, the Hindu Marriage Act of 1955 and 1956), most women returned to and remained confined to their traditional roles and familial domesticity. The high hopes and great expectations of India's struggle for freedom were betrayed by 'The Postponement of the Social and Economic Revolution' (Myrdal 1968, vol. 1: 273–80) which was necessary to fulfil them, and with this the emancipation of women as well. They had yet to realize that 'the personal is the political'.

The 'genesis of the new women's liberation movement lay in the radicalization of Indian politics in the late sixties' (Patel 2008: 3), which continued into the 1970s. The Naxalbari movement of leftist extremists in the Communist strongholds of West Bengal and Kerala, the Navnirman movement of students in Gujarat, the Sampoorna Kranti of Jayaprakash Narayan in Bihar and across the north, the Gandhian Chipko movement in the Himalayan

foothills—all these and more posed a radical challenge to the politics-as-usual syndrome of the established parties.

In the 1970s during the stir against price rise, which was spearheaded by the middle class, urban women, too, joined the demand for change. In 1974, the Stree Mukti Sangathana in Bombay and the Progressive Organization of Women in Hyderabad were formed, and between 1977 and 1979, similar women's organizations in Delhi, Bangalore, Hyderabad, Bombay, Ahmedabad, Patna and Madras were established. At the beginning of the UN's International Women's Year, in 1974 (followed by the International Decade of Women, 1975–85), the National Committee on the Status of Women in India released a report titled 'Towards Equality', on the 'Status of Women in India (1971–1974)', underscoring the shocking reality of the lives of many women in our society. In response, new organizations were formed, such as in Mumbai the Forum Against the Oppression of Women, in Delhi, Saheli, in Hyderabad, Stree Shakti Sangathana, and in Bangalore, Vimochana—all demanding action on specific issues, like dowry and rape.

Academic departments and centres of women's studies brought the necessary critical reflection to the activist movements. Antiquated legislation had to go, and a new developmental and political agenda was to be put in place. By the 1980s, women had taken to the streets as empowered agents of their own liberation, demanding their legitimate place in society as equal partners with men.

Certainly the women's movement in India has been influenced and inspired by movements abroad, especially those in the West. But women in India do have their own multicultural distinctiveness, and their movements have followed their own historical trajectories. They do not pretend to have resolved the 'women's question', but at least it is being energetically raised, and their impact is significant and irreversible. Women are now joining hands not just across barriers of caste and class, or region and language; they are crossing national boundaries on these as well, across South Asia and beyond.

However, since 'women' are not a single 'coherent and unified category' (Naffine 1994: 11, n. 10), such synergies need much fine-tuning. However,

without taking recourse to an essential stereotypical archetype, there is an existential commonality across all the subcategories into which women can be classified. Gender inequality is further compounded and confused on other dimensions of social inequality, such as caste or ethnicity, class or race, which in turn become cumulative inequalities. Taken together, this inflicts multiple and complex inequalities on women across the globe. These make them increasingly vulnerable not just to domestic violence but to social injustices in a male-dominated society. Here men are the norm, women the deviant, because of their biological differences from men. They are thus constituted as 'outgroups', 'located outside positions of power and influence' (Bacchi 1996: 11).

Women's movements have rightly claimed that this makes them 'sisters' to other women, across all boundaries. For, wherever they are located, socially or geographically, whether Dalit or black, upper or middle or lower class, in the West or the East, the global North or the South, women have all experienced bias and suffered discrimination, though there are variations in degree and kind. Hence, wherever women are vulnerable to such deprivation, affirmative action for them must be a demand for inclusive justice. Thus, as caste quotas are needed to counter the deprivation that caste hierarchies inflict, so too are women's quotas necessary for gendered hierarchies. As minority rights are protective measures for minorities vulnerable to majoritarian domination, so too must women's rights be privileged against entrenched patriarchies.

Constitutionally and legally, women's-rights legislation has been progressive and liberal. And yet, the statistics of crimes against women are stark evidence that the implementation of this legislation has not been effective. The proportion of women in public life and government, in select educational institutions and professional occupations, further corroborates that equal opportunity for women is in fact neither equal nor opportune. Now, drastically falling sex ratios are threatening to turn women into a declining gender minority in many states in north India.

Regrettably, religious minorities which often vigorously affirm their minority rights in defence of their personal law codes and their educational

institutions, use the same to resist gender equality and justice in their communities. *Religion and Personal Law in Secular India* (Larson 2001) suggests an ominous collision course between minority rights and women's rights, which plays into the hands of majoritarian chauvinists, even as it frustrates human rights activists.

The issue of reserved quotas for women is also getting increasingly contentious. Interestingly, these were not contested at the lower levels of local self-government in panchayati raj institutions, as promulgated through the Seventy-third and Seventy-fourth Amendments to the Constitution in 1992. Quotas have even been expanded from a third to a half in some states, and that too in some of the most patriarchal ones. But at the higher legislative levels of Parliament and state legislatures, quotas for women have been fiercely resisted and endlessly postponed. Complicated intricacies are involved, with the real possibility of patriarchs and matriarchs of various ideologies and persuasions hijacking this process to pursue their own agendas.

A refusal to face these issues—of gender equality and personal law, political representation and women's quotas—will mean a further postponement in addressing the 'women's question', as well as that of the social and political revolution, and thus a betrayal of the promise of our struggle for freedom. These issues must be faced with a critical sensitivity and a sense of integral justice towards the women's question. Women's liberation is not just for women, after all: its promise is to liberate society as a whole, men from their patriarchies and all of us from our hierarchies, bringing us closer to a more egalitarian society, a more representative democracy, a more inclusive citizenship.

THE LAW AND THE LADY

The fundamental right to non-discrimination in our Constitution remains a formal and legal declaration of equality, though it is far from the reality on the ground, especially in regard to gender relations in this country. Much of the legislation for gender justice meant to protect women against atrocities and violence, harassment and outrage, is at times quite exemplary, but is

stymied by those entrusted with enforcing these laws, whether in the executive or the judiciary. The statistics on crimes against women show an increasingly upward trend: dowry deaths, bride burning, female foeticide and even infanticide, as well as rape and sexual harassment. Moreover, the conviction rate on these crimes makes a mockery of the law. Patriarchy prevails; the status quo triumphs.

One of the most complex and contentious areas of gender equality is the impasse on personal law, which so starkly illustrates much else in gender relations. The origins of our present personal law code are found in the gender legislation and patriarchy that were created in colonial India, and which still cast a long shadow on the quest for gender justice and equality today. The British sought to govern in accordance with existing practices and traditions. Though a uniform criminal law code was imposed, in civil matters that pertained to the family (marriage, inheritance, divorce), a personal law code particular to a community was formalized on the basis of textual sources, rather than an unreliable oral tradition.

Eleanor Newbigin, a Cambridge historian, argues ‘that the systems of personal law in operation in India today are the outcome of the late colonial attempts by Hindu and Muslim male reformers to alter the legal system in ways that served their own interests’ (Newbigin 2009: 83). Once these traditions acquired the legitimacy and force of codified law, they became far more rigid than the pre-colonial judiciary’s reliance on oral tradition. Instead of ‘bringing the order of modernity to forms of social organizations ... English law works to strengthen them into forms of control’ (Viswanathan 2001: 77).

Even today, reformed personal law retains the male-dominated co-parency of the Hindu joint family and protects the property rights of Muslim males. Rukhmabai, in the Bombay Presidency, was one of the extraordinary women reformers who challenged and survived the system; however, she was one of the very few whose trauma ended in triumph. Young Huchi’s story in Mysore ended tragically. Huchi belonged to the weaver caste, the Dewaga, in Mysore, then a princely state not yet under the Native Convert Remarriage Act, 1866, in force in British India. This ‘allowed a marriage to be dissolved

if the *unconverted* spouse refused to cohabit with his or her partner following conversion' (Viswanathan 2001: 103; emphasis in text). Huchi's case appears in the government records of 1876. She had attended the London Mission Society School and was attracted to Christianity. Afraid that she would convert, her parents married her off to Appiah. She was thirteen years old at the time; he, nineteen.

The marriage was never consummated and Huchi ran off to the church, where she was baptized as Helen Gertrude, though she had been threatened with beatings and even death if she did so. She then decided to marry Lutchmih, a Christian convert. But just as the wedding rites were about to be performed, Appiah dramatically appeared and forcibly claimed her with 'an ominous warning that now she would have to live him not as his wife but as his prostitute, because her renunciation of Hinduism had left him no choice but to treat her as an outcaste' (ibid. 101).

She then filed for the dissolution of her marriage. In 1873, the lower court went in her favour, but the final verdict accepted Appiah's claim. The judge declared her marriage valid under Hindu law since she had not been baptized at the time. Only adultery or desertion by Appiah would be grounds for dissolution. She could not end the marriage, but Appiah could, on grounds of conversion. However, he was claiming his marital rights, while threatening to treat her as an outcaste, because of her conversion. The married woman, Hindu or Christian, had no claim over her body to deny the man's conjugal rights in a forced and unwanted marriage, even though she would be treated not as wife but as prostitute.

A dispatch from the Legislative Department at the time summed up the situation: 'If the law is against her, I don't see how we can sacrifice the "Law to the 'Lady'" (National Archives India, New Delhi, Home Department, 1876, Letter from the Foreign Department to the Legislative Department: 3). The collusion between two patriarchies here, both British and Indian, is appalling.

Rukhmabai's case, in the following decade, has many similarities with the Huchi case, but fortunately it ended differently. She was born in 1864 and, under family pressure to follow Hindu custom of the time, was married off to

Dadaji Bhikaji, a poor cousin, when she was eleven and he nineteen years old (Chandra 2008: 15). In 1884, Dadaji began a legal battle to claim his rights over his wife. Rukhmabai appealed to English law against the forcible imposition of conjugal rights. On 21 September 1885, Justice Pinhey of the Bombay High Court delivered a resounding verdict in favour of Rukhmabai, calling Dadaji's claim for restitution of conjugal rights a misnomer, since the marriage had not been consummated.

The judgment caused an uproar, a 'war in discussion' (*Native Opinion*, 11 April 1887). Tilak's newspaper the *Maharatta* and other conservatives urged Rukhmabai to serve her husband, who was suffering from lung disease, and so attain immortality like Savitri, who married Satyavan though she knew he was dying. Others saw in the judgment 'a shrewd blow at the whole system of infant marriage', which could be 'a most wholesome influence in the direction of reform' (*The Times of India*, 22 September 1885). But this was stymied when the judgment was stayed on appeal; in March 1887, Justice Faran reversed the decision and ordered Rukhmabai to go to her husband or face the risk of imprisonment for six months. When Rukhmabai declared that she would rather face the maximum penalty than go back to her husband, the controversy began to escalate unpredictably.

The viceroy at the time wired his law member: 'I hope you are keeping your eye on the Rukhmabai case. It will never do to allow her to be put into prison' (National Archives of India, New Delhi, *Home Department, Judicial Proceedings*, June 1887, Nos 189–92). Eventually, 'the case reached the House of Lords and finally Queen Victoria intervened to dissolve the marriage. In July 1888, Rukhmabai agreed to 'buy off' Bhikaji with a payment of 2000 rupees 'in satisfaction of all costs so that he could remarry, which he did immediately' (Rappaport 2001: 599). But Rukhmabai was forbidden to remarry. In 1889, she went to London to study medicine and returned to India in 1895 as chief medical officer in Surat. In 1918, she went to Rajkot and retired in 1929; she died in Bombay in 1955, aged ninety-one.

Here was a villainous code of law that could not accommodate this heroic lady, since the law was made neither by nor for women. Rukhmabai bitterly observed: 'A Hindu woman—unless she is a widow and destitute of friends

and relatives—cannot follow even the dictates of her own conscience’ (Shah, A.B., ed. 1977: 176), and she lambasted the British government:

It is false to expect any justice for India’s daughters from the English Government, for instead of befriending her the Government has proved to be a worse tyrant to her than the native society and religion. It advocates on one hand the education and emancipation of the Hindu women, and then, when the woman is educated and refuses to be a slave in soul and body to the man against whom her whole nature revolts, the English Government comes to break her spirit allowing its law to become an instrument for riveting her chains. (Shah, A.B., ed. 1977: 178)

How much better has our Indian government done by our women?

A COMMON CIVIL CODE

Article 44 in the Directive Principles of State Policy sets the cat among the pigeons: ‘The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.’ There was bitter opposition from the Muslim members in the Constituent Assembly to this statement. So, rather than abruptly abolishing personal law, it seemed better to begin with reform, and it was supposed that with the progressive advance of secularism in the country, these would eventually converge towards a uniform civil code. An uneasy beginning was to be made with the Hindu majority rather than the Muslim minority. It was a concession made then, but now it seems impossible to move forward from there.

On the right, the opposition was led by the Hindu traditionalists represented by the Jana Sangh, the earlier political avatar of the RSS before its present reincarnation in the BJP. But there was resistance even within the Congress party itself. Outlawing bigamy, giving women property rights—these constituted a severe threat to these patriarchs, and were bitterly resisted. How could an outcaste ‘untouchable’ law minister such as Ambedkar have any authority or mandate to interpret and override the sacred scriptures? On the left, the socialists and Communists, liberals and secularists pressed for a speedy reform of all personal laws. In a Parliament dominated by Nehru’s party, in spite of the prime minister’s personal backing, the Hindu Code Bill was rejected in 1954, and Ambedkar resigned in protest. Eventually, a modified version was passed in 1955. With the

Hindu Marriage Act of 1956, Hindu women were given the right to choose or divorce their marriage partners, polygamy was abolished, and daughters and wives were given rights to their fathers' and husbands' property.

Today the roles are reversed: the very political parties that so stridently protested the reform of Hindu personal law have now become champions of a uniform civil code. It would seem that having lost their battle then, they are now determined to inflict the same defeat on others. They denigrate Muslim resistance to reform as being anti-secular and any accommodation to their personal law as appeasement. On the other side, the more secular liberals and the left have become more sensitive to the Muslim community, now on the defensive, and also to the limitations of a uniform civil code. These liberals are no longer so vocal in demanding change in Muslim personal law. They settle for its reform rather than its abolition, seeking gender justice rather than a common civil code for society, so as to address the real issues of gender equity and equality.

In the case of the Parsis, the Parsi Succession Act of 1864 was followed by the Parsi Marriage and Divorce Act, 1865, which was updated in 1936. The reform of personal law for other communities has been piecemeal and snail-paced. In 2000, the Christian Marriage Bill proposed amendments to make the extremely biased Christian Marriage Act of 1872 more gender equitable. It met with some official resistance from clerical and lay leaders, but was eventually passed with the Indian Divorce Act of 2001.

However, Muslim personal law has followed a rather unfortunate trajectory, complicated by the communal tensions provoked by extremist leaders. In their defensiveness the Muslim community now vehemently opposes any change in their personal law. They perceive this as a threat to their religious traditions, even though many of the changes envisaged have been introduced in other Muslim countries and have long been accepted by traditional religious leaders there—e.g., more gender equity in divorce laws and a prohibition of the triple talaq.

As long as Muslims in India perceive in their personal law a symbol of their identity and a guarantor of their rights as a minority, this stance is unlikely to change. And as long as the Muslim community remains on the

defensive, this perception will only be further confirmed. If prejudice towards a community comes from outside, then it can be addressed from there; however, reforming an already defensive community from outside only seals it off further from reform. If resistance is from within, then this must be countered from within. Outsiders can at most play a secondary, supportive role. But when the political stakes are high, then even so-called secular leaders and their parties choose to consolidate their vote banks rather than risk reform. This was strikingly epitomized in the case of Shah Bano, when identity trumped justice.

IDENTITY TRUMPS JUSTICE

In 1978, Shah Bano was sixty-two years old when her husband, Mohammed Ahmed Khan, divorced her after forty-four years of marriage. Though her husband was a successful lawyer in Indore, she was illiterate. His second wife, Halima Begum, was barely literate. Shah Bano had three sons and two daughters; Halima had one son and six daughters. They all lived together in a medium-sized haveli. Not surprisingly, the initial quarrel seemed to be over property. At the time of divorce, Shah Bano received her *iddat*, the hundred-day maintenance as per the Muslim personal law code based on the Shariat, and her *mehr*, the payment made by the bride's family at the time of marriage, around Rs 3,000. Later she recalled: 'I felt enormous relief, but I also hated him' (Bumiller 1990: 166).

Since this was far too little to live on, Shah Bano sued for regular maintenance under the common criminal code of 1973, Section 125, which had increased the required maintenance from a maximum of Rs 500 to Rs 3,000. She won her case and, in 1985, the matter reached the Supreme Court on appeal. Here again Shah Bano won, and she was awarded Rs 179.20 plus cost, calculated at around Rs 10,000 by the court. Other similar judgments had gone uncontested, but here Chief Justice Y.V. Chandrachud commented on the unfairness of the Muslim personal law code, and called for a uniform civil code. Even more provocative was the idea of a Hindu judge attempting to interpret the Quran, which caused an uproar among conservative Muslims in the community.

The All India Muslim Personal Law Board (AIMPLB), a conservative, male-dominated body, had been constituted in 1973 to ensure the continued enforcement of the Muslim Personal Law (Shariat) Application Act of 1937, which provided for the application of the Islamic Law Code of Shariat to Muslims in India in personal civil matters. The AIMPLB now mobilized the Muslim community, dominated by radical and extremist clerics and politicians, against the judgment with mass public protests on the streets. The comments of the chief justice were perceived by a much-beleaguered community as a direct threat to their religious identity, undermining the traditions that defined them and the minority rights that protected them.

But whatever the provocation of the chief justice's remarks, the judgment by itself was an affirmation of gender rights against personal law. The Congress government of Rajiv Gandhi wavered and eventually succumbed to the protests, rather than risk riding out the storm. With a majority of more than three-fourth, on 19 May 1986 his government passed the perversely named Muslim Women's (Protection after Divorce) Act of 1986 to exempt Muslims from Section 125 of the criminal code.

The act removed the responsibility for the continued maintenance of divorced Muslim women from their husbands. Instead, this was placed first on the relatives in whose property they had an inheritance and finally on the state Wakf Board that manages properties held in common for the community. The legislation left divorced Muslim women no less vulnerable, for now any secure support would be subject to two further stages of negotiation. This was not the kind of protection of fundamental rights or of gender justice and equality that the founding fathers envisaged with the Constitution they bequeathed to us.

The AIMPLB welcomed the Act as a crowning success of its agitation—without giving much thought to the divorced women who were left vulnerable as a consequence, nor about whether this would further marginalize the community in the public's perception. The Hindu nationalists stridently accused the government of appeasing its vote banks, as indeed it had. In fact, the Act was meant to balance the government's earlier appeasement of Hindu sentiment, when on 1 February the same year the gates of the Babri Masjid in

Ayodhya had been unlocked. They had been closed since 1949, when the site first fell into dispute.

If anything, unlocking the gates and passing the Act was dual vote-bank politics: appealing to Hindu religious sentiment in expectation of their vote and appeasing conservative Muslims leaders so that they would deliver their community's votes as well. It was a flawed policy that failed on both counts. In the end, it succeeded only in sharpening the divide between the communities. Human rights activists and those in the women's movement were appalled and began to agitate. Others felt that at least some of the sections of the Act lent themselves to more gender-just interpretations.

Thus, Clause A in Section 3 (1) of the Act says that a divorced woman shall be entitled to 'a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband'. The courts have seized on this to give Muslim women a more equitable case-law precedent on maintenance. Thus, the full constitutional bench of the Supreme Court in the Daniel Latifi case, while upholding the validity of the law, focused on this clause, ruling that reasonable maintenance could not be confined to the iddat period. This is now the benchmark judgment on the maintenance accorded to divorced Muslim women.

The roles of the traditional Hindu right and the secular liberal left are now reversed. The BJP and its Hindutvawadis vociferously rail against Muslim personal law, demanding a uniform civil code for gender equality in all communities, regardless of any local traditions, religious or otherwise. These were the very grounds on which they had so vociferously resisted the reform of their own personal law. However, when in power they brought no new legislation to abolish polygamy or even restrain it, as is done in some Muslim countries where polygamy is conditional on the consent of the first wife. They also brought no legal mandate for the support of widows or divorced women, nor were any gender-neutral inheritance laws proposed for the civil codes that warranted such gender justice.

All this puts a question mark on the Hindu nationalists' bona fides to institute any real gender justice, and suggests that their stance is more political and meant to appeal to their own undiscerning vote banks. A more

convincing stance for a uniform civil code would be a movement in one's own community. But the patriarchal advantages of personal law are not easily surrendered. For instance, the concessions to the Hindu joint family would be taken away by a uniform civil code premised on the modern nuclear family. Wealthy Hindu families who jointly hold their property—or claim to do so as Hindu Undivided Families—would lose the tax breaks and property-right exemptions they have so far enjoyed. Accepting a more equitable share of inheritance for women is where case law has reached till now.

On the opposite side, the secular liberal left now opposes the uniform civil code they had once championed with such enthusiasm. But then again, the Muslim Women's (Protection after Divorce) Act of 1986 suggests that this, too, is more a matter of convenience than conviction. On either side of the political spectrum, even prominent women leaders at many levels in their political parties have done little or nothing for more gender-sensitive personal laws. Rather, women's movements and human rights activists have taken the agenda forward, and a consensus among these is beginning to emerge.

CONVERGENCE, NOT UNIFORMITY

Joining the debate on the religious communities and their personal laws, Kumkum Sangari, a women's-rights scholar and activist, makes an extensive review of the 'Politics of Diversity' in the context of 'Religious Communities and Multiple Patriarchies' (Sangari 1995). Because all communities are diversified along multiple axes, their patriarchies will vary from each other in degree and kind. Ethnic cultures and political ideologies have as much to do with the disempowerment of women as religion. Hence, a uniform civil code will not be able to address these multiple hierarchies. Moreover, a legitimate apprehension is that it would inevitably reflect the majority Hindu traditions and thus compromise those of other religious communities and of different secular persuasions.

Even in those western societies that do have such a uniform code, some informal recognition must be made or else the law could go against women in

tightly knit conservative ethnic or religious communities in those societies. Thus, a woman may win a court decision in her favour but find that the verdict is not recognized as legitimate in her own community, and thus lose support and even be ostracized there. This had long been done in some western countries, like England, in the case of orthodox Jews, who follow a strict rabbinic law code. In a foundation lecture to the Royal Courts of Justice on 7 February 2008, Williams Rowan, the archbishop of Canterbury and primate of the Anglican Church, mooted some similar considerations for conservative Muslim communities following the Shariat law, but in the prevailing Islamophobia such thinking has loudly been opposed.

The final outcome of the Shah Bano case underlines the needs for such sensitivity. Before the Supreme Court judgment, she had defied the maulvis who had demanded she return the money she had already collected because it was haram. In her own defence, she argued, 'If someone has been drinking alcohol all his life and repents in the end, does it mean he has to vomit all the alcohol he has consumed?' (Saeed Naqvi, *Indian Express*, 4 December 1985). Yet she finally was pressured by her community into rejecting the Supreme Court verdict that had gone in her favour, and stay with the Shariat if she did not want her actions to be deemed haram. Thus, in an 'Open Letter to Muslims', she declared, 'I, Shahbano, being a Muslim, reject it and dissociate myself from every judgement which is contrary to the Islamic Shariat' (Engineer 1987: 211–12).

Sangari argues for a two-pronged approach: empower women to affirm the common fundamental rights applicable to all women in society, and at the same time protect them from the particular patriarchies peculiar to their communities. Hence, an effective civil code must have a 'double purpose: to protect women, here and now, from existing patriarchies ... while they also seek to project, simultaneously, an ideal horizon of women empowered as agents and citizens' (ibid: 387). Necessarily, such a code implies a common core of gender rights across all communities as well as provisions specific to different communities. This would not be a uniform civil code, but an agenda for reforming the personal laws in order to make gender relations more equitable in the concrete contexts of different communities.

For women to be agents and equal citizens in society, their victimhood ought to be first recognized. A gender-just and culturally sensitive civil code would be required to 'encourage religious diversity, establish inalienable rights for all women, as well as find ways of dealing with the diversity of patriarchies' (Sangari 1995: 3386). This provides a point of convergence for a more nuanced and culturally sensitive civil code that can more effectively empower and protect women as required in their real social contexts. It would not be a uniform civil code but a more effective one, both common to all communities and specific to each.

Reformative change becomes necessary where social customs and religious traditions do not measure up to constitutional demands of justice and equity. The constitutional requirement of a uniform civil code was meant to integrate religious communities into a united national society. But given the bewildering plurality of communities in India and how collective identities effectively subsume individual ones, forcing a uniform civil code on these communities would be neither just nor viable. However,

if facilitating volition and flexibility in the area of religion is a desirable goal given India's history of cultural pluralism, optional personal and civil codes would offer the most choices. By starting to recognize more such choices, the state might get beyond the current ironies of its group based policies, such as the preoccupation with birth groups and suspicion of any voluntary identity shifts. Legitimizing choices about identity may put the 'personal' back into personal law. (Fenkins 2001: 118)

Legislating 'optional personal and civil codes' and giving support in civil society to the same is a practical beginning that could hardly be opposed, and so would command the widest consensus.

TOKENISM AND REALITY

The reform of personal law represents a direct threat to the control that patriarchies exercise in their communities, legitimized on multiple dimensions, by religious beliefs and cultural traditions, economic practices and political ideologies. Hence, they are difficult to dislodge. The same is true of caste. As with caste, reserved quotas for women in the public arena are a transparent and unambiguous expression of affirmative action.

However, as caste quotas are a threat to caste hierarchies, so too are women's quotas to dominant patriarchies.

The closer to the centres of power such quotas are allocated, the greater the threat and the fiercer the opposition. On the periphery of status and power they are hardly contested, because there is little competitive demand for opportunities at this level, whether of employment or offices, in education or welfare. At the village and district levels of panchayati raj institutions, reserved quotas for women were easily accepted and even extended from a third to a half in some states; but for Parliament and state legislatures, they are still stubbornly resisted by the same politicians, at times in open debate, at others in back-room deals.

However, caste quotas are also vehemently resisted by the upper castes and classes at the higher levels of opportunity in education and employment, where increasing demand outruns scarce opportunity. Reserved political quotas for women would not be an issue if adequate numbers were already represented in governance. But the present pathetic and still declining numbers of women in government and leadership tell an alarming story of women's growing marginalization in elective political processes, especially in state legislatures and Parliament.

Democratic representation is necessary to legislate just state policies, deliver fair executive action, and protect due judicial process. The adequate representation of women in these democratic processes and elected roles of real consequence and leadership are necessary if all these are to reach them effectively. Women have long demanded affirmative policies in three areas: women judges to try cases of rape and atrocities against women, special women's cells in local police stations, and the protective presence of policewomen when dealing with women suspects or offenders. Affirmative action on many of these has been forthcoming, but without effective accountability, even this eventually amounts to tokenism, not real change. In a liberal democracy, political representation is the institutional means for such executive and judicial accountability.

A major study across six countries made a disturbing discovery: 'when the category "women" appears to gain recognition, this is often part of a political

manoeuvre to limit political change for women' (Bacchi 1996: 10). Hence, despite commitments to 'women' in the form of affirmative action policies, women rate little 'political attention' and as 'a political category rate little importance' (ibid.). Consequently, what women 'are confronted with is not a state that represents "men's interests" as against women's, but government conducted as if men's interests are the only ones that exist' (Pringle and Watson 1992: 68).

As such, 'man' remains the 'unremarked standard' in discussions about the 'woman problem/question' (Bacchi 1996: 12). Defining gender issues in terms of 'woman' and then addressing them in terms of such a standard puts women on the defensive and leaves unexamined the problem/question of how male identity is constructed and how patriarchal values and norms are embedded in it. Doing so allows men, as 'the standard', to represent women, who are 'the problem', effectively depriving women of voice and agency in their own cause, making them dependent on male wisdom and benevolence.

The casualness with which this is accepted in everyday encounters makes already dependent women even more vulnerable to being taken for granted and exploited by men. Not uncommonly, this is seen in the predatory behaviour of policemen, and even more in the outrageous judgments delivered in cases involving women who have no redress except when civil society takes up their cause. This is the story of Mathura, a young adivasi girl that shocked the conscience of a nation but could not transform the established police or judicial systems.

MATHURA'S STORY

Mathura was a sixteen-year-old orphan, a daily-wage labourer, who was raped by two policemen in the compound of the police station at Desaiganj, in Chandrapur district of Maharashtra, on the night of 26 March 1972. She had been brought there by the police with the boy with whom she had eloped, and his parents. They had intended to marry, but her brother opposed the marriage and had charged the boy with kidnapping a minor girl. After recording their statements, Mathura was asked to stay behind, while the others left the police station. Alone with the two policemen on duty, she was

raped by one and outraged sexually by the other too drunk to do anything more. When she finally emerged, she told her companions, who had waited outside, that she had been raped. A medical examination, late the next evening, revealed no injuries, but the chemical laboratory confirmed the presence of semen on her clothes.

In 1974, the matter came up in the sessions court. There, the two accused policemen were acquitted, the rationalization being that since Mathura was habituated to sexual intercourse and showed no signs of resisting her violators, intercourse could be proved but not rape. The Nagpur bench of the Bombay High Court reversed this ruling on appeal, reasoning that passive submission due to fear induced by serious threats could not be construed as consent or willing sexual intercourse. The court sentenced the rapist policemen to five years' rigorous imprisonment and the molesting one to a year. However, in 1979 the Supreme Court reversed this judgment, arguing that even in custodial circumstances, non-consensual passive submission could not be presumed, and 'that the onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and that such onus never shifts' (AIR 1979 SC 185). In these judgments, the serious disagreement even among learned judges is quite apparent.

Women activists were horrified with the final outcome. Activists galvanized their movement to demand corrective amendments to the rape law with regard to the validity of resistance in circumstances of intimidation and threat, the relevance of a woman's personal history or character to the case at hand, and the fairness of placing the onus of proof on the victim in such circumstances. The government was now on the defensive. A law commission was constituted to study the demands.

However, when the bill to amend the law was tabled in Parliament in August 1980, none of these positive recommendations were included. The specific demand that a woman's sexual history and general conduct could not be permissible as evidence in a rape trial was also excluded. Only shifting the onus of proof in instances of custodial rape was accepted. The bill was sent to a joint committee to further elicit public opinion, in November 1982.

Finally, the Criminal Law Amendment Act, 1983, was passed. It amended Section 376 of the Indian Penal Code (IPC) and enhanced the minimum punishment for custodial rape to ten years. To protect the identity of the victim, the act also provided for trial in camera (in private), with a new section in the IPC, Sec 228 (A). However, these amendments hardly proved adequate to stem the rise in the number of cases of sexual violence against women.

In her 'Review of a Decade of Legislation, 1980–89', the activist and lawyer Flavia Agnes (1992) remarks that though 'almost every campaign against violence on women resulted in new legislation ... crime statistics reveal a different story ... The rate of conviction under these lofty and laudable laws was dismal. The deterrent value of the amendments enacted was nil' (Agnes 1992: WS-19). All this raises a very pertinent question: what must be the next step in 'Protecting Women against Violence?' (ibid.)

The Mathura rape case represents countless women, who have been subjected to similar indignities or even worse atrocities and then been forced to watch their tormentors go free—even while they themselves are judged as liars or women of 'easy virtue' by men who lay claim to the virtuous truth. Too readily does a patriarchal logic presume that the 'law's claim to truth is based on a binary logic which sets up oppositions like truth/untruth, guilt/innocence, consent/non-consent' (Menon 2004: 123). This is simplistic and insensitive in regard to the ambiguities involved in a forced choice between suffering the violence of submitting to the rapist and the violence of resisting his assault.

Those who are vulnerable to such experiences will be more empathetic. Men who find themselves subjected to the threat of being violently sodomized in prison will understand the terror involved for a woman violated in custodial rape and how the alternative between passive submission and active resistance is a Hobson's choice, apparently free but no real option. Any fair presumption here must be in favour of the victim, not the violator. It required an amendment of the Criminal Law Amendment Act to sensitize our police and judiciary to this. However, without a more effective representation of women in our police and courts, they are not likely to be

made more gender sensitive than they are today. Even these new amendments might end up as tokenism. Finally, the Supreme Court has ruled that consensual sex out of helplessness or fear cannot be a defence against a charge of rape (*Indian Express*, 29 July 2010).

The problem is not just a matter of police immunity or male-dominated courts. More than simply how the law is implemented and interpreted, the issue concerns how policies are formulated and laws enacted. Women must be represented at the centres of power and decision-making. However, such representation is unlikely to gain ground without being enforced by law. If reserved quotas in political assemblies for SCs and STs have been accepted as legitimate means against caste hierarchy and ethnic marginalization, then gender-based reservations against patriarchy and women's exclusion must also be accepted.

A beginning has been made at the grass roots, with reservation for women in panchayati raj institutions. Though politicians and their parties are willing to expand reserved quotas at this level, they have not yet mustered the political will to take reserved quotas for women to the next levels of democratic political participation. Across the political spectrum, resistance has varied from active opposition and obfuscating alternative proposals and demands for passive conspiratorial acquiescence with those who voiced these proposals. However, even when such legal measures are eventually enacted, and their implementation goes beyond mere tokenism, they will still be just another step in a long, winding and bumpy climb ahead.

TOO MUCH? TOO LITTLE?

The legislation implementing and extending the Mandal Commission recommendations in the last two decades was passed by an overwhelming majority in Parliament, even with the necessary constitutional amendments. Opposition was expressed in public protests on the streets, at times violently. With women's reservations, the contestation in Parliament is endless—and more recently, violent. Ugly, unprecedented scenes were witnessed in the Rajya Sabha when the bill was tabled, with some violently protesting male MPs having to be physically removed by the House marshals.

Finally, the bill was passed in their absence, with the required three-fourths majority, on 9 March 2010. Before its promulgation, it still has to be passed in the Lok Sabha and the state legislative assemblies, where the same trouble from the same parties is anticipated. But as happens with so much public debate and protest, the real issues are lost in transit from conception to delivery. Sound and fury rules the day.

Once affirmative action for women has been legislated, 'the courts in India have demonstrated an inclination to uphold sex discrimination where the classification was not unreasonable and where it was motivated by a legislative and executive solicitude for the moral and physical well-being of women' (Anand 1987: 305). Protective legislation for women is rather readily granted (Agnes 1992: WS-19), especially when the support of women's movements is anticipated at the elections. Meanwhile, alternative

proposals which sought to accommodate the concerns of women's representation while keeping the status quo of overwhelming male domination intact, were debated threadbare and found to be either ineffective or infeasible ... The fact that this legislation will break the status quo, if implemented, does not amount to any argument against the legislation. The problem is with the status quo itself, since it has been unfair to women, who comprise half of our population and electorate (Bose 2010: 12)

The Women's Reservation Bill, mandating a quota of a third of the seats for women in state legislatures and Parliament, was a logical extension of what had been achieved relatively easily at the level of local representative bodies after the adoption of the Seventy-third and Seventy-fourth Amendments to the Constitution, in 1992. The positive experience of women in the panchayats and a recognition of their interventions in them presaged this, especially in Karnataka, Maharashtra, West Bengal and Kerala, where panchayati raj was taken more seriously.

The need and urgency for greater representation of women at higher levels of governance is strikingly apparent from the sparseness of their numbers there. From a dismal 4.4 per cent in the first Lok Sabha (1952–57), women members reached their lowest proportion in the sixth (1977–80), with 3.8 per cent. Things did improve by the thirteenth Lok Sabha (1999–2004), with women constituting 9.2 per cent, but then declined marginally to 8.28 per

cent in the fourteenth (2004–09) and again rose a bit to 10.9 per cent in the fifteenth (elected in 2009).

In 2008, the All India Democratic Women's Association reported to the parliamentary standing committee that the proportion of OBC women MPs to the total number of women MPs in the fourteenth Lok Sabha was 30 per cent, slightly higher than the 28 per cent for the total number of OBC MPs in the House. However, this is not an indication of their electoral marginalization with regard to men in their communities. With a one-third quota for women, SC and ST women members together would increase from 17 to 40 within their present 22.5 per cent reservations, as constitutionally mandated. What the actual percentage of OBC women will be with the one-third quota for all women remains to be seen.

The Women's Reservation Bill was first introduced in the Lok Sabha in 1996 as the Eighty-first Constitutional Amendment Bill, by the Janata government. During the subsequent long years of its chequered history, many amendments have been proposed and discussed by political parties, women's groups, and parliamentary commissions, but most of these have been meant to soften the impact of the change it would bring. Certainly none measured up to women's demand for an adequate representation in these bodies such as political parties and parliamentary commissions. Political parties had long accepted an increase in women's representation by voluntarily nominating more women candidates, but this has had little or no effect, at least on the number of women in Parliament. Parties were unwilling to 'risk' women candidates where they had safer seats, and so nominated them mostly to ones where they had little chance of winning.

Several other suggestions have been put forward. A proposal was made to increase the strength of the assemblies, with dual member constituencies for half of the seats, with women contesting one and men the other (Narayan, Jay Prakash et al. 2000). This would bring in a third more women MPs without disturbing the status quo of male-MP representation. However, it would make these already unwieldy bodies even more so, by increasing the total number of seats by half.

A more complicated suggestion was made in 1997 by the Shetkari Mahila Aghadi of Shetkari Sanghatana (Farmers' Union Women's Platform). This would have pooled three constituencies with three contesting candidates, of which one would mandatorily be a woman, and then give voters three votes, one of which would have to be cast for the woman candidate (*Communalism Combat*, June 1997: 6). This would meet the requirement of the overall numbers, but also multiply the demands on the candidates' campaigning, and extend the successful representatives' obligations to unfeasible proportions, blur accountability, as well as hinder the implementation of governmental programmes in the extended constituency, especially if it had a divided electorate.

A rotation of reserved seats would mean that a third of the constituencies would have to be vacated by the sitting candidates. This has been viewed as an injustice to those candidates who have nurtured their constituencies after earlier elections. But many such nurturing representatives have also used their positions to stymie any opposition and secure the seats for themselves and their parties. All too often, such secure seats have become feudal fiefdoms. Rotation could provide the opportunity of liberating such constituencies at least every third election.

Reserved quotas for women do pose a direct threat to the prevailing patriarchies in our society. Politicians and parties, those openly opposed and even those apparently supportive, obfuscate their patriarchal agenda by demanding amendments or making alternative proposals to ensure that the bill will rock their boat as little as possible. But no single piece of legislation, even a path-breaking one like this, can by itself fulfil all the expectations or assuage all the fears that will inevitably arise.

The Women's Reservation Bill is situated in the endless complexities and contradictions of gender relations in a traditional society undergoing rapid, even drastic change. It can at best be a first step and at worst the last one; but at the least it should not be a step backwards, as some opponents to the bill hold. The pertinent question is really this: do 'political parties resist the Bill because they fear it will empower women too much or too little?' (Menon

2004: 170). For some opponents to the bill, it is too much too soon; for some proponents, it is already too little too late.

MULTIPLE HIERARCHIES, UNEQUAL PATRIARCHIES

This precisely is the debate about sub-quotas within the women's quota for the OBCs, who are leading the charge against its present formulation and with whom some of the Muslim minority groups have now joined. This divisive issue has become a dangerous sticking point, threatening the final outcome of the Women's Reservation Bill. The dividing lines here are rather apparent. The OBC apprehension is that upper-caste/class women, already better prepared and positioned in public life than OBC women, will corner a majority of the reserved seats and consolidate their gains, increasing the overall proportion of upper castes and classes in elected assemblies, where the OBCs as a demographic majority are now a dominant group. Hence, the OBC demand for sub-quotas for their women.

In our caste hierarchies, besides the inequalities between and within castes, there are gender inequalities peculiar to each caste, so that within these caste hierarchies and across castes, there are unequal patriarchies (John 2008: 54) as well. Ideally, the bill should address both, the inequalities between men and women in society at large and the inequalities between upper-caste and OBC women. This is the justification for the OBC demand for quotas within the quota.

But then again, the demand for sub-quotas does not address apprehensions about the *bibi-beti* syndrome—that men will 'ventriloquize' through their elected wives and daughters. This syndrome might just be further compounded in situations where patriarchy is stronger and women more submissive. No community can pretend to gender equality; it is always a matter of degree, though it is more associated with more traditional and less urban communities than with more modern, urban ones. The caste panchayats in north Indian village communities are at times shocking testimony to this.

There is an anomaly here that needs to be confronted:

Could it be that enhanced representation of women in the national parliament spells a far greater and immediate challenge to the gendered status quo within the political party system? ... Is it that

the pattern of quota systems in India has shown that elite based strategies of empowerment are less helpful to groups seeking recognition than those based on grassroots institutions? (Rai and Sharma 2000: 159)

Where the male access to power is of greater consequence and is easier, there women reservations would be a real and greater threat. This could explain why women's reservations in panchayati raj institutions were accepted and the quota even enhanced. Aspirants to these roles are not in the competitions with state- and national-level leaders. Moreover, the devolution of state powers to local self-government has been rather limited.

Those more generally opposed to all reserved quotas would be opposed to the Women's Reservation Bill as well. Those who oppose women's quotas as inadequate and even counterproductive to the cause of gender equity are likely to be muted in their opposition in the present climate of political correctness, but one cannot miss the subterranean tremors below the fault lines of the gender divide. Even political parties that support this bill had to issue a whip to get their members to toe their line when the bill was voted upon in the Rajya Sabha. However, the issue of caste-based sub-quotas, and now minority-based ones, does need to be further unravelled.

The obvious purpose of greater representation for women is for greater gender equity in society, not to protect or promote any caste or class advantage. The greater the gender inequalities in a society and the fewer the women in public life, the more urgent are mandatory quotas for women. However, women are not a uniform category in any society, and inequalities between women arise from the inequality between the communities to which they belong. The general disparities here have much greater impact than do the specific inequalities between women. This was the justification for the caste-based quotas in education and employment that are already in place.

However, because of the severe discrimination and deprivation still experienced by SCs and STs, political reservations to elected assemblies were written into our Constitution only for these communities. However, to date, OBCs do not have quotas even in panchayati raj institutions, and giving such allowances to OBC women now might open a new can of worms. Meanwhile, the Mandal Commission has not recommended political

reservations for OBCs, nor has the Sachar Committee done so for Muslims. The Constituent Assembly had discussed and dismissed such political reservations based on religion and caste when it dismantled the colonial allocation of seats in representative assemblies. Now we seem to have reached a historical disconnect with the constitutional projection that caste would be less and less relevant in the new free India.

Some would see the 'quota within a quota' demand as bringing back caste and religion into the political arena; others argue that they are already there. Better to bring this into the open, perhaps, than ignore them while they play out in the background in hidden and unaccounted ways. But once we let the genie out of the bottle, will we be able to put it back again?

The logical extension of sub-quotas for OBC women would be parliamentary and legislative quotas for the OBCs. But then, as with women, OBCs are not a uniform category. An endless subdivision of reservations would eventually lead to completely proportional quotas to reflect society. This would perpetuate these categories, rather than transcend them, for quotas once politicized cease being temporary as they are intended to be. They tend to become permanent, and rescinding them becomes politically unfeasible, at least in our contemporary political scenario.

Women, by and large, celebrated publicly when the Women's Reservation Bill in its present form was passed in the Rajya Sabha. However, there are anxious apprehensions that the unresolved controversies around the bill will be hyped up to stymie its passage, even as it has many hurdles to cross. Yet this legislation could well be a first step in targeting patriarchy in society as a whole, and could subsequently be amended to target specific community patriarchies in their particular caste hierarchies. The opponents of the bill are determined not to allow even this, fearful that it might be the last fatal step. Some of these opponents have made this into an all-or-nothing issue: amend or die.

Through the long years of parliamentary debates and public discussions, referrals to expert committees and parliamentary commissions, the divisions have become more strident and aggressive. Extended discussion seems only to politicize the issue even further. On both sides of the divide, patriarchal

mindsets seem to rule the roost, and whether sub-quotas will affect patriarchy or caste hierarchy more effectively is still uncertain.

The OBC leadership seems more concerned with protecting their male dominance than with advancing their women; while the proponents, more with increasing their upper-caste representation than promoting that of women. The unparliamentary behaviour of many male MPs each time the bill is debated has marginalized the real issues of gender equality and equity. Women's voices on the bill and the amendments are less and less heard. This only serves the status quo of male domination.

All of this is stark evidence that the liberation of women in this country is bound up with, even dependent on, liberating their men from their patriarchal mindset. Perhaps the hundreds of thousands of village women leaders elected in panchayati raj institutions will prepare themselves for higher levels of political leadership. Once they reach critical numbers, they could be the vanguard that will one day storm the bastions of male domination; but until then, some form of affirmative action must fill in. But for this, a critical minimum threshold of proportional representation, labour force participation, and the general social autonomy and cultural standing of women must be crossed. Roop Kanwar's sati is a shocking revelation of how distant our society remains from that point.

ROOP KANWAR'S SATI

The Greek historian Aristobulus of Cassandreia, who travelled with Alexander the Great to India, recorded the practice of sati, widows burning themselves on their husbands' funeral pyres. The Greeks believed this was to dissuade wives from poisoning their husbands. The old *shastris*, the scholars on the Hindu scriptures, lauded the practice and justified it as required of righteous wives. However, the *Manusmriti*, regarded as the most authoritative expression of traditional Hindu law, does not mention sati.

During the sixteenth century, the Portuguese declared sati a crime in Goa, and the Moguls did the same in the seventeenth. In 1829, Lord Bentinck, the governor-general of the East India Company, declared sati to be culpable

homicide. But there have been shocking instance of sati even in contemporary India:

Kuttu Bai, a 65 year widow committed sati in the state of Madhya Pradesh in August 2002, another Vidyawati, a 35-year-old woman, committed sati by jumping into the blazing funeral pyre of her husband in the year 2006 in Uttar Pradesh, Janakrani (40 years old) was burnt to death on the funeral pyre of her husband in Sager District of Madhya Pradesh in August 2006 and very recently one Lalmati (71 years old) of Chhattisgarh has committed sati in October 2008. (Ahmad 2009: 2)

Women who committed sati were generally widows of royal or high-caste status. Temples were often built in their honour. But whatever the religious rationalization, there is no denying the social implications of this inhuman expression of male dominance. It made wives dependent on their husbands' lives for their own, and 'got them out of the way' when they became widows.

The true story of Roop Kanwar was lost in the funeral pyre that consumed her husband and herself. In itself, the story is quite straightforward. However, in the controversies and ambiguities that followed, the responses of people and their leaders constituted a stinging testimony to our prevalent traditions of patriarchy.

On 4 September 1987, Roop Kanwar, an eighteen-year-old Rajput woman from Deorala, Sikar district, Rajasthan, committed sati before several thousand witnesses. She had been married for eight months and there were doubts about her willingness to immolate herself. Following her death, the Rajasthan High Court banned the *chunri* ceremony on the thirteenth day honouring her, but it was held all the same the next day, 16 September, outside the local temple. On 1 October, the Rajasthan government quickly promulgated the Rajasthan Sati (Prevention) Ordinance, 1987. Some forty-five persons were charged with murder but all were acquitted.

The central government followed with the Commission of Sati (Prevention) Act, 1988. This repealed earlier sati-prevention laws and extended the offence beyond committing or abetting to glorifying sati:

Whoever does any act of glorification of sati shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees. (Section 5)

Under this new Act, eleven individuals were charged in the Roop Kanwar case, but were finally acquitted some sixteen years later. The first information report (FIR) had contained no names; no witnesses were presented, not even the district magistrate; and the high-profile witnesses had turned hostile, including the additional district magistrate, sub-inspector and additional sub-inspector. The *sati-sthal*, place of the sati, set up in 1987, once guarded by sword-brandishing Rajput youths, had to be taken over by policemen to prevent public worship there. But Rajput families still perform the Roop Kanwar sati puja in their homes in September, while the district magistrate sends policemen to the ten sati temples in Sikar to prevent any such puja there (*Hindustan Times*, 5 September 2007).

After vigorous protests by women's movements, a Cabinet committee was set up to make the law more stringent. This pushed for longer prison terms, mandatory prosecution, heavier fines, and further provisions for outlawing the glorification of sati. But in April 2007, these recommendations were dropped, after two Cabinet ministers and an MP from Rajasthan raised objections. And there the matter still stands.

As with Bhanwari Devi's gang rape, Shah Bano's divorce and Mathura's custodial rape, with Roop Kanwar's sati the government representatives—at several levels and in many departments, in the legislative, the judiciary, and the executive, almost always men—seem to conspire to stymie the effective prevention of sati. These politicians are more concerned with protecting their electoral constituencies than the lives of their women. The recent reluctance of political leaders to take an unambiguous stand on caste panchayats in Haryana, in spite of their implementing extrajudicial executions, is another instance of such vote-bank politics. Laws and their implementation have become tokens of intent, not effective prevention of atrocities against women. Sati is the extreme case, but the fate of our widows is no less atrocious, and that of the vast majority of our women only a mite better.

All this is indicative of the gender oppression of women in our society. The shocking immolation of young Roop Kanwar could have been a turning point in addressing traditions hostile to our women, but it seems to have had little impact beyond a legal response. Even this has not been effectively

implemented because it seems to be politically importune to do so. In our electoral politics, still so dominated by caste and patriarchy, gender justice receives short shrift. If only women such as Roop Kanwar were given free and independent voice, the stories they could tell and the impact they might have would surely have an effect on such regressive politics. But this cannot happen without women's representation, and reserved quotas is a much-needed requirement to enhance this representation.

GENDERED CITIZENSHIP

In Indian society, gender equity goes against the grain of our patriarchal traditions, which overtly or covertly resist any change that challenges them. Only a vigorous politics for gender equity can challenge our male-dominated electoral politics. The Women's Reservation Bill is largely being pushed by women MPs. If there were more of them in the House, there would surely have been a very different debate. Male MPs have not been very vocal in their support in the House or very forthcoming outside it, even those in parties formally supporting the bill. Silence here is far from consent.

The strident OBC opposition to the bill is a comment on their own patriarchies that have controlled their women and kept them more backward than upper-caste women. They demand sub-quotas for OBC women only because more of their women in the elected bodies will assure their caste representation in the House. Upper castes are more inclined to support the bill in its present form, similarly expecting a better representation of their women in the reserved quota, and thus to preserve their own caste representation in these bodies. To judge by our present politics, the bibi-beti syndrome is equally prominent in both groups, so the patriarchal control over women is likely to reduce their presence in the legislature to a non-threatening tokenism. Neither group is actually committed to the real autonomy of women. Their ambiguity over and even covert support to the patriarchal panchayats of caste dominance, even to some of their murderous diktats, only confirms this severe lack of intent.

The real issue at stake is not about token representation of women, but about empowering them. If the empowerment issue is going to keep getting

lost in the melee of caste and patriarchal politics, it is women in the public domain who must liberate themselves and their men. Women's movements have done this in civil society. To them we owe much of our gender sensitivity. The Women's Reservation Bill, even in its present form, could be a first step to bring women into the political arena and then help towards a more equal and participative, a more gender-inclusive and gender-sensitive citizenship for all.

This demands an active citizenship, not just a passive one (Walzer 1970: 203–25). The first is a more republican ideal of active participation in consequential decisions in a vibrant public space in pursuit of the common good. Active citizens are partners in the governance of society. The second satisfies the liberal concern for individual rights and private interests. Passive citizens are content to be recipients of a benevolent state. Taking both aspects together implies that 'citizenship is not just a certain status, defined by a set of rights and responsibilities, but also as an identity' (Kymlicka and Norman 1994: 369). In other words, the resources and rewards, the obligations and burdens of citizenship must be actively negotiated within a democratic state; for, even though the entitlements of citizenship are formally available to all equally, the citizen's position in society—as defined by the social structures of class, caste and gender—conditions access to them.

This is an ongoing process, and who negotiates with whom and on whose behalf is crucial to any equitable outcome. These are processes in the public culture of a society which then become reflected in its institutions, from the familial to the political. Without an independent and empowered presence of women in these processes, they will not be gender-just and equitable. The historical testimony for this is overwhelming. The effective exclusion of women from these processes of negotiation in the public domain is how traditional patriarchies have reproduced themselves, and why they are so threatened by autonomous women storming their preserved male bastions.

A Gendered Citizenship (Roy 2005) must not only reject women's domestication to the private domain; it must contest the oppressive structures of caste and class, especially the multiple patriarchies running across these.

Effective representation and equitable negotiation is a prerequisite for an active gendered citizenship, or else women would be mere passive dependents of patriarchal largesse. How best to do this must be in terms of women's needs, articulated by their own voices, not by those of patriarchies that pretend to ventriloquize this but in fact serve their own agenda of protecting their own caste or class dominance.

Women's movements in this country have struggled to negotiate gender-sensitive citizenship rights. What gains they have achieved are largely in civil society, outside the male hegemony of political power. In the 1960s and 1970s, the women's movement in India focused on preventing atrocities against women and negotiating their rights. By the 1980s, it had moved on to challenge structured gender inequalities, which are becoming increasingly pertinent as our present neo-liberal policies make women particularly vulnerable.

However, 'groups of women who have tried to broaden the political space available for "women" have had to choose whether to use "women's" traditional status as carers and nurturers' (Naffine (1994: 12), an option particularly difficult in a traditional culture. But these characteristics must be brought to bear in the political arena, not left restricted to the family—for, the familial, like the personal, is the political, too. The 'dichotomy assumed between "public" (non-domestic) and "private" (domestic) has enabled the family to be excluded from the values of "justice" and "equality"' (Nussbaum 2000:10). In spite of our idealization of the family in our society, the gender inequities there 'bring us closer to the starkness of the inegalitarian and oppressive relationship between men and women' (Gandhi and Shah 1992: 271). Thus, invisible to the public gaze, 'the family both fosters and undermines human capabilities' (Nussbaum 2000: 270).

BEYOND THE STALEMATE

The Inter-Parliamentary Union (IPU), established in 1889, at its meeting in October 2004 debated women's representation; quotas were the central issue. In 2005, this worldwide body had 15.7 per cent women members; of the ministers in it, 14.3 per cent were women. As early as 1992, a rather

radical resolution from the IPU council stated: ‘The concept of democracy will only assume true and dynamic significance when political policies and national legislation are decided upon jointly by men and women with equitable regard for the interests and aptitudes of both halves of the population’ (IPU 1994).

Political representation is a necessary condition for a liberal democracy. Political quotas are meant to address those who are excluded because of the inequalitarian social structures in which political processes are enacted. So, these are accepted as legitimate justification for SC and ST quotas in legislatures and Parliament. Reserved quotas for women are a fair extension of that same principle. After all, diverse as the category of women may be, all women suffer discrimination and deprivation in our families and society, and as such their right to representation can no more be denied. The Women’s Reservation Bill must empower women to address their situations politically, not to serve the old hierarchies all over again.

However, as with caste, here too reserved quotas are not a sufficient condition for equity and equality for women—though, given the present circumstances, they are a necessary one. It is not just the quantity but the quality of representation that would make it effective. Reserved quotas must match the electoral system and be accompanied by other initiatives: conscientization, capacity building, gender-sensitive environments. For, ‘in the long run, only a shift in a country’s political mores and culture will bring more women into the political arena’ (Dahlerup 2006: 272).

Voluntary alternatives for women’s inclusion in the political process are not viable because, though proposed and promised, they are not taken seriously. An effective implementation of reserved quotas for women in legislatures and Parliament must bring a more participative and inclusive, as well as a more egalitarian and sensitive citizenship for all. Whatever form they finally take, quotas must not be held hostage to the multiple patriarchies and hierarchies that plague our politics, but rather must prioritize women beyond caste and class. Yet little would be gained if the *Politics of Presence* (Phillips 1995) of one group engendered the political exclusion of others. This is not an unknown phenomenon in the quota politics of this country. Any

preferential concession to disadvantaged groups must be checked against an integral and inclusive understanding of justice.

This will demand structural and policy changes in a gender-biased society. However, to deny any longer a gender-sensitive citizenship to those who hold up half our sky is to perpetuate the inherent contradictions and injustices of a patriarchal society. Such a denial in a liberal and just democracy must be condemned before it becomes unsustainable.

A Second Freedom Struggle

ANOMALIES AND CONTRADICTIONS ■ DEMOCRATIC INCLUSION ■
 EGALITARIAN PARTICIPATION ■ INTEGRATIVE POLITICS ■
 DEMOGRAPHY AS DESTINY ■ BREAKING THE IMPASSE ■ OPENING
 HORIZONS

ANOMALIES AND CONTRADICTIONS

In India, caste, religion and patriarchy emerge as the three most resilient obstacles in our quest for a just society through just means. When change is inevitable, it is often subverted into new avatars that protect the vested interests of those who support these retrograde traditions. Our quest must move against and beyond the injustices that these institutions have so long imposed on our people, without burdening them with new ones or consolidating old ones. For this, our quest must be set in a historical context. Then the issues can be better critiqued from an understanding grounded in our Constitution. This must be the public consensual platform from which our engagement proceeds.

If we do not learn from our history to address our anomalies and contradictions, we will condemn ourselves to repeat that same history, either as tragedy or as farce. Unfortunately, in the confusion of conflicting constitutional ideals that must be respected, the contending legislative priorities that must be set, and the confusing judicial interpretations that have been made, we easily forget how the promise of our freedom struggle inspired our ideals and oriented our hopes. There is a second freedom struggle challenging us now.

The draft for the American Civil War (1860–65) illustrates the anomalies and contradictions when inclusion and participation are considered a burden rather than a privilege, and seen not as a duty to be borne but a right to be optionally exercised (Geary 1991: 3–48). As the war began to go badly for the North, the initial enthusiasm to volunteer also waned; by 1861, President Abraham Lincoln signed the first draft law. Draftees could find substitutes if they did not want to serve. Soon, newspapers carried advertisements offering to pay for substitutes, with offers as high as 1,500 dollars. What was first publicized as a just war against slavery was now caricatured in the slogan, ‘Rich man’s war, poor man’s fight!’ (Indeed, that is true of all our wars even today.) In 1863, a new draft law abolished substitution but allowed the draftee to buy his way out of the draft for a fee of 300 dollars to the government. This prompted a new slogan: ‘300 hundred dollars for a life!’ Insurance companies promptly came out with a monthly premium policy (MacPherson 1988: 490–94). The next year, the government enacted a new draft law that eliminated the commutation fee as well.

Finally, the burden and duty to fight for one’s country was imposed on all those eligible for the draft. This seems a long and torturous path to the obvious duties and privileges of citizenship. Eventually, of the 207,000 who were drafted, 87,000 paid commutation fees, 74,000 hired substitutes, and only 47,000 actually served. The others fled or pleaded disability. The bulk of the army consisted of volunteers attracted by bounty payments (Geary 1991: 83). Even today, the rich and powerful find ways of escaping the draft; some have even gone on to become hawkish politicians in Washington, urging young men to fight for their country. Here the implications for egalitarian inclusion and democratic participation are too obvious to be missed: the rich easily subvert their civic duties; the poor carry an unequal burden. Volunteer army recruits are still from the poorer strata of society.

In rejecting any dichotomy between ends and means, Gandhi staked out the moral high ground, from where he sought to bring righteousness into all his endeavours, political or otherwise. He was not one to allow a convenient pragmatism to compromise the justice of his cause. In this, he was surely taking an impossible overdraft on the moral stamina of his followers. Yet

something of his high ethical ideals was internalized by our Constituent Assembly members and expressed in the Constitution they gave us. Thus, social inclusion and political participation in the pursuit of a just society must be planned and implemented with commitment and care, lest unworthy means displace noble ends, as so easily happens with bureaucratic and centralized organizations. Indeed, the ideal of a just society at times seems as illusory, as just means to it seem elusive.

The constitutional purpose of affirmative action, and the preferential treatment for the deprived and the vulnerable that it implied, was to address the anomalies and contradictions of our society, specifically focusing on caste, religion and patriarchy. For the Constituent Assembly, this was integral to its agenda of a transformative social reform within its understanding of establishing a just society by just means, as we so solemnly pledged when we constituted ourselves as a ‘sovereign, socialist, secular, democratic Republic ... assuring the dignity of the individual and the unity and integrity of the nation’.

Politicizing justice in the pursuit of sectarian interests makes justice a pawn in the power game played by those promoting and by those opposing affirmative action policies and their implementation. As arbitrators of this engagement, the courts struggle to interpret the Constitution and are often forced into practical accommodations, though at times they have dared to face down a populist Parliament.

Such tensions do not augur well for the future of India’s democracy. Power politics and electoral compulsions are already beginning to compromise it. Democracy envisages ‘government by discussion’ (Buchanan 1954: 120) among equal and representative partners in quest of the common good of all. It is not just a precarious balance of interests among various constituents of powerful dominant lobbies of vote banks that exercise countervailing power refereed by the courts. This politicizes justice, hollowing out the substantive values on which it must be premised: liberty, equality, fraternity. Democracy, as a government of the people, for the people, by the people, is then reduced to empty procedures that legitimize a partisan agenda of the more powerful constituents even against the common good.

So, to pursue reserved quotas and minority rights against the common good betrays the very purpose of such preferential treatment. Caste quotas become a quest for upward social mobility; the creamy layer of recipient communities uses them for its own partisan benefit, to the exclusion of others more disadvantaged and more deserving in their own caste communities. Minority rights consolidate the traditional elites and religious leaders of these communities, who often become fundamentalist to preserve the status quo against change that is perceived as untoward. Patriarchies prefer tokenism to any real empowerment of women that might challenge their authority, and so subvert gender polices for their own self-preservation.

The cumulative effect of these manoeuvres endangers affirmative action. In such circumstances, it can at best create new elites and eventually lead to a circulation of elites; at worst, it can strengthen old ones. But exchanging new elites for old could well be a scenario worse than before. For, when new and old caste or class elites accommodate each other and at times amalgamate, it does not make for a more egalitarian and just society. Preferential policies, when they consolidate a creamy layer of the more advantaged among the reserved quotas for Dalits and adivasis and women, do not empower the vast majority of people trapped at the bottom of the quota, who are then left outside the charmed circle of this privileged advancement.

Preserving an unjust and unequal status quo of the old, in new avatars is no longer a viable or an acceptable option. Recapturing the constitutional vision of an inclusive and egalitarian society, a participative and integrated democracy, will demand another model of development, with more fine-tuned affirmative policies, as well as more focused preferential treatment for the disadvantaged and the vulnerable. Our constitutional vision undoubtedly prioritizes democratic inclusion over strong centralized government, egalitarian participation over a compartmentalized society, an integrative politics over an assimilative state.

Though our freedom struggle was against colonial imperialists, our development model has internalized this very *Intimate Enemy* (Nandy 1983). We need a second freedom struggle against the internal colonialists and their covert imperialism against our own people; a struggle for the 'quality of life'

for a happy people, not a nation craving for the ‘standard of living’ of a rich country; a striving to be an exemplary state rather than a great power. Such were the ideals of our leaders in our first freedom struggle—Gandhi, Tagore, Nehru—to which we must reach out again and again before they slip beyond our grasp.

DEMOCRATIC INCLUSION

In 1923, at the height of the controversies over separate electorates, Maulana Mohammad Ali Jauhar was president of the Indian National Congress. He later left in opposition to Nehru’s rejection of separate electorates for Muslims. He is reported to have once jokingly remarked on the enthusiasm of religious preachers:

My own belief is that both sides are working with an eye much more on the next decennial Census than on heaven itself, and I frankly confess it is on such occasions that I sigh for the days when our forefathers settled things by cutting heads rather than counting them. (Indian National Congress 1934: 700)

This has always been the extreme but hidden authoritarian temptation that never comes to terms with the democratic deficit, preferring a more autocratic politics as long as it does not immediately affect them or their vested interests.

While most western democracies proceeded cautiously, in incremental steps, towards universal suffrage, the Indian Constitution promulgated it at the very founding of our republic. For a country with shockingly high levels of illiteracy and poverty, this was a decisive commitment to an egalitarian and inclusive ideal of citizenship, a great leap of faith in the good sense of our own people. In retrospect, that has not been misplaced. Even compared with other major democracies, the overall electoral results bear testimony to the basic common sense and traditional wisdom of our people.

There have of course been aberrations, and the tensions and strains are often apparent at the fraying edges of our democracy. The national Emergency declared by Indira Gandhi is the most obvious and extreme example of this. Communal and criminal candidates do get elected. Yet overall, the unprecedented scale of Indian elections gives evidence of a

robust electoral democracy. However, this is still at the level of procedure; it is not the substance of a mature democracy as yet, and we could lose our way.

Western electoral democracy is based on the individual voter as the subject of democratic and civil rights. This has been redefined in the Indian republic with communities as the subject of collective rights as well. Collective voting—‘vote banks’—is a consequence of this communitarian emphasis. The hierarchical structure of Indian society and the discursive traditions of *The Argumentative Indian* (Sen 2005) have facilitated this process. However, these are the same social structures and traditions that at times undermine the substance of democracy. Much of this is apparent in electoral campaigns, which showcase the best and the worst in our democratic processes. Appeals to exclusivist identities and partisan motivations, obscurantist superstitions and irrational fears, foreground the worst in our caste, religious and patriarchal institutions.

Caste society found a niche for each community in society, but it was a hierarchical inclusion; it made no pretence to equality of status either of communities or of individuals. Vedantic philosophy and Bhakti panths did not effectively impact on caste structures. Further, the social hierarchy was replicated in the patriarchy of the extended joint family. The French sociologist Emile Durkheim, in his seminal work on *The Division of Labor in Society* (Durkheim 1933), would categorize this as a ‘forced division of labour’. Ambedkar more pointedly described this as a graded ‘division of labourers’, not just of labour (Ambedkar 1995: 41). An enforced division of labour, or a graded one of labourers based on an ascribed status of caste, religion or gender is illiberal, inequalitarian, exclusivist and unjust. This is the sombre flip side of traditional society in India, a huge deficit in social capital that still plagues us.

In our electoral democracy, caste and religious identities are readily used to mobilize people and consolidate vote banks, with little or no concern for the divisive fallout. Our Constitution legitimizes caste quotas in order to delegitimize caste hierarchies. But without other affirmative-action policies for an inclusive and egalitarian society, quotas by themselves do the very

opposite, heightening an identity politics of caste for short-term, partisan gains. This is the real democratic deficit that precipitates enormous contradictions and anomalies at the heart of our political enterprise. Highly stratified and divided societies are very prone to this increasingly serious concern regarding such caste politics, which populist politics cannot address.

This is the shadow side of universal suffrage, a side that undermines its democratic dividend, especially where social inequality and exclusion prevail. In hierarchical, plural and patriarchal societies, inequalities are structural. In such societies, 'arrangements that accommodate contestation among a plurality of competing publics better promote the ideal of participatory parity than does a single, comprehensive, overarching public sphere' (Frazer 1993: 14).

Moreover, such egalitarian inclusion affirms, reassures, motivates and draws on the resources of these participating groups. As Iris Marion Young, the political scientist, explains:

Inclusion of differentiated groups is important not only as a means of demonstrating equal respect and to ensure that all legitimate interests in the polity receive expression, though these are fundamental reasons for democratic inclusion. Inclusion has two additional functions. First, it motivates participants in political debate to transform their claims from mere expressions of self-regarding interest to appeals to justice. Secondly, it maximizes the social knowledge available to a democratic public, such that citizens are more likely to make just and wise decisions. (Young 2000: 115)

Separate electorates introduced by the colonial government were supposed to foster greater political representation, but they were co-opted by sectarian religious interests and eventually divided the subcontinent. Our democratic Constitution has sanctioned joint electorates for reserved electoral seats only for SCs and STs; a constitutional amendment for women's quotas is still to be sanctioned. Yet, successful candidates from reserved seats often get co-opted by party agendas, with its caste, class and gender biases.

Democratic inclusion focuses perspectives and sharpens questions on the many anomalies and contradictions in our affirmative-action policies. More importantly, it sets the crucial criteria for any effective approach to caste

quotas, minority rights and women's empowerment. How far are reservations helping to include these disadvantaged groups in the larger society and not just advancing a creamy layer at their top? How far are minority rights preserving and promoting the distinctiveness of these religious and linguistic communities, not using them to foster hostile identities and obscurantist traditions? Is women's empowerment being reduced to tokenism, subverted by patriarchs or is it being co-opted by leaders of the status quo? Misuse of constitutional privileges or rights will eventually delegitimize reservations by undermining their constitutional basis. This happened with separate electorates; it could happen again with political quotas.

EGALITARIAN PARTICIPATION

In his data-based study on *Poverty and Famine*, Amartya Sen convincingly demonstrates the connection between *Entitlements and Deprivation* (Sen 1981): famines occur less from a lack of food produced than from a lack of entitlements of people. Without a free press to alert people, sometimes even available food does not reach the starving. Sen estimates that in China under Mao Zedong, some 30 million died in the Great Leap Forward (1958–61). Democratic participation is generally slower on the development agenda but far less lethal than authoritarian centralization. Yet some would make an amoral and pragmatic cost–benefit calculation to choose otherwise.

The real issue is that democracy cannot be effective if it is not premised on an egalitarian inclusion, or else it is easily subverted by powerful vested interests and their well-funded lobbies. These co-opt voters and their representatives to causes that are often alien to their real interests and needs. Bourgeois democracies are prone to such politics, leaving people, especially the poor and marginalized, excluded and alienated. We see this happening in our own country. Impatience with our pace of development at times tempts us to taking a little leap forward, as reflected in the Emergency, with slogans such as: 'Talk Less, Work More' and 'Mera Bharat Mahan'. But that is not an experience that anyone today wants to see repeated. However, with liberalization and globalization, the increasing inequalities that high growth has brought could precipitate another emergency, as is happening in areas of

the ‘red corridor’, the Maoist-dominated districts in central India, where today the government’s writ no longer runs.

To be effective, democratic inclusion must necessarily be egalitarian. Adding *socialist* to the Preamble of the Constitution underscores this, for the essence of democratic citizenship lies not in passively accepting rights but in actively participating in the decision-making process. There is a necessary relationship between *Inclusion and Democracy*: ‘If inclusion in decision-making is a core of the democratic ideal, then, to the extent that such political exclusions exist, democratic societies do not live up to their promise’ (Young 2000: 13). Widening egalitarian inclusion and increasing democratic participation can break the ‘reinforcing circle between social and economic inequality and political inequality that enables the powerful to use formally democratic processes to perpetuate injustice or preserve privilege’ (ibid.: 17).

Moreover, egalitarian participation can only be premised on a social democracy, which Ambedkar characterized as not about ‘one man, one vote’, which becomes the basis of majoritarianism, but about ‘one man, one value’, which must be the basis of democratic rights and civil liberties. Such values cannot be quantified or counted. Centralized bureaucracies militate against such democratic and egalitarian participation, which must be built and strengthened in a bottom-up process. Mere decentralization can result in centralization at lower levels of government—from the Centre to the states, which often excludes lower levels of government at the district and village ones. Rather, what is required is a devolution of power to the lowest feasible level, to facilitate autonomy by empowering local institutions, families, communities and work groups at multiple levels in society.

Pope Pius XI articulated this in an encyclical, *Quadragesimo Anno* (1931), as the principle of ‘subsidiarity’. This was first proposed for the European Union at the Treaty of Maastricht in 1992 and written into EU law with the Treaty of Lisbon (2009). The Seventy-third and Seventy-fourth Amendments to our Constitution, in 1992, mandate such a devolution of power, though it still has to be made effective in local self-government. The Provisions of Panchayat (Extension to Scheduled Areas) Act, 1996,

popularly referred to as PESA, extended these provisions to scheduled areas. We are still a long way from Gandhi's dream of an India of self-reliant, interdependent communities, of village republics interlinked in ever expanding, always supporting 'oceanic circles' (*Harijan* 28 July, 1946: 236).

Subsidiarity means not abrogating authority to higher levels for what can be done at lower ones of society. This necessarily implies its obverse: solidarity, not abdicating responsibility for lower levels for what must be done at higher ones. Down-up effectiveness requires top-down facilitation, for autonomy does not negate interdependence; rather, both are necessary ingredients for an egalitarian and participative society on a human scale. Such a civil society would be viable only by privileging the 'common good, that is, maintaining conditions and achieving objectives that are similarly to the advantage of all' (Rawls 1999: 205), where justice as liberty, equality and solidarity are what is sought after, not power and pelf, prerogative and privilege.

Participation at local levels is being facilitated by affirmative policies and reserved quotas for SCs and women (as mandated by the Seventy-third and Seventy-fourth Amendments) and PESA. Where state governments have empowered and facilitated these local bodies with real authority and resources, this has worked best, as in Kerala and Karnataka. Local problems are best handled locally with effective facilitation from above—i.e., panchayats setting their priorities and enforcing accountability—while states allocate financial resources to local bodies and assist them with special and technical inputs as needed. But laggard and lackadaisical states still drag their feet, refusing to devolve power to local bodies while demanding it from the central government.

Problems of caste vote banks at others levels of state and national government are also in evidence at the local levels, but they are more manageable unless aggravated by external influences and alien interests, injecting state politics into local bodies. There has been vigorous and even violent opposition when the 'rotation of posts' policy brought in an ST or a woman sarpanch, the president of the village council. In one rather symbolic,

perhaps apocryphal, instance reported in Maharashtra, the only chair designated for the woman sarpanch in the panchayat office was deliberately removed before her first meeting, evidently because the men resented sitting on the floor in her presence. So, the resourceful lady brought a chair from her home, planted it in the office in front of the men, sat on it, and began the meeting! A whole new generation of local community leaders is being formed across the board, and when they step up to higher levels, as must inevitably happen, then the bottom-up process of transformation of our society will be on its way.

However, more than reserved quotas, affirmative policies at this level of local governance, in terms of education and infrastructure, are needed to build the social and material capital of the people. Conscientized adult literacy, good school education, linkages, and openings to the outside world are critical matters for investment from state and central governments. The ineffectiveness of our urban municipalities can in large measure be traced to a lack of such investment. They have become pawns in the game of regional politics, controlled and emaciated by state governments. Nongovernmental organizations, too, have a crucial role to play in raising awareness in rural and urban civil society, and in building up the social capital in these institutions.

Local control of these funds may not be always above board, but the scale of corruption will necessarily be less, and the dispersal of funds can be better monitored and made more accountable. The closer the control of funds to the point of dispersal, the more transparent the system can be made to the immediate beneficiaries. Then the impersonality and obfuscation of our giant bureaucracies would not intimidate our citizens, or siphon off the funds before they reach them. The colossal wastage of government funds is indictment enough to warrant urgent change, and affirmative action at the grass roots, as an empowerment process, has a critical role to play.

INTEGRATIVE POLITICS

The plurality privileged by our Constitution goes beyond structural plurality—i.e., separation of powers, a federal structure, and now, with the recent

amendments, to a devolution of power to local levels by way of panchayati raj. It sanctions cultural pluralism as well, along with linguistic and religious minority rights. The courts have confirmed the federal structure and minority rights as part of the basic constitutional structure. Surely, the Constituent Assembly members did not anticipate some of the unfortunate consequences of this delicately balanced federal structure and the provision of minority rights: the divisive identity politics based on caste and religion, region and language. The political right's centralism has been expressed in an aggressive demand for an integration that amounts to assimilation, first projected in the slogan 'Hindi, Hindu, Hindustan', or more extremist versions of it in Hindutva and Hinduraj. India is endemically far too diverse for such an agenda, which only encourages a backlash of separatism.

We need a politics of integration that does not amount to assimilation, as in the assimilative process, collective identities get merged, and unity becomes uniformity. Our challenge lies in the quest for a diverse society that is egalitarian and just, secular and free. Thus, our quest for economic equality, creating class consciousness, is never merely to invert class divisions and perpetuate them in a new stratification. Rather, it is to mobilize a class struggle for a classless society, where social inequalities are abolished or at least minimized. In our quest for social justice, mere positional change in the caste hierarchy without an attempt to eliminate it, will only perpetuate casteism. Caste mobilization must be for a casteless society, where caste hierarchy gets demolished or at least marginalized. So, too, if religious identities are activated in our quest for religious liberation, it must not be for dominance or isolation, but to create a free and inter-religious pluralism, where religious differences are complementary not antagonistic, a secular space where all communities have equal respect and no one is more equal than any other.

Our diversity in unity must accommodate not just a plurality of diverse communities but also multiple ways of belonging, premised on multiple identities. This is the 'deep diversity' that the social philosopher Charles Taylor privileged (Taylor, C. 1993: 75). The Union of India has constitutionally accepted this, and far more generously than many other

countries. However, if we are 'to promote a sense of solidarity and common purpose in a multination state, it will involve accommodating, rather than subordinating national identities' (Kymlicka 1995: 189). Not for us the homogeneity of the 'melting pot', nor the heterogeneity of the 'salad bowl', but rather a 'differentiated solidarity ... to balance values of generalized inclusion and respect with more particularist and local self-affirmation and expression' (Young 2000: 221). Our Constitution does provide a framework for this: citizenship rights for individuals that allow for multiple identities, and collective rights for groups that make for cultural autonomy.

Today, the only way citizens can cope with an increasingly complex, multicultural, pluri-religious world is with correspondingly multiple and inclusive identities. Group boundaries that are fuzzy and porous, community traditions that are open and syncretic foster such identities. In an imploding world, these become crucial for harmonious group and community life. Indic civilization has a long tradition of this, which most unfortunately is being eroded today. Yet in our freedom struggle, Indians from various ethnic, religious and linguistic communities came together for a common cause. Then we sought to reconcile contradictions and conflicts into a higher social order and 'over time, the Indian freedom movement ceased to be an expression of only nationalist consolidation; it came to acquire a new stature as a symbol of the universal struggle for political justice and cultural dignity' (Nandy 1994: 2-3).

The sense of belonging to a community is a resource (Putnam 2000), but when it finds expression in domination and oppression of others, it undermines society at large. Falling back on the exclusive and totalizing identities of one's community is essentially a defensive reaction to simplify our world and seek security in the collective. But though doing so may for a while give *The Illusion of Destiny* (Sen 2006), it empowers the collective over the individual even as it compromises personal autonomy and freedom, eventually isolating and impoverishing the group itself. The us-versus-them chauvinism that accompanies such identities leaves us all in a less secure and more dangerous world of violence and terror.

To premise ‘my identity’ on being a Muslim or a Hindu, a Dalit or an adivasi, always leaves little social space for the ‘other’—the non-Muslim, non-Hindu, non-Dalit or non-advasi. Such a binary categorization of the world has at times also affected the gender divide. These impervious divides inevitably spill over into antagonism and violence, as we witness on an ever larger scale today with religious and regional, caste and ethnic groups in our society. Forcing a nationalist assimilation on such polarized antagonisms will only up the ante on such violence.

Multiple inclusive identities have a long history in the subcontinent. We need now to visit those sites and draw on them once again. Indic civilization has never imagined itself as a ‘singularity’, a word physicists use for a unique and unrepeatable phenomenon that cannot be generalized. It so aptly expresses the constructed predicament of extremists: *We are the chosen elect, the rest are cannon fodder for our cause!* This applies to dogmatic ideologues of all hues, religious or caste, ethnic or nationalist.

The patriotism that inspired our freedom struggle was inclusive, even when it fell short of its own ideals. It was anti-imperialist and non-militaristic and rejected a narrow nationalist agenda, refusing to give primacy to politics but seeking rather to reconcile the contradictions and conflicts of this country into a higher cultural order (Nandy 1994: 2). For Gandhi and Tagore, in ‘this ideology of patriotism rather than of nationalism, there was a built-in critique of nationalism and refusal to recognize the nation-state as the organizing principle of the Indian civilization and as the last word in the country’s political life’ (ibid.: 3).

This is the challenge of an integration that is not assimilative, that integrates lower-level differences into a higher-level unity. Subsidiarity, as the devolution of authority, allows for the autonomy and empowerment of these groups. Solidarity supplies for their insufficiencies, and coordinates their vertical and horizontal interdependencies. Though a society is not an organism, the living image of one is an apt metaphor for such an integrated organic society, a living whole that is more than a sum of its parts.

The Seventy-third Amendment mandated such subsidiarity with panchayati raj; the Seventy-fourth, for urban municipalities. PESA extended this to the

scheduled areas in nine states: Andhra Pradesh, Bihar, Jharkhand, Gujarat, Himachal Pradesh, Madhya Pradesh, Chhattisgarh, Maharashtra and Orissa (Odisha). These presaged crucial changes in our structure of governance. In those states where implementation has been effective, the benefits are already in evidence. Where commitment to affirmative-action policies have been wanting, especially regarding STs and SCs, the benefits of these legislative changes have also fallen short. Without the empowerment of these last and least, the advantages of local self-government is inevitably seized by dominant castes and communities.

Thus, the promise of PESA has been stymied in the scramble for mining and forest resources in these scheduled areas, largely with the connivance of state and central governments. Private corporate interests, politicians and bureaucrats all connive to advantage themselves with memoranda of understanding signed without taking any real cognizance of tribal panchayats and gram sabhas, which were only required to rubber stamp the agreements. Bribery and coercion are used to divide the adivasi communities; non-violent resistance is then misrepresented as a Maoist threat, and any opposition to these vested interests is crushed (Padel and Das 2009).

A report on the workings of PESA by the Institute of Rural Management, Anand (IRMA), was not allowed to be published by the Ministry of Panchayati Raj, which had itself commissioned it (Guha 2010). This comprehensive and sober study found that in many states, the enabling rules for gram sabha control over village resources have not been put in place. Even though state governors have the authority to ensure that states honour the mandate of PESA, they abdicate this responsibility (ibid.). Little wonder, then, that the consequent displacement and desperation has forced these adivasis to seek Maoist support against continued oppression and exploitation. For, in spite of their brutality, adivasi support to the Maoists corresponds to their perceived threat from other outsiders.

Adivasis and Dalits are among the most threatened among our people today. Yet any attempt at development for them without an effective devolution of power to the structures of local self-governance will be dangerously counterproductive. Authoritarian diktats work only in the short

run but often precipitate blowback that can undo any long-term advantage. If such structures of governance had been effectively in place in India, adivasis would not have been left to the mercy of ruthless developers and corrupt government officials. The top-down development model we have adopted excludes the marginalized. The remarkable growth we are now experiencing is further accentuating the asymmetries in our society, polarizing the already endemic divides between caste and class, gender and community.

Not all minorities in our society are economically deprived or politically marginalized. However, their cultural and religious identities are often under threat, and the more vulnerable communities do experience increasing prejudice and intolerance. This is especially true for Muslims and Christians. Recent communal tensions and violence, precipitated by right-wing majoritarianism, have made these communities increasingly insecure. Minority rights were meant as a constitutional protection for vulnerable linguistic and religious communities. They are not an exemption from constitutional rights and duties, either individual or collective. They are abused when used to mobilize vote banks or to oppress individual community members, especially women, at times even in violation of their fundamental rights. Only when their distinctiveness is respected does integration into a pluralist society enrich diversity and foster openness.

Similarly, affirmative action for women is meant to work towards gender equity in our patriarchal society. It is misplaced when men ‘ventriloquize’ through their women. And it is always women, with the multiple disadvantages of caste and class, community and location, who are among the last and least in our society—poor adivasi women in remote areas, say, or indigent Muslim Dalit women in urban ghettos. The marginalized, whether Dalits or adivasis, minorities or women, do not want a perpetuation of their exclusion from society. In an interdependent, imploding world, this can only result in further exploitation, as evidenced by the Excluded Areas policies of the colonial government, which managed to exclude development and progress but not exploitation and oppression. Without effective political mobilization, Dalits fare no better than adivasis; neither will minorities without the committed protection of their constitutional rights; nor will

women without an empowered political representation. People's movements are a *cri de cœur* for democratic inclusion and egalitarian participation as full citizens, adequately represented in our society and in our republic. This demands an integrative politics.

DEMOGRAPHY AS DESTINY

On World Population Day, 11 July 2010, UN Secretary-General Ban Ki-moon, commenting on the day's theme of 'Everyone Counts', said, 'To be counted is to become visible.' Some sixty countries conducted their censuses that year, as population data is a necessary instrument of governance. But where government databanks are constantly being electronically updated, several countries do not depend on a decadal census any more:

There are two reasons for the change. The first is that computerisation allows statisticians to interrogate databases in a way that was not possible when information was stored on cards in filing cabinets. The second is that counting people the traditional way is getting harder, and less useful. Rising labour mobility and the accelerating pace of societal change mean that information goes stale more quickly than ever (*The Economist*, 17 July 2010: 14)

Modern societies need continual feedback on population data, not just once every ten years and then a few more years to process. Scandinavian countries have not had a traditional census for decades; Britain and Germany conducted their last census in 2011. But our government's electronic databanks are nowhere close to such computerization. Perhaps when an individual's data is stored on the proposed Unique Identification (UID) card, we may think of doing away with the decadal census.

The debate on including caste in the national census is evidence of the politics of enumerating communities. In the colonial census, enumeration and categorization were but the first step in enlarging and systematizing the archive of information required for efficient administration. A census can facilitate the creation of imagined communities (Anderson 1983) and consolidate collective identities (Zuberi 2001). The colonial census consolidated *Castes of Mind* in *The Making of Modern India* (Dirks 2002). For, when 'enumerated communities' are rigidly defined, their 'fuzzy boundaries' become impervious (Kaviraj 1992: 20–33). This make for

singular, exclusive identities that often create *The Illusion of Destiny* (Sen 2006).

A census can have unintended consequences, especially when politicized. Lebanon, with its delicately balanced demographics and even more divisive politics, has not had one since 1932. What we do not know cannot hurt us—or so we tell ourselves. Often, census data is manipulated to panic people. Thus,

in the 1960s there was much anxiety and apprehension about the increasing divide between the developed and the developing world. Paul Ehrlich played upon these fears and uncertainties with a book that became a critical guide for international developmental aid. *The Population Bomb* (1968) predicted hundreds of millions dying of famine in 1970s and India was his basket case! In *The End of Affluence* (1974) Ehrlich and his wife estimated a billion and more dying by the mid 1980s. They restated their basic thesis in *The Population Explosion*, (1990), which was reviewed at length by Thomas Espenshade (1991: 333) who concludes, that this book ‘is short on hard analysis and lacks specific solutions. (Heredia 2004: 105)

Ehrlich’s alarmist ‘Population control is the only answer’ was surely not unrelated to the sterilization atrocities visited on the poor of our country at the time of the Emergency. Yet in the last twenty-five years the death toll from famine has declined, though the world population has grown about 50 per cent since 1968. Today, population growth rates are falling worldwide. In India, the decadal growth-rate decline for 1971–81 was 0.14 per cent, for 1981–91, 0.80 per cent, and for 1991–2001, 2.52 per cent. But the myth of the ‘population bomb’ exploding is still not quite defused. Indeed, in India we are talking about a population dividend, which puts to question the earlier panic. Amartya Sen has popularized the ‘Kerala model’, which brings population growth rates down without coercive measures such as the one-child policy in China.

Religion has long been a category in the census, and it has been used both to make alarmist projections and to frighten people into political support. Thus, U.N. Mukherji using the 1891 census, in a series of articles in *The Bengalee* (1–22 June 1909), projects a dire scenario: *Hindus: A Dying Race* (Sarkar 2002: 64). More recently, the Centre for Policy Studies, Chennai, a think tank of the Hindu right, used the *Religious Demography of India* (Srinivas, et al. 2000) to project a jump in the populations of Muslims and

Christians. Serious demographers dismiss the authors as ‘demographic illiterates from the Sangh Parivar’ (Jeffery and Jeffery 2003: 4718). But this does little to contain the political fallout of such studies.

In many countries of the European Union, alarmist predictions by the political right warn of a Muslim population bomb ticking away; these are further exacerbated by projected threats of Islamic extremism and terror. But the real issue and consequences of this Islamophobia are not addressed. In the Indian context, concerns regarding a caste census becoming inevitably politicized are not imaginary. If a caste census contributed to an additional across-the-board politicization of caste, this would further strengthen caste. However, the possible misuse of data cannot be the reason for not collecting it in the first place—that would be akin to burying one’s head in the sand.

Social scientists have urged ‘the need for data’ (Omvedt 2010), confident in its power to help interpret the world and then, hopefully, to change it. But they do not sufficiently recognize the intellectual pre-judgements and manipulation that opens all data up to misinterpretation. Too often, political prejudices stack the deck against change and undermine the have-nots, while privileging the haves. The courts have insisted on reliable data on which to base their judgments. This was a major methodological flaw in the Mandal report, which could do no better than project the 1931 census.

Anticipating the dangers is the more appropriate response to such issues, rather than closing one’s eyes to them. Certainly we are not better off without the data on which any nuanced and fine-tuned policy depends. The complexity of caste enumeration was never quite resolved in the colonial census. Since then, the issues involved have been compounded by major changes in our society. Very helpful suggestions have been made to answer the objections raised by ‘The Politics of Not Counting Caste’ (Deshpande and John 2010) and for ‘A Forward Looking Strategy’ (Desai 2010). Individuals self-reporting their caste in local terms, and then a group of experts classifying these into larger state and national categories, would provide rich demographic data; yet, this does not provide against its partisan politicization. There is warning enough, if it were needed, in the history of

Backward Caste Commissions in states like Karnataka, which has had three such commissions, in 1975, 1986 and 1990.

We need a more nuanced approach to setting ‘Caste in the Right Mould’ (Sheth 2010) and ‘to anticipate some long-term consequences such a comprehensive caste census might create’. Some such consequences could be a consolidation of caste identities and, consequently, a legitimization of caste authority over individuals, as we have seen with the khaps; an undermining of class identities and reducing of democracy to one of ascribed communities, not free individuals. Yet caste is a reality we cannot ignore. The constitutional justification for caste reservations, and our courts acceptance of caste as an indicator of ‘backwardness’, was precisely to level the field and make caste identity irrelevant in addressing backwardness. This was to be a self-eliminating policy within a specified time frame. Yet even with continued extensions, the most backward have been not effectively reached. Moreover,

if the census data on the OBCs are collected in the first place and then analysed, presented and used for the purpose of just and efficient implementation of the prevailing policy—that is, to make benefits travel down to the ‘last OBC’, while continually creaming off the upper layers. Such policy will remain relevant till the systemic connection of caste to backwardness is randomised and its social-structural basis is thinned down. (Sheth 2010)

This would satisfy the requirement of the courts. In fact, ‘the core rationale for this caste census may thus lie in the technical requirement arising from the acceptance of the Mandal Commission recommendations to extend reservations to the Other Backward Classes’ (Teltumbde 2010: 11). No reserved category is completely homogeneous, and without such a fine-tuning of data collection and analysis, the last and least among them will not be reached. After all, in social, economic and political dimensions, forward OBC castes are much closer to the upper castes, while the lowest among the OBCs are nearer the SCs.

However, ‘while the census can provide base figures, it cannot substitute for the kind of information needed both for inclusion of castes in an OBC list or for “graduation” of castes out of the list, even assuming the latter were ever to be politically feasible’ (Sunder 2010). Moreover, the OBCs are a

very heterogeneous category with regard to both discrimination and deprivation, as well as political and economic power. Hence, a gradation of OBCs on these counts must be done with reliable data, which the census needs to collect. The same must be said for more refined data on the SCs and STs, who are also very diverse within their categories. The contestations among the numerous sub-castes and adivasi communities among them are evidence of this, as in Andhra between the Madigas and Malas, or in Maharashtra between the Mahars and the Matangs, and the Warlis and the Kathkaris.

As reservations have expanded, especially for the OBCs, and the demand for minority consideration in the area of reserved quotas has gained momentum, we need fine-tuned, reliable and extensive data on which to premise our affirmative-action policy. Otherwise, it will be hijacked for the partisan gains of the better off and more empowered communities, and within these by the creamy layers. This furthers inter- and intra-community inequalities. The alternative is to let the politics of reservations run its course and resolve the problem, as we do with so many others, by default or exhaustion.

For reservations to be sustainable and credible, constitutional justice must be factored in to policies and politics, so that commitment to justice trumps political expediency. As yet,

the most disturbing aspect of the present reservation policy is that it is based not on rationality but on considerations of what the political traffic will bear. Whether it be extending OBC reservations, of including Christian and Muslim dalits as SCs, or extending quotas to the upper caste poor ... affirmative action policies are more the product of political demands and exigencies rather than manifestation of humanitarian feelings. (Anand 1987: 373)

The possibilities of a caste census being politicized and misused cannot be a reason for not collecting the relevant census data. Neither can we be blind to the very real probability of such a politicization. To be an effective instrument of policy, demographic data must go beyond crude figures and include socio-economic information on caste. Accurate and in-depth data can bring some rationality to such politics. On the basis of a fine-tuned analysis

of such data, policies to target the realities of caste and backwardness in our society can be legitimately and credibly premised.

The proposal made in Parliament on 7 May 2010, to include caste in the 2011 census, generated considerable controversy. A group of ministers was entrusted to review the issue. On 10 August, it approved a comprehensive caste census with a headcount of all castes (*The Hindu*, 11 August 2010). This has been favourably received by the major political parties, and is already being implemented by the Census Bureau. But how the decision will eventually pan out depends on how it is implemented and how the data is used.

Caste today is not static, if ever it was. The question is: what new avatars will it take with the dynamics of contemporary caste politics, and how will these affect our substantive democracy? Unfortunately, seeking strength in mere numbers is at times the not-so-hidden agenda of those who are demanding a caste-based census, betting that their demography will better their destiny (Desai 2010: 10). But then again, those opposing such a census have their agenda as well. As often happens, politics trumps justice.

BREAKING THE IMPASSE

In Dhaka, during the Bengal riots of 1944, a man who had been stabbed and was profusely bleeding collapsed in front of the house of an eleven-year-old boy. The boy and his father rushed the man to the hospital. On the way, the man said that, against his wife's pleading, he had gone out, desperate to find some work. He never returned home. Kader Mia was the day labourer; Amartya Sen the boy. Decades later, as Sen relates the story in *Identity and Violence*, he wonders:

Why should someone suddenly be killed? And why by people who did not even know the victim, who could not have done any harm to the killers?... The poorest members of any community are the easiest to kill in these riots, since they have to go out utterly unprotected in search of daily subsistence and their rickety shelters can easily be penetrated and ravaged by gangs. (Sen 2006: 173)

There have been and still are many Kader Mias across the subcontinent. They still are murdered by nameless killers who still go unpunished, and

remain unrepentant. Such collective violence, whether driven by religious fundamentalists, caste enemies or insensitive patriarchs, is readily rationalized as self-defence: *We killed them before they could attack us*. The us-versus-them divide is defined by solidary and singular identities, and sustained by prejudice and hatred, all of which makes for non-negotiable, impervious community boundaries, whether on the basis of religion or caste. Solidarity within the group is contingent on hostility towards the others: *Either you are with us or against us*. This becomes a vicious circle of self-sustaining violence.

The difficulties in reversing the escalating spiral at times seem insurmountable, especially when such political violence finds a moral justification. Canadian academic and politician Michael Ignatieff understood this well:

revenge—morally considered—is a desire to keep faith with the dead, to honour their memory by taking up their cause where they left off. Revenge keeps faith between generations; the violence it engenders is a ritual form of respect for the community's dead—therein lies its legitimacy. Reconciliation is difficult precisely because it must compete with the powerful alternative morality of violence. Political terror is tenacious because it is an ethical practice. It is a cult of the dead, a dire and absolute expression of respect. (Ignatieff 1993: 188)

The difficulties of reconciliation is further compounded when we do not come to terms with and transcend our fears, both individual and collective. For,

fear robs subjects of their capacity to act with or against others. It leaves them shaken, sometimes permanently traumatized. And when large numbers fall under the dark clouds of fear, no sun shines on civil society. Fear saps its energies and tears and twists at the institutions of political representation. Fear eats the soul of democracy. (Keane 2004: 235)

An identity politics premised on revenge and fear has no room for solidarity and compassion beyond narrow community borders.

Breaking the impasse demands a solidarity that is just, free and equal, which is only possible with a balance between fundamental rights and duties of citizens to each other. Though liberty and equality are perceived more as a matter of rights, solidarity is more a matter of duty, but not a justiciable one. Yet without a sense of solidarity across the differences and diversities of society, affirmative action, especially reserved quotas, will be endlessly

contested by those left out and determinedly perpetuated by those who reap the benefits.

An authentic fraternal solidarity reaches out across inequalities of caste, class and region, across divides of ethnicity, religion and gender, to make possible a life of dignity and freedom, of self-respect and self-reliance for all. Beginning with the last and least, we must go *Beyond the Culture of Cynicism* (Giroux 2001), by ‘Transcending Pessimism’ and ‘Rekindling Socialist Imagination’ (Panitch and Gindin 2001). We need a fraternal solidarity of co-responsibility towards each other and the common good to break through and keep faith with the living, leaving ‘the dead to bury the dead’. A living society cannot remain imprisoned in history or it will die re-enacting its past once again in the present.

OPENING HORIZONS

From our presentation in the earlier chapters, caste, religion and patriarchy in this country emerge as the three most resilient and recalcitrant obstacles in our quest for a just society through just means. When change is inevitable, it is often subverted into new avatars that protect the vested interests of those who support these retrograde traditions. Our quest must move against and beyond the injustices that these institutions have so long imposed on our people, without imposing new ones or consolidating old ones. Opening new horizons implies that our quest is set in a historical context in which the issues can be better understood and critiqued from an understanding that is grounded in our Constitution, which is the public consensual platform from which our engagement must proceed. Again, if we do not learn from our history, we will condemn ourselves to repeat it.

There are other positions and approaches not presented here, for no single presentation can be exhaustive. These too must be contextualized and critiqued, or else our engagement with them will get locked into ideological fundamentalism and stymied by dogmatic faith. All too often, an unconscious ideology or stock wisdom limits one’s perspective, and a blind faith becomes irrational, if not bad faith. If these are made explicit they can be dealt with in the open, rather than sully the conversation with background

noise. This then makes the chances of greater transparency far better, even in disagreement.

The conversation started here could well end in polemics that cheer those who agree with one's position without answering the doubts of those who disagree. To cope with differences and disagreements, a fruitful conversation must be carried forward in three interrelated stages: *open discussion*, *equal dialogue*, *consensual decision-making*. The first implies an intellectual quest to clarify ideas and ideals through dialectical discussion. However, clarifying concepts and issues can become a conversation driven by unconscious ideologies and blind faith. This makes for misrepresentation and misunderstanding, and leads to endless debate rather than a fruitful discussion, especially when sensitive and divisive issues are involved. But clarity and incisiveness may well bring difference and division into the open without necessarily reconciling or integrating them.

Even a serious and open discussion can become polarized so as to be fruitless, or it may dissolve into banal pleasantries. Conversations politicized by competing interests and conflicting values are a recipe for even more competition and conflict. Where might is right, power dictates the outcome, and truth and justice are reduced to a mere pretence. A carefully prepared and contextualized discussion is still a first step in a constructive group encounter. To proceed any further, a deeper engagement is needed.

The second stage is the level of dialogue. A clarification of issues is a necessary preparation for fruitful dialogue. This done, the emphasis can shift to open communication between the participants as equals. After all, a more holistic and inclusive comprehension, not just a conceptual or notional one, brings a better understanding and mutual appreciation between engaged partners in a more human and personal involvement. But open communication without some clarity and comprehension of the issues we are dialoguing about can only lead to a sharing of ignorance, not to a real understanding—or worse, to antagonistic misunderstandings.

Obviously, dialogue is a delicate matter and is best seen as an ongoing learning process, inviting us into ever deeper sharing. It is not just a one-off event. It must be an ongoing learning process of deepening and broadening

the exchange. The mutual understanding and self-discovery of such a dialogue becomes the basis on which contentious issues may be resolved. However, it must be an open and equal dialogue. For, where differences are large and convictions deep, defensiveness and distrust can derail a promising dialogue with suspicion and apprehension, and dialogue is subverted into a manipulative process that cannot result in sustainable decisions and committed implementation. Authentic dialogue must be premised on open and respectful communication.

This last is a precondition that requires self-awareness and introspection; otherwise, dialogue will be no more than a debate by other means. Dialogue makes prudent and consensual decisions not only more feasible and sustainable but more transparent and fair as well. Yet, dialogue does not resolve all the ambiguities and uncertainties in complex issues, where interests compete and values conflict. Besides, we all bring our own burden of defensiveness and distrust, which does not make for open communication. Without some level of reciprocal tolerance, an open and equal discussion is a non-starter. It is more likely to result in confusion and misunderstanding, even recrimination and hostility.

However, tolerance must be reciprocal, not skewed in favour of the less tolerant against the more intolerant. We must therefore distinguish four graded levels of tolerance across a continuous spectrum, drawing on the theologian Raimundo Panikkar (1983: 20–36):

1. Political: calculating its pragmatic limits as a matter of practical adjustment to the other, accepting the lesser of two evils;
2. Intellectual: realizing of the need for the other, who can complement one's own limitations;
3. Ethical: fulfilling the moral obligation of not harming the other by being unjust and unfair; and
4. Spiritual: reaching out to the other in mutual human fulfilment.

The level of our tolerance is set by the way we perceive the other. At the first level, the other is perceived as an obstacle or even a threat; at the second, as a useful complement; at the third, as a moral obligation; at the fourth, as a human enrichment. The level of our tolerance, then, positions us before the other and so defines the limits of our solidarity as either pragmatic, utilitarian, ethical or spiritual. Tolerance, then, is not just a matter

between persons; it is as much a concern between groups. It is the precondition for solidarity, just as solidarity becomes the context for tolerance.

Unless the dialoguing partners begin at the same level of tolerance, dialogue will become grounded in recrimination. Moreover, the more comprehensive our tolerance, the more effective our dialogue can be, for dialogue is more than a verbal exchange. It implies reciprocity between the self and the other, which can take place in various types of encounters and exchanges between individuals and groups. Here, we will distinguish four domains of dialogue, following an inter-religious model (Pontifical Council for Inter-Religious Dialogue 1991):

1. Life: living together in close proximity and neighbourly spirit;
2. Action: working together for a purpose;
3. Experience: sharing our experiences of life and action; and
4. Articulation: critiquing our experience and understanding.

The first domain of dialogue involves a daily encounter, a sharing of others' joys and sorrows, of our human problems and preoccupations. The second involves a deeper level of sharing and interaction, and also requires a wider area for consensus, understanding and action. The third involves a still deeper level of encountering and understanding each other, while the fourth brings them all together. To begin with, a dialogue may not be possible in any one of these domains. This will depend on the level of tolerance of the dialoguing partners. But wherever it starts, the more inclusive the domain, the more comprehensive and sustainable our solidarity will be. A genuine dialogue in one or other domain will reinforce and open dialogue in the others.

Finally, a constructive engagement on issues and concerns in discussion and dialogue must eventually culminate in the third stage of our conversation, consensual decision-making. Implementing these decisions will inevitably need political will, which is not always easy, especially in regard to contested areas such as affirmative action and reserved quotas. But with an enriching and deeper tolerance and an inclusive and sustained dialogue, we

will be able, in solidarity, to interrogate our present political and other preoccupations in order to open new horizons, to bring about a new politics premised on justice as liberty, equality and fraternity. Indeed, this was the slogan that epitomized a revolution in France and across the world, but its promise has still to be fulfilled for many of our citizens.

Hopefully, the conversation we have begun in the earlier chapters will not lose itself in endless discussions, nor get mired in confrontational debate. Hopefully, our interlocutions will carry us further into an open dialogue to bring a much overdue consensus on implementing our constitutional tryst with our people. In the Constitution, we pledged ourselves to a

sovereign, socialist, secular, democratic Republic ... to secure for all its citizens:
justice, social, economic and political;
liberty of thought, expression, belief, faith and worship;
equality of status and of opportunity;
and to promote among them all,
fraternity assuring the dignity of the individual and the unity and integrity of the nation.

We will need enormous courage and imagination, commitment and perseverance to break the present impasse and fulfil that pledge to all our people, especially to the last and least. On them our society visits such enormous injustice and exclusion, in spite of the fact that our Constitution protects and promotes them with reserved quotas, minority rights and gender equity. In the bewildering diversity of India, with its innumerable diversities, increasing inequalities, and escalating collective violence, our challenge is to recover a new vision and stature from our first freedom struggle, ‘as a symbol of the universal struggle for political justice and cultural dignity’ (Nandy 1994: 2–3).

More than easy conclusions in this conversation, we need a commitment to an ongoing agenda, opening new horizons that will inspire and motivate us to fulfil our constitutional pledge to our peoples, beginning with Gandhi’s least and last Indian. Otherwise, once again, we will be back with that untamed elephant in the room with the ‘six blind men of Indostan’, who

Rail on in utter ignorance
Of what each other mean,
And prate about an Elephant
Not one of them has seen!

From a distant but similar context in the Caribbean, in his poem 'Names', Derek Walcott cautions us never to allow our mind to be 'halved by a horizon', even when 'as a fishline sinks' the old 'horizon sinks in the memory' (Walcott 1986). For then, new ones open in our imagination.

References

- Acton, John Emerich Edward Dalberg. *History of Freedom and Other Essays*. 1907. London: Macmillan. 1909.
- Agnes, Flavia. 'Protecting Women against Violence? Review of a Decade of Legislation, 1980–1989'. *Economic and Political Weekly* 37(17): WS-19—WS-21, WS-24—WS-33.
- Agrwaal, Ashok, and Bharat Bhushan, eds. 'Justice and Law: The Limits of the Deliverables of Law'. Vol. 2 of *State of Justice in India*, R. Samaddar, ed. New Delhi: Sage. 2009.
- Ahmad, Irfan. 'A Different Jihad: Dalit Muslims' Challenge to Ashraf Hegemony'. *Economic and Political Weekly* 38 (46): 4886–4891.
- Ahmad, Nehaluddin. Web Journal of Current Legal Issues. No. 2. 2009
<http://webjcli.ncl.ac.uk/2009/issue2/ahmad2.html>.
- Alam, Javeed. 'The Contemporary Muslim Situation in India: A Long-Term View'. In *Religion Community and Development*, edited by Gurpreet Mahajan and Surinder S. Jodhka. London and New Delhi: Routledge Taylor and Francis Group. 2010. pp. 203–227.
- All India Reporter*. Supreme Court. 1986.
- All India Reporter*. Supreme Court. SCR 1: 512. 1988.
- All India Reporter*. Supreme Court. SCR 8: 481. 2002.
- Ambedkar, Bhimrao Ramji. *Annihilation of Caste*. 1944. Jalandhar: Bheem Patrika Publications. 1995.
- . *What Congress and Gandhi Have Done to the Untouchables* (2nd edition). Bombay: Thacker and Co. 1946.
- . *States and Minorities*. Lucknow: Buddha Vihar. 1978.
- Anaimuthu, V., ed. *Periyar E. Vē. Ra. Sithanaikal, Sinthanaiyalar Pathippagam* (Thoughts of Periyar). 3 Vols. Thiruchirapalli: Thinkers Forum. 1974.
- Anand, C.L. *Equality, Justice and Reverse Discrimination in India*. Delhi: Mittal Publications. 1987.
- Anandhi, S. *Contending Identities, Dalits and Secular Politics in Madras Slums*. New Delhi: Indian Social Institute. 1995.
- Anderson, Benedict. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. New York: Verso. 1983.
- Anderson Michael R., and Sumit Guha, eds. *Changing Concepts of Rights and Justice in South Asia*. Delhi: Oxford University Press. 1998.
- Anwar, Ali. *Masawat ki Jang* (Battle for Equality). Delhi: Vani Prakashan. 2001.
- Arendt, Hannah. 'Reflections on Violence'. *The New York Review of Books*. 27 February 1969. pp. 19–20.
- Aristotle. *The Nicomachean Ethics*, translated by William David Ross, J.L. Ackrill and J.O. Urmson. Oxford: Oxford University Press. 1925.
- . *The Politics*, edited and translated by Ernst Baker. New York: Oxford University Press. 1946.

- Akerlof, George A. 'The Market for "Lemons": Quality Uncertainty and the Market Mechanism'. *Quarterly Journal of Economics* 84 (3): 488–500.
- Augustine, of Hippo. *City of God*. [Digireads.com](http://www.a1books.co.in/searchdetail.do?a1Code=booksgoogleanditemCode=1420933728), accessed 28 July 2010, <http://www.a1books.co.in/searchdetail.do?a1Code=booksgoogleanditemCode=1420933728>.
- Austin, Granville. *The Indian Constitution: Cornerstone of a Nation*. Oxford: Oxford University Press. 1966.
- Bacchi, Carol Lee. *Politics of Affirmative Action: 'Women', Equality and Category Politics*. New Delhi, London: Sage. 1996.
- Bajpai, Rochana. 'Constituent Assembly Debates and Minority Rights'. *Economic and Political Weekly* 35 (21–22): 1837–1845.
- Barrett, M., and A. Phillips, eds. *Destabilising Theory: Contemporary Feminist Debates*. Cambridge: Polity Press. 1992.
- Barrier, N. Gerald. 'Panjab and Communal Politics. 1870–1908'. *Journal of South Asian Studies* 27 (3): 523–539.
- Barry, Brian. *Why Social Justice Matters*. Cambridge: Polity Press. 2005.
- Basu, Durgadas. *Commentary on the Constitution*. Vol. 2. Kolkata: S.C. Sarkar and Sons. 1965.
- Basu, Kaushik, and Sanjay Subrahmanyam. *Unravelling the Nation: Sectarian Conflict and India's Secular Identity*. New Delhi: Penguin Books India. 1996.
- Barton, L., and S. Walker, eds. *Social Crisis and Education Research*. London: L. Croom Helms. 1984.
- Baxi, Upendra, ed. *The Right to be Human*. New Delhi: Lancet International. 1987.
- Bellah, Robert N. *Beyond Belief: Essays on Religion in a Post-Traditional World*. New York: Harper and Row. 1970.
- Bentham, Jeremy. *The Works of Jeremy Bentham*. Published under the superintendence of his executor, John Bowring. 11 Vols. New York: Russell and Russell. 1962.
- Berger, Peter L. *Facing Up To Modernity: Excursions in Society, Politics, and Religion*. New York: Basic Books. 1977.
- Bhargava, Rajeev, and Helmut Reifeld, eds. *Civil Society, Public Sphere and Citizenship—Dialogues and Perceptions*. New Delhi: Sage. 2005.
- Bhushan, Bharat. 'Indexing Social Justice in India: A Story of Commissions, Reports and Popular Responses'. In 'Justice and Law: The Limits of the Deliverables of Law', edited by Ashok Agrwaal and Bharat Bhushan. Vol. 2 of *State of Justice in India*, R. Samaddar, ed. New Delhi: Sage. 2009.. pp. 100–132.
- Blau, Peter. *Exchange and Power in Social Life*. New York: Wiley. 1964.
- Blunt, E.A.H. *The Caste System of North India*. 1931. Delhi: S. Chand. 1969.
- Bok, Sissela. *Lying: Moral Choice in Private and Public Life*. New York: Pantheon Books. 1978.
- Bose, N.K. 'The Hindu Method of Tribal Absorption'. *Science and Culture*. Vol. 7. 1941.
- Bose, Prasenjit. 'Women's Reservation in Legislatures: A Defence'. *Economic and Political Weekly* 45 (14): 10–12.
- Brass, Paul, and Achin Vanaik, eds. *Competing Nationalisms in South Asia*. Hyderabad: Orient Longman. 2002.
- Brass, Paul. *The Production of Hindu–Muslim Violence in Contemporary India*. Seattle: University of Washington Press. 2003.
- Bryce, James. *Studies in History and Jurisprudence*. Vol. 1. New York: Oxford University Press. 1901.

- Buchanan, James M. 'Social Choice, Democracy, and Free Markets'. *Journal of Political Economy* 62 (2): 114–123.
- Bumiller, Elizabeth. *May You Be the Mother of a Hundred Sons*. New York: Fawcett Columbine. 1990.
- Campbell, Jack. *Creating Our Common Future: Educating for Unity and Diversity*. New York: Berghahn Books. 2001.
- Chalam, K.S. *Education and Weaker Sections*. Delhi: Inter India Publications. 1988.
- Chandra, Sudhir. 'Rukhmabai Debate over Woman's Right to Her Person'. *Economic and Political Weekly* 31 (44): 2937–2947.
- Centeno, Miguel Angel. 'Between Rocky Democracies and Hard Markets: Dilemmas of the Double Transition', edited by John Hagan. *Annual Review of Sociology*. Vol. 20. California: Palo Alto. pp. 125–147.
- Chakrabarty, Bidyut, ed. *Communal Identity in India: Its Construction and Articulation in the Twentieth Century*. New Delhi: Oxford University Press. 2003.
- Chandra, Bipan, Mridula Mukherjee, Aditya Mukherjee, K.N. Pannikar, and Sucheta Mahajan. *India's Struggle for Independence, 1857–1947*. New Delhi: Viking. 1988.
- Chandra, Sudhir. *Enslaved Daughters: Colonialism, Law, and Women's Rights*. New Delhi: Oxford University Press. 2008.
- Chari, Anurekha. 'Gendered Citizenship and Women's Movement'. *Economic and Political Weekly* 45 (17): 47–57.
- Carr, E.H. *What Is History?* 1964. London: Penguin. 1996.
- Chatterjee, Partha. 'The Nationalist Resolution of the Women's Question'. In *Recasting Women: Essays in Colonial History*, edited by Kumkum Sangari and Sudesh Vaid. New Delhi: Kali for Women. 1989. pp. 233–253.
- Chatterjee, Partha. 'Secularism and Toleration'. *Economic and Political Weekly* 29 (2): 1768–1776.
- Chaudhuri, Buddhadeb, ed. *Tribal Development in India*. Vol. 1–5. New Delhi: Inter India Publications. 1990.
- Chaudhuri, Buddhadeb, ed. *Tribal Transformation in India*. Vols 1–4. New Delhi: Inter India Publications. 1992.
- Chaudhury, Pradipta. 'The "Creamy Layer": Political Economy of Reservations'. *Economic and Political Weekly* 39 (20): 299–307.
- Chemerinsky, Erwin. 'Making Sense of the Affirmative Action Debate'. In *Civil Rights and Social Wrongs: Black-White Relations Since World War II*, edited by John Higham. Philadelphia: Pennsylvania State University. 1997. pp. 86–101.
- Chitnis, Suma. 'Definition of the Terms Scheduled Castes and Scheduled Tribes: A Crisis of Ambivalence'. In *The Politics of Backwardness: Reservation Policy in India*, edited by V.A. Pai Panandiker. New Delhi: Centre for Policy Research, Konark Publishers. 1997. pp. 88–107.
- Connolly, William. *Why I am Not a Secularist*. Minneapolis and London: University of Minnesota Press. 1999.
- Constituent Assembly Debates: Official Report* 1950. 7 vols. Delhi: Government of India, Manager of Publications. 2003.
- Crawford, James, ed. *The Rights of Peoples*. Oxford: Oxford University Press. 1988.
- Dahl, Robert A. *Who Governs? Democracy and Power in an American City*. New Haven, USA: Yale University Press. 1961.

- Damon, F.H. 'The Kula and Generalised Exchange: Considering Some Unconsidered Aspects of the Elementary Structures of Kinship'. *Man* (New Series) 15: 267–292. 1980.
- Dahlerup, Drude, ed. *Women, Quotas and Politics*. London and New York: Routledge. 2006.
- Das, Veena. *Mirrors of Violence: Communities, Riots and Survivors in South Asia*. Delhi: Oxford University Press. 1992.
- Davidson, Donald. *Expressing Evaluations*. Kansas, USA: University of Kansas. 1984.
- Desai, A.R. 'Tribes in Transition'. In *Tribal Development in India*, edited by Buddhadeb Chaudhuri. pp. 505–518. 1990.
- Deshpande, Satish and Mary E. John. 'The Politics of Not Counting Caste'. *Economic and Political Weekly* 45 (25): 39–42.
- Devalle, Susana R.C. *Discourses of Ethnicity: Culture and Protest in Jharkhand*. New Delhi: Sage. 1992.
- Dhanda, Meena, ed. *Reservations for Women*. New Delhi: Kali for Women. 2008.
- Dhavan, Rajeev. *Reserved!: How Parliament Debated Reservations 1995–2007*. New Delhi: Rupa and Company. 2008.
- Dirks, Nicholas B. *Castes of Mind: Colonialism and the Making of Modern India*. Delhi: Permanent Black. 2002.
- Dube, S.C. 'Approaches to the Tribal Problem in India'. In *Proceedings of the Seminar on Tribal Development*, edited by L.P. Vidyarthi. Bhubaneswar. 1975. pp. 107–112.
- Dumont, Louis. *Homo Hierarchicus: The Caste System and its Implications*. London: Weidenfeld and Nicolson. 1970.
- Durkheim, Emile. *Division of Labor in Society*, translated by George Simpson. New York: Macmillan. 1933.
- Dworkin, Ronald. *Taking Rights Seriously*. Cambridge, Massachusetts: Harvard University Press. 1977.
- . *A Matter of Principle*. London: Harvard University Press. 1985.
- . *Sovereign Virtue: The Theory and Practice of Equality*. 2001. Cambridge, Massachusetts, and London: Harvard University Press. 2002.
- Ehrlich, Paul. *The Population Bomb*. New York: Ballantine Books. 1968.
- Espenshade, Thomas J. Book review in *Population and Development* 17(2): 331–339.
- Ehrlich, Paul, and Anne Ehrlich. *The End of Affluence*. Rivercity, Massachusetts: Rivercity Press. 1974.
- . *The Population Explosion*. New York: Simon and Schuster. 1990.
- Ekeh, Peter P. *Social Exchange Theory: The Two Traditions*. Cambridge, Massachusetts: Harvard University Press. 1974.
- Engineer, Asghar Ali, ed. *The Shah Bano Controversy*. Bombay: Orient Longman. 1987.
- Falk, Richard. 'Rights of People (in Particular Indigenous Peoples)'. In *The Rights of Peoples*, edited by James Crawford. Oxford: Oxford University Press. 1988. pp. 17–37.
- Fallers, Lloyd A. *Inequality: Social Stratification Reconsidered*. Chicago: The University of Chicago Press. 1973.
- Fenkins, Laura Dudley. 'Personal Law and Reservations: Volition and Religion in Contemporary India'. Gerald James Larson, ed., op. cit. Pp. 104–123. 2001.
- Frazer, Elisabeth, and Nicola Lacey. *The Politics of Community—a Feminist Critique of the Liberal-Communitarian Debate*. New York: Harvester Wheatsheaf. 1993.

- Frazer, Nancy. *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory*. Minneapolis: University of Minnesota Press. 1989.
- . ‘Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy’. In *The Phantom Public Sphere*, edited by Bruce Robbins. Minneapolis: University of Minnesota Press. pp. 1–32. 1993.
- Freire, Paulo. *Pedagogy of the Oppressed*. London: Penguin. 1972.
- Freitag, Sandra. *Collective Action and Community: Public Areas and the Emergence of Communalism in North India*. Delhi: Oxford University Press. 1990.
- Fuchs, Stephen. *Rebellious Prophets: A Study of Messianic Movements in Indian Religions*. Bombay: Asia Publishing House. 1965.
- . *The Aboriginal Tribes of India*. Delhi: Macmillan India. 1974.
- . ‘The Religion of Indian Tribals’. In *Tribal Development in India*, edited by Buddhadeb Chaudhuri. Vol. 5. pp. 23–51. 1992.
- Galanter, Marc. *Law and Society in Modern India*, edited and introduced by Rajeev Dhavan. Delhi: Oxford University Press. 1989.
- . *Competing Equalities: Law and the Backward Classes in India*. 1984. Delhi: Oxford University Press. 1991.
- Gandhi, Mohandas K. *Collected Works*. 100 vols. Government of India, New Delhi. (Referred to in text as CW.) 1958–89.
- Gandhi, Nandita, and Nandita Shah. *The Issues at Stake*. New Delhi: Kali for Women. 1992.
- Gavaskar, Mahesh. ‘Colonialism within Colonialism: Phule’s Critique of Brahmin Power’. (Unpublished paper.) 1995.
- Geary, James W. *We Need Men: The Union Draft in the Civil War*. Dekalb, Illinois: Northern Illinois University Press. 1991.
- Geertz, Clifford, ed. *Old Societies and New States: The Quest for Modernity in Asia and Africa*. London: The Free Press of Glencoe. 1963.
- Geetha, V., and S.V. Rajadurai. *Towards a Non-Brahmin Millennium—From Iyothee Thass to Periyar*. Calcutta: Samya. 1998.
- Ghurye, G.S. *Caste and Race in India*. Mumbai: Popular Prakashan. 1969.
- Ghurye, G.S. *The Scheduled Tribes*. Mumbai: Popular Prakashan. 1963.
- Giddens, Anthony. *Beyond Left and Right: The Future Radical Politics*. Cambridge: Polity Press. 1994.
- Giroux, Henry A. ‘Ideology, Agency and the Process of Schooling’. In *Social Crisis and Education Research*, edited by L. Barton and S. Walker. London: L. Croom Helms. 1984. pp. 306–333.
- . *Public Spaces, Private Lives: Beyond the Culture of Cynicism*. Lanham, Maryland: Rowman and Littlefield Publishers. 2001.
- Goodin, Robert E. *Protecting the Vulnerable: A Reanalysis of Our Social Responsibilities*. Chicago: University of Chicago Press. 1986.
- Gore, M.S. *The Social Context of an Ideology: Ambedkar’s Political and Social Thought*. New Delhi: Sage. 1993. Government of India National Commission for Minorities. *Dalits in the Muslim and Christian Communities: A Status Report on the Current Social Scientific Knowledge*. New Delhi: Government of India. (<http://www.ncm.nic.in/pdf/report%20dalit%20reservation.pdf>). 2008.
- Gramsci, Antonio. *Prison Notebooks: Selections*, edited and translated by Quintin Hoare and Geoffrey Nowell Smith. Madras: Orient Longman. 1996.

- Guha, Ramachandra. 'Justice and the Adivasi: The tribal predicament and the genesis of the Maoist problem. Politics and Play'. *Telegraph*. 17 July 2010.
- Guha, Ranajit, ed. *Subaltern Studies I: Writings on South Asian History and Society*. Delhi: Oxford University Press. 1982.
- . 'On Some Aspects of Historiography of Colonial India'. pp. 1–8. 1982.
- Gupta, Dipankar. 'Secularization and Minoritization'. In *Nation-Building in India: Culture, Power and Society*, edited by Kumar Anand. New Delhi: Radiant Publishers. pp. 75–84. 1999.
- Habermas, Jurgen. *The Postnational Constellation: Political Essays*. Cambridge: Polity Press. 1986.
- . *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Cambridge: Polity Press. 1989.
- . 'Citizenship and National Identity: Some Reflections on the Future of Europe'. *Praxis International* 12 (1): 1–19.
- Handoo, Jawaharlal. 'Far From Truth: Anthropology and Tribal Studies'. *Tribal Transformation in India*, edited by Buddhadeb Chaudhuri. Vol. 3. p. 39, pp. 35–42. 1992.
- Hansen, Thomas. *The Saffron Wave: Democracy and Hindu Nationalism in Modern India*. New Delhi: Oxford University Press. 1999.
- Hasan, Farhat. 'Forms of Civility and Publicness in Pre-British India'. In *Civil Society, Public Sphere and Citizenship—Dialogues and Perceptions*, edited by Rajeev Bhargava and Helmut Reifeld. New Delhi: Sage. 2005. pp. 84–105.
- Hayek, F.A. 'Law, Legislation and Liberty'. In *The Mirage of Social Justice*. Vol. 2. London: Routledge and Kegan Paul. 1976.
- Heredia, Rudolf C. 'Demography as Ideology: Weakness in Numbers'. *Indian Journal of Secularism* 8 (2): 103–112.
- . *Changing Gods: Rethinking Conversion in India*. New Delhi: Penguin. 2007.
- Heschel, Abraham Joshua. *No Religion Is an Island: Abraham Joshua Heschel and Interreligious Dialogue*, edited by Harold Kasimow and Byron L. Sherwin. New York: Orbis Books. pp. 3–22. 1991.
- Higham John, ed. *Civil Rights and Social Wrongs: Black-White Relations Since World War II*. Philadelphia: Pennsylvania State University. 1997.
- Hobbes, Thomas. *Leviathan*, edited by Richard Tick. 1651. Cambridge: Cambridge University Press. (<http://www.gutenberg.org/files/3207/3207-h/3207-h.htm>.) 1991.
- Hobsbawm, Eric. 'Ethnicity and Nationalism in Europe'. *Anthropology Today* 8 (1): 3–8.
- Holden, Edward S. *The Mogul Emperors of Hindustan: A.D. 1339-A.D. 1707*. New York: Charles Scribner's Sons. Reprinted 2004, New Delhi: Asian Educational Services. 1985.
- Homans, George C. *Social Behavior: Its Elementary Forms*. New York: Harcourt. 1974.
- Horowitz, Donald L. *The Deadly Ethnic Riot*. New Delhi: Oxford University Press. 2001.
- Huntington, Samuel P. *The Clash of Civilizations and the Remaking of World Order*. New York: Simon and Schuster. 1996.
- Ignatieff, Michael. *Blood and Belonging: Journeys into New Nationalism*. London: Viking. 1993.
- Indian National Congress. 1934. *Congress Presidential Addresses*. Madras: G.A. Natesan and Co.
- Ingold, Tim, ed. *Companion Encyclopedia of Anthropology*. London: Routledge. 1994.
- Ingold, Tim. 'Introduction to Culture'. In *Companion Encyclopedia of Anthropology*. pp. 329–349. London: Routledge. 1994.
- Inter-Parliamentary Council. Resolution on 'Women and Political Power'. April 1992. <http://www.ipu.org/wmn-e/planactn.htm>. (last visited 21 Aug 2012).

- Israel, Benjamin J. *The Jews of India*. New Delhi: Mosaic Books. 1998.
- Jaffrelot, Christophe. *India's Silent Revolution: The Rise of the Low Castes in North Indian Politics*. New Delhi: Permanent Black. 2003.
- Jaswal, J.S. *Reservation Policy and the Law: Myth and Reality of Constitutional Safeguards to Scheduled Castes*. Delhi: Deep and Deep. 2000.
- Jayal, Gopal Niraja. *Representing India: Ethnic Diversity and the Governance of Public Institutions*. New York: Palgrave MacMillan. 2006.
- Jinnah, Mohammad Ali. *Speeches of the Quaid-i-Azam Mohammad Ali Jinnah as Governor General of Pakistan*. Karachi: Sind Observer Press. 1948.
- Jeffery, Roger, and Patricia Jeffery. 'Religion and Fertility in India'. *Economic and Political Weekly* 35 (35 and 36): 3253–3259.
- Jencks, Christopher, et al. *Inequality: A Reassessment of the Effect of Family and Schooling in America*. New York: Basic Books. 1972.
- John, Mary E. 'Reservations and the Women's Movement in Twentieth Century India'. In *Reservations for Women*, edited by Meena Dhanda. New Delhi: Kali for Women. 2008. pp. 29–58.
- Joshi, Shashi, and Bhagwan Josh. *Struggle for Hegemony in India: Culture, Community and Power*. Vol. 3: 1941–1947. New Delhi: Sage. 1994.
- Kakar, Sudhir. 'Some Unconscious Aspects of Ethnic Violence'. In *Mirrors of Violence: Communities, Riots and Survivors in South Asia*, edited by Veena Das. Delhi: Oxford University Press. 1992. Pp. 135–145.
- . 'Reflections on Group Identity'. *Seminar* 402. pp. 50–55. 1993.
- Kant, Immanuel. *Groundwork for the Metaphysics of Morals*, translated by H.J. Paton. 1785. New York: Harper Torchbooks. 1964.
- Kaviraj, Sudipto. 'The Imaginary Institution of India'. In *Subaltern Studies VII*, edited by Partha Chatterjee and Gyanendra Pandey. New Delhi: Oxford University Press. 1992. pp. 20–33.
- Keane, John. 'Fear and Democracy'. In *Violence and Politics: Globalisation's Paradox*, edited by Kenton Worcester, Sally Avery Bermanzohn and Mark Unger. New York: Routledge. 2002. pp. 226–244.
- Kosambi, D.D. *Myth and Reality: Studies in the Formation of Indian Culture*. Mumbai: Popular Prakashan. 1962.
- Kothari, Rajni. 'Human Rights: A Movement in Search of a Theory'. In *Human Rights: Challenges for Theory and Action*, edited by S. Kothari and H. Sethi. New York: New Horizon Press. 1991. pp. 19–29.
- . 'Issues before Indian Democracy: An Overview'. In *Indian Democracy: Meanings and Practices*, edited by Rajendra Vora and Suhas Palshikar. New Delhi: Sage Publications. 2004.. pp. 45–57.
- Krishnamurthy, J. *Women in Colonial India: Essays on Survival, Work, and the State*. New Delhi: Oxford University Press. 1989.
- Krishnan, P.S. 'The Logical Step'. *Frontline* 23 (8): 17–20.
- Krishnaswamy, Sudhir, and Madhav Khosla. 'Reading A.K. Thakur vs Union of India: Legal Effect and Significance'. *Economic and Political Weekly* 43 (29): 53–60.
- Kumar, Mridul. 'Reservations for Marathas in Maharashtra'. *Economic and Political Weekly* 44 (14): 10–12.
- Kymlicka, Will. *Liberalism, Community and Culture*. Oxford: Clarendon Press. 1989.

- . *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press. 1995.
- Kymlicka, Will, and Baogang He, eds. *Multiculturalism in Asia*. New York: Oxford University Press. 2005.
- Kymlicka, Will and Wayne Norman. 'Return of the Citizen: A Survey of Recent Work on Citizenship Theory'. *Ethics* 104 (2): 352–381.
- Laine, James. *Hindu King in Islamic India*. New Delhi: Oxford University Press. 2003.
- Lama-Rewal, Stephanie Tawa. *Electoral Reservations, Political Representation and Social Change in India: A Comparative Perspective*. New Delhi: Manohar Publishers. 2005.
- Larson, Gerald James, ed. *Religion and Personal Law in Secular India: A Call to Judgment*. Delhi: Social Science Press. 2001.
- Lohia, Rammanohar. *The Caste System*. 1958. Hyderabad: Rammanohar Lohia Samanta Vidyalaya. 1979
- MacIntyre, Alasdair. *After Virtue: A Study in Moral Theory*. London: Duckworth Publishers. 1981.
- . *Whose Justice?* London: Duckworth Publishers. 1988.
- McPherson, James. *Battle Cry of Freedom: The Civil War Era*. New York: Oxford University Press. 1988.
- Mahajan, Gurpreet. 'Indian Exceptionalism or Indian Model: Negotiating Cultural Diversity and Minority Rights in a Democratic Nation-State'. In *Multiculturalism in Asia*, edited by Kymlicka Will and Baogang He. Pp. 288–313. New York: Oxford University Press. 2005.
- Mahajan, Gurpreet, and Surinder S. Jodkha, eds. *Religion, Community and Development: Changing Contours of Politics and Policy in India*. London and New Delhi: Routledge Taylor and Francis Group. 2010.
- Maine, Henry Summer. *Village-communities in the East and West*. New York: H. Holt and Company. 1889.
- Malinowski, Bronislaw. *Argonauts of the Western Pacific: An Account of Native Enterprise and Adventure in the Archipelagoes of Melanesian New Guinea*. London: George Routledge and Sons. 1922.
- Malraux, André. *Anti-Memoirs*. London: Penguin. 1968.
- Manasa. 'Karnataka and the Women's Reservation Bill'. *Economic and Political Weekly* 44 (43–44): 3849–3853. 2000.
- Mandela, Nelson. *Long Walk to Freedom*. Boston: Little Brown. 1994.
- Marx, Karl. *Critique of the Gotha Programme*. Moscow: Progress Publishers. 1970.
- . *The German Ideology*. Moscow: Progress Publishers. 1976.
- Maximov, G.P., ed. *The Political Philosophy of Bakunin*. New York: The Free Press. 1953.
- Mayaram, Shail. *Resisting Regimes: Myth, Memory and the Shaping of a Muslim Identity*. New Delhi: Oxford University Press. 1997.
- Mayer, Tamar. 'Gender Ironies of Nationalism: Setting the Stage'. In *Gender Ironies of Nationalism: Sexing the Nation*. London: Routledge. 2000. pp. 1–22. 2000.
- Mayer, Tamar, ed. *Gender Ironies of Nationalism: Sexing the Nation*. London: Routledge. 2000.
- McCall, Leslie. *Complex Inequality: Gender, Class and Race in the New Economy*. New York, London: Routledge. 2001.
- McMillan, Alistair. *Standing at the Margins: Representation and Electoral Reservation in India*. Oxford University Press. 2005.

- Mendelsohn, Oliver, and Marika Vicziany. *The Untouchables: Subordination, Poverty and the State in Modern India*. New Delhi: Cambridge University Press. 2000.
- Mehta, Piarey Lal. *Constitutional Protection to Scheduled Tribes in India: Retrospect and Prospect*. Delhi: H.K. Publishers and Distributors. 1991.
- Menon, Nivedita. *Recovering Subversion: Feminist Politics Beyond the Law*. Delhi: Permanent Black. 2004.
- Merton, Robert K. *Social Theory and Social Structure*. Chicago: University of Chicago Press. 1996.
- Miller, David. 'In Defense of Nationality'. *Journal of Applied Philosophy* 10 (1): 3–16. 1993.
- . *Principles of Social Justice*. Cambridge, Massachusetts: Harvard University Press. 1999.
- . *Social Justice*. Oxford: Oxford University Press. 1976.
- Mill, John Stuart. *On Liberty*, edited by Gertrude Himmelfarb. 1859. London: Penguin. 1974.
- Mill, John Stuart. *Utilitarianism*, edited by George Sher. 1861. Indianapolis: Hackett Publishing Company. 2001.
- Mohanty, Manoranjan, ed. *Class, Caste, Gender*. New Delhi: Sage. 2004.
- Moon, V., ed. *Dr Babasaheb Ambedkar: Writings and Speeches*. Vol. 1. Bombay: Government of Maharashtra. 1979.
- . *Dr Babasaheb Ambedkar: Writings and Speeches*. Vol. 5. Bombay: Government of Maharashtra. 1989.
- Myrdal, Gunnar. *Asian Drama: An Inquiry into the Poverty of Nations*. 3 Vols. London: Penguin. 1968.
- Naffine, Ngaire. 'Possession: Erotic Love and the Law of Rape'. *The Modern Law Review* 57 (3): 10–37. June 1994.
- Naipaul, V.S. *India: A Million Mutinies Now*. London: Vintage. 1990.
- Nandy, Ashis. *Creating a Nationality: The Ramjanmabhumi Movement and the Fear of the Self*. New Delhi: Oxford University Press. 1995.
- . *The Illegitimacy of Nationalism*. New Delhi: Oxford University Press. 1994.
- . *Intimate Enemy*. New Delhi: Oxford University Press. 1983.
- Narayan, Jay Prakash, Madhu Kishwar, et al. 'Enhancing Women's Representation in the Legislatures: An alternative to Government Bill for Women's Reservation'. *Manushi*. No. 116. January–February 2000.
- Narula, Smita. *Broken People: Caste Violence against India's Untouchables*. New York: Human Rights Watch, New York. 1999.
- National Commission for Minorities (NCM). *Dalits in the Muslim and Christian Communities: A Status Report on the Current Social Scientific Knowledge*. New Delhi: Government of India. (<http://www.ncm.nic.in/pdf/report%20dalit%20reservation.pdf>). 2008.
- National Commissioner for Scheduled Castes and Tribes. *Report*. New Delhi: Government of India. 1952.
- National Committee on the Status of Women in India. *Towards Equality*. New Delhi: Government of India. 1974.
- Newbigin, Eleanor. 'The Codification of Personal Law and Secular Citizenship: Revisiting the History of Law Reform in Late Colonial India'. *Indian Economic and Social History Review* 46 (1): 83–104. 2009.
- Newman, John, Henry. *An Essay on the Development of Christian Doctrine*. London: J. Toovey. 1846.

- Nigam, Aditya. *The Insurrection of Little Selves: The Crisis of Secular-Nationalism in India*. New Delhi: Oxford University Press. 2006.
- Nisbet, Robert. *The Quest for Community: A Study in the Ethics of Order and Freedom*. Oxford: Oxford University Press. 1953.
- Nozick, Robert. *Anarchy, State, and Utopia*. Oxford: Blackwell. 1974.
- Nussbaum, Martha C. *Frontiers of Justice: Disability, Nationality, Species Membership*. New Delhi: Oxford University Press. 2007.
- . *Women and Human Development: The Capabilities Approach*. Cambridge, UK: The Press Syndicate, University of Cambridge. 2000.
- Nussbaum, Martha C., and Amartya Sen, eds. *The Quality of Life*. New York: Oxford University Press. 1993.
- O'Hanlon, Rosalind. *Caste, Conflict, and Ideology: Mahatma Jotirao Phule and Low Caste Protest in Nineteenth Century Western India*. Cambridge: Cambridge University Press. 1985.
- Omvedt, Gail. *Cultural Revolt in a Colonial Society: the NonBrahman Movement in Western India, 1873–1930*. Bombay: Scientific Socialist Education Trust. 1976.
- . *Dalits and the Democratic Revolution: Dr. Ambedkar and the Dalit Movement in Colonial India*. New Delhi: Sage. 1994.
- . *Dalit Visions: The Anti-caste Movement and the Construction of an Indian Identity*. New Delhi: Orient Longman. 1995.
- . 'Hinduism as Delhi Rule: Periyar and the National Question'. In *Communal Identity in India: Its Construction and Articulation in the Twentieth Century*, edited by Bidyut Chakrabarty. New Delhi: Oxford University Press. 2003. pp. 256–264.
- . 'Caste in the Census'. *Durgabai Deshmukh Memorial Lecture*. New Delhi: Council for Social Development. 2010.
- Pai Panandiker, V.A. *The Politics of Backwardness: Reservation Policy in India*. New Delhi: Centre for Policy Research, Konark Publishers. 1997.
- Padel, Felix, and Samarendra Das. *Out of this Earth: East India Adivasis and the Aluminium Cartel*. Delhi: Orient Black Swan. 2009.
- Palsetia, Jesse S. *The Parsis of India: Preservation of Identity in Bombay City*. Leiden-boston: Brill. 2001.
- Pandian, M.S. *Brahmin and Non-Brahmin: Genealogies of the Tamil Political Present*. New Delhi: Permanent Black. 2007.
- Panikkar, Raimundo. *Myth, Faith, and Hermeneutics*. Bangalore: Asian Trading. 1983.
- Panitch, Leo, and Sam Gindin. 'Transcending Pessimism: Rekindling Socialist Imagination'. *Monthly Review* 51 (11): 1–10.
- Parasuram, S., et al. *Analysis of OBC Reservations Policy for Higher Education in India*. Mumbai: Tata Institute of Social Sciences. 2009.
- Parekh, Bhikhu. *Rethinking Multiculturalism: Cultural Diversity and Political Theory*. London: MacMillan. 2000.
- Patel, Vibhuti. 'Women's Struggles and Movement in India'. *Janata* 63 (18): 3–9.
- Paterson, Grethe B., ed. *The Tanner Lectures on Human Values*. Vol. 14. Utah, USA: University of Utah Press. 1993.
- Pathy, Jaganath. *Tribal Peasantry: Dynamics of Development*. New Delhi: Inter India Publications. 1984.
- . *Ethnic Minorities in the Process of Development*. Jaipur: Rawat Publications. 1988.

- Pearson, Gail. 'Reserved Seats—Women and the Vote in Bombay'. *Indian Economic and Social History Review*. Vol. 20. pp. 47–65. 1989.
- Phillips, Anne. *The Politics of Presence*. Oxford: Clarendon Press. 1995.
- Phule, Jotirao Govindrao. *Collected Works of Mahatma Phule. Slavery (in the Civilised British Government under the Cloak of Brahminism)*, translated by P.G. Patil. Vols 1 and 2. Mumbai: Education Department, Government of Maharashtra. 1991.
- Plato. *The Republic*, translated by Benjamin Jowett. Oxford: Oxford University Press. 1935.
- Polanyi, Karl. *The Great Transformation*. Boston: Beacon Press. 1957.
- Pontifical Council for Inter-Religious Dialogue. *Dialogue and Proclamation*. No. 42. Vatican City. 1991.
- Post, Robert. 'Between Norms and Choices'. *Boston Review*. pp. 34–35. October–November, 1997.
- Poulantzas, Nicos. *State, Power and Socialism*, translated by Patrick Camiller. London: New Left Books. 1978.
- Pringle, R., and S. Watson. "'Women's Interests" and the Poststructuralist State'. In *Destabilising Theory: Contemporary Feminist Debates*, edited by M. Barrett and A. Phillips. Cambridge: Polity Press. 1992. pp. 57–73.
- Putnam, Robert D. *Bowling Alone: The Collapse and the Revival of the American Community*. New York: Simon and Schuster. 2000.
- Rai, Shrin M., ed. *International Perspectives on Gender and Democratisation*. New York: St. Martin Press. 2000.
- Rai, Shrin M., and Kumud Sharma. 'Democratising the Indian Parliament: The Reservation for Women Debate'. In *International Perspectives on Gender and Democratisation*, edited by Shrin Rai. New York: St. Martin Press. 2000. pp. 149–165.
- Rajan, Nalini. *Secularism, Democracy, Justice: Implications of Rawlsian Principles in India*. New Delhi: Sage Publications. London: Thousand Oaks. 1998.
- Rao, M.S.A., ed. *Social Movements in India*. Vol. 1. New Delhi: Manohar Publications. 1978.
- Rappaport, Helen. *Encyclopedia of Women Social Reformers*. Vol. 1. California, USA: ABC-CLIO. 2001.
- Rawls, John. *The Law of Peoples—with "The Idea of Public Reason Revisited"*. Cambridge, Massachusetts: Harvard University Press. 1999.
- . *Political Liberalism*. New York: Columbia University Press. 1993.
- . *A Theory of Justice*. 1971. Oxford University Press. 1999.
- Ray, Rajat Kanta. 'The Kanahar Cronicle'. **Modern Asian Studies** 21 (4): 711–749.
- Report of the Christian Missionary Activities Enquiry Committee* (popularly called the Niyogi Report, after its chairman). Vols 1 and 2. Madhya Pradesh. 1956.
- Report of the Commissioner for Scheduled Castes and Tribes*. New Delhi: Government of India. 1952.
- Rosenfeld, Michael. *Affirmative Action and Justice: A Philosophical and Constitutional Inquiry*. New Haven, Connecticut: Yale University Press. 1991.
- Roy, Anupama. *Gendered Citizenship: Historical and Conceptual Explorations*. Hyderabad: Orient Longman. 2005.
- Roy Burman, B.K. 'Persistence of Folk Law in India with Particular Reference to Tribal Communities'. In *Tribal Transformation in India*, edited by Buddhadeb Chaudhuri. Vol. 3. 1989. pp. 173–187.
- Sachar, Rajinder. *A Report on the Social, Economic and Educational Status of the Muslim Community of India*. New Delhi: Government of India. 2006.

- Sacks, Jonathan. *The Dignity of Difference: How to Avoid the Clash of Civilisations*. London: Continuum. 2002.
- Sahoo, Niranjan. *Reservation Policy and its Implementation across Domains in India: An Analytical Review*. New Delhi: Academic Foundation. 2001.
- Samaddar, Ranabir, ed. *State of Justice in India: Issues of Social Justice*. Vol. 2, Series Introduction. pp. 8–26. New Delhi: Sage. 2009.
- Sandel, Michael J. *Justice: What's the Right Thing to Do?* London: Allen Lane, Penguin. 2009.
- Sangari, Kumkum. 'Politics of Diversity: Religious Communities and Multiple Patriarchies'. *Economic and Political Weekly* 30 (51, 52): 3287–3310, 3381–3389.
- Sangari, Kumkum, Sudesh Vaid, eds. *Recasting Women: Essays in Colonial History*. New Delhi: Kali for Women. 1989. Sarkar Sumit. *Beyond Nationalist Frames: Relocating Postmodernism, Hindutva, History*. Delhi: Permanent Black. 2002.
- Sarkar, Tanika. 'Politics and Women in Bengal—the Conditions and Meaning of Participation'. *Indian Economic Social History Review*. Vol. 21. pp. 91–10. 1984.
- Savarkar, V.D. *Hindu Pad Padshahi*. 1925. New Delhi: Bharati Sahitya Sadan. 1971.
- Savarkar, V.D., *Hindutva: Who is a Hindu?* 1923. New Delhi: Bharati Sahitya Sadan. 1989.
- Schmaltz, David. *The Blind Men and the Elephant: Mastering Project Work*. San Francisco: Berrett-Koehler Publishers. 2003.
- Sen, Amartya. *Poverty and Famine: An Essay on Entitlements and Deprivation*. Oxford and New Delhi: Oxford University Press. 1981.
- . 'Capability and Well-Being'. In *The Quality of Life*, edited by Nussbaum and Sen. New York: Oxford University Press. pp. 30–53. 1993.
- . *Development as Freedom*. Oxford, New Delhi: Oxford University Press. 1999.
- . *The Argumentative Indian: Writings on Indian History, Culture and Identity*. London: Penguin Books. 2005.
- . *Identity and Violence: The Illusion of Destiny*. New Delhi: Penguin Books India. 2006.
- . *The Idea of Justice*. London: Allen Lane, Penguin Books. 2009.
- Shah, A.B. ed. *The Letters and Correspondence of Pandita Ramabai*. Mumbai: Maharashtra State Board for Literature and Culture. 1977.
- Sheth, D.L. 'Caste in the Right Mould'. *Indian Express*. 23 June 2010.
- Shiva Rao, B., ed. *The Framing of India's Constitution*. Vols 1–5. New Delhi: Indian Institute of Public Administration. 1967.
- Shodhan, Amrita. *A Question of Community: Religious Groups and Colonial Law*. Kolkata: Samya. 2001.
- Singh, K.S., ed. *Tribal Society in India: An Anthro-Historical Perspective*. New Delhi: Manohar. 1985.
- . *People of India*. 6 Vols. New Delhi: Anthropological Survey of India, Government of India; Oxford University Press. 1993–1996.
- Smith, Adam. *The Wealth of Nations*. London: W. Strahan and T. Cadell. 1776.
- Sonalde, Desai. 'Caste and Census: A Forward Looking Strategy'. *Economic and Political Weekly* 45 (29): 10–13.
- Srinivas, M.N. *On Living in a Revolution and Other Essays*. New Delhi: Oxford University Press. 1992.
- Status of Women in India: A Synopsis of the Report of the National Committee on the Status of Women (1971–74)*. New Delhi: Government of India. 1975.

- Stein, Maurice Robert. *The Eclipse of Community: An Interpretation of American Studies*. Chicago: University of Chicago. 1972.
- Subrahmanyam, Sanjay. In *Unravelling the Nation: Sectarian Conflict and India's Secular Identity*, edited by Basu and Subrahmanyam. New Delhi: Penguin Books India. Pp. 44–80. 1996.
- Sunder, Nandini. 'Will counting caste help to reduce inequality?' *The Hindu*. 11 May 2010.
- Tambiah, Stanley. *Leveling Crowds: Ethnonationalist Conflicts and Collective Violence in South Asia*. Berkeley: University of California Press. 1996.
- Tawney, R.H. *Equality*. 1932. London: Allen and Unwin. 1952.
- Taylor, Bron. *Affirmative Action at Work: Law, Politics, and Ethics*. Pittsburgh, Pennsylvania: University of Pittsburgh Press. 1991.
- Taylor, Charles. 'Modernity and the Rise of the Public Sphere'. In *The Tanner Lectures on Human Values*, edited by Grethe B. Paterson. Vol. 14. 1993. pp. 203–260.
- Paterson, Grethe B., ed. *The Tanner Lectures on Human Values*. Vol. 14. Utah, USA: University of Utah Press. 1993.
- Taylor, Charles. 'Shared and Divergent Values'. In *Multiculturalism and the Politics of Recognition*, edited by Ronald Watts and D. Brown. 1991. pp. 53–76.
- Teltumbde, Anand. 'Reverting to the Original Vision of Reservations'. *Economic and Political Weekly* 42 (25): 2383–2385.
- . 'Counting Castes: Advantage the Ruling Class'. *Economic and Political Weekly* 45 (28): 10–12.
- Thompson, E.P. *The Poverty of Theory*. London: Monthly Review Press. 1978.
- Thomas W.I., and F. Znaniecki. *The Polish Peasant in America*. New York: Alfred A. Knopf. 1927.
- Thorat, Sukhadeo, Aryama and Prashant Negi, eds. *Reservation and Private Sector: Quest for Equal Opportunity and Growth*. New Delhi: Indian Institute of Dalit Studies, Rawat Publications. 2005.
- Thurston, Edgar. *Castes and Tribes of South India*. 1909. Vol. 6. New Delhi: Asian Education Service. 1987.
- Tocqueville, Alexis de. *Democracy in America*, edited by Francis Bowen. Cambridge, Massachusetts: University Press; Welch, Bigelow and Co. 1862.
- United Nations. *Human Development Programme 1997*. New Delhi: Oxford University Press. 1997
- Varshney, Ashutosh. *Ethnic Conflict and Civic Life: Hindus and Muslims in India*. New Delhi: Oxford University Press. 2002.
- Vasak, Karel. 'Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights'. *UNESCO Courier* 30:11. Paris. 1977.
- Viswanathan, Gauri. *Outside the Fold: Conversion, Modernity and Belief*. New Delhi: Oxford University Press. 2001.
- Vora Rajendra, and Suhas Palshikar, eds. *Indian Democracy: Meanings and Practices*. New Delhi: Sage Publications. 2004.
- Vidyarthi, L.P. 'Strategy for Tribal Development in India'. *Proceedings of the Seminar on Tribal Development*, Bhubaneswar. 1975.
- Wad, S.B. *Caste and Colonial Laws in India*. New Delhi: Documentation Centre for Business and Policy Research. 1984.
- Walcott, Derek. *Collected Poems: 1948–1984*. New York: Farrar, Straus and Giroux. 1986.
- Walzer, Michael. *Obligations: Essays on Disobedience, War, and Citizenship*. Cambridge: Harvard University Press. 1970.
- Walzer, Michael. *Spheres of Justice*. New York: Basic Books. 1983.

- Walzer, Michael. *Thick and Thin: Moral Argument at Home and Abroad*. Indiana, USA: University of Notre Dame. 1994.
- Watts, Ronald and D. Brown, eds. *Multiculturalism and the Politics of Recognition*. Toronto: University of Toronto Press. 1995.
- Weber, Max. *The Protestant Ethic and the Spirit of Capitalism*. London: Allen and Unwin. 1930.
- Wilson, John. *Indian Caste*. Vol. 2. Edinburgh, London: William Blackwood. 1877.
- Wilson, William Julius. *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy*. Chicago: University of Chicago Press. 1987.
- Winick, Charles. *Dictionary of Anthropology*. London: Peter Owen. 1960.
- Worcester, Kenton, Sally Avery Bermanzohn and Mark Unger. *Violence and Politics: Globalisation's Paradox*. New York: Routledge. 2002.
- Young, Iris Marion. *Justice and the Politics of Difference*. Princeton, New Jersey: Princeton University Press. 1990
- . *Inclusion and Democracy*. New York: Oxford University Press. 2000.
- . *Global Challenges: War, Self-Determination and Responsibility for Justice*. Cambridge, UK: Polity Press. 2007.
- Zelliot, Eleanor. *From Untouchable to Dalit: Essays on the Ambedkar Movement*. New Delhi: Manohar. 1996.
- Zuberi, Tokufu. *Thicker Than Blood: How Racial Statistics Lie*. Minneapolis: University of Minnesota Press. 2001.

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