

Academy of Third World Studies
And South Asia Forum for Human Rights
Workshop on Federalism and Protection of Minorities in India
Jamia Millia University, Delhi,
February 27-28, 2004

Report of Workshop and Recommendations

South Asia Forum for Human Rights (SAFHR) & the Academy of Third World Studies (ATWS) organised a two day workshop on **“Federalism and Protection of Minorities in India”** at Jamia Millia Islamia in New Delhi on 27-28 February 2004. Some 35 participants from Delhi and other parts of India took part in the two days discussions. (See Appendix I) Participants included legal and constitutional experts, academics, human rights and social activists and persons associated with official and non-governmental institutions concerned with protection of Minority Rights. In addition research fellows at the ATWS and students of Jamia Millia University attended as observers. The Canadian academic, Prof Douglas Verney, delivered a key note presentation on ‘The Struggle for Judicial Review: Supreme Courts and Limited Governments’.

The workshop examined the inadequacies in the role of the Indian state as the guarantor of the Fundamental Rights enshrined in the constitution. Recognising the centrality of the notion of federalism in providing protection of minorities in India, the workshop addressed the questions – i) whether federalism had failed the minorities in providing protection and ii) what needs to be done to overcome the limitations in the capacity of federalism to provide protection. The 2002 Gujarat carnage of Muslims had exposed a clash between the federal principles that protect the autonomy of the states and the fundamental rights, which belong to all citizens. The workshop agenda was structured to explore the capacity of constitutional, legal, administrative and civil society mechanisms to respond to the crisis of protection of minorities in India. There were no formal papers (given the time limitation) but presentations were recorded and the transcript will be edited and brought out as a monograph.

Objectives

- To examine inadequacies in constitutional provisions of federalism and the protection of minorities in India.
- To examine the clash between principles of regional autonomy and federal responsibility for protection of fundamentally guaranteed rights of all citizens of India.
- To explore ways of developing new institutions, legal mechanisms and statutory bodies that should have the constitutional power to intervene in situations of gross violation of the fundamental rights of citizens including the minorities in any part of India.
- To go beyond a constitutional regime of negative guarantees of protection of minorities and creatively explore how to make obligatory on the part of the institutions of the state, the responsibility to propagate, promote and incorporate the values of secularism, tolerance and inclusiveness, in every sphere of their functions.
- To expose and challenge the criminalization of dissent

Outcome

In the wide ranging discussions, Valerian Rodrigues succinctly summed up the five thrust areas that emerged as the way forward – Reinforcing civic and citizen activism; Shaping and enlarging legal provisions; Devising constitutional and legal alternatives e.g. new statutory institutions reinforcing federalism; Sensitizing arenas of the state to minority rights i.e. greater recognition in the fostering of values of difference and diversity and Political partisanship and advocacy of minorities. However there was a deep pessimistic streak that ran through the presentations and discussions that the crisis in the protection of the rights of minorities in India ultimately is a reflection of what is happening at the level of state and society and India. Moreover, world wide there was a decisive shift towards regression policies of intolerance towards minorities especially targeted against Muslims.

The focus was largely on religious minorities but it was emphasized that it was politically important and necessary to contextualize it in a wider framework that linked the situation of discrimination, material disadvantage and attacks on Muslims, Christians, Tribals (Indigenous peoples) and Dalits. However, there was the reality of the Hindu rightwing RSS-Sangh Parivar's success in producing a rift between what should have been a broad struggle front. As John Dayal said, "Christians (50% of all Christians are Dalits) look at Muslims through the lens of upper caste RSS". There was a stark assertion of the need to drop euphemisms – 'Minorities' and refer to the crisis of protection of Muslims.

Although there was a strong representation of participants who brought in the gender perspective, especially in the context of the Gujarat carnage, unfortunately gender got reduced to an 'add on', as Sheba George commented especially when more abstract issues of protecting cultural identity were being critically examined. This was despite the fact that it is women who are expected to overtly play out the cultural identity. And as the Gujarat carnage brought into sharp focus, women's bodies become the sites of revenge or as Mr. A G Noorani pointed out that in Kashmir rape is used as an instrument of state policy. The dominant politics of denial of rape (at the level of the executive, the legal system, the media and society) was poignantly illustrated by Flavia Agnes in her statement "Rape always speaks through the lips of a dead women." The crime then gets collapsed into murder as finally there is the evidence of the body.

More concretely some of the suggestions included the setting up of some kind of autonomous central mechanism or federal authority with moral and constitutional sanction. Among the suggestions was a proposal for the creation of a Protector General of Human Rights with statutory powers, It was felt that exceptional or special situations required special institutional structures and jurisprudential responses. Proposed were changes in the Indian Penal Code (IPC) for mass crime- a law against genocide. More federal courts, federal investigative bodies and federal police were proposed. However a cautionary note was interjected that a federal system structured around the rightwing politics of Sangh Parivar would be disastrous. Others like Prof. Balveer Aurora argued that there was the possibility of strengthening and making more independent existing institutions like National Human Rights Commission (NHRC). However the Minorities Commission was witheringly dismissed although Member of the Minorities Commission, Mr. A R Sherwani defensively spoke about their efforts and limitations. While Prof. Mushirul Hasan argued that invoking the Constitution is a weak man's recourse, it was a grim testimony that so many of the legal and constitutional experts around the table, eventually placed their trust in civic –civil society activism.

Summaries and Discussions

Chairing the introductory session, former Foreign Secretary S.K. Singh reflected on the nature of the crisis of the federal state structure of India. It is complicated by the fact that failures of

governance, including the protection of minorities, are intertwined with India's relations with its neighbours. What happens in the states of UP and Bihar has implications in Nepal, of Tamil Nadu in Sri Lanka, Punjab, Rajasthan and Jammu and Kashmir in Pakistan. Tapan Bose picked up on the theme of Minorities, historically being a trans border concern. In India there is the situation of the religious minorities – Muslims, Christians, etc. being all over the country.

SAFHR Secretary General, Tapan Bose set out the framework and objectives of the workshop as articulated in his concept paper (Appendix II). The Gujarat carnage had brought to the fore the dilemma about the implications of autonomy of the states and the central government's primary responsibility under the constitution to protect the lives and liberty of all citizens. When the government of a federating unit of the Indian Union systematically flouts constitutionally guaranteed rights of a section of citizens, who should protect fundamental rights? In Gujarat the fundamental rights guaranteed by Articles 14, 15, 21 and 25 were denied to a section of our citizens because of their religious identity. The BJP led state government did little to protect the citizens who were being killed, raped and tortured by mobs that were led by people belonging to the BJP, the ruling party and other members of the Sangh Parivar. The central government failed to intervene in Gujarat on the grounds that the state government was legally constituted and was empowered to deal with the situation.

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

While recognising the democratic value of rise of regional parties and the limitations on the Centre's tendency to interfere in the affairs of the elected governments of states, there was the reality that in almost all states of India, attacks on religious and social minorities are increasing and the governments betray a lack of political will to act. The minority question in India is a communal question. The minority problem in India is directly related to the majoritarian politics of rightwing Hindu nationalism- Hindutva. The current pro-Hindutva wave at the polls indicates that we could see more states coming under the Hindutva forces. Who then will uphold the fundamental rights when both the legislature and the government are conniving with criminal elements in denying the right to life of a section of Indian citizens? Bose placed the constitutional articulation of the minorities question in the context of the shadow of Partition and the dominating concern for the territory and integrity of India. The requests for special safeguards and separate electorate for minorities were rejected. The right to equality before law and right against discrimination were seen as adequate for the protection of all citizens, including the minorities.

Bose referred to the evolution of other models of protection as emerged in pre-war Europe, the minority protection treaties of the League of Nations and the shift to principles of universal as opposed to protection of specific rights in the UNO frameworks and the development of the European Union's *Framework Convention for the Protection of National Minorities* and the setting up of the office of a High Commissioner for National Minorities with a mandate for trans border intervention. These models were specific to Europe.

The post-colonial Indian constitution does not recognise the concept of ' national minority' . While the constitution recognised the right of ' minority' religious groups to set up their own educational institutions, it did not provide a definition of minority. Articles 14, 15 and 25 affirm the right to equality and protection against discrimination. These are essentially negative guarantees. The state is not legally obliged to promote the values of secularism and respect for minorities in every aspect of its work. The constitution does not empower the citizens or any statutory body to force the states to take preventive action. The Supreme Court is too weak an institution to do this job alone. The National Human Rights Commission is a toothless body. The Minorities Commission is a weak watchdog.

Adumbrating the objectives of the Workshop, Bose emphasized the need to create new institutions, legal mechanisms and statutory bodies which should have the moral authority and constitutional powers to intervene in situations of gross violation of the fundamental rights of citizens including the minorities in any part of India.

Prof Douglas Verney focused on the systems provision for 'judicial review' as means of limiting the powers of the government especially when faced with a crisis of governance. In a detailed paper, he traversed the varied experience of Britain, America, Canada and the US arriving at an uneasy balance in the tension between Parliamentary supremacy and judicial authority to review legislative decisions. "Judicial review emerged out of the crisis or crises of governance," he argued. In India as in Canada, there has been a shift from judicial interpretation to judicial review of acts of parliament. Initially the Courts were reluctant to challenge the government's use of emergency powers or review proclamations under article 356 of the Constitution by which an elected government in the state was dismissed and President's Rule imposed. Verney argues that 'it was only after Hindu -Muslim tensions led to the destruction of the mosque at Ayodhya in Dec 1992 that the Court decided to intervene on the issue of President's Rule in the *Bommai* case 1994. He lauds the Court's decision in the *Bommai* case (1994) which upheld the federal principle that the states were sovereign in their own spheres. More particularly on the issue of upholding the principles of secularism, the Court split 5-4 on the decision whether the Union government had the power to remove a state government. Clearly the Court was seeking to provide safeguards against the misuse of article 356 by the Union government. Events in Gujarat 2002, he observed, might oblige *Bommai* to be reconsidered. However in the case of Gujarat neither the Union nor the state governments (both in the hands of the BJP) appeared to be committed to upholding the secular state.

Syed Shahabuddin, former MP and Convener Babri Masjid Action Committee, in responding to the challenges of protecting minorities, shifted the emphasis from the Courts and the Constitution to the Political executive. If the politicians are firm the 'permanent executive' (the civil administration) will behave. The minority question needed to be engaged with at not only the national and state level but at the district and Panchayat levels.

As for the Gujarat, Shahabuddin argued that 'nothing was done in Gujarat that hasn't happened elsewhere', what made the Gujarat carnage exceptional was i) the role of the state and the state machinery; ii) the hi tech nature of the operation; iii) the open participation by the elite and the iv) the communal tension was sustained far longer than elsewhere.

Taking a long view, Shahabuddin referred to the importance of reform within long term of Muslim society. *Sona Khan* an eminent lawyer focused on reform within Muslim society, for example, compulsory registration of marriages and on inheritance.

Shahabuddin also argued for more federal mechanisms like federal police, federal investigative agencies and federal courts.

Sheba George, whose "Sahrawu" team was in the thick of the carnage in Ahmedabad providing succor and relief was impassioned in her analysis of the failure of not only the state but society in Gujarat. She disturbingly pointed at not only the breakdown of the state but the society as a whole. "All are guilty" she passionately asserted. "Is the state only responsible?" she asked. From within Gujarat, Gujarati society did not act to stop the violence. Gandhians did not intervene. Of course it was a high-risk situation and probably they would have been killed. As a result of the failure to act, within Gujarat 'we were overwhelmed by helplessness'. This was despite the fact that the warning signs were clear. There had been the assault on Christians in Dang; in Ahmedabad the cultural vandalism against Hussain's architectural monuments and the outcrop of Bajrang Dal training camps. "We all knew it was coming". The extent of the planning was evident in the directives given to Hindu women to either leave or aid and abet. State support was openly given to non state actors. Institutions created to stop violence like the Rapid Action Force were used to abet. Deployment of the army was delayed and then misguided.

George said that about 23 districts were affected and according to the official figures 999 killed. Out of the many cases of rape that happened the victims and the social activists were able to get only two cases of rapes registered with the police. In a strange twist after the event, the media, women's social action groups of Gujarat, state government officials, the police and the political leaders denied the systemic use of rape and sexual violence against women. George informed that Gujarat government had arrested 287 persons on charges of rioting and violence. Almost all of these persons were detained under the Prevention of Terrorism Act (POTA). With the exception of one, all other persons arrested under POTA were Muslims who were the main victims of the riot.

Post Gujarat carnage there was consolidation of anti Muslim activities with Gujarati society retreating into a defensive xenophobia that Non Gujaratis are against them. George argued for creation of a special mechanism to respond to the exceptional circumstances of Gujarat and Gujarat like situations to deliver justice and restore the faith of 'all' in citizenship.

Flavia Agnes explored a gender perspective in analyzing constitutional provisions, institutions and civil society responses for protection. In Gujarat, the systematic use of sexual violence against Muslim women, challenged and brought to the fore the weaknesses in the women's movement. The women's movement had been mobilized against rape, domestic violence and dowry agitations and subsequently divided by the Muslim Women's (Divorce) Act. "An impression has been created that there is a contradiction between women's rights and minority rights", she said. The manner in which the Shah Bano case was projected resulted in the communalization of the gender question. In the popular discourse, the Muslims Women's Act has become a metaphor for Muslim appeasement. Agnes appealed for a more nuanced approach that reflected the quiet incremental successes as for example where the Courts have positively intervened on behalf of (Muslim) women's rights.

Referring to the official and societal complicity in denying rape she dramatically emphasized that "Rape always speaks through the lips of a dead women." As for 'live women', the community does not give the women the "honourable space to remember". Most of the rape cases have been turned into murder. Evidence of rape is not there but there is the evidence of the body. Despite all the evidence, the media still maintains rape did not happen. Affidavits have been filed before the Justice K D Shah Commission, but there is little expectation of acceptance let alone justice.

The communal bias in the culture is so entrenched that it has produced in the middle class a tacit acceptance of riots and pogroms as a reaction to Muslim appeasement. In Gujarat the state and the public prosecutor are together, i.e. the accused and the state have merged together. The Sri Krishna Commission's report into the Mumbai violence was the best example of what was

possible. The existing constitutional mechanisms were linear and the victims were obliged to approach the courts of the state, even when there were enough grounds to doubt the impartiality of the state's criminal justice system, as the orders of the district and the Ahmedabad High Court have shown. There were no options available to the victims to approach the courts in other states of the Indian Union. Agnes emphasized the need for an autonomous central machinery to deal with these atrocities. Irrespective of who was in power there needed to be institutional protection of the principles of multiculturalism.

Several participants argued for the creation of federal mechanisms that transcends administrative state divisions. It would involve defining federal crimes, federal investigation federal courts and federal policing. Others felt that there was an over reliance on a constitutional approach. 'The power of the state rests not on the law but on the power of the community. The focus should be on the community. The police and the paramilitaries are an extension of the community/the body and if the body is in pieces the arms can not integrate it'.

A G Noorani, an eminent constitutional expert, discussed the issue of constitutional safeguards versus political empowerment and saw little hope in depending upon state institutions and the executive. In a situation where the state and its institutions e.g. the police, are communalized, there is need to look to civil society action. Noorani questioned the failure of the institution of the President to intervene in the Gujarat crisis 'Is the President irrelevant in the Constitution?' He mapped a contextual framework for Godhra and the Gujarat carnage, unraveling from the Ram Janambhoomi affair. He emphasized the complicity of the Congress party in the decisive move to open the locks of the temple.

Looking at the capacity of the political parties, the executive, and state institutions Noorani's assessment was negative. As regards the political parties, he blamed them for the perpetuation of exclusivist minority (mirror image majority) politics. 'Can't depend upon a political party or a Muslim organization to show a way forward. As for the Minority Rights Commission, it was dismissed as joke. Partition too was no solution, 'it bisects the problem', he said. Dismissing Commissions of Inquiry, he went into history to excavate the two Commissions of Inquiry set up to look into the Jalianwalla Bagh massacre- one was official and the other non official, under Chimilal Setalvad. Noorani expressed much greater promise in the capacity of NGO's and peoples activism. Peoples Commission of Inquiry have a hallowed tradition, their credibility depends upon inviting judges with no obvious political association. It has to rigorously appeal to legal norms. It demands that NGOs should master legal reforms

George added a cautionary note. Gujarat, she said, demonstrated the failure of Gujarati civil society to intervene. Also next time around in Gujarat, human rights groups and the media would be the first on the list.

Syeda Hamid, educationist and former Member of the National Commission for Women (NCW), developed further the theme of the failure of state administration at the local, state or central level to bring violators to justice. She drew upon her experiences as Member NCW to expand on the intersection between gender and gross violations of the rights of minorities and Dalits to illustrate the failure of the machinery of the state to enforce law and order and protect human rights. She proposed the appointment of a Protector General of Human Rights (PGHR) on level with the status of the Auditor General, Chief Election Commissioner and the Chief Justice. The PHR would be accountable to the Parliament alone.

She argued that the PGHR's mandate would be all India, with powers to investigate, make public findings, pass strictures or praise the conduct and performance of elected representatives and public servants, and have the power to record recorded his remarks in their Confidential Report.

The PGHR should have powers to order the local state and Union officials to undertake steps to provide protection to citizens and groups of citizens and communities.

She took up the importance of placing the Gujarat violence in the wider context of violent attacks on Christians. The need to make these linkages was also mentioned by Sheba George in her comments on Dang incident and the warning signs that were ignored.

John Dayal Convener 'Catholic ...' brought in the dimension of the attacks on Christians and Dalits through dramatic life size poster representations of atrocities against Dalits and tribals. He enumerated the violence and violations against Christians, e.g. 400 churches have been burnt in the North East. Addressing the question of why tribals in Gujarat participated for the first time in the violence, Dayal suggested that the RSS that had been steadily infiltrating these areas had been sowing discord, i.e. co-opting the tribals against the Dalits. Moreover the Jesuit organizations that had been active in the area were being forced to close down their projects because of a tighter regulatory framework, FCRA controls, etc. There are about 40,000 Christian educational institutions (?). 50% of all Christians are Dalits and 30% of Dalit Christians are illiterate

In their self perception, Christians do not define themselves as a minority emphasizing integrationist trends. Christians see Muslims through an RSS lens. Much more positive information has to flow between them for understanding and solidarity to develop. As for the Minority Rights Commission, it is as good as dead.

Prof. Iqbal Ansari an eminent minority rights activist argued in favour of intervention in support of protection of minorities at the international level. He pointed out that the Indian state was very sensitive to the reaction of the international community and there was need to elicit support of the international community and sections of non-resident Indians (NRI). There was need to lobby against VHP seeking NGO status in the UNO system. Elaborating on the international law of genocide, he proposed changes in IPC to give recognition to mass crimes and genocide. Jurisprudential responses to mass crime or exceptional situations require exceptional mechanisms – a statutory National Crimes Tribunal.

Bose was skeptical of an over dependence on law which could be an instrument for justice but also for oppression. It was not a people's jurisprudence. In a sense civil society too was an extension of the power and structure of the state he argued. He asked, "was it possible to give voice to the victim in the big forum of the media. Was it possible for a victim to get redress and to be reintegrated society?" Our state and society structures were not designed to give value to the victim's experience and learn from them, said Bose.

Teesta Setalvad: Bombay and Gujarat tested the systems capacity to respond to mass crimes. It demonstrated that in a situation of systemic breakdown of law and order and mass crimes, the civil rights activists have no option but to appeal to the President to deploy the army and to go to the Supreme Court for relief. However at the time of the carnage the Supreme Court was not able to intervene to stop the violence. The Zahira Sheikh episode was necessary to shake up the SC and get it to intervene. (Subsequent to the Workshop, the Supreme Court passed strictures against the Gujarat state police and the state's judiciary in the Best Bakery case ordering retrial). There was the possibility of invoking constitutional provisions of articles 356 and 355 for ultimate relief in a situation of breakdown but it seems there was a clear lack of political will.

Setalvad gave the example of the report and recommendations of the Judicial Commission of Inquiry into the 1969 communal violence in Gujarat in which about 1100 persons were killed. She pointed out that the three judges on the Inquiry Commission had identified the sort of jurisprudential changes that were required to be made in response to mass crime including into

which they were inquiring. They also suggested changes in the IPC. Public memory suffers from amnesia. In the wake of Gujarat 2002, the report of the citizens' committee on Crimes against Humanity had proposed a National Statutory Crimes Tribunal to define and address communal crimes, caste violence and gender crimes. The report had suggested that the tribunal should consist of the Chief Justice of the Supreme Court, the Prime Minister, the leaders of the opposition and eminent jurists. The tribunal should have a term of seven years. It should have the power to investigate, having its own investigative agency and the power to arrest the accused and send them for trial.

Setlavad detailed some of the difficulties faced at the ground level in pursuing state accountability and justice for the victims of mass crimes. How could the same police that was instrumental in perpetuating and abetting the crimes be an instrument for seeking justice, she asked. There was the systematic failure of the police to record First Information Reports (FIRs). The police also refused to record the names of abusers although the names were mentioned again and again. There were repeated intimidation of witnesses and gross abuse of the Indian Evidence Act by the police as was evident in the case of Bilkis when the exhumed bodies revealed that salt was used to disintegrate the body. There is no system of witness protection. The conviction rate was less than ten percent in Gujarat. Although the Courts and the Supreme Court in particular are looked to as the last resort for justice and relief, there was a tendency for the judicial system to escape criticism, especially the weakness in the judiciary's *suo moto* response vis-a-vis abuse of human rights. The judges of the district and session's courts were not trained to exercise the constitutional mandate of *suo moto* response to a human rights crime.

Absence of political desire for justice, Setlavad pointed out had become a more fundamental issue in the face of systemic failure. Here the situation was not the federal dilemma of state in opposition to the center, but the assault had come from both the state and the center. Arguing for a re-framing of the problematic beyond Centre –State framework (especially when the BJP was in power in both places) Setlavad pressed for the need to understand "what are the forces we're up against". She felt it was important to ask whether it was a question of an attack on minorities or it was a part of a systemic violence, which was ideologically driven and directed against the basic democratic foundations of the Constitution.

Mushirul Hasan, the Director of ATWS, intervened, arguing that invoking the Constitution had become a weak man's recourse. Although the Constitution provides the reference format of fundamental rights, we knew that it was hollow. "We're dealing with a government at the Centre that allows a fascist government in the state to commit mass crimes. We're dealing with spineless bodies that perform little purpose. Institutions that were our strongest allies are no longer available or have become ineffective and irrelevant" said Hasan. The four annual reports of the National Minorities Commission were yet to be placed before Parliament. A strong federal system with the rightwing Sangh Parivar ruling the states and the centre would be disastrous. Most depressing was that in these elections – no one considered it politically expedient to mention Gujarat – i.e. the Opposition parties have chosen not to make the mass killing of Muslims in Gujarat an election issue. According to Hasan this was in contrast to the post Bombay communal violence and the Sri Krishna Commission of Inquiry –the election in Maharashtra state was fought on that plank. "We have to explore other ways, to mobilize and mount campaigns to exert sufficient pressure" said Hasan.

Nitya Ramakrishnan a courageous legal defender, who has dared to take up the cases of the accused in the attack on the Indian Parliament in Delhi and the Godhra train massacre, explored the shrinking space for the right to dissent. Increasingly, the trend has been towards the criminalization of dissent. Historically, in a democratic tradition the state was not an undifferentiated monolith, i.e. there was space for dissent between the state and the majority. The

state set notions of limits through law- the whole notion of legitimacy come from the state. Law set the limits of state action and the state set limits of dissent by law. The judiciary become the deciding ground. Ramakrishnan opined that this balance was disturbed by three things: one was the shrinking space between state and majority, especially in recent times where the state had openly come out in support of the Hindu majority, both in terms of law, policy and executive action. In the Godhra train massacre case the state was prosecuting one set of people i.e. the Muslims under terrorist laws, while the terrorist law was not applied on the Hindus.

What was defined as free speech and what was defamation was open to interpretation and the redefinition of what was a crime. The criminalization of dissent was a product of the intolerance of the majority that had become the other face of the state. The State appropriated the notion of public good and any opposition to it was seen as anti-national. The level of debate was of a low caliber because of the notion of crime and criminality and the idea that the nation was under threat and the state had to police it. In the past, the state was accountable to its people, but that has disappeared. "Consequently, the same state that is corrupt and inefficient has acquired more and more police powers because the corporate lobby is pushing for policing the marginalized and the problematic areas. So you have an increased space for criminalization. What would have been legitimate dissent at one time, is not so anymore" she concluded.

According to Ramakrishnan, one of the main reasons why dissent was criminalized was the abdication of its role of a watchdog by the middle classes which might have been expected to protest and question state policy. We have ourselves given up and accepted the state rhetoric on issues of terrorism, national security, etc. Within the judiciary, for many years the judgement on the AK Gopalan case (challenging his detention under a preventive detention law) was considered a conservative judgement that upheld a retrograde law. Even the majority of the judges, who upheld the constitutional validity of preventive detention laws, there was agreement that while it was constitutional, no situation was envisaged where the normal criminal procedure would be overturned. Since then there has been a steady abdication of defence of notions of rights and accountability. For example while rejecting the appeal against the Prevention of Terrorism Act, Justice Munshi went on to say that Home Minister Mr. Advani's speech about threat from terrorism was sufficient to give constitutionality to a law and hence that challenges on the grounds of fundamental rights was an esoteric argument. There is a categorization of some groups as criminal, that it is inherent in what you are and not what you do. Ramakrishnan was sceptical about creating more policing and weighed in favour of strengthening existing institutions,

G.Hargopal an academic and front line civil liberties activist from Andhra Pradesh, explored the right to intervention and issues sovereignty, especially in a situation where the responsibilities attendant on sovereignty are abdicated by a state that is increasingly being criminalized. Meanwhile society is becoming more fragmented. The way secularism is defined itself creates a problem – as it is projected as something that divides society rather than harmonizes it. Hargopal largely focused on intervention by human rights and civil liberties groups. Emphasizing that interventions have to be based on moral, ethical and democratic standards.

Gurpreet Mahajan, an academic sketched a democratic federal framework for a multicultural polity based on the principle of evenhandedness, i.e. minimizing ways in which groups get discriminated and disadvantaged and where difference and diversity is respected and protected. Federal arrangements can work in the interest of minorities enhancing diversity. Institutions can provide a framework for contestation fostering difference and diversification. In addition peoples movements can play a role in compelling the state to perform in a particular kind of way

However, as **Rodrigues** pointed out the federal framework with its checks and balances work in a situation insulated from the crisis and systemic breakdown that confronts us today. Claims of

redistribution get linked with recognition and perpetuate competitive and divisive identity politics. The federal principle as a solution for protecting minority rights is at odds with an Indian reality of minorities not being region specific. As **Bose** stressed minorities is not a spatial concept in India and spatial autonomy no solution.

Gautam Navlakha, writer and human rights engaged with the issue of protecting the right to cultural identity, arguing for the need to factor in the equally important right to material well being. He sketched an international backdrop of a movement towards regressive politics in terms of respect of cultural identity. Attacks on minorities, especially the targeting of Muslims becoming universal. Globalization has seen a movement toward homogenization within states as evinced by recent exclusionary cultural policies in Germany, France Holland and Denmark. In Europe the process of building a new nation is being anchored in a civilizational base that is Christian. Liberal political theory is posited on majority rule with protection for minorities but in reality what does it mean. Does it mean respecting the rights of cultural groups and doing away with cultural discrimination? Navlakha argued the importance of protecting the material well being of minorities and the issue of denial of justice. This would require engage with political economy and taking on issues of employment and housing rights.

The constitutional debates reveal that the notion of protection of minority rights was discussed in a pro-active framework, that is a statutory body of a Minority Commission with the right to intervene and call witnesses. But after partition there was a decisive shift. It comes down to the good will of the majority to protect the minorities. We can argue for more laws and institutions but critical is what is happening at the level of state and society.

Prompted by the lack of a gender perspective in the discussion on right to cultural identity, **Sheba George** asserted that ultimately gender remained just an add on. Despite the earlier emphasis and the awareness post Gujarat and earlier, that women's bodies as cultural markers, become the battle ground for revenge. Moreover in Gujarat there was the phenomenon of women taking part in the violence against other (community's) women. The failure to integrate gender was particularly glaring in the context of right to cultural identity as it is women who are expected to play out that defined cultural identity. The cultural pressures on women to conform to cultural identity politics is not restricted to Muslim women but is the experience of all women.

Balveer Aurora academic and writer on federalism, attempted to locate the notion of the federal principle enshrined in the Constitution in the impulse to protect the rights of minorities. However, the shadow of partition fell on the constituent assembly discussions diluting and reshaping its content of self-rule and shared rule. Post partition federalism came to be viewed as carrying the seeds of disintegration. embodied in constitutional self rule and shared ruled – lacking protection of minority rights. The limits provided on the federal principle – articles 356 and 355 – provided the power to intervene if the core of the constitution, i.e. fundamental rights, were violated. The powers given for this purpose were not used, there was a lack of political will. Instead intervention was misused (to dismiss elected state government and impose President's rule) till it was curbed by the Supreme Court (Bommai case 1994). The sole authority rested with the government to decide when this interventionary power was to be invoked. In this context he mentioned the existence of body of the Inter State Council that could have played an interventionary role. However, he was not confident that it could be used.

Is the failure of federalism being used as an alibi for inaction, asked Aurora? Federal principles were never intended to curtail the exercise of central powers to protect fundamental rights. Aurora was critical of Bose's dismissal of institutions and looked upon the NHRC as having the possibility of evolving into an independent watchdog institution.

Rita Manchanda writer and gender-rights activist probed the possibility of political response through a structure like the Inter State Council to exert pressure and contain a rogue federal unit. For example, when the state government decided to allow the civil servants of Gujarat to join the RSS, the Chief Minister/Chief Secretaries at the Inter State Council (and the bureaucracies) could have decided that they would have no official dealings with the state till the order was rescinded.

Valerian Rodrigues, an academic succinctly summarized the thrust of the new directions for protecting minority rights as - reinforce civic and citizen's activism; shaping and enlarging legal provisions; some constitutional and legal alternative including new institutions to reinforce federalism, sensitizing arenas of the state to minority issues and political partisanship and advocacy of minorities. However, he warned that unless we have a receptive society the alternatives may make no difference.

Indian Constitution structured on the basis of majorities. Secularism too has been based on the principle of majority. The eulogized discourse of secularism is constructed on the basis of equal rights. It has resulted in a large number of minorities calling themselves secular e.g. Christians. This increasing trend of people hiding their identities has fed into the streamlining of majoritarianism in India. Rodrigues argued that there were specific conditions that made Gujarat a particularity and therefore Gujarat was unlikely to be repeated elsewhere.

Conclusion: More concretely some of the suggestions included the setting up of an autonomous central mechanism or federal authority with moral and constitutional sanction. Among the suggestions was a proposal for the creation of a Protector General of Human Rights with statutory powers, It was felt that exceptional or special situations required special institutional structures and jurisprudential responses. Another proposal was for the creation of a National Statutory Crimes Tribunal comprising Chief Justice of the Supreme Court, Prime Minister, leader of the Opposition and eminent legal experts. It would have powers to investigate and have its own investigative agency and powers to arrest and put the accused on trial. Also, proposed were changes in the IPC for mass crime- a law against genocide. More federal courts, federal investigative bodies and federal police were proposed. However a cautionary note was interjected that a federal system structured around the Sangh Parivar would be disastrous. Others like Balveer Aurora argued that there was the possibility of strengthening and making more independent existing institutions like National Human Rights Commission (NHRC). However the Minorities Commission was witheringly dismissed although Member A R Sherwani defensively spoke about their efforts and limitations. While Mushirul Hasan argued that invoking the Constitution is a weak man's recourse, it was a grim testimony that so many of the legal and constitutional experts around the table, eventually placed their trust in civic -civil society activism.

It was suggested that as the oral presentations and the discussions were recorded these should be transcribed and edited into a volume. This volume could be used for generating wider discussions on the critical issues articulated by the participants. It was also recommended that more such workshops, at least another three, one each in Mumbai, Chennai and Kolkata should be held to involve the academics, political activists and legal experts of these regions. It was felt that such a wider consultation would help in generating a greater debate on this vital issue.