

PLURALISM WORKING PAPER | 2010 / NO 6

HUMAN RIGHTS, PLURALISM AND CIVIL SOCIETY

Reflecting on contemporary challenges in India

SITHARAMAM KAKARALA

Colophon

First published in September 2010 by the Promoting Pluralism Knowledge Programme, jointly coordinated by:

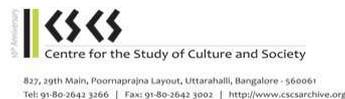
Humanist Institute for Co-operation with Developing Countries
P.O. Box 85565 | 2508 CG The Hague | The Netherlands
www.hivos.net

The Kosmopolis Institute (University for Humanistics)
P.O. Box 797 | 3500 AT Utrecht | The Netherlands
<http://kosmopolis.uvh.nl>

Center for Religious & Cross-Cultural Studies (Gadjah Mada Graduate School)
Jl. Teknika Utara | Pogung | Yogyakarta Indonesia 55281 | Indonesia
www.crcs.ugm.ac.id

Centre for the Study of Culture and Society
827, 29th Main | Poornaprajna Layout | Uttarahalli | Bangalore – 560061 | India
www.cscsarchive.org

Cross Cultural Foundation of Uganda
P.O. Box 25517 | Kampala | Uganda
www.crossculturalfoundation.or.ug



Editing by Caroline Suransky, Hilde van 't Klooster and Ute Seela (Kosmopolis Institute, Utrecht, The Netherlands and Hivos, The Hague, The Netherlands)

Design by Tangerine – design communicatie advies, Rotterdam, The Netherlands

ISSN 1879-7172

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Author(s) (year). 'Title', *Pluralism Working Paper series*. Paper no.



Human Rights, Pluralism and Civil Society

**Reflecting on contemporary
challenges in India**

Sitharamam Kakarala

Pluralism Working Paper no 6

Title	Human Rights, Pluralism and Civil Society Reflecting on contemporary challenges in India
Author	Prof. Sitharamam Kakarala
Keywords	Human Rights, social action, civil society, social theory, pluri-culturalism, India
Category in Working Paper series	A – academic research paper
Comments can be sent to	Sitharamam Kakarala – k.sitharamam@gmail.com And to the editors of the Pluralism Working Paper series – pluralismworkingpapers@uvh.nl
	Prof. Sitharamam Kakarala is Senior Fellow at the Centre for Culture and Society in Bangalore, India. He is also Regional Coordinator of the Promoting Pluralism Knowledge Programme in India. CSCS was established in 1996 by scholars interested in new approaches to studying culture in India. The need was felt to reframe the social sciences and humanities disciplines to deal with the transformations and political mobilizations currently taking place in the area of gender, caste and community.
Website	http://www.cscsarchive.org and http://pluralism.in

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Caroline Suransky, Hilde van 't Klooster and Ute Seela

Editors of the *Pluralism Working Paper series*

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Editor's preface

In this paper, *Human Rights, Pluralism and Civil Society – Reflecting on contemporary challenges in India*, Prof. Sitharamam Kakarala, coordinator of the Pluralism program in India, presents an interesting review of the conceptual approaches and strategic actions of human rights - and secular action groups in complex plural societies. His analysis particularly refers to the context of communal violence and conflict issues in contemporary India. It explores salient concerns around religious pluralism and relates them to issues of caste, gender and ethnicity.

Respectfully, Kakarala stresses that this paper does not intend to judge civil society organisations or make a categorical statement about their work in extremely complicated situations, for instance after the demolition of the Babri Masjid or in the aftermath of the violence in Gujarat in 2002. Rather, the paper wants to help reframe the debate on pluralism concerns in ways that allow us to go beyond communal violence and constitutional governance questions, and thus help us to rethink ways and means of strengthening the *pluricultural* societal fabric.

Kakarala insightfully identifies a number of key challenges to pluralism concerns from a civil society vantage point. He argues that present-day challenges emerged when existing - tried and tested - strategies of political protest by civil society organisations as well as efforts to address matters through constitutional and human rights mechanisms, seem to have become increasingly inadequate in a (global) context in which people's engagement with social change is changing.

The paper shows that the inadequacy problem is not confined to civil society practice. Similar struggles can be identified in the realm of social theory development. Concisely the paper explores recent theoretical challenges to the "too simplistic dichotomy between the universal and the particular in understanding the ideals of democracy, human rights" and other core concepts which are closely related to pluralism.

The paper goes on to identify a number of key lessons and emerging scenarios which creatively challenge our thinking about social theory and social action for pluralism.

Dr. Caroline Suransky,

Chief editor of the *Pluralism Working Paper series* for the Promoting Pluralism Knowledge Programme

Human Rights, Pluralism and Civil Society

Reflecting on contemporary challenges in India

Sitharamam Kakarala

1. By way of beginning

At the outset, I would like to clarify two points. First, though the attempt is to conceptualise the civil society response to pluralism concerns,¹ my aim primarily confines to address issues around religious pluralism concerns and bring in issues of caste, gender and ethnicity as much as they are related to the issue of religious pluralism in contemporary India. Second, this paper is *not* an attempt at either evaluating or judging the role and practice of the civil society organisations (CSOs)² or making a categorical statement on the significantly commendable work done by them in various extraordinarily difficult situations like the communal violence in the aftermath of the demolition of the Babri Masjid or in the aftermath of Gujarat 2002. Similarly, it is also not a normative take on human rights, either as a legal tool or jurisprudential concept, evaluating whether they are *useful* or *effective* in dealing with matters related to religious and identity pluralism in India. The paper does not intend to address the concerns of pluralism in the universality and cultural relativism framework. I personally consider that human rights, and more particularly the constitutionally guaranteed Fundamental Rights, including the specific guarantees to the minorities, have been crucial in generating social and legal responses to fight for the cause of pluralism in contemporary India.

However, the intended purpose and objective of human rights or Fundamental Rights is itself not adequate to make them either go beyond the scope of critical reflection or deliver unquestionable social goods. For, despite a laudable intention and desire, the actualisation process could spring surprises, and sometimes not entirely to the satisfaction of the situation. Thus the paper, while acknowledging the critical role played by human rights interventions in addressing the concerns of pluralism, intends to reflect on the following: (1) situations that emanated at the intersection of growing communalisation of the culture and politics in contemporary India and its implications for the future of democracy; (2) the track record of the constitutional governance; and, (3) the civil society efforts in addressing these challenges through constitutional and human rights mechanisms, especially against the backdrop of rapidly changing times of globalisation and the claims of an emerging knowledge society (UNESCO, 2005).

¹ India's social and cultural diversity does of course not confine to religious pluralism alone. Other issues such as caste, especially in the form of tensions between the Dalit groups and the dominant and upper caste groups (mainly in the form of discrimination and violence against dalit groups across the country), gender, both in the context of religion as well as caste related issues (ranging from unequal status in religious personal laws to inter-caste and inter-religious marriage issues), ethnicity, often in the form of tribal and non-tribal relations (eg. Nagaland since mid-1940s, Assam during 1980s, North-Eastern states on a continual basis, and recent development concerns in Jarkhand, Orissa etc.) and linguistic and regional tensions.

² Throughout the paper I use the term CSO in an inclusive way to represent all organizational forms such as conventional social movement groups such as civil liberties groups (Peoples Union for Civil Liberties, Peoples Union for Democratic Rights etc), voluntary organisations (numerous groups are still working purely on voluntary basis without external financial support), NGOs and CBOs.

Much has been written and said about the problem of communalism and communal and caste violence in India in the last decade.³ The aim of the paper is therefore not to augment the same corpus with yet another reflection. Rather I take for granted the existence of such rich and diverse analytical corpus on the subject and use that as the basis for the current reflection, supplementing it with the insights of the emerging theoretical frameworks and the specific studies generated by the Pluralism Knowledge Programme in India and also elsewhere.

The primary objective of the paper is thus to present a case for reframing the debate on the concerns of pluralism beyond communal violence and constitutional governance questions and explore possible ways by which such reframing could help us to rethink ways and means of strengthening the pluricultural fabric of India.

2. Grappling with the Big Picture: Rapidity of Change, Uncertain Times and Messy Connections!

Like many other developing countries, India has witnessed major shifts in its development pathways since the early 1990s. In the social and development sectors, where these developments are referred to as 'neoliberalism', there has been a major critique of these developments especially from the vantage point of the poor and the dispossessed, indicating the mixed baggage that it brought to them¹. While these developments during the last two decades brought many new opportunities of work and skills, livelihood and social mobility, they also created various vulnerabilities across the spectrum, especially for the poor. An important source of these vulnerabilities is slowly but steadily loosening orientations to many established normative standards such as justice, equity, equality and human rights (Comaroff & Comaroff, 2001). This 'loosening' is said to be a double-edged process: creating possibilities of rethinking and expanding the scope and ambit of these ideas, and at the same time making them simultaneously vulnerable to significant redefinition. So enormous is the extent of change in meaning, that it actually deviates from its erstwhile understanding. Notions such as social and constitutional justice, secularism, fairness, human rights etc face vulnerability of this kind in contemporary India². For instance, there have been concerns about the changing orientation of the Indian Supreme Court in dealing with matters of public interest and is being 'structurally adjusted' (Baxi, 2002)⁴ which poses questions about the future of constitutional justice in India. Similarly, developments during the last decade, especially since Gujarat 2002, raised more questions about the future of secularism than providing answers³. The role of the state, both as the principle facilitator of neoliberal policies and the principal guarantor of constitutional justice, has been ambiguous to say the least. The experience with processes of justice has been seriously disappointing, if not outrageously ineffective, viewed from the victim's point of view.⁵

The 'civic space' in India is naturally not immune to these changes. It had witnessed significant changes both in terms of proliferation of new organisational forms as well as strategies of intervention. The proliferation of the newer organisations is especially driven by concerns of participation and monitoring on the one hand (eg. in monitoring local school management, resource utilisation and distribution), and newer strategies in livelihood creation and empowerment (eg. Micro credit, self-help groups etc) on the other. These strategic shifts took place partly due to the necessity which was created by new organisational forms and partly due to overall changes in concepts of empowerment.

³ Communalism will perhaps be the most debated topic, with the exception of economic liberalisation and its impact, in recent years in India especially since the destruction of the Babri Masjid and then the Gujarat 2002. It is not feasible to provide a comprehensive bibliography of these works here, but the references at the end serve as a useful beginning pointer on the matter.

⁴ Commenting on the changing orientations of the Court since the beginning of the 1990s regarding the famed intervention process of the Social Action/Public Interest litigation, Upendra Baxi (2002) argued that there is a discernable pattern of reversal, that is, a hostile or negative orientation towards what was considered as 'public interest' matters.

⁵ Since the demolition of the Babri Masjid structure in December 1992, three major Commissions of Inquiry have been set up: The Liberhan Commission of Inquiry on the Demolition of the Babri Masjid; the Sri Krishna Commission of Inquiry on the Mumbai riots I 1993; and, the Shah-Nanavati Commission in Gujarat inquiring into the 2002 violence. The Liberhan Commission submitted its report after 17 years of inquiry in 2009 awaiting initiation of any action from the state; the Sri Krishna Commission submitted its report in 1998 and over the last decade the state has not really implemented the substantive findings of the report; the Shah-Nanavati Commission has submitted an interim report in 2009.

More particularly, it is interesting to identify that around the same time, the nature of challenges to religious pluralism and identity⁶ also underwent major shifts. Conflict between religious groups is not new in India, though there is no single cause that can be attributed for the eruptions of such violence.⁷ The Hindu – Muslim violence, which has a long recorded history of over two hundred years, has regional as well as contextual variation in causal explanations, ranging from localised intolerant practices, to economic disparities between communities and longstanding simmering tensions (Balagopal, 1988; Breman, 2002; Shah, 2002), to electoral politics and political populism (PUDR, 1987), to carefully planned and executed ‘pogroms’ or crimes against humanity (Concerned Citizens Tribunal, 2002a; 2002b; 2002c). Various reports of human and democratic rights groups during 1980s suggest the political populism and vote mobilisation dimensions behind numerous Hindu-Muslim conflicts occurred during the 1980s. The rise of the Bharatiya Janata Party (BJP), the main right-wing party, to national level as a force to reckon with is squarely attributed to this carefully planned communal violence (Jaffrelot, Christophe, 1996a).

During the same years, India underwent enormous socio-economic changes in the form of liberalisation of policies and the economy, the rise of India’s ICT industry to make it globally visible, the emergence of a new consumer class riding on the success of ‘outsourcing’ industry and the consequent spin off of retailing industry.

This situation needs further contextualisation as similar changes swept through the rest of the world as well during the same time, though in an uneven way (Castells, 2000a; 2000b; 2000c); Harvey, 2007; Comaroff & Comaroff, 2001). Similarly, there has been an explosion of religion in public space globally (Tétreault & Denemark, 2004), tendencies of religious identity polarisation which gave fears of rising religious fundamentalism of all kinds.⁸ Thus, the problems of pluralism in India, considered against this global backdrop, at once appears to be related to the politics of economic transformation (neoliberalism, both at the national as well as at the global levels) and related to the tectonic shifts in the arena of identity politics.⁹ Understanding this link between the ‘local’ and the ‘global’ is critical to the diagnosis and the prognosis of the challenges to pluralism in India.

Covering all these questions is, however, beyond the scope of this paper. What I venture to present here is a sketch of the nature of challenges and possibilities by addressing them in a nutshell.

⁶ The debates in India are often not navigated through the phrase of religious pluralism, but more by the social phenomenon of ‘communalism’ and violence, conflict and tensions associated with that phenomenon. But the term pluralism denotes much more than the phenomenon of communalism and hence my reference to the term includes communalism, but not confined to it.

⁷ Historical accounts of ‘communal violence’, a label that represents inter-religious, and mainly Hindu-Muslim, violence in India, traces the conflicts back to late 18th century (Pandey, 2006). The contemporary escalation of communal violence lead to significant growth in academic and activist interests in understanding communalism and the routes through which it has entrenched in the Indian society (Jaffrelot, 2007a). Many studies identify the ‘causes’ being political mobilization of masses into a process of hatred through strategies of unscrupulous kind employed by the Hindu organisations like the RSS (the National Volunteers Association) and its allied outfits like the BJP (Bharatiya Janata party). While such mobilization is clearly evident as an empirical fact, what however is not entirely clear is why such ideologies of hate appear to have a deep appeal to the masses leading to their mobilization remains largely a mystery (Narayan, 2009). Besides, a number of critical writings emphasized on the non-communal causes of communal violence such as economic differences, tribal – non-tribal issues etc (Balagopal, 1988; Breman, 2002; Shah, 2002).

⁸ While it is a common misconception to equate fundamentalism with Islamic radicalism of various kinds, fundamentalism has been identified as a hardened ideology of various religious groups, ranging from various denominations of Christianity, Islam, Hinduism, Buddhism, Judaism etc.

⁹ Jean and John Comaroff (2001) suggest that the rise of new identity politics, such as the rise of ethno-religious movements and their seeming opposition may have to be understood as products of neoliberalism.

3. A Mapping of the nature of challenges to Pluriculturalism in Contemporary India

In this section I present a perspective on understanding the challenges to pluralism in India. In doing so, I shall consider the debates around communalism but also go beyond to decipher emerging concerns that could have significant implications for peaceful coexistence.

During the struggles against colonialism, many social reformers in India considered its plural heritage deeply entrenched in the country's history and held that the Indian experience of respect and coexistence with multiple religions would help the West to deal with their growing pluriformity in the 20th century (Tagore, 1916). The history of the national movement in India is a history of transforming diverse identities into a unifying 'nation'. But it was also the site on which the first major political partition of a geography into two independent nations—Pakistan and India—took place soon after the end of the colonial regime. The 'partition' left a deep scar on both sides of the border and, the memory of suffering and pain still continue to generate most compelling and moving narratives (Butalia, 2000; Pandey, 2001; Tan & Kudaisya, 2000). A deeply painful event of this nature could not escape from being useful for those who wanted political mileage out of it. Especially when competitive democratic politics took the turn of 'identity populism'—considering various group/community identities potential 'vote banks'. Thus the inter-religious conflicts, popularly referred 'communal violence', during the 1970s and 1980s was attributed to the process of the politicisation of religion by political parties that tried to get the support of the majority Hindus (Jaffrelot, 1995).¹⁰ The escalation of communal violence during 1980s and early 1990s continued to be seen as caused by competitive identity populism (Sabrang Research, 2004), and became the most visible cause and the driving force of the problem. However, it acquired a more complex character against the background of global changes and persisting national problems such as the Kashmir problem. It is important to schematically present a view on the nature of challenges to pluralism during the 1990s. Below, I capture some of the key points in this regard.

First, undoubtedly the communal polarisation persisted as right-wing politics continued to view it as a useful vehicle for mobilising votes. While the communalisation of voter politics was in itself not new, the intensity and scale acquired new vigour and momentum, as the ambitions of the main Hindu nationalist party to gain political control at the national level grew (Jaffrelot, 1996; Puniyani, 2005). The flipside of communal violence is caste violence. While the nature of caste discrimination and violence tends to be different in various parts of India, reports of violence and atrocities against dalits continue to appear despite a strong legal framework prohibiting such practices (Balagopal, 1987; 1991; Sainath, 1996; Shah, 2002).¹¹

Second, a central source of strength of Indian democracy is its constitutional and secular framework of minority rights protection¹², which began to appear vulnerable to social polarisations since 1990s. The human rights and secular action groups in civil society, which deploy constitutional strategies in combating communalism and right-wing politics, experienced mixed results in the wake of the massive upscaling of communalism in the 1990s, if seen closely in terms of their ability to contain or redress the violations. While attempts to find justice for the victims of communalism resulted in some individual case verdicts upholding minority rights and provided redressal in the form of criminal convictions or civil compensations, there was a growing frustration, if not disillusionment, with the

¹⁰ The Bharatiya Janata party or BJP is a product of such politics. But political parties with a Hindu bent of mind was not new and existed from 1950. The BJP is a new formation and drew ideological as well as cadre support from the previous political party, Bharatiya Jan Sangh, founded by Shayama Prasad Mukerjee and supported by the Rashtriya Swayamsevak Sangh (RSS) a voluntary organization established to revive Hindu pride.

¹¹ The Constitution of India Prohibits any form of discrimination based on caste, class, creed, gender etc. and makes untouchability a prohibited act (Arts 14 – 16). Further there have been three special legislations addressing the issue of caste based discrimination and violence: the Untouchability Prohibition Act (1955); the Civil Rights Protection Act (1976); and, the Prohibition of Atrocities against Scheduled Castes and Scheduled Tribes Act (1989). Besides these, there are institutions specially to address the concerns of the SCs and STS: National Commission on Scheduled Castes and Scheduled Tribes and the Commission on Safai Karmacharis. Similar bodies exist in many States.

¹² The Constitution of India presents one of the most comprehensive minority rights protection frameworks. Besides providing a strong non-discrimination proviso in articles 14-16, special protection for minorities is extended in articles 25 to 30, dealing with a range of protections from safeguarding language, culture to right to establish and manage educational institutions.

working or lack of it of the established constitutional framework and available legal and institutional mechanisms to contain communalism as a social phenomenon¹³.

Third, incidents of glaring communal hate and growing cleavages of local level government participation in such incidents began to shake the confidence in the constitutional, secular mandate of the state and its obligation to be an impartial arbiter of social tensions. Rather, what became part of a growing common sense is, somewhat sadly, the crumbling edifice of the secular state itself (Concerned Citizens Tribunal, 2002a; 2002b; 2002c; Indian Social Institute, 2002).

Fourth, the constitutional consensus on minority identities and caste identities also came under severe stress from a rather unexpected set of grounds, namely from growing protest against the established monolithic constitutional constructions of 'minorities' or 'scheduled castes' etc. Within the Hindu fold, dalits, the social outcaste groups whose historically disadvantageous status and continuing oppression attracted the attention of the world recently (Narula & Human Rights Watch, 1999), witnessed movements within its fold questioning the assumptions of social justice in the constitution and asked for a reframing of the rules of welfare and distributive justice. The struggle between two sub-categories of the dalit rubric, namely Maala and Maadiga in Andhra Pradesh present as an illustration in this case. Maadiga's began agitation to seek separate quota within the constitutional reservation provided to Scheduled Castes to mitigate the formations of the internal 'creamy layer' with the dalit fold (Balagopal, 2000). Similarly, the caste question became a major marker of protest in recent times in all major religions, though both Christianity and Islam do not officially accord recognition to caste within their fold (Deshpande & Bapna, 2008). The rise of Pasmanda Muslim Mahaz in eastern India, which began questioning the constructions of Muslim minority concerns in a monolithic way (Ansari, 2009), and the growing conflict within the Sikh religious context around the caste question (Jodhka, 2001) suffices to illustrate this point.

Fifth, what was considered to be one of the most effective ways of social transformation since the beginning of social reform movements in the nineteenth century colonial India and continued in post-independent India, namely social change through legal and constitutional reform, has begun to lose its hegemonic position in the wake of new identity politics. Many attempts to push social reform through legal change during the last couple of decades did not go unchallenged. While such challenge to legal reform in itself is not new, it is the nature and magnitude of challenge which marks the difference, and is primarily related to the rise of new identity politics. The debates on gender and religion, uniform civil code, reforming religious education processes such as Madrasas are examples in contemporary India (Needham & Rajan, 2007). The hegemonic legitimacy enjoyed by a state-driven legal reform process as an acceptable way to transform 'traditional' or 'customary' practices seems to have acquired a more complex life and thus raise questions of democracy and legitimacy in the politics of modernisation. (Partha Chatterjee, 2007).

Sixth, this period also witnessed proliferation of 'right-wing' civil society groups, of which the majority belongs to the Hindutva groups (or Sangh Parivar), although also to some minority groups, especially Islamic groups. These proliferating organisational forms have begun to occupy significant space in 'civil society' and are engaged in a competitive mobilisation of youth, women and people at large (Puniyani, 2005). The persistent perceived inadequacy of secular social action organisations and processes to match up in mobilising people on the basis of secular, non-identity platforms, and more importantly votes for centrist or left parliamentary parties that have a record of being secular began to sync in. This led to a major self-realisation in the recent years, but more as a 'problem' without a clear solution. CSOs often appear to have a clearer understanding about *what* happened in the mobilisation of people and votes but by and large without a comprehensive understanding as to *why* this happened.

Seventh, there appears to be a subtle but plausible shift in the 'political orientations' of the youth, especially, though not exclusively, metropolitan locations. The traditional vocabularies of left, right and centre and attitudes towards 'ideological affinities' appear to have given way to more loosened and flexible orientations. This led to uncommon and newer ways of protest. This became visible for

¹³ I have already mentioned about the slow and reluctant nature in which the Commissions seem to be functioning and also the delay in the implementation of the findings of judicial commissions appointed in the aftermath of communal violence. Besides, there is no consistency in the judicial decisions on secularism by the Apex Court, rather there appears to be a tendency of shifting from a more stronger minority rights orientation to an 'ascendency of monocultural view' (Alam J, 2010), in other words towards stronger assimilationism as opposed to stronger respect for the autonomy of minority cultures.

example in the demonstrations of sexual minority groups, and not always to the comfort of politically oriented social action of erstwhile denominations.

Eighth, there is a growing body of critical writing emerging in a diverse cross-cultural context that critically engages with some of the core theoretical categories of (liberal) modernity, namely law, secularism, pluralism, state, development, civil society, democracy, equality, liberty, citizenship, human rights, and such other concepts. The nature of contemporary theoretical critique is, unlike what happened in the nineteenth century, not on normative debates as mere philosophical critique. Instead, it tends to combine both anthropological data with critical theory and thereby raising grounded fundamental questions about the existing categories that are the basis of much of our everyday understanding⁹.

These debates, inter alia, raise three fundamental issues about the ways in which social realities are understood.

Normative constructions such as equality, liberty, and democracy tend to ignore the culture question in understanding the ways, means and processes through which the 'universal categories' is circulated, transplanted, internalised and re-presented in diverse socio-cultural settings. This impoverishes the debates to the extent that it would consider all debates on these concepts as self-evidently universal. The debate is not about privileging the particular against the universal, but to recognise that there is a catalytic role that is played by culture in mediating the circulation and redefinition of these categories and thereby making contextually meaningful or, in Upendra Baxi terms, 'contemporary'.¹⁴ Recent postcolonial theory, which pays significant attention to the question of the 'universal', has diverse positions on the issue and its conceptual siblings such as the cosmopolitan etc. (Chatterjee, 2006; Needham & Rajan, 2007; Spivak, 2002). Notwithstanding these differences, an important converging point in methodological terms is their preoccupation with the question of re-imagining the universal in a world of cultural pluralism and thereby exploring possibilities of re-imagining the 'universal' in intellectually productive ways suited to our times.

The above debates must be placed against the backdrop of recent developments in social theory and philosophy on some of the key questions: namely, democracy (problematizing coercion and inequality beyond the liberal procedural arguments) and pluralism (of 'meaning' and its epistemic and ontological connotations). These debates indicate that the tendency to dichotomise the 'universal' and the 'particular' (or relative) often tends to bloc possibilities to explore and represent diverse ways in which concepts such as equality or freedom are available in various socio-cultural contexts. In other words, current social theory is not sufficiently plural in its epistemic and normative bases. Diverse contributions ranging from the work of An Na'im (An-Na'im & Baderin, 2010; Na'im & Deng, 1990), William Connolly (2010; 1995), and Talal Asad (Talal Asad., 2003; Talal Asad, 2001) serve as examples here.

Finally, at the bottom line, the normative constructions in existing debates appear to lack the ability to withstand the scrutiny of both the available historical analyses on these categories as well as the test of internal consistency. Contemporary critical debates on secularism could serve as example here (Asad 2003; Casanova, 1994).

Needless to say that these three fundamental questions are inter-related and have serious implications for both theory and practice as they affect the way we understand and construct meaning in our everyday realities. In a way they present the 'pluralism challenge' to existing theoretical constructions and their everyday translations in practice.

In summary, the nature of challenge to pluralism comes only in part from direct threats of communalism and other forms of ethno-identity violence. This has to be analysed along with two other developments: first, the increasingly visible inadequacy and vulnerability of established strategies of political protest and civil society practice in dealing with these threats. Secondly, the theoretical advancements in recent times in overcoming the simplistic dichotomy of the universal and the particular in understanding the ideals of democracy, human rights and such other concepts.

¹⁴ In his *Future of Human Rights* (2000), Upendra Baxi tried to explore the debate on the concept of human rights beyond the universalist and relativist dichotomy. He reflected on possible ways by which we could understand different dimensions of the 'universal' becoming contextualised or translated into a social scenario through social action processes and thereby becoming amenable for local understandings and everyday practice. This he termed 'contemporary human rights' and contrasted it with the idea of 'modern human rights, which he claimed represents the simple universalist assumption that they are self-definitional and 'available to all'. See chapters 2 and 3.

4. Responding to the Challenges: Civil Society's Approach to Pluralism Concerns

In this section I shall confine myself to a schematic analysis of the responses of CSOs in India. I shall focus on the following themes: (i) seeking justice to the victims of gross human rights violations such as communal violence and the aftermath; (ii) campaigning and mobilising in favour of rebuilding and strengthening the secular fabric of society; (iii) rehabilitation and resettlement of victims of communal and other ethno-identity violence; (iv) reconciliation in post-conflict scenario.

Seeking Justice for victims and doing campaigns for secularism

From the very beginning, 'Seeking Justice' stands as the single most urgent concern in civil society interventions. The bulk of activities carried out by CSOs in India in this regard follow strategies to help mobilise opinion and people in favour of a perspective of justice. At yet another level, they use constitutional methods of redressal such as courts or demanding new legal frameworks (legal reform). The actualisation of the idea of justice therefore has a retributive dimension (seeking punishment of the culprits who committed the acts of violence/violations) and a campaign dimension (seeking responsible state action to maintain peace and a just environment and seeking citizen participation in support of such demands).

An important strategy of CSOs has been '*fact finding*' missions.¹⁵ The earlier response during 1970s and early 1980s came from the Civil liberties groups. The method of fact finding subsequently became part of the NGO activities and more recently emerged as 'investigative journalism' practices in the media.

Since the beginning of 1990s, with the rise of NGO-isation of human rights activity, numerous human rights NGOs began to take up similar activities. By late 1990s, new NGOs or social action groups with a special focus on communalism began to emerge. Magazines like *Communalism Combat* appeared, besides the civil liberties magazines like PUCL Bulletin and many vernacular magazines of civil liberties groups, uncovering a variety of trends in communalisation of polity and society.

The main assumption that underpins this strategy is that presenting correct information can lead to the mobilisation of opinion and people for a cause within a democracy. Fact-finding helped CSOs to highlight hidden dimensions and aspects into the discussion and also generated momentum for interventions. Although fact-finding continues as an important strategy of human rights interventions, of late its effectiveness or ability to mobilise has begun to depend upon how the dominant media space responds or accommodates the findings.¹⁶ Similarly, there is perceptible change in the urban middle class orientation to social action, there is a growing presence of new media oriented engagement as channels of expression which contrast with previous strategies of direct mobilisation. With the rise of specialist NGOs, such as the advocacy NGOs in the field of human rights and justice, a practice of initiating court cases pursuing justice in a concentrated and focused manner also emerged. Fighting court cases was not new. Civil liberties organisations have always engaged with the court system and their predominant engagement was with the issue of liberty. The issues were

¹⁵ The strategy of 'fact finding' appears to have arrived through the Indian civil liberties organisations drawing inspiration from the experience of civil liberties movements elsewhere, especially from the American Civil Liberties Union in the US and the National Council for Civil Liberties in the UK. Ever since the first fact finding of the Jalianwalabagh incident in 1918, conducted by the Indian National Congress it remained an important way of both creating an authentic and impartial 'alternative' truth to that of the version of the State. The activity comprises of forming a group of respected individual drawn from public life and make them survey all the affected sides of the incident in concern and produce a narrative that will explain what the truth according to them is. A more procedurally standardized process was adopted by the United Nations in dealing with gross human rights violations since 1970s in the form of Truth Commissions. The bibliography at the end provides a number of examples of these fact-finding reports.

¹⁶ It is useful to recount a specific case that might help communicate my point. Regarding extra-judicial killings, which in local parlance is known as 'encounters' wherein the suspected far-left activists and their sympathizers get killed, the civil liberties groups have campaigned since the beginning of 1970s. certain groups like the Andhra Pradesh Civil Liberties Committee (APCLC) carried legal battles in the higher courts seeking judicial interventions to stop what they called 'fake encounters'. However, the courts, including the Apex Court, were quite wary of arriving at any decisive verdict or injunction in favour of the civil liberties argument (Balagopal). It took nearly 30 years of relentless and hard campaigning by the civil liberties movement to get a directive from the National Human Rights Commission in 1997, asking the police to treat every act of 'encounter' as an act of culpable homicide issue and conduct an inquiry and submit reports (NHRC 1997). On the contrary, when media took up certain encounter issues in the recent past, notably the Sohrabuddin case and Ishrat Jahan case, the issue of encounters became a widely debated matter and the courts had to respond accordingly.

primarily related to seeking bail, or fighting cases of those indicted under the charge of sedition or treason or detained under Preventive Detention Laws of extraordinary kind. With the arrival of advocacy NGOs' in 1990s new possibilities of employing law for seeking other aspects of justice, for example victim compensation, or seeking court interventions to remedy perceived notions of discrimination (as in the case of Section 377 pertaining to the persecution of sexual minorities under the Criminal Law in India) or seeking state intervention by framing progressive laws to correct social inequalities and discrimination (as in the case of domestic violence or violence against the Scheduled Castes and Scheduled Tribes).

The NGO interventions in advocacy did create new possibilities, especially during the period in which the Apex Court in India was identified as a 'progressive' activist court and made numerous interventions in favour of the rights of the poor and marginalised through what came to be known as the Public Interest Litigation process (Baxi, 1985; Sathe, 2003). However, the recent scenario became more complicated with some plausible change which has been identified in the nature of the Apex Court responses to the Public Interest Litigation cases (Baxi, 2002). In addition, there are changing orientations of national and international philanthropic organisations and their orientation to rights and which kind of rights etc., which highlight the continuing vulnerability of these interventions.¹⁷

New Challenges in the Post-Godhra Gujarat

What emerged during the post-Godhra Gujarat violence, beyond the justice question, is the enormity of the task of compensation, rehabilitation and resettlement of the victims and finding ways of social reconciliation. The intervention of courts in terms of providing compensation alone is not adequate for rehabilitation and resettlement for thousands of families who lost substantive, if not their total sources of livelihood and who suffered the demise of family members. Although there is no comprehensive account of the rehabilitation and resettlement process, available accounts, both oral as well as published, indicate many unanswered questions (CSSS, 2010; Chandhoke, Priyadarshi, Tyagi, & Khanna, 2007; Mander, 2006).

The above sketch is not, as mentioned in the beginning of the paper, an attempt to evaluate the effectiveness of the human rights movement. It is only an attempt to identify the activities which aimed to secure justice for victims and their changing character in the context of changing times. It is difficult to provide any empirical figures about the nature and extent of mobilisation, as there is hardly any data on such matters. It is safe to conclude that methods like fact-finding has been partially appropriated by the new media space and thus place new demands on ways of imaging the task of mobilisation by human rights groups. Similarly, methods like advocacy have undergone some changes especially in the light of transformations in the climate of judicial responses and orientations of philanthropic processes.¹⁸

Rehabilitation, Resettlement, and Reconciliation

The issue of rehabilitation and resettlement originally emerged as part of discussions of rights of people who were affected by infrastructure projects like the construction of highways and mega dams (Baxi, 2000; Ramanathan, 1996). While this paper cannot delve into the details of these debates, it is suffice to indicate that the debate around these infrastructure projects continues to haunt the Indian political and economic elite in various forms. Examples include anti-dam or anti-infrastructure movements, such as the save Narmada campaign, the struggle against converting agricultural land for building factories, making the Special Economic Zones (SEZs), as in the recent mobilisations in Nandigram in West Bengal or mobilisation of tribals in Orissa against indiscriminate mining of forest land. The above illustrations indicate the persistent and unresolved nature of the issue of rehabilitation and resettlement in the larger development process.

¹⁷ Although there is no systematic reflection on the changing nature of support for human rights activities of CSOs in India, one hears frequently the diminishing support for human rights advocacy. Besides, there is also a general scenario of gradual withdrawal of bilateral aid support for civil society activities. Further, this is not limited to international aid policies, for even the national sources of philanthropic funding is also focusing on result oriented service delivery as opposed to human rights advocacy.

¹⁸ As mentioned already, there is plausible change in the higher courts' response to Public Interest Litigation, which indirectly contributed to a debate on the need to be cautious in invoking the litigation as a method of seeking justice. This is implicitly contributing to searching for novel ways of protest.

The issue of rehabilitation and resettlement (R&R) in communal and caste violence remained, until post-2002 Gujarat, as mere symbolic gestures of politicians to provide compensation to victims of violence. The inadequacy of these gestures was all too clear from the beginning, but became glaringly obvious in the aftermath of Gujarat 2002. This paved the way for the formation of a campaign by CSOs to pursue a more systematic process of R&R (CSSS, 2010; Chandhoke, Priyadarshi, Tyagi, & Khanna, 2007; SAHR WARU et al, 2008). What emerged was the rise of informal as well as formal community-based groups, especially amongst Muslims, to address the substantive concerns of rehabilitation and resettlement.

Besides the unsatisfactory state of R&R process, what seems to have been left out in the entire activity is the issue of 'reconciliation' (Powers, 2008; Oommen, 2009). Relevant questions here are: can societies that became polarised on communal lines be bridged back to normalcy? Can communities that entertained systematic prejudices and hate overcome the past and live together? Is it possible to address and resolve issues of peaceful co-existence without compromising on the concerns of justice and protection of fundamental human rights?

These and many other related questions became pertinent and striking for those engaged in anti-communalism activities in recent times, especially post-Gujarat 2002, which is by far the deepest scar on the secular fabric of India. The scale and magnitude of Gujarat 2002 created possibilities of mass exodus of minority communities, especially Muslims, from their original inhabitations into 'comfort zones' of community neighbourhoods, which are referred by secular groups as processes of 'Ghettoisation'. This became an important issue in the R & R process, especially in the context of housing concerns of the victims in Gujarat.

Justice versus Reconciliation?

The prolonged nature of legal interventions and their rather mixed outcomes, the frustrations in pursuing rehabilitation and resettlement and the need for communities to bring back normalcy to their lives made the post-2002 Gujarat situation both complex and enormously challenging. Quite like all other experiences of traumatic social violence and its aftermath,¹⁹ Gujarat post-2002 too presents an entangled problem: between perceived notions of justice and anxieties of reconciliation. The existing debates indicate that there may be two seemingly contrasting points of view: first, that any proper reconciliation must precede adequate and reasonable addressing of justice issues; and, second, that given the experience of justice, it may be necessary to put reconciliation as the priority principle over others.

In broad schematic terms, achieving justice has been and continues to be the primary focal point of action for many secular/human rights NGOs (Mander, 2009). While many do consider reconciliation as an important process to bring normalcy back to life in Gujarat, especially for Muslims and other minorities, they are also simultaneously concerned about addressing reconciliation without adequately dealing with the justice question. On the other hand, certain voices, which may be representing 'community' concerns tend to suggest reconciliation as the primary burden to bring back normalcy (Bandukwala, 2004; Bandukwala, 2004; Lobo, Das, & Bandukwala, 2006) . The recent work on the 'Gujarat Harmony Project' threw mixed light on the issue (Powers, 2008; T.K.Oommen, 2009). While the experiment invariably left many questions unanswered, it nevertheless made a beginning in identifying practical concerns in an attempt at 'reconciliation'.

¹⁹ The situation of Gujarat 2002 was referred by many as a genocide or a catastrophe (Baxi 2002) or a pogrom (Brass 2004). The comparison with similar situations like Rwanda or Yugoslavia or South Africa therefore are not entirely out of place.

5. Towards a Constructive Critique of Human Rights–based Initiatives against communalism and fundamentalism

How can we understand the role of civil society in dealing with communal violence and other forms of challenges to plural social fabric in India? How should we analyse its relative strengths and limitations in addressing these challenges? What lessons can we draw to strengthen effective responses?

Responding to the above concerns cannot escape being controversial because it involves critical reflections on specific processes and interventions. I will present my argument in two parts. First, an overview of human rights approaches to concerns of communalism and communal violence in India, and, second, an analysis of the philosophical assumptions that underpin these human rights approaches.

Reflecting on the Indian Experience

The civil society response to communalism and communal violence came in diverse ways. However, there has been no systematic analysis of these responses available so far. The general accounts of human rights groups or CSOs (Chandhoke, 2009; Kakarala, 2008; Ramanathan, 2001; The Alternative Law Forum, 2009) only present an oblique reference to this aspect. I therefore will draw my inferences from partly available analyses on the CSOs and partly from diverse sources on the current state of affairs as regards communalism (Oommen, 2008; Powel, 2009).

The Significance of Human Rights for Social Action

The civil society has significantly invested in pressure politics on the state in their efforts to combat communal problems. This process is often fraught with frustratingly long delays in getting the state to act. During the last two decades, for instance, civil society invested enormously into seeking justice for victims of communal violence: first in the cases of violence in the early 1990s, at Ayodhya and in Mumbai. These efforts resulted in the constitution of two judicial commissions: one by Justice Sri Krishna Commission to inquire into the Mumbai riots and the other one led by Justice Liberhan Commission to inquire into the Ayodhya incidents.

The Justice Srikrishna Commission Report on Mumbai communal violence, an inquiry into the Mumbai riots of 1992-93, took five years to complete and submit and clearly indicted a number of politicians, especially those belonging to the Shiv Sena Party (Justice Srikrishna Commission 1998). The report presented detailed evidence on the direct and indirect involvement of the named political figures. However, the successive governments, including successive Congress governments, are still to implement the report (Gopalakrishnan, 2007).

The Justice Liberhan Commission, which conducted the inquiry on Ayodhya incidents took nearly seventeen years to complete and present its findings. These findings appeared more ambiguous than those of Justice Srikrishna Commission report as it indicted primarily the then Chief Minister of Uttar Pradesh, Mr. Kalyan Singh (Justice Liberhan Commission 2009). More than a year later, the government of the day is yet to make any official response on the findings of the report.

A similar situation has emerged with regard to the report of the Justice Ranganath Misra Commission, which inquired into the 1984 anti-Sikh riots in Delhi, wherein nearly 2000 Sikhs were killed in the aftermath of the assassination of the then Prime Minister, Indira Gandhi. The final report of this commission disappointed many human rights groups as it kept the details of the potential perpetrators secret and its findings came nowhere close to the available alternate reportage done by CSOs. Subsequently eight separate committees have been appointed to address specific issues such as compensation. But on the whole the outcome is remains rather unsatisfactory, particularly to the Sikh community (Kaur, 2006).

Similarly, the Justice Nanavati-Shah (Mehta) Commission constituted to inquire into the Gujarat violence of 2002 is still in session (extended till December 2010). It submitted an interim report which drew much criticism from CSOs, for its findings did not reveal much on the persons who took part in the 2002 violence (G.T. Nanavati, J, 2008).²⁰

²⁰ "Human rights advocates slam Nanavati Commission Report", <http://www.actionaid.org/drc/index.aspx?PageID=3794>.

Besides the Nanatavani-Shah Commission inquiry, the Gujarat violence saw active involvement of the National Human Rights Commission (NHRC).²¹ CSOs consider the role played by the NHRC as vitally important in obtaining interventions from the Apex Court in matters of justice and neutrality in critical cases, which provided symbolic optimism and hope in the legal system. However, the substantive question of justice for the victims is - more than eight year later - still a long way to go.

It is against this not so optimistic backdrop of state action, that concerned activists and academics began to reflect on the potentials and limitations of the abovementioned strategies in dealing with immediate questions of justice and the larger question of communal consciousness. While it goes without saying that these channels of law are crucial for any modern society in dealing with questions of justice and maintaining the rule of law, we need to reflect on its limitations as well. The limitations of these strategies in providing substantive justice - at least as they exist in the current situation and the institutional cultures of apathy - are too glaring. Hence there is a need to reflect on what else could civil society do in pursuing the goal of justice.

Historically, human rights groups have always pinned their hopes on mobilisation - of opinion and of people as resources of generating pressure politics to compel the state to act in the right direction. Though not clearly stated, there has been a general hope that human rights will become a mass culture and people will spontaneously react and represent their concerns in the language of human rights. There is no doubt that these efforts have indeed contributed significantly to popularise human rights among masses. The NGOs on the other hand focus primarily on advocacy (ie., making people aware of their rights and ways and means of engaging with the structures of governance) and pressure politics through court litigation and opinion mobilisation. These strategies worked with much success to the credit to civil society groups during the 1980s and to an extent in the 1990s when the Social Action Litigation or Public Interest Litigation was at its peak. Recent experiences of civil society groups as regards the court litigation strategy has not been that enthusiastic (Baxi, 2002)²². This situation should be reflected upon critically in the light of the limits of pressure politics in compelling the state to act swiftly and decisively. The challenges before the CSOs thus can be summarised as follows.

First, organising sustained mobilisation on the lines of principles or ideology appears to be a far more difficult task because the majority of such mobilisations often gets channelled into 'interest' orientations or even opportunism, which could be referred to as political populism. It seems that for majority of people everyday concerns overweigh the normative concerns. This gets further accentuated in the context of a lack of adequate response from the state (Chatterjee, 2006; Fleiner, 2009; Larson, 2001).

Second, there is increasing evidence to suggest that there is no necessary correlation between mobilisation and forging sustainable change. Mobilisations can indeed help to generate debates, put instant pressure on the governments to make them act and bring necessary legal or social changes. However, persistence of dominant interests to the contrary could find ways of undoing the gains of mobilisations. A number of social movements experiences in the last two decades in India stand as evidence in this matter (Balagopal, 1992).

Third, the new identity politics of recent years has begun pose novel challenges to the presumptions of mobilisation. There are growing tensions within groups which hitherto were considered to have a monolith identity. Recent mobilisations within the dalit rubric on the issue of quota reservations, the increasing visibility of caste oriented fragmentation within Islam, Sikhism and even Christianity are examples of this trend (Balagopal, 2000; Jodhka, 2006).

Thus, bottom line is that an analysis of CSO approaches only present us with more questions than answers. What is reasonably clear however, is that the two key components of the strategy, namely make the state act decisively in delivering justice and forge social change to help mitigate sources of human rights violations, are both under challenge.

²¹ <http://nhrc.nic.in/gujratororders.htm>

²² It must however be added that even during years in which SAL/PIL was seen as an important strategy of pressure politics, the courts continued to be wary on matters that were considered as state security or where the security forces were involved directly. See Balagopal (1986; 1994).

Intervention and Change: the basic Theoretical Presumption of Human Rights Interventions

Besides a critical reflection on the changing nature of the challenges to pressure politics through mobilisation, it is equally important to scrutinise some basic theoretical presumptions of CSO interventions. They presumptions can be summarised as follows: first, that the state will perform if pressure/resistance from civil society is built in right and concerted ways, especially if the state is a liberal democratic state; second, that identification and highlighting of the invisible factors is a critical activity in engaging with the state in persuading it to initiate measures of change; and, third, that courts, commissions and tribunals and other such relevant constitutional mechanisms will help delivering justice to the affected/victims.

While the reader may draw her own conclusions on these presumptions from the recent experiences in India, I would like to pursue some critical reflection on these theoretical underpinnings of human rights interventions in the light of recent developments in social theory.

Since the 19th century, these theoretical underpinnings have been the founding principles of any constitutional democracy which provides a framework of grievance redressal and justice as a way of providing legitimacy for the rule of law and other core processes of modern democracy. Since then, a lot has been written on the progression of democracy (or the process of democratisation) through analyses of social protest and movements as critical actors of change (Moore, 1993; Shah, 2004). There is continuing and growing interest in studying social movements and protest, although from somewhat different vantage points than the analyses of resistance. Especially since the beginning of early 1990s, with the work of Robert Putnam on social capital (Putnam, 2002) the interest seems to have shifted from resistance to 'networking' and building 'social capital' in civil society. While such a shift in itself has serious implications for understanding what constitutes 'democratisation' (and the politics of 'networking'), this change was further accentuated by newer theoretical concerns from postcolonial settings.

First, there has been growing concern about the inability of legal and policy reform to effectively facilitate or foster the concomitant social change. Recent work on persisting attitudes towards dalits and untouchability in India (Narula & Human Rights Watch, 1999), the persisting inability of the state to implement constitutional mandates of reform and welfare (Chatterjee, 2006b), and a growing crisis of the post-colonial state in dealing with 'traditions', often terms as 'reactionary' or 'conservative' (Comaroff & Comaroff, 2006) stand as instructive examples in this regard.

Second, that what has been framed as legal or constitutional principles more often than not came in tension with social practices, and thus by default making such practices 'illegal' and 'undesirable' or even 'barbaric'.²³ While such legal framing of old or conservative social practices were previously seen as necessarily progressive, recent debates around a number of issues, especially around gender and religion and religious symbols in secular public sphere, bring new concerns, new challenges to such simple assumptions of 'progressiveness'.

Third, there is growing ambiguity about the necessary connection between the legal and policy reform process and changing social attitudes, including those of people who assume positions of power in managing societies. This is not to declare that legal and social reforms are irrelevant, but to point out their limitations and thus arriving at a reasonable understanding of such strategies.

And, finally, and perhaps more fundamentally, the assumption that social reform through legal and policy changes constitute a legitimate 'approach' to democratisation has come under some questioning. Such analysis has never addressed the hidden 'foundational violence' in the making of such a framework of governance (Agamben, 2005; Baxi, 2008; Benjamin & Bullock, 1996; Derrida, 1992; Spivak, 2002). The body of work on the last point has shown hidden (violent) dimensions of modern constitutionalism which were internalised and thus justified the modernising mission of the nation-state. Such modernising interventions could not but remain coercive in their nature (of power) and thus inherently authoritarian, hence will always generate counter resistance forces (Chatterjee, 2006; Comaroff & Comaroff, 2006; Partha Chatterjee, 2007). Counter-responses to the modernising missions of the nation state, were seen, and often continue to be seen as 'reactionary' or

²³ A number of issues can be mentioned to illustrate this increasingly thorny issue. Neither the tension between modern legal framework and the 'traditional' custom nor the approach to see anything in tension with modern law as 'barbaric' is new. In the Indian context until recently the enactment of Uniform Civil Code was perceived as the best of dealing gender inequality issues. It is only during the recent times that there is some recognition of the not so unqualified nature of its use in addressing gender concerns. See (Agnes, 1994; 1995)

conservative. That perhaps there is some kind of political conservatism in some of those responses need not be a contestable point. However, the moot question for those who would like to pursue a more democratic and sustainable social transformative politics, this is a too simple and perhaps un-reflexive judgement of the other as 'reactionary' or conservative and presents a woefully inadequate justification in favour of the intervention. That is, if one were to take the principle of non-coercion as a fundamental value in engaging with social transformation. Indeed, such interventions seem to have acquired new dimensions in the wake of new identity politics and contribute significantly to the crisis of legitimacy of such interventions (Comaroff & Comaroff, 2006; Needham & Rajan, 2007).

The above analysis argues that recent advancements in social theory as well as ground level experiences of CSOs, both indicate new challenges to time tested strategies of protest and change. While it is not clear yet what the real alternatives methods could be to facilitate progressive social change, taking cognisance of the problem itself is an important beginning. For, there may not be clear and generally applicable alternatives, instead, they may have to be arrived at through contextualised reflections.²⁴

Resources of a Possible way Forward

The brief outline above on civil society's engagement with concerns of pluralism, especially interventions around anti-communalism, does not intend to make a case to find alternatives to human rights approaches. Rather, as mentioned at the outset, its aim is to identify some critical methodological, epistemological and strategic issues, that have not been addressed in the public debates in recent times, and flag them as an invitation for new reflection. In the remaining part of the paper I shall highlight some of these identified concerns.

Legal/Constitutional Means as the only Vehicle of Justice and Progressive Change

There is no doubt that a strong constitutional framework of minority rights and anti-discrimination, combined with a broadly available international human rights framework, was critically important to generate the necessary social discourse and practice in addressing the growing identity based polarisations in India. Besides it being useful in the demand for swift action and response from all branches of the state, human rights also provided a conceptual framework of the problem and certain ways of intervention in seeking possible solutions within that frame.

More concretely, the legal and constitutional strategies and interventions have provided some symbolic hope in justice and redressal of gross violations. In addition, they provided much needed compensation and other forms of help in re-beginning of the lives of the victims, and created a social discourse of cathartic reflection. The experience of CSOs in India demonstrates the significance of a democratic constitution and a value framework that help people as a referral goal in addressing inter-religious violence and prejudices. A favourable constitutional framework was instrumental in social mobilisation, and presented the case of 'what exactly is violated' and the 'nature of that violation'. These strategies of redressal ranged from seeking individual cases of compensation and rehabilitation to campaigning for new laws and regulations to bring accountability of state and non-state actors. Any level of relative 'victory' in such matters worked as a source of inspiration to strengthen similar activity or interventions.

Having thus highlighted the critical significance of the human rights approaches in addressing the issues of pluralism, I would like to highlight some concerns that may be brought into the realm of critical reflection.

First, the *significance of human rights remained at best at the symbolic level.* The substantive questions of justice, rehabilitation and reconciliation often remain perpetually open and thus provoking the question 'why that is so'? The theoretical veracity and practical significance of such question becomes even more critical when it is placed against the backdrop of experiences of injustice spanned over a long historical period of time. Instead of considering such a questioning as a threat to human rights approaches, I suggest that such a question is critical in provoking us reopen and address the substantive questions. The enormous amount of effort in creating the evidence for legal materials is far too demanding and comparatively the results have been not highly encouraging.

²⁴ Some of the recent work on Gender, Religion and Reform in multicultural contexts began to reflect on some of these concerns and proposed newer ways of engaging with the question of change (Deveaux, 2006; Fortier, 2008; Foblets and Renteln, 2009; Shachar, 2001; Song, 2010). Shachar particularly argued for an approach of 'transformative accommodation' in addressing the issues of gender reform.

Though there are some key symbolic 'victories' in the activity, such as the Sri Krishna Commission's report on Mumbai riots of 1992/93 as well as some of the key cases of post-Godhra Gujarat, they appear as modest gains at best, by comparison to the efforts that were put in.

Second, the *inordinate delay* in the legal process is often a dampener and major source of discouragement, both for the victims as well as CSOs. The Sri Krishna Commission took nearly five years; the Liberhan Commission took nearly seventeen years; even the 'fast-track' cases with special courts etc. often take long years. The Godhra trials, which are currently under way after nearly seven years in Gujarat, are a case in illustration. Judges, lawyers and activists often endorse this problem through the rhetorical phrase of "justice delayed is justice denied". The public debate on the issues though often gets reduced to one of 'speedy disposal' of cases and hence largely managerial and resource oriented. The substantive questions are rarely addressed in these debates.

Third, that one must add to the issue of delay *the non-binding nature of the findings of the commissions of inquiry*. The reports of many of these commissions are often non-binding in nature and hence more often than not they remain as yet another source of evidence of violations as opposed to making governments of the day obligated to implant the findings and provide adequate remedies to injustices. This is yet another major source of disappointment for human rights interventions.

Fourth, there are a *number of critical blind spots in the current CSO engagement with law and legal solutions and their imagined relation with social problems*. I present three different aspects of this problem.

- a) A critical issue is *conceptualisation of remedy and justice*. The dominant approach is to pursue the 'remedies' as 'enframed' in the existing legal order. This is of course important as a central indicator of rule of law. It demonstrates the supremacy of law, and the pursuit of the remedies given under law. However, many recent experiences of gross violations, both within India as well as in the international context (IID, 2010; Frankel, 2008; Merwe & Chapman, 2008; T.K.Oommen, 2008), have repeatedly shown the gross inadequacy of legal remedies in addressing the substantive questions of justice. This inadequacy may be explained in various ways. First, the framing of the remedies as well their actualisation has never been more than symbolic in purpose. Second, in a majority of situations, if not all situations, these 'remedies' have not addressed what may be called substantive aspects of justice outside the 'enframed' remedy. That is, once a resolution is arrived at in the court of law, justice is considered to have been meted in that case. Third, such an approach thus fails to either address the concerns of justice in everyday context (eg. peace and reconciliation in zones of violence) (Asghar Ali Engineer, Durrani K S, 1992; Meijer, 2006; Parker, 2010; T.K.Oommen, 2008; Washington, 1993; Wescoat, 2007), or help reflect on the complex relationship between victims and perpetrators (Mamdani, 2002; Mutua, 2001).
- b) A second critical issue is *the persistence of seriously an outmoded and simplistic framework of tradition and modernity dichotomy in the public discourse* on law and that which appears to stand outside the law (eg. custom, a social practice, religious belief etc.). Persistence of this belief, that legal enframing as modernisation (and also that which is necessarily preferable to non-law options) and matters that stand outside of the law as necessarily conservative (and hence need legal enframing) is a major source of dilemma and also conflict across the world, though in different ways (Comaroff & Comaroff, 2006; Fleiner, 2009; Larson, 2001; Lazreg, 2009; Sangari, 2010; Shachar, 2001). For whatever reasons, the conventional wisdom of seeking 'social reform' and modernisation of certain traditional and community practices through legal enframing, appears to have worked well for a while. However, in recent times has often met with negative reactions from communities. The situation is however far more complex and needs to be analysed in an open, that is, de-normativised, way.²⁵ This approach will perhaps help us to, first of all, view the problem beyond what Michael Foucault (Foucault & Rabinow, 1991) called the blackmail of the enlightenment. With this, he meant to view the issue as a conflict between one that of progressive (in favour of modern law) and conservative (opposing legal intervention).

Secondly, it helps us to understand (1) the internal discourse of critique and reform within communities and (2) the diversity of ways in which certain concepts and practices could be rethought (Chatterjee, 2006a). This issue acquires particularly critical importance in the

²⁵ This is probably the single most important theme of social anthropological work in the recent times. Particular references may be made to diverse approaches of (Comaroff & Comaroff, 2006; Scott, D. H., Charles, Ed., 2006; Talal Asad, Judith Butler, 2009; Talal Asad., 2003).

context of CSO engagement with human rights approaches, which often tend to entertain this polarised view. I submit that such an approach does not help to reflect on critical resources other than state-centered law in pursuing substantive aspects of justice.

- c) Finally, an important offshoot of the above orientation to law and society, is the reductionism of all socio-cultural reform as legal reform. While this standardised solution may facilitate immediate and swift demands for necessarily legal reforms for all perceived social problems in contemporary India, it necessarily impoverishes the resolution pathways, for, all the diverse possibilities in which many of the issues can be addressed and resolved gets marginalised in favour of the standard legal reform. Some recent work on community identity and reform made a compelling case for taking internal reform processes seriously and thereby help us to negotiate strategies of social change in diverse ways (Agnes, 1994; Agnes, 1999; Agnes, 2005; Chatterjee, 2007). This in turn can address the critical concern I mentioned above, namely making reform both sustainable and democratic and thus critically being self-conscious of the foundational violence concern.

Protest, Mobilisation and the Challenge of Sustainable Democratic Change

Besides legal victories and remedies, the civil society engagement with human rights approaches has created an admirably large body of materials and documentation that form the base of a vibrant source of ideas for debates and reflection.²⁶ Over the last couple of decades both academic as well as activist writings further enhanced the possibilities of a reflexive resource base for action and intervention.²⁷ This large and impressive body of work presents many possibilities. I shall however confine myself to observations on protest and change.

Let me begin by conceding that the question what 'sustainable change' is, is in itself a complex matter and there may not be any consensus possible on the issue. However, it goes without saying that the twentieth century social science was nevertheless significantly concerned about the issue. Some, like Max Weber, considered the process of mobilisation inevitably leads to institutionalisation (Weber, Roth, & Wittich, 1978). Others held that institutionalisation leads to 'depoliticisation' (Blühdorn & Jun, 2007). Implicit in the latter assumption was that 'sustainable' but democratic change needs 'political' mobilisation and hence institutionalisation actually curtails such possibility. Neither of these approaches stand as polarised as they may appear at first sight, for recent evidence of mobilisation has raised questions about both.

Below, I present an indication of the kind of questions that emerged in the recent work.

First and foremost, ***the causal relationship between protest and democracy has become more complicated and uncertain***. In other words, it is no longer possible to extend the argument that protest of all kinds must necessarily advance the cause of democracy (Rosanvallon & Goldhammer, 2008). Because, today mobilisation occurs from all quarters, ranging from those who seek to bring revolutionary change (on the far left side of politics) to those intend to radically transform society (on the far right of the politics).²⁸

A related point is the ***causal relationship between mobilisation and the intended effect/change***. For a long time, political sociologists have emphasized that there is no necessary link between the reasons why a mobilisation may occur and what eventually may get realised in the process (Lauer, 1976; Shah, 2004). In spite of this emphasis, there has been a presumption that whatever might be

²⁶ While much of this documentation however remains to be local and specific collections, and rarely they found way into the serious academic libraries, of late possibilities of their archiving and making them available to wider public became enhanced with the arrival of web technologies. Now many organisations do maintain their websites, though often one would remain to hope for more systematic archiving. Some important web sources were provided at the end of the references.

²⁷ Although academic reflection on social movements and their strategies arrived rather late to Indian academia (Shah, 2004), the last couple of decades witnessed some intense reflection and writing.

²⁸ This point is now self-evident not just in India but in many jurisdictions in the world. The comparative literature presenting this growing uncertainty and complexity is both fascinating and instructive. The range of issues are also simultaneously intriguing and fascinating, whether it is the French debates on religious symbols in the public sphere (Scott, 2007), or the North European debates on freedom of expression versus religious fundamentalism (Carle, 2006; Talal Asad, Judith Butler, 2009), or religious revivalist movements in Asia (Daniels, 2007; Hansen, 1999; Jaffrelot, 2007), all of them representing the emerging complexity of the civic space and the ambiguity of its democratic content. More generally on the changing nature of relationship between civil society and democracy see (Kaviraj & Khilnani, 2001; Rosanvallon & Goldhammer, 2008).

the eventual outcome, it is likely to be 'progressive'. Recent work however suggests rather messy connections between contingent forms of solidarity (as opposed to political ideologies in the past), interest-driven populism (as opposed to principle/value-oriented mobilisation), and resolutions arrived on electoral calculations. Recent work of Partha Chatterjee on the dynamics of democratisation in the postcolonial world and the need to shift the analytical focus to 'political society' from 'civil society' as the site of democratisation (2006c) is a useful example in this case.

Another related issue is regarding *the dynamics of the sustainability of change*. Contrary to popular assumption that changes achieved through political mobilisation lead to its institutionalisation, recent experience indicates rather fluctuating fortunes. For example, despite unprecedented experience of violence and suffering in Gujarat 2002, and notwithstanding sustained mobilisation for responsible intervention from the state, the substance of the anti-communal bill proposed by government of India appears to have not cheered many (National Consultation On Communal Violence Bill, 2010). A somewhat similar example from Indonesia would be the process of localisation of Islamic Sharia initiated in recent years, which has generated much controversy and anxiety both within Indonesia as well as beyond (Fealy & White, 2008). These examples drive home the point that not only can changes emerge in ways different from the way it was intended, but that those situations may even run counter to the intended purpose.

The **Second** concern is related *to the strategies of mobilisation*. The time tested strategies of CSOs are publications and campaigns. The reach and potential of these forms of mobilisation has become a general concern, as they tend to reach relatively smaller groups of concerned individuals. The publication of materials is significant and the quality of publications is generally good, and importantly, made available at affordable prices, often even free of cost. However, the bulk of these reports publish under 10,000 copies and many of them do not enjoy a long shelf-life. Two principle issues therefore are how to circulate these materials more widely and how to improve their shelf-life. Of late the CSOs have begun to take advantage of the web space and electronic campaigns. While most of the web space consists only of rudimentary information of organisations, there are good examples of innovation.²⁹ The web therefore can further develop as a critical space of dissemination and mobilisation and one should await further innovations in this regard.

Normative/Value Orientations in Rapidly Changing World

Finally, the human rights movement cannot be detached from human rights theory. Because, the legitimacy of human rights demands in the campaigns of CSOs depends upon the wider acceptability and acknowledgement of support for the theoretical principles underpinning those demands. Since the beginning of 1990s, it has become a far more difficult task for CSOs, or even the intergovernmental organisations, to advocate stronger labour rights regimes. Anyone who is familiar with the history of labour rights regimes in the post-WW II era can easily recognise the 'change'. But the change is not merely in terms of the 'extent' of protection. There is indeed a philosophical shift, broadly in tune with the changing orientations of our times.³⁰ The foundations of human rights, attributed to what is known as 'deontology' wherein the existence of rights draw their justification from philosophical humanism (that is: human reason as the basis of social ordering) and the conception of the inherent dignity of the human being, which exists by simply being human, not derived from any extra-human source. Because the source of 'Human' rights is both inherent and non-alienable from the human being, anything, including the power of the state (or market actors) that affects the core principles of human dignity would have to be amended in favour of the latter (ie., the dignity of human being). Contrary to this position since the post-1990s, a shift in the position appears to be tilting towards privileging the outcome, the consequence even if it were to affect the human dignity negatively. In other words, if there is a tension between the rights of workers and the principles of market efficiency, in the shifting logic the human rights can be restricted, for the market efficiency is

²⁹ Special mention must be made of sites like the Counter Currents, Coalition against Genocide, and Communalism Watch. Campaign blogs like Kafila have created ripples of action in the new space. Interestingly, the web space is also being used effectively by religious communities as well. The web site on the Indian Muslims is an example.

³⁰ Space does not permit to elaborate this point in detail here. Suffice to mention that the original approach of ILO and the United Nations during 1950s to 1970s, which kept the rights of the labour in the centre while creating standards (United Nations Commission on Human Rights, 1975). Similarly, the impact of development process on human rights including the advancements in science and technology were debated keeping the interests of human rights in the centre (Weeramantry, 1990; Weeramantry, 1993; Weeramantry, 1998). However, the approach of international standard setting is suggested to have been changed significantly since the beginnings of 1990s, wherein the focus is shifted from the human being (rights bearing individual) to efficiency of regulation, distribution and exchange of goods and services. See (Garcia, 1999; Baxi, 2005).

fundamental for the survival of market actors (Baxi, 2008b) In other words, the philosophical orientation of the neoliberal order appears to prefer a consequential value framework, thereby privileging the 'efficiency principle' over the existing value framework of 'deontology'³¹ (Garcia, 1999).

However, this is only part of the story of change. Simultaneously there is a plausible attitudinal change towards 'normativity' itself. It is quite possible that such a shift is taking place due to crisis of the enlightenment value framework and the rise of 'fragmented universality' (Baxi, 1999; Butler, Laclau, & Žižek, 2000). Such significantly far reaching changes in social theory indeed affect social movements, whether it is on issues of gender, or women's rights or labour rights or human rights is merely the detail part.

As regards the specific case of human rights theory, for a while this change in human rights orientation was confined to reflections within the framework of universalism versus cultural relativism (Follesdal, 2005; Renteln, 1990) or in the Asian Values debate (Barr, M.D, 2002; Tay, 2007). Neither of these approaches was free from essentialisms of one or another kind and thus woefully inadequate to address the concerns of a pluralistic world (Baxi, 2008; Corradetti, 2009) . Thus, the pluralist challenge to human rights is not about whether they can or even should be universal. Rather the critical point is how human rights could become truly universal in a pluralistic world. The challenge is to de-essentialise the universalism in the existing theory. This in a nutshell, is the new 'pluralism effect' (Connolly, 2010; 1995; Connolly, Chambers, & Carver, 2008; Dallmayr, 2010).

The perceived shifts in theory must be supplemented with changing orientations to norms in the everyday practices of current generations, especially the youth. Put somewhat bluntly, the younger men and women seem to be less troubled with being not too strongly normative in their orientations. The younger women demonstrate no knowledge of yester years feminists, for instance on beauty, or dealing with men. But at the same time they seem to be readily assertive, confident and working towards a professional life. There appears to be less emphasis on being 'morally hung-up', and more pragmatic on matters of everyday life, while at the same time pursuing paths of relative autonomy (Aapola, Gonick, & Harris, 2005; Harris, 2008; Verhoeven, Davids, & Schulpen, 2007).

A moot question to ask in this context is, then, should we worry that the dominant trend of orientation to norms tends to be flexible? If we take this trend as a 'threat' and develop a strong 'political take' on the issue, then we could end up being, somewhat unreflexively, defenders of the existing status quo framework. On the other hand, if we view this trend with critical caution, it could possibly provide new possibilities to imagine true universal values suitable for a pluralistic world. After all, greater flexibility means the possibility of being more open, which is a welcome attitude in addressing the problem of fundamentalisms. As Upendra Baxi cautioned, we need to be guided by certain value orientations ('taking suffering seriously') in our approach or method in critical reflexivity (Baxi, 1985b).

³¹ It is generally agreed that the philosophical foundations of modern human rights draw from both ecclesiastical philosophy (e.g., natural law and natural rights) and enlightenment humanism (human reason and human dignity). The 'deontological' foundations of human rights reefer to the sources of rights solely being placed on human reason and human dignity and thus their respect must not be based on the consequence. In other worlds, protection of human rights is a value in itself; whether the act of such protection would result in good governance or economic efficiency is immaterial to the purpose. For some general insights in to these questions see, (Dine & Fagan, 2006; Mathis & Shannon, 2009; Smith, 1995).

6. In Lieu of Conclusion: why must we explore non-standard solutions for persistent social problems in the wake of Knowledge Society?

Instead of attempting to provide a summary of my arguments made in the above pages, I wish to plead a case in favour of a diversity of approaches and intervention strategies in engaging with the challenges to pluralism in contemporary India.

Writing nearly three decades ago about the crisis of Law and human rights in the wake of scientific and technological developments, the Sri Lankan scholar and former judge of the Internal Court of Justice C. G. Weeramantry exhorted, somewhat prophetically, that unless some serious measures were taken by nation-states and the international community, new technologies would pose a real threat to human freedom and self-determination (Weeramantry, 1983). In the same vein, he lamented the rapidity of technological progress and the inability of law and human rights frameworks to evolve adequate regulatory measures to maintain the democratic equilibrium. I would like to highlight the point that the information and telecommunication technologies were only on the distant horizon at that time.

Twenty years later, we have begun to experience the full-blown ICT influence and the arrival of internet and other web technologies. We also witnessed a sudden surge of literature on how the unprecedented rapidity with which these technologies evolve and through their evolution, tend to usher in a multi-dimensional change process with equal rapidity.³² This new formation, which in recent times is often referred to as 'knowledge society', has begun to pose serious questions to the existing body of social sciences, both in methodological (tools, techniques and strategies of understanding change) and epistemological (conceptual and analytical frameworks) terms.

The challenges for CSOs in addressing the existing concerns of justice and peace against this backdrop are multiple. **First**, there is need for a considerate and open reflection on the issue of substantive justice so that it can help us to rethink existing strategies and interventions. **Second**, the rapidly changing circumstances have created a much wider 'civic space' that contains many unconventional actors. Having a sharply polarised dichotomous approach towards identifying them is perhaps no longer productive. But a rethinking of this issue needs broader and perhaps more open-ended definitions and categories than what CSOs have been used to so far. **Third**, though it might appear to parrot a corporate mantra, 'innovation' is critical for newer forms of action and is necessary in the creation of newer possibilities and expanding the boundaries. An important resource of innovation in CSO interventions lies in the ability and willingness to constantly rethink the content of many concerns such as human rights in their respective socio-cultural contexts. **Fourth**, the rapid changes in the journey of the so called knowledge society create newer concerns of inequity, exclusion and injustice. The CSOs, while grappling with the existing challenges, would require to engage with these concerns. And finally, **fifth**, such an engagement demands, as a pre-requisite, dynamic and rapid learning resources in order to keep pace with process of change.

Let me conclude by reiterating my point that the objective of this paper is to present a framework of analysis to identify the nature of existing as well as emerging challenges to civil society interventions in dealing with concerns of justice, peace and human rights.

³² Interestingly the literature emerged from diverse quarters: academic writing, but not only from social scientists, but also scholars from disciplines of technology, management etc., professionals and intergovernmental agencies. One of the most comprehensive analytical accounts was provided by Manuel Castells's three volume study on the arrival of the 'information age' (Castells, 2000; Castells, 2000; Castells, 2000). Since then there have been numerous intergovernmental documents (World Bank, 2007; International Social Science Council, 2010) articulating concerns as well as possibilities of the emerging social order, which is referred to in many expressions: 'knowledge economy', 'knowledge society', 'network society' etc. The single most characteristic of this new formation is the centrality of technology in shaping the experience of life, and the unprecedented pace of the technological changes making many existing frameworks of order, control, values, regulation, morality etc., become loosened in their foundations, if not already become obsolete. While it is too early to either eulogize or denigrate this phenomenon (I am reminded of the intense dilemmas of social movement circles of 1980s on the arrival of personal computer and its impact on many sections of society), a useful or appropriate approach however have to be different from that of the one proposed by Weeramantry. In other words, the issue is no longer that of the speed of technological change and the slumbering law, but technology itself become de facto law. Thus approach is also not about how to restrict technological expansion, but about how to imagine ways of strengthening human freedom and dignity in the changing context.

I have presented a modest sketch of the diverse nature of these challenges, especially in the light of growing pluralisation and I have ventured to locate them at two levels: at the level of existing practices and somewhat speculatively at the level of newly emerging scenarios. I would like to sincerely submit that the future of social action for human rights, pluralism and peace depends to a great extent up on how civil society organisations and academic studies can re-energize questions of justice and help to reframe normative concerns to make them relevant, effective and substantively democratic to help mediate social change in the emerging knowledge society.

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ISSN 1879-7172

Contact

Humanist Institute for Cooperation
with Developing Countries (Hivos)
Raamweg 16, P.O. Box 85565, NL-2508 CG
The Hague, The Netherlands
T +31-70 376 55 00 | F +31-70 362 46 00
info@hivos.net | www.hivos.net

The Kosmopolis Institute
University for Humanistics
Kromme Nieuwegracht 29B | P.O. Box 797 |
NL-3500 AT, Utrecht, The Netherlands
T +31-30-2390 100 | F +31-30-2340 738
pluralismworkingpapers@uvh.nl |
<http://kosmopolis.uvh.nl>