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Supervisor: Anders Uhlin

Repetitive Stability of Indian Muslim Identity – An Account from the Majority/Minority Nexus

Ted Svensson

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Abstract

Muslims constitute the largest religious minority in contemporary India. During the last two decades the Hindu Right, with its notion of India as an essentially Hindu nation, has imposed grave external pressure on the Muslim population, both in terms of security and self-identification. The emergent political and social assertion of Hindu nationalism has to a large extent managed to alter and reconstitute the meaning of national identity in India. The prolongation of communal depictions of Indian society is, however, not only founded in the rise of Hindu nationalist sentiments, but is synchronously instituted by historic events and state categorisation. Through differentiating Indian society into entities and compartments along a religious axis a specific notion of the majority/minority divide has been installed. The current analysis argues that the state actively sustains a particular reading of the social as epitomised by religion, which it has partly inherited from colonial understandings. By tracing decisive temporal moments since the independence of India the present assessment aim at exposing how the majority/minority nexus has been portrayed and reproduced. It also takes as its objective to understand how Muslim collective identity repeatedly attains stability and coherence, although the Muslim fold is characterised by significant 'internal' divergences and a multitude of potential identity markers.

Keywords: India, Muslim identity, communalism, majoritarianism, minorityism, state categorisation

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List of Abbreviations

AIMPLB	All India Muslim Personal Law Board
BJP	Bharatiya Janata Party
CCT	Concerned Citizens Tribunal
HRW	Human Rights Watch
OBC	Other Backward Classes
RSS	Rashtriya Swayamsevak Sangh
UPA	United Progressive Alliance
VHP	Vishwa Hindu Parishad

1 Introduction

‘When we set up the ashram’, one of the social workers told me, ‘we looked all over for an appropriate space. And finally this spot was identified. It was actually a graveyard, a kabristan for Muslims, and on the bodies of the dead, we built the lives of women’. (Butalia 1998: 163)

In the opening half of 2002 India witnessed its most deplorable instance of Hindu-Muslim violence since the partition of British India in 1947. During three months Gujarat, a state in the western part of the country, became the locale for pogrom-like scenes of anti-Muslim sentiments that transgressed into unruly atrocities. A vicious cycle of hate-propaganda had spiralled into the death of at least 2,000 Muslims and an approximate 100,000 were expelled from their homes. State and police complicity was widespread and commission reports recount numerous stories of politicians and police officers partaking in the murderous conduct performed by large mobs. How could anti-Muslim attitudes, in a democratic system espousing ideas of secularism and equality, erupt in profuse revulsion that led to the extensive killing of Muslims? When receiving the dead bodies, Muslim gravediggers in Gujarat unloaded the symptoms of hatred: corpses displayed marks of grave atrocity as bodies had been burned and mutilated beyond recognition. The initial quotation does not, however, refer to the events in 2002. It is reminiscing and commenting the recovery of abducted women after British India had been divided in two. India and Pakistan collaborated in operations wherein kidnapped women were rescued. Hindu and Sikh women were brought to India, whereas Muslim women were transferred to Pakistan. After arriving in India the former were accommodated in transit housings where they were supposed to stay until being reunited with their families. It is one of these places, which the citation recollects.

Since the late 1980s the Hindu Right, with its notion of India as essentially a Hindu nation, has gradually managed to establish itself as a prominent agent in civil society as well as in the political arena. In 1998 its political branch—the Bharatiya Janata Party—triumphed for the first time in the general elections. With the rather unanticipated rise in political influence of the Hindu Right during the last two decades a large number of academic work, analysing the phenomenon, has been published. Although numerous of these books and articles mention Indian Muslims and their vulnerable position in contemporary India, few deal with Muslims other than as an appendage, through stereotypes or via the notion of ‘otherness’, which is being propagated by Hindu nationalists. Indian Muslims have, in other words, mostly been discussed as a by-product or alternatively been held up as a mirror to the growing assertion of Hindu Right ideology. It was this

neglect that initially aroused my interest. What is the proper composition of the Muslim population, beyond stereotype depictions and ideological attempts to condense Indian Muslims into a monolith collective?

Apart from the academic silence on identity formations and political factions within the Muslim population a seeming paradox stirred my curiosity. Although Indian Muslims have experienced an intensified level of insecurity, due to the mounting communalisation of Indian society, very few have responded violently. Why have extremism not thrived as a reaction to anti-Muslim riots and rhetoric? I soon realised, of course, that my intuition was based in an idea of a ‘typical’ Muslim reaction, which I—among others—shared with those advocating a Hindu nation. Even though the puzzle was based in prejudice and entirely flawed it does, nonetheless, remain valid to accentuate in a time when Muslims recurrently are portrayed as leaning towards violent resistance. A second, less capricious, conundrum emerged on a more theoretical level. Indian society is often described as containing a vast—almost brimful—and diverse array of social identities. Many of these are complex and display an overlapping property. At the same time, media reports, state policies and political ideologies seem to neatly categorise Indian society into stable well-defined entities. In scrutinising the topic, I found that Indian Muslims are often described in terms of singularity and homogeneity even though social, regional and cultural variations are widely acknowledged. Synchronously as multitude is admitted, a pervading notion of immanent qualities persists and is constantly being articulated within civil society and the political sphere. In what way are these contradictory conceptions compatible; how is the stability and cohesiveness of certain collective identities sustained while emerging in a context impressed with seeming multitude? To be able to satisfactorily answer these questions we need to embark on an exploration ranging from the birth of the Indian nation state and up to contemporary events.

1.1 Analytic Strategy and the Theoretical Keystone

Before commencing the main analysis we need to probe into its fundamental theoretical layers. What follows beneath is intended to somewhat clarify the methodological points of departure. The study’s approach to ontology and epistemology is elucidated through definitions of the political as well as social identity. Phrased differently, what is the site occupied by the political and how do social identities relate to this adjacent or embedding scenery?

What does the political consist in? The political act will here be denoting ideological attempts to bridge a constitutive ontological gap that exists between the particular and the universal (Zizek 2000a: 158f). The particular should be understood as each instance of political articulation that aims to ascribe concrete and absolute meaning to the social; whereas the universal stands for the empty horizon onto which the particular tries to inscribe meaning. It is the unbridgeable void between these which both opens up and comprises the arena for political

contest. There is not One universal¹ and the term should, therefore, not be considered as equivalent to a static and a priori form to which political projects and meanings might fully comply (Butler *et al.* 2000: 3). Zerilli phrases it eloquently, when stating that the universal ‘is not a container of a presence but the placeholder of an absence’ (1998: 11). As a result, it can never represent finality or fullness, since the universal in itself is a specific historic construct, constituted by a chain of particulars (*ibid.*). The universal is, therefore, not equivalent to a ‘negation of particularity’ (Badiou 2003: 110). It is here we encounter the prerequisite for political struggle: a political order never manages to entirely coincide with the one universal and might, consequently, always be challenged and subverted (Zizek 2000b: 101). Arendt seems to substantiate the current reasoning, while proposing that the circumstances of human life ‘never condition us absolutely’ (1998: 11).

In this definition of the political, power—in the sense of a struggle to hegemonically ascribe meaning to the universal—evolves as a key element. Each attempt to signify or ascribe totality to the universal simultaneously silences difference and excludes other political articulations. Through the process of determining and establishing meaning language stabilises that which cannot be fixed (Castoriadis 1984: 133). By successfully excluding other signifying practices or definitions of key concepts, the particular might install itself as the dominant signifier of the void. In efforts to trace this process, wherein other particular ideologies are being muted, we might either confront the social texture as structured along binary forms of antagonism or, in concert with Waever, assert a less bipolar approach (2002: 24). According to the latter, the self/other dimension of identities only collapses into pure opposition in rare situations. In the Indian society a widespread and firmly rooted dichotomy between Hindus and Muslims is detectable. It is the various vehicles enabling such radical opposition of identity formations, which will be the focal point in this analysis.

What is then the proper relationship between the political and social identity? All identity formations, whether individual or collective, are historical and social constructs. The contingency is a consequence of the constitutive emptiness in subjects: the subject lacks a stable, self-identical and solid core (Hall 1996: 3). Since identities, in addition, are primarily constituted by their difference to the ‘Other’, no final permanency or immutability subsists (Laclau 1996: 52). In the process of analysing social identities we cannot, in other words, talk about essential immanent qualities waiting to be unmasked or articulated. In order to, however, avoid a completely generic approach to identity it seems appropriate to adopt Brah’s definition of collective identities as subjects-in-process, around which particular meanings of differentiation is concentrated (1996: 124f). Caste, gender and religion are examples of such matrices binding individuals’ experiences together into a collective identity. Devoid of a pre-politic and fixed

¹ Irigaray would prefer to talk of two universals coinciding with a sexed or gendered axis. She argues, in commenting on the male-centeredness of Western thinking, that the ‘universal was conceived as one, on the basis of one. But this one does not exist’ (Irigaray 1992; quoted in Zerilli 1998: 12). In the present reasoning the universal, nevertheless, ought to be understood as contingent and not bipolar.

subject, identities have to continuously mobilise moments wherein the subject-in-process appears to coincide with an 'I' (*ibid.* 247).

The establishment of opposition seems to be indispensable in the construction of collective commonality. By articulating an illusory fixed identity a corollary notion of the 'Other' is instituted. In the Indian context, especially religion appears to acquire the modality to delimit and produce boundaries between group identities. It is, however, important to bear in mind that—equal to the failure of the particular political act to fully coincide with the universal—collective identities never manage to completely annihilate internal heterogeneity nor totally bar those identities posed as 'Others' (Butler 2000: 30f). A particular identity appears on the basis of its relative position in an open-ended system embodied by differential relations. Since identity can never be regarded as fully naturalised it needs to be situated within 'a floating logic of difference' (Grace 2000: 62). Instead of trying to detain an underlying essence, analyses of collective identity ought to endeavour to 'locate the political in the very signifying practices that establish, regulate and deregulate identity' (Butler 1999: 181).

Even though the current theorisation rejects the existence of a reified essence, underlying the subject and social identities, it does not propose these as entirely fluid and deficient of a coagulating trait. There is temporal and spatial stability, stemming from the regular rearticulation and repetitive performance of identity. In commenting on gender, Butler designates this as a 'stylized repetition of act' (1999: 179). By being involved in a performative cycle wherein it acts upon a collective identity, the subject retains a fictitious essence. The maintenance of stability depends on the continuous rearticulation of meaning. Without constant rearticulation meaning will be 'dead' (Joas 2002: 510f). In our case, this implies that the limits and contents of a collective identity need to be confirmed through repetition. Subjectivity², in other words, has the utility and capacity to surmount the fundamental emptiness in subjects by replacing it with an artificial sense of coherence and stability.

The present argumentation implies a reading of the subject as relational and to a large extent conditioned by external circumstances. Does this not then result in a definition of social identity as lacking agency—as purely determined by the surrounding structure? The answer is no. The notion of collective identities as subjects-in-process does not indicate an association of identity formations with passiveness. The lacking essence in subjects should rather be conceived as an opportunity to oppose and challenge dominant political conceptions of group identity. Instead of looking upon subjects-in-process as 'impossible' or as false constructions, they might more accurately be described as that which is 'opening [...] in the sense of [...] constantly renewed inauguration' (Castoriadis 1984: 144). A particular subject is, in other words, constituted both in and through its practices (Butler 1999: 181).

Where does the initial sketch leave us? It gives rise to two interrelated questions. What particular political project has been able to establish itself as the primary interpreter of the social in India? The Hindu Right with its discourse on a

² Here conceived as the process of making sense of the world.

Hindu nation has managed to partially conquer the discursive space between the particular and universal. It has not succeeded, however, in acquiring a fully hegemonic position, but by ‘abjecting’ Muslims and Christians from its version of national identity it has managed to impose severe external pressure on minority groups, in terms of identification as well as physical and emotional security. The second question, which concerns the stability of Muslim identity in India, is more difficult to answer and it will, accordingly, be the fundamental problematic around which the analysis pivots. *How has the outer boundary of a Muslim ‘community’ been reproduced and rearticulated, i.e. been attributed a seemingly coherent and fixed character?* In order to understand Muslim identity we need to look at the repetitive character in the production of Muslims as a group. What is debarring Muslims from entering a national identity transcending religious divergences; which signifying practices regulates and deregulates Muslim identity? To respond, Muslim identity needs to be situated within the constitutive split known to us here as the political. The study, thus, takes as its objective to—in a genealogical manner—trace decisive temporal moments wherein Muslims have been fashioned as a singular community. In the attempt to detect and expose how the boundary between religious identities is repetitively reinforced, I have in many sections chosen to emphasise the symbolic role ascribed to women.

1.2 Empirical Sources

The available material is, to clothe it in a euphemism, not abundant. Secondary sources critically recounting and exploring issues relating to Muslim identity in post-Partition India are surprisingly rare. While there are books abound analysing the political aspects of the period preceding the independence of India, the selection of studies on Muslim identity politics since 1947 is meagre. The Indian state does not accumulate or produce data on socio-economic indices in the case of religious affiliation, which means that empirical figures on the status of Muslims in post-colonial India is seldom gathered. In shifting focus to the primary empirical sources a research-related limitation surface. Since I do not speak Urdu or Hindi a large number of written accounts, debates and narratives lie beyond the scope of access. These are regrettably left out. A positive circumstance is that a profusion of original texts and translations are published in English. In an effort to counter the lack of useful secondary sources and to compensate the omission of non-English material, I conducted fourteen qualitative interviews, each extending one hour. The interviews were carried out on the premise of being possible reflections of how prominent individual Muslims perceive collective Muslim identity. I also regarded the interviews as an opportunity to extract more profound knowledge concerning the contours of contemporary identity politics in India. Since the interviews were made in a semi-structured manner, reminiscent of framed conversations, I have chosen to restrict their function to enhance and illustrate the argumentation.

1. 3 Delimiting Remarks

Initially, this is not a thesis about Islam, not a critical assessment of its ideology, rituals and schemes of normativity. The analysis is above all not aiming to discern or reveal discrepancy between an ideal scriptural Islam and the everyday life led by Indian Muslims in order to evaluate possible divergences. Three delimiting components, thus, surface. Firstly, I deliberately refrain from treating Muslim identity exclusively in religious terms. Secondly, I do not intend to normatively interpret or measure Islamic customs, practices and traditions. I will for instructive reasons, explore the manner in which customs and behaviours relate to the ideological core of religion. Finally, the objective is not to generate a product of personal conjecture and speculation. Implied in the last premise is that, in a sober attempt to seriously explore the political constituents of Muslim identity, it is not feasible to include tentative judgments, especially regarding the level of solidarity between Muslims on a supranational level. A fundamental stipulation is, therefore, that the majority of Indian Muslims attain personal experiences and self-awareness via everyday life, which takes place within a discursive and material framework mediated by events, symbols and meanings engendered within Indian society. Proclamations of solidarity or commonalities with Muslims in Pakistan will here be regarded as stereotypes manufactured and disseminated by the Hindu Right.

Secondly, Kashmir will be excluded from the analysis since the socio-political circumstances are substantially different from the rest of India. The enduring conflict and the involved parties have a distinct regional character, not plausible to properly include in a discussion on India's Muslims in general. The omission does not, however, signal or indicate irrelevancy—events in Kashmir do influence Indian society and polity.

2 Indian Muslims in Post-Partition India

Muslims constitute the largest religious minority in India. According to the 2001 census the roughly 140 million Muslims measure 12.4 per cent of the entire population. Indian Muslims concurrently comprise approximately a tenth of the total number of Muslims worldwide (Shahabuddin 1998: 271). Almost half of India's Muslim population is concentrated in the northern states, at times referred to as the Hindi belt³, while the rest is fairly evenly distributed between the other parts of the country. The vast majority of Indian Muslims belong to the Sunni fold, but roughly ten per cent count themselves as Shiites. In a closer examination of the Muslim population the most salient feature that materialise is the multitude and complexity of 'internal' difference. India's Muslims are constituted by a wide array of regional, linguistic, economic, sectarian and caste identities (Momin 2004: 39; Sikand 2003b: 99). The manifold identity patterns are not easily reduced to a single monolith whole.

2.1 One Muslim Community?

Although every description of Indian Muslims as a distinct and homogenous entity are based in a false assumption, it is nevertheless possible to detect a widespread recognition of an innate 'unity' and immanent quality in Muslim identity. Both orthodox Muslim organisations and the Hindu Right, although they differ on the substance, share this misconception. The former perceives Muslims as united and integrated into a whole by their adherence to Islam. Religion is here designated as an all-consuming universal indicator of identity. In the current analysis this understanding is assumed as a neglect to take the discrepancy between empir-ical and normative depictions of the Muslim population into consideration. It aggregates an image of individual Muslims and their everyday lives as fully coinciding with a straight path established in the Quran and the *hadiths*⁴. It is a portrayal of Muslims as constantly preoccupied with observing religious rituals and practices; as 'more prone to paying heed to Islamist ideas and movements' than to other identity markers (Hasan 2002: 9). Simultaneously it relies on an apprehension of Islam as a static point of reference, intact from and unaffected by context-specific interpretations. It neglects that Islam is a 'living system of worship' and discount influences from the cultural and socio-political environment wherein Muslim faith is practiced (Bayly 1989: 73). To summarise,

³ Uttar Pradesh, Bihar, Madhya Pradesh, Haryana, Delhi and Rajasthan.

⁴ The hadiths may be defined as a 'report of the words and deeds of Muhammad and other early Muslims', which functions as a 'source of biographical material for Muhammad, contextualization of Quranic revelations, and Islamic law' (Esposito 2003).

an understanding of Indian Muslims as unified into a collective entirely in terms of religious affiliation, fails to distinguish between what Hasan has called the little and great tradition of Islam, i.e. between historically situated practices and experiences and the normative ideals advocated in scriptures (2001: 41). A neglect of this division results in a comprehension of Islam as unchanging and beyond external influences.

In pre-modern times the terms ‘Muslim’ and ‘Hindu’ did not constitute strictly demarcated religious categories (Sikand 2003a: 3). Before Hindu revivalism in late 19th century, local traditions lending customs from various religions were prevalent across the Indian subcontinent. A diffused sense of distinct religious identity was common among ordinary Muslims and Hindus (Engineer 1995: 49). It was especially in rural and semi-rural areas that linguistic and cultural practices, e.g. dressing, rituals and names, converged. No given correlation between behaviour and religious creed existed. It is this apparent plasticity and diversity in religious identity that both orthodox Muslims organisations and the Hindu Right have tried to mute and replace with well-defined boundaries. The latter’s claim that Indian history reveals an endemic fissure between Hindus and Muslims since medieval times is embedded in a yearning for constancy in social categories. It strives to reify a historical opposition and apartness, which did not exist or as Sikand expresses it, ‘although they [Muslims] shared a common holy text, the Qur’an, and revered the same Arabian Prophet, they were far from being the homogenous community that might be imagined in modern-day Islamist and Hindu discourse’ (2003a: 7).

To further illustrate the complexity of Muslim identity it seems appropriate to point out the existence of casteism also among Muslims⁵. The caste system, with its hierarchical stratification of relations into a dissected structure of affiliation and status, is a fundamental aspect of Indian society. It would be a mistake to assume, although its implications have changed during the post-colonial period, that caste in modern India has lost its significance (Desai 2004: 181). Even though the Koran is sternly universal and radically egalitarian in its social ethics, casteism exists as a central aspect of the social stratification of the Muslim population in India (Sikand 2004: 110). Caste divisions and hereditary occupational hierarchies amongst Muslims endure and are endogamous in character (Ahmad 1978: 5f). Muslim casteism lack the ritual dimension of pollution and purity, which is important in the Hindu counterpart. A common explanation to the practice of caste stratification by Indian Muslims is that the majority descend from converts to Islam—known as *ajlaf* (meaning base or lowly). These converts belonged to the lower caste sections of society (*ibid.* 1978: 13). They and their progeny were not taking part in the administration of Muslim ruled India nor did they become fully educated in Islamic knowledge. Only a small portion of Muslims maps out their ancestry to Iranian, Arab or Central Asian origin. While those descending

⁵ Even though the word caste might refer to a wide range of definitions in this thesis it corresponds to the term *jati*, which signifies a structure wherein endogamous and hereditary groups hold relatively determinate positions within the hierarchical order (Dudley Jenkins 2003: 13; cf. Gupta 1991: 137). Membership in a *jati* is determined by birth and is permanent. The estimated number of sub-groups in contemporary India has been calculated as ranging from 2,000 to 3,000 (Galanter 1984: 8).

from migrants—*ashraf* (noble)—were involved in state bureaucracy or held religious functions, the converts continued their traditional livelihood as petty labour, artisans and small-scale peasants (Sikand 2004: 110). As a result, the *ajlaf* continued to adhere to local traditions, norms and customs.

Is it correct to talk about a single Muslim ‘community’, while—as above—explicitly admitting the significance of internal distinctions? Would it not be utterly erroneous to distinguish a common Muslim identity as the main object of analysis? In the theoretical preface to the analysis, I suggested an understanding of identities as relational and non-essentialist. The word ‘community’ cannot, therefore, be attributed with a fundamental harmony, agreement or consensus (Caputo 1997: 107). Under the current caption, I emphasise the diversity and fragmentation of identity patterns within the Muslim population. It, hence, appears to be quite imprecise, even paradoxical, to define Indian Muslims in singular terms. Since the focal point of the analysis is Muslim identity politics since Partition, a requirement to stringently delimit collective identity surface as indispensable. Is it possible to acknowledge multiplicity as a fundamental feature of Muslim identity in India and at the same time refer to it as a distinct phenomenon and analytic unit? A solution to this severe predicament seems to be available, however, if we refuse to engage the empirical divergence as our point of departure. There is indisputably significant differences between Muslims in Kerala and Assam, rich and poor Muslims, Shiites and Sunnis etc., but simultaneously a range of attempts to impose a cohesive definition of Muslimness exists. The concept ‘Muslim community’ is constantly reinforced and reproduced as a separate entity, through the articulation of specific meaning and the erection of visible boundaries. Three main exertions to ascribe consistency to the term ascend: Islam as an ideology representing and transmitting singularity, unity and homogeneity; the widely circulated stereotypes about Muslim conduct primarily endorsed by the Hindu Right; and state categorisation of Muslims as a minority.

As already touched upon, this thesis aim at discerning and emphasising the variables ascribing a seeming stability to Muslim identity. The relevancy of ‘internal’ distinctions does persist, but the intimidating rhetoric and activities of militant Hindu groups have generated an inclination among Muslims to emphasise the uniting cord of religious affiliation. As we will see, there is a temporal and spatial stability in how the Muslim community is described and acted upon. There is a regular recurrence of historical moments wherein religion gains momentum as a unifying horizon.

2.2 Impact of the Communal-Minded Hindu Right

By the concluding stages of the 1990s it was possible to distinguish three main currents within Indian politics, all in some respect related to political awareness among the Hindu middle classes (Desai 2004: 203). The trends consisted of a decline of the traditionally all-pervasive Congress party, the intensified assertion and influence of regional parties on national politics, and the emergence of the

Hindu Right⁶, culminating 1998 in the definite election victory of its political wing—the Bharatiya Janata Party (BJP). All three affected the lives of Muslims, but the elucidation in this chapter will revolve around the mounting influence of Hindu nationalism.

During the last two decades the Hindu Right has managed to internalise the core elements of its ideology into a wide section of Indian society (for a detailed account, see Jaffrelot 1999). Its political branch—the BJP—was the dominating faction within the National Democratic Alliance that governed India between 1998 and 2004. In the most recent national election it lost to the Congress-led United Progressive Alliance (UPA), but remains the largest oppositional force. A major device in the ascension of Hindu nationalist sentiments has been the deployment of communal violence. In an Indian context, the term communal refers to a conception of religious communities as constituting homogenous collectives with distinctive histories. Communalism is, in other words, an idea implying that shared religious creed is correlative with economic, social and political interest. Instances of inter-communal conflicts involving Hindus and Muslims have been a recurrent phenomenon since Independence, especially in the country's northern and western parts. A considerable increase was noticeable in the initial years of the 1990s. During this period the Hindu Right intensified their agitation against the Babri Masjid in Ayodhya. The Babri Masjid was a mosque claimed by the Hindu Right to have been erected on the birthplace of the Hindu god Ram. It was demolished in December 1992 by a voluminous gathering of Hindu Right activists, resulting in widespread riots all over India. Between 1990 and 1993 the figure of communal unrest and bloodshed, principally provoked by the hostile rhetoric and mass mobilisation by the BJP and the militant Vishwa Hindu Parishad (VHP) on the Babri Masjid issue, drastically escalated into numbers unparalleled since 1947 (Brass 2003: 61).

According to Engineer, the outbursts of communal riots in post-independent India have nurtured a deeper sense of solidarity amongst Muslims (1995: 52). The extensive feeling of insecurity⁷ appears to have caused an amplified significance of Muslim identity during the last two decades (Anand 15 Feb 2005). It also interrupts and erodes steps toward social change or as Engineer describes it, 'if my house is on fire and someone comes and tells me about plans for interior decoration, will it make any sense?' (15 Feb 2005). As previously mentioned, the Muslim population is stratified along similar lines as Indian society in general.

⁶ The Hindu Right is here denoting the conglomerate of organisations associated with the Rashtriya Swayamsevak Sangh (RSS). In the liaison between Hindu nationalist organisations, the RSS occupies the intermediate and dominant position; political strategies and objectives emanate from it, the bulk of Hindu Right volunteers and cadre attain its ideological guidance through participation in its daily activities, and near all prominent members of Hindu nationalist organisations and the BJP originate from the RSS.

⁷ Although the notions of 'ontological insecurity' and 'securitized subjectivity' (see Kinnvall 2004), surfacing in the wake of globalisation and its erosion of stable collective identities, appears plausible to apply to the political thrust of the Hindu Right, the experience of Muslims seems somewhat different. The feeling of anxiousness among Muslims does involve an ontological dimension due to the liquefying tendency of late modernism, but ought primarily to be perceived as a consequence of direct physical and material threat. The communalisation of Indian polity and civil society has meant that Muslim insecurity is directly linked to anti-Muslim violence and agitation.

Communal violence, however, has had an ability to evade factors of intra-community heterogeneity and replace them with self-identification on the basis of religion. In each instance of Hindu-Muslim rioting, the scattered quality of Muslimness appears to acquire a distinct shape through its opposition to the meaning of Hinduness promoted by the Hindu Right. It is imperative to insert that the general tendency or response by Muslims has not displayed an inclination towards violent response. The reaction has, on the contrary, concentrated on how to use democratic institutions in order to claim justice and establish ‘bridges of understanding with other communities’ (Sikand 2003c: 335). In the infinitesimal number of groups advocating aggression against Hindus as a group or the Indian state it appears as if the militant ideology primarily functions as a device for mobilisation, not direct action (*ibid.* 337).

The impact that Hindu Right practices exercise on collective identities might be isolated into two interrelated consequences: the reinforcement of religious identities and a discursive attempt to redefine national identity. The first-mentioned is foremost an outcome of communal violence and aims at devising an image of Muslims as ‘outside the national mainstream’ (Hasan 2002: 37). The second relates itself to the ideological fundament of Hindu nationalism⁸. The basic idea underpinning Hindu Right ideology is that, since Hindus comprise nearby 85 per cent of India’s population, it logically follows that India should be epitomised by association and resemblance with Hindu culture. By subscribing to a common ancestry, history and tradition present-day Hindus are thought to represent a distinct exclusive nation, which overrides other schemes of identification, such as class or caste. The claim to majoritarianism is ingrained in the presumption of an existing homogenous Hindu identity, possible to extract from a joint fundament of racial, geographic and cultural commonalities. An evident problem for the Hindu Right is that Hinduism does not coincide with monolith descriptions and that no distinct unified Hindu culture or identity is perceptible. The composition of the Hindu population is, in sharp contrast with Hindu Right conception, primarily marked out by its cultural multitude. For this reason, there is a need to trace and distinguish prospective adversaries. In order to install a sense of homogenous Hindu identity a strategy to construct Muslims as disparate and deviating has been utilised.

Stereotypes are a key element in the frequent reproduction of community boundaries. A frequently employed stereotype projects Muslims as aggressive and intolerant. Another pervasive prejudice is that Muslims, due to their large families, will soon outnumber Hindus. Muslims are considered promiscuous and virile, which results in a rejection of family planning. The basic narrative structuring and delineating the boundary between Hindus and Muslims is the myth propagating a relentless antagonistic relationship, emerging already in the 11th century when the original Muslim raids began. Ever since, Muslims have been

⁸ The foundation of Hindu Right ideology was initially explicated in 1923 when V.D. Savarkar’s *Hindutva – Who is a Hindu?* (1969) was originally published. It became further elaborated by the second leader of the RSS—M.S. Golwalkar—in the publications *We or Our Nationhood Defined* (1939) and *Bunch of Thoughts* (1966). For a contemporary version, see the RSS’ weekly magazine *Organiser*.

Hindus' and the Hindu nation's main enemy, which is confirmed by the deliberate demolition of Hindu temples, the systematic rape of Hindu women and forced conversion carried out by Muslim rulers. Medieval India is described as a period in which oppressive and bloodthirsty Muslim rulers with foreign descent governed the country. The reference to foreignness is imperative. According to the Hindu Right, Islam is an alien faith since its holy land and most revered places of worship lies outside India. By adhering to Islam, Muslims intrinsically embrace extra-territorial solidarities and lack in patriotism.

These examples of widely circulated and reductionist representations appear to fully coincide with Hall's conception of stereotyping as a signifying practice (1997: 258). Hall postulates a three-layered structure. Firstly, the employment of stereotypes involves a dimension wherein 'difference' is naturalised and fixed; secondly, via acts of exclusion and 'closure' it engenders a 'strategy of splitting' aimed at generating rigid symbolic boundaries; and finally, stereotyping practices have a tendency to emerge in and radiate from environments characterised by grave power asymmetries. All three prerequisites are fulfilled in the relegation of Muslims to the location of 'Other' in Hindu Right idiom. Difference is established by the delineation of a split separating Muslim qualities from Hindu virtues. The establishment of opposition primarily aims to describe Muslims as being 'beyond the pale' of an inclusive 'Us'. By neglecting the social texture of hybrid identities the Hindu Right impedes an inclusive national identity and replaces it with a symbolic divide separating religious communities. The third element in stereotyping is detectable in the socio-economic and political marginalisation of a large segment of the Muslim population.

To conclude this section on the Hindu Right, I find it interesting to further emphasise the second facet of stereotyping, the 'strategy of splitting'. The attempt to exclude Muslims from the national identity and to totalise a closure of the social is properly captured by what Kristeva designates abjection (1982: 2ff). The abject is an entity out of place, representing the forbidden or contaminated. It is not an object lying outside the 'Self', but might more appropriately be understood as that which is banished or suppressed. The abject is accordingly attributed with a set of negative connotations. In the present case, the religious minorities is the debarred entity, excluded in order to restore the 'purity' of a Hindu nation. It is, however, not the stereotype representation of difference—i.e. Muslims as a monolith—that is abjected. The abject in Hindu Right discourse is the contravening and transgressing schemes of identity. The plasticity and heterogeneity of Muslim identity threatens to undermine the artificial unity in the terms 'Hindu' and 'Hinduism'. If Islam in India does not correspond with a totalising horizon, then notions of Hindu concord will vanish.

2.3 Indian Muslims as Second-Class Citizens

A sizeable segment of the Muslim population is marginalised in terms of socio-economic indicators and political influence. A second kind of marginalisation exists in the omission of Muslims from the Hindu Right's notion of national ident-

ity and the ensuing high degree of insecurity. A momentous background to the 'backwardness' of Muslims was the migration of a substantial amount of educated Muslims to Pakistan during and after Partition (Momin 2004: 44). The educational movement within the Muslim community in early 20th century supported the expansion of potent and influential middle classes, which constituted an emerging set of dominant groups in parts of northern India (Hasan M 2004: 279). This scenario was drastically altered with the occurrence of Partition. Muslims in contemporary India experience greater economic paucity, if compared with members of other religious minorities. The Gopal Singh committee stated in 1983, in its *Report on Minorities*⁹, that the Muslim community was distinguished by a mediocre level of education and an exceptionally low socio-economic development (Hasan Z 2004: 246). The National Sample Survey from 1999-2000 confirms this description and communicates an invariable gap between Muslims and Hindus (*The Hindu* 13 September 2002). Both the income level and the employment rate is lower among Muslims. The figures regarding education and landholding are equally dismal and a sizeable ratio has modest consumption expenditure (*The Hindu* 12 September 2002). The contrast between Muslims and other Indian citizens becomes even more apparent in urban than in rural India, which is noteworthy since a comparatively large number of Muslims lead their lives in cities.

Another major problem is the modest rate of literacy. Muslims are, in comparison with Hindus, illiterate to a higher degree. In rural areas 48 per cent of children above the age of seven and adults were incapable of reading or writing among Muslims, while the corresponding figures on Hindus revealed an illiteracy rate of 44 per cent (Hasan Z 2004: 261). In urban areas data reveals a much wider fissure, narrating that 30 per cent of Muslim are unable to read or write, while the number among Hindus is 19 per cent (*The Hindu* 12 September 2002). To these socio-economic variables, I would like to add another important aspect of disadvantage—a political marginalisation almost resembling silence. How and to what extent did Muslims participate in the political arena in the first decades following Independence? Since the elite section of the Muslim population had migrated to Pakistan there was no given leadership remaining to represent Indian Muslims. Those sections of the Muslim middle classes that had chosen not to migrate was embodied by their weakness. The majority of Muslims left in independent India were minor peasants, workers lacking organisation and artisans (Engineer 1995: 43). The few prominent secular and religious leaders that preferred to stay in India had only marginal influence on political events and agendas.

With the dissolution of the Congress party in the 1990s as a dominant 'grand coalition', which partly promoted minority proportionality and interest, the number of Muslims sharing in public power and employment decreased (Hasan Z 2004: 251). While examining the trend of Muslim participation and presence in the legislature, we find a declining number since 1980, when 49 out of 543 MPs were Muslims. In 1999 the figure had diminished to 30 (Momin 2004: 60). When contrasted with the changing composition of the Lok Sabha—today a quarter of

⁹ First Annual Report of the Minorities Commission for the year ending 31 December 1978, 1979 and Report on Minorities, Vol. 2, Ministry of Home Affairs, 1983, Delhi.

its members originate from lower castes—and the increasing weight of minority votes these figures appear to disrupt a general tendency (Hasan Z 2004: 253f). The interrupted pattern seem more comprehensible, however, if illuminated in the light of the intensified communalisation of politics and the fear amid political parties of being accused of minority appeasement (Zakaria 2004: 187). The decline in political representation is not an isolated case of political marginalisation. In its annual report from 1998-99 the National Commission for Minorities commented on the grave under-representation of Muslims ‘in all public services both at the national and state levels’ (cited in Momin 2004: 59). The number of Muslims employed by the judiciary, police and state administration is remarkably modest and is gradually abating (Hasan Z 2004: 251).

Who is representing Muslims politically? This is a truly hard question to answer. The contemporary Muslim leadership is fragmented and hard to define or distil into a distinct face or group of people. There are some elite and orthodox Muslims partaking in political controversies often bitterly defending the outer discursive limits of the community. Their voices are not constantly heard, but preferably engage in poignant issues, such as the controversies revolving around the Muslim personal law or the demolition of the Babri Masjid. The most high profile is the All India Muslim Personal Law Board (AIMPLB), which is an elite and scholarly organisation claiming to represent all Muslims. Influential Muslims are, as a result, often accused of not being interested in the substantive problems of their co-religionists (see for example, Engineer 1995: 45). In addition to these loud representatives there are orthodox elite and mass organisations, such as the Jamaat-e-Islami Hind and Tablighi Jamaat, working more inaudibly, staying away from the public debate and political sphere. There is finally a segment of secular Muslims finding it increasingly harder to create a space wherein they might articulate identities not correlating to the majority/minority nexus.

3 Partition Memory

‘I know that mine is today a voice in the wilderness’. (Mahatma Gandhi; cited in Hasan 2000: 7).

In August 1947 a traumatic cataclysmic event quivered the Indian sub-continent. British India was, in accordance with the Hindustan-Pakistan plan declared on June 3, divided into two sovereign states. Its partition resulted in mass migration and an unparalleled amount of violence. The geographical dimension of the division meant that the provinces of Punjab and Bengal were cut almost in half. Post-independent Pakistan, thus, consisted of two separate parts deficient of land connection¹⁰. The human dimension of Partition is an immensely disturbing story. The truncation of India initiated one of the most substantial uprooting of people witnessed throughout the last century (Hasan 2001: 167). An estimated 12 million refugees travelled in both directions across borders, demarcating the juvenile nation states, during a time-span of just a few months (Butalia 1998: 76). Hindus and Sikhs were uprooted from their homes in newly created Pakistan and a vast number of Muslims left the territory belonging to independent India.

It was and still is a tremor, an abyss sedimented into the substructure of the Indian state and its social texture. 2 million people died according to official Indian estimation (*ibid.* 3). Some of these succumbed due to malnutrition and disease, but many suffered violent attacks from people belonging to other religious communities. No one knew the exact borders delimiting the two countries. In Punjab trains were attacked when they stopped at stations on the ‘wrong’ side of the border. Families were divided as family members preferred to stay behind, whereas others were abducted or lost before and during the journey. Migrants used all available transportation options—flights, trains, cars and buses—but the most common way to travel was by foot. Many people chose to gather in large columns, in order to protect themselves from attacks. One column is believed to have included 400,000 people (*ibid.* 77). It travelled from western Punjab to India and it took eight days to pass through a single landmark on its route.

As in many momentous human tragedies women suffered badly. 75,000 Hindu, Muslim and Sikh women are supposed to have been abducted or raped in the wake of the decision to dissect British India (*ibid.* 132). Sexual violence occurred in large scale during the months following Partition. In addition to instances of rape, women ‘were paraded naked in the streets, several had their breasts cut off, their bodies were tattooed with marks of the “other” religion’ (*ibid.*). Another kind of violence was the forced suicide or killing of women by their own men in order

¹⁰ In 1971 Eastern Pakistan became present-day Bangladesh.

to avoid conversion. A further manifestation of the vulnerable position of women is the large number of abductions carried out by men belonging to other religious communities. For many years after the divide, Pakistan and India cooperated in attempts to recover 'their' abducted women. In state perspective religion turned into the primary identity of these women and India was regarded as the proper home for those defined as Hindu or Sikh.

3.1 The Breeding Ground for Communalism

What made Partition possible? One reason might be located in the formation of novel communal traditions and symbols appropriated by Hindu as well as Muslim revivalism in the 19th century. The advance of new ways to look at the content and limits of collective identity, managed in some measure to bridge the conventional urban-rural divide and replace it with pan-Indian notions of religious affiliation (Hasan 2000: 9). Revivalist conceptions of communal attributes were defined, affirmed and cultivated by organisations attempting to reject and separate joint Hindu-Muslim culture. The socio-political locale of late 19th and early 20th century India, appears to have been distinguished by common traditions and denominators. Such commonalities transcended religious boundaries. C.A. Bayly advances one step further while positing that it seems difficult to discern a 'unilinear or cumulative growth of communal identity before 1860' and that no separate Hindu, Muslim or Sikh identity is obtainable without reference to 'individual events or specific societies' (1985: 202). Brass seems to partly concur with this reasoning when pointing out that the inter-communal relationship exhibited sufficient resemblances and divergences to stimulate both a combined culture or the creation of two nations (1974: 119).

The installing of an order disbanding local traditions, customs and rituals was a political act. As previously mentioned, the discursive practices of the Hindu Right have during the last decades managed to gain near hegemonic influence. A similar change in how inter-communal relations were perceived produced the environment forerunning Partition. To demonstrate the eruptive force of political discourse, it is worth repeating a question formulated by Hasan; 'why did a people, with a long-standing history of shared living, respond to symbols of discord and disunity at a particular historical juncture?' (2000: 10). While religion separated Hindus, Muslims and Sikhs in Punjab the three religious communities shared a cultural identity as Punjabis. Why did religious differences suddenly replace cultural congruence, such as a shared language? A key factor emanates out of the increasing fusion of 'Muslimness' and the 'Other'.

According to Gupta, the prevailing image of Muslims in popular Hindi literature and newspapers during late 19th and early 20th century, contained grave prejudices ascribing a set of negative qualities as innate to the 'Muslim temperament' (2002: 243f). Hindi literary writers, often affiliated with Hindu revivalist movements, portrayed and infused life into inert and primordial Muslim characters via analogies narrating accounts of atrocities such as abduction, forced marriage and rape of Hindu women occurring in medieval Muslim ruled India.

The delineation of assumed qualities from historical Muslim rulers became a crucial part in the construction of Muslims as the 'Other'. Polemic, obscene and insulting texts were published in order to convey a picture of Islam and its followers as immoral. The 'fanaticism' of Muslim rulers attributed an inclination towards religious extremism to all Indian Muslims. Hedonist and sexual pleasure as well as a craving for material luxury were portrayed as emblematic traits of Muslims. The same stereotype prejudices might be derived in contemporary inter-communal relations and conflicts. The dissemination of 'historically' deduced stereotypes is, however, not the most remarkable aspect of the smear campaign carried out in Hindi literature. In addition, we find a projection of Hindu depravity and decadence as a product of Muslim reign. Immoral social practices performed by Hindus at the closure of 19th century, particularly towards women, were recounted as remnant products of Muslim dominance. The colonial authorities did, for apparent reasons, not oppose the diffusion of these images depicting Muslim immorality (Gupta 2002: 244).

The discourse of 'Otherness' in Hindi writings and the dissemination of cultural stereotypes helped to foster a collective Hindu memory, wherein Muslims came to represent a threat to Hindu women. The latter was transmuted into pure sacred symbols of Hindu community, while Muslims were represented as a virile, hostile and brutal male intimidating the security and livelihood of Hindu women (*ibid.* 251). What we recover here is a backdrop to the controversy regarding abduction and recovery operations in the late 1940s. During the 1920s, gender developed into an imperative variable in the extrication of religious communities into separate entities. In this period, the symbolic role of women became increasingly significant in communal relations and the shaping of an exclusive Hindu identity (*ibid.* 222f). Especially conceptions concerning the role and meaning of Hindu women were key elements in the process of disconnection. De Alwis and Jayawardena agree with this argument when making the observation that Hindu revivalism, essentially through its focus on women's biological role as mothers, generated an image of Hindu women as vessels of tradition and culture (1996: x). Women's bodies and reproductive ability became discursively attached to the interest of the community.

A node in the reconstitution of communal identity was the abductions of women taking place before Partition; through abductions of Hindu women the Hindu identity managed to acquire a meaning transcending material stratifications of class, caste and patriarchy (Gupta 2002: 258). Through repeated accusations from Hindu communalists and Hindi writers, pre-Partition abductions became entangled with the other circulated stereotype notions of Muslim behaviour. The prospect of abductions managed to produce fear of a joint enemy—the Muslim male. In those cases when a Muslim woman was seized from her family the abduction was portrayed as a result of romance, whereas Muslim men always acted on their aggressive nature. The process of homogenisation was triumphant since Muslims became associated with the horizon of 'Otherness' (*ibid.* 224).

3.2 Recovery Operation and Forced Suicide

An official estimation of the quantity of women, abducted in the wake of Partition, established a number recounting nearly 33,000 Hindu and Sikh women and 50,000 Muslim women (Bhasin & Menon 2000: 70). In the Inter-Dominion Treaty, accepted by the two governments in December 1947, an agreement was made to bring back as many as possible. It was agreed that inter-communal marriage or conversion should not be recognised after 31 August (Bhasin & Menon 1996: 18). For nine years the government operations were being performed, resulting in the recovery of 8,000 Hindu and Sikh women, while 22,000 Muslim women were sent to Pakistan (Butalia 1998: 163). It is noteworthy that the Indian government was not eager to admit or react to abductions performed by men sharing the same religion as the seized women (Bhasin & Menon 1996: 29). Muslim women abducted by Muslims or Hindu women forcefully apprehended by Hindus did not fit into the wider framework of national identity. What distinguished India from Pakistan if not religion? The abducted women were consequently clad in an idiom naturalising a binary opposition between Muslim and Hindu identity. By being born a Muslim you belonged to Pakistan; by having Hindu parents you fell within the liability of the Indian state (*ibid.* 18).

An excerpt mirroring the official and dominating imagery regarding abductions is the following quote,

‘[recovery operations is] an effort to remove from the lives of thousands of innocent women the misery that is their lot today and to restore them to their legitimate environment where they can spend the rest of their lives with *izzat* [honour]’ (Mridula Sarabhai; cited in Bhasin & Menon 1996: 11).

The passage reveals a set of notions distinctive of the recovery policies. First, the assumption that all abducted women were victims and suffered gravely; second, that the family that had abandoned them or been lost in the disorder of Partition was the only legitimate setting; third, the assumption that abducted women would be easily accepted once they returned to their families; and finally, the importance to maintain and re-establish honour. It here seems appropriate to add a disputing of the last idea; whose honour was in danger? Was it the honour of individual women, their families or the entire nation?

One enlightening facet that might help us answer this question surface if we examine the role of children born after Partition. Many abducted women became pregnant with their abductors. In India, this evolved into a major dilemma. A child born by a Hindu woman with a Muslim father would face problems with being accepted by the mother’s relatives (Patel 2004: 176). According to a government decision, those children born in Pakistan should be left with their fathers, while women who were pregnant during the actual recovery had a choice either to keep them or to have the child adopted (Bhasin & Menon 1996: 19). Another relevant aspect is that deviant cases, such as those women opposing recovery attempts, did not fit into or coincide with the suppositions about the Indian nation that lay beneath the official approach. Neither those women who had been intentionally

abandoned by their families or the ones content with their new situation were recognised within the parameters of recovery operations.

The nationalist movement against British colonialism had mobilised around India as a symbol of the Motherland. India was, accordingly, attributed feminine qualities. Partition came to be looked upon by some segments of Indian society as a violent abuse against the nation-as-mother. The loss of territory was depicted in Hindu nationalist publications, such as the *Organiser*, as a corporal vivisection (Butalia 1998: 189). What was the space of abducted women within this conception of nation-as-mother? As Butalia correctly points out, the recovery operations primarily served the purpose of purifying and relocating women into the community and their families (*ibid.* 90). The recovery operations, in other words, became a question of national honour—a mission to reverse the failure to initially protect members of the nation. In state discourse Pakistan became acknowledged as the abductor-country, while India was made equivalent with the parent-protector (Bhasin & Menon 1996: 18). A dichotomous relation between a benevolent Indian state and an uncivilised Pakistan was constructed.

A final confirmation of the symbolic role of women during Partition is the phenomenon of forced death. It stands out as a pertinent example of the central position of women both in the establishment and patrolling of community boundaries. The question of community identity did, in the extreme circumstances of Partition, become firmly connected with the need to protect women and their reproductive function. The intimidating and impending risk of rape or conversion to Islam seems to have enacted an atypical version of gendered violence. To safeguard honour, men killed or forced kinswomen to commit suicide. Women also actively participated by assisting sisters, daughters and finally themselves to end their lives (Bhasin & Menon 2000: 45). Both Hindu and Sikh women suffered this destiny to preserve community honour, through a refusal to be caught by the 'Other'. The employed methods were profuse: women jumped into wells and rivers, took poison, were strangled, burned and decapitated.

Since the surviving family members did not report their death, there are obviously no figures determining the number of women and children dying in this way. Stories about heroic suicides are, however, abundant (Butalia 1998: 208). The memory of mothers, wives and sisters killed in order to allow the family to persevere has endured and entered a realm of martyrdom. The forced deaths are distorted into voluntary suicides heroically aiming at preserving purity and honour. It reiterates an assumption that conversion, not death, was the supreme threat to families and whole communities. It is important to here take into account the passive notion of women that saturates the underlying premises; women must be saved by men who can save themselves (*ibid.* 196). Violent challenges could be fought with pride, but conversion was a final defeat and loss of honour. It further, recaps a fear that women could be impregnated by men from another religion, which would mean that they gave birth to 'impure' children. Forced death was an instrument to stay away from being polluted.

4 State Reification of Community

He shook his head in incomprehension, his topknot bobbing up and down like a yo-yo. 'You must be something ... your name sounds Hindu, so Hindu you must be,' said the exasperated census-wala. 'It is meant to sound Sikh,' I said, clenching my teeth in barely suppressed fury. 'You must be Sikh then,' he declared, like an imperious judge. 'No, no,' I protested. 'Just write "Humanism" in the box.' 'There's no such religion in the census form,' he answered smugly, scanning through the list of officially recognized creeds on the paper that he brandished before me like a summons. 'If you are not anything, then you must be Hindu,' he decided for me. 'Your parents must follow some religion and that should be yours too.' 'I'd rather be an atheist than be called a Hindu or any such thing,' I insisted. There was no religion called 'Atheism' in the list either. He reluctantly placed me in the box meant for sundry 'Others' placed at the bottom of the list. (Sikand 2003a: 1)

The colonial authorities conducted a vast range of surveys in order to accumulate knowledge about their subjects. The process of producing census reports was primarily intended to generate social categories according to which India could be administered and governed (Hasan M 2004: 280). Since the collected knowledge about various aspects of Indian society belonged to the British colonial mission to reign over the crown colony, it became permeated with orientalist imagination. The British procedure to officially record identities seems partly to be replicated in present-day methods of state classification. As Appadurai has accentuated, the separation of Muslim and Hindu identity has been erected at a macro-level, which has not only divided religious and caste identities into signifiers of imagined communities, but into reified and 'enumerated' communities as well (1993: 332). Symptomatically, the last census report compiled in 2001 arranged collective identities into a condensed taxonomy based on religious belonging. In this chapter I intend to elucidate the active agency of the state in shaping contemporary group identities.

4.1 Becoming-Minority

It is perhaps self-evident that social categories fail to capture the complex and mobile pattern of individual identification. It is, however, not predetermined in what way categories should be demarcated and defined. As Zoya Hasan has correctly stipulated, the state does not only respond to diversity, but simultaneously assists in constructing this diversity in a particular way (2004: 241). In present-day India, the state relates to its citizens primarily as members of caste or through their religious affiliation. The concept of 'minority', according to official vocabulary and as per the National Commission for Minorities Act, should be

read as equivalent to India's religious minorities. Those who do not explicitly declare their religion in census operations are considered as Hindus. A minority is, in other words, defined as being 'non-Hindu'. This way of perceiving the term fortifies a distinction between majority and minority erected upon religious lines. A corollary factor is that the concept of minority transcends significant cleavages, thereby naturalising and discounting internal differences. Through its enactment of the binary concepts of majority and minority the Indian state produce and disseminate misleading assumptions on the nature of unity and antagonism both within and between collective identities (Hasan M 2004: 281).

Another manifestation of the majority/minority dichotomy is the alleged religious-based voting patterns. Muslims are commonly assumed to vote on similar patterns and in opposition to the Hindu majority. In other words, political interests and voting behaviour are predicated upon religious belief. There is, however, no quantitative support for this claim and the oft mentioned 'Muslim vote bank'. The possibility that the issue of religious identity may 'be swept aside' was exposed by the elections held in 1977, when voting patterns revealed anti-Emergency¹¹ sentiments to be the source of people's voting behaviour (Engineer 1995: 48). In the last elections Muslims did not vote amass on a single party, but rather acted as 'mini banks' in given constituencies where they voted for the secular candidate (Shahabuddin 12 Jan 2005). Even in the few cases when religious commonalities do coincide with political developments, they have a tendency to swiftly dissolve (Hasan M 2004: 281). Political and religious concord does not, in other words, exhibit any innate correlation. They rather verify the fluid character of collective affiliation.

According to Rattansi, social construction of identity is comprised of two parts (1995: 257f). On the one hand, it involves 'self-identification'¹²; on the other hand, it consists of signifying practices by disciplinary agents, e.g. the state. The social sciences might also be included in this section, due to their participation in the compartmentalising of society. Althusser seemed to emphasise a similar penetrating role of the state when he spoke about repressive and ideological state apparatuses (1994: 114) The repressive state apparatus is constituted by the 'the organised whole whose different parts are centralised beneath a commanding unity' and is that which politically enables the ideological state apparatuses. These signify a range of institutions that seems to be 'relatively autonomous' from state power, e.g. schools, churches, the family, media etc. The two kinds of state apparatuses relate to each other through a 'division of labour'; both reproduce the ideology of the ruling class. Although Althusser's theory refers to a reproduction of class-based exploitation, the shared observation appears to be that social identities constantly interrelate with and are affected by state attempts to legally, scientifically and administratively produce schemes of identification. In our case, we find that the Indian state reinforces a perennial split of society along a binary

¹¹ In 1975 Prime Minister Indira Gandhi announced a state of emergency banning all opposition parties and a number of Muslim and Hindu organisations.

¹² Rattansi does not define this concept, but according to Anthias, self-identification consists of a spatial and temporal location of the self, primarily through a denial of what one is not (2005: 42f).

majority/minority axis. Another social divide erected through state activities is the engineered difference imposed through the employment of affirmative action.

4.2 Positive Discrimination

The first government of independent India decided to supplement social categories inherited from the colonial period with a set of reservation policies for backward and disadvantaged classes (Dudley Jenkins 2003: 12). These preferential policies ratified affirmative action and seemed to include a dual intertwined objective: on one hand, they comprised an endeavour to raise the socio-economic level and political influence of deprived groups; on the other, the policies generated an accommodation and preservation of cultural diversity. An accompanying decision was made regarding reservations for Muslims in the case of legislative seats. The vivid memory of Partition meant that preferential treatment based in religion was abandoned and replaced by a devotion to secular ideals¹³ (Hasan 2001: 138). All citizens, irrespective of faith, should have the same obligations and rights. Neither were Muslim parliamentary members willing to insist on a special quota in the parliament nor were Hindu politicians ready to accept it (Wright 1997: 853). As we shall see, this did not, however, completely erase all religious elements in India's policies of affirmative action. By confining the most substantial admission quotas to the majority population the religious nature of preferential treatment lingered.

Three segments of society have been distinguished as suitable beneficiaries of preferential treatment: Scheduled Castes, Scheduled Tribes, and Other Backward Classes (OBC). The first category corresponds to the section within the Hindu population which is situated as 'untouchables' at the bottom of caste hierarchies (Galanter 1984: 122); the second grouping matches those sections of the population, which on the basis of cultural and spatial seclusion have been ascribed 'tribal characteristics' (*ibid.* 150); finally, the term OBC refers to communities and classes omitted by the criterion of untouchability found in the first category, but still defined as socially and educationally depressed (Dudley Jenkins 2003: 14f). In the OBC category there is, in spite of the word class, no direct linkage to economic deprivation and no legally specified measure to identify the groups that should be included. To establish a uniform approach on the all-India level, a National Backward Classes Commission has been institutionalised to supervise the list's composition and to implement the recommendations by the Mandal Commission Report made in 1980. The report, which recommended that 27 per cent of government and educational seats should be reserved for OBCs, designated 80 Muslim *jatis* as backward. Despite much talk of 'mandalisation' during the 1980s the recommendations were not approved until 1990 when the Janata government decided to implement these. The expansion of the OBC quota did not include or admit a need of special consideration for the entire Muslim community.

¹³ In India secularism does not correspond to the separation of state and religion, but signifies the state's equal respect of all religions and types of religiosity.

The first two categories benefit more from preferential treatment than the OBC. The positions reserved to the first-mentioned include university admission quotas, legislative seats, government service as well as public sector employment (Dudley Jenkins 2003: 15). In government service the quota is 7.5 per cent for Scheduled Tribes and 15 per cent for Scheduled Castes. Reserved seats in the Indian parliament—the Lok Sabha—as well as in the state assemblies are distributed according to the figures of Scheduled Caste and Tribe population in each state. The totality of reservations is not allowed to exceed 50 per cent and therefore the Supreme Court enacted a legal limit of 27 per cent of quotas intended for the OBC (*ibid.*). The decision has resulted in an asymmetrical distribution of reserved posts, since the OBC category comprises a higher percentage in several states. The perimeter enacting an upper limit of maximum 50 per cent has, however, been ignored in some states. One example is Tamil Nadu where reservation quotas have reached 69 per cent.

The Scheduled Caste status has gone through a multifaceted process wherein it has been connected to religious affiliation (Sikand 2004: 113). An initial advance occurred in 1935 when the Government of India Act was issued. In the act an index of castes considered as socially marginalised and appraised as deserving economic and educational compensation was listed. A large number of the caste groups incorporated in the list transcended religious lines and contained members from several religions—several included both Hindus and Muslims (Galanter 1984: 16). The inclusion of non-Hindus in the fold of Scheduled Castes was, however, revised by a Presidential Order in 1950 (*ibid.* 144). According to the decree, only those deemed as Hindus should be regarded as fitting the category. It, consequently, altered the non-communal contours of the Scheduled Caste category and made Hindus the sole recipients of its benefits. The amendment meant that millions of non-Hindu low-caste—also denoted *Dalit*—groups were erased from the index of Schedule Castes. In 1956 low-caste confessors of Sikhism were once again ascribed Schedule Caste status and in 1990 Dalit Buddhists gained anew entrance into the category. Low-caste Muslims and Christians still remain outside, deprived of those affirmative actions enjoyed by Dalits recognised as Scheduled Castes.

Since the early 1980s there has been ongoing assertion of a distinct Dalit identity throughout India (Kothari 1997: 448f). Dalits consists of a variety of caste sections considered as the substratum of the caste system, thus, comprising the bottom level of social order. These subordinated groups constitute approximately 20 per cent of the entire population (Sikand 2004: 109). A detectable sign of the growing political engagement is visible in the changing parameters of party politics. Before the 1980s Dalits were considered as passive supporters of the Congress party, but today a dispersion and regionalisation of politics is taking place (Butler *et al.* 1997: 172f). Regional parties have come to influence the political map and many of them exclusively represent Dalit interests (Brass 2003: 43f). Besides entering and articulating concerns within the democratic process, mass conversions of Dalit Hindus to non-Hindu religions have been deployed to assert equal rights. In order to escape the discriminating treatment subjected to ‘untouchables’ within the discursive field of Hinduism, a new identity has been

articulated by the adoption of a different faith. The most famous instance of socially motivated conversion occurred in 1956, when Dr. Bhimrao Ramji Ambedkar in unison with 300,000 Hindus mass converted to Buddhism. Dr. Ambedkar argued that Dalits, since they were regarded as 'outcastes' and accordingly excluded from the caste structure, did not fit the connotation 'Hindu' (Sikand 2004: 120). It is interesting to note that conversion to Islam has not been a viable option for 'untouchables' in post-independent India. The figure of Hindus adopting Islam communicates a negative trend in terms of net conversions (Shahabuddin 1998: 285). The limited amount of conversions to Islam should, according to Sikand, be considered as a result of Partition and its reduction of Muslims into 'a relatively powerless and insecure minority' (Sikand 2004: 121). This background combined with the mounting anti-Muslim atmosphere in independent India has made conversion to Islam, on the rationale of social emancipation, an impracticable and contra productive alternative.

As a response to the exclusion of Muslims from the Scheduled Caste reservations an imperative attempt to reconstitute Muslim identity in India has emerged. During the 1990s an array of organisations catering to the interest of low-caste Muslims was created; the All India Muslim OBC Organisation and the All India Backward Muslim Morcha being the most high profile. Both advocate an end to the denial of Scheduled Caste status to Muslims. It is, in other words, an attempt to extend existing categories. The emergence of these movements is moreover interesting since it appears to substantiate the argument that a wide range of different comprehensions of identity flourish within the Muslim population. In the wider pasture of a Muslim community various agendas and voices subsists (*ibid.* 119). By articulating a distinct Dalit Muslim identity they challenge elite representations of the Muslim community as monolith and homogenous. It also opposes the idea, campaigned by elite organisations, to establish a quota encompassing all Muslims. The basic assumption in the urge for a religious-based quota covering all Muslims is to uplift the entire community by admitting its vertical backwardness. The underlying premise is that the entire community faces injustice and should therefore have access to evenly distributed opportunities (Shahabuddin 12 Jan 2005). Dalit Muslim movements oppose this projection of Indian Muslims as a single community lacking social and cultural variations and instead try to operate 'across religious divides' (Dudley Jenkins 2003: 116). As the label 'Dalit Muslim' suggests, it is both challenging the general discrimination of Muslims as well as denouncing the traditional Muslim leadership and their version of Muslim identity.

The conversion of Dalits and the enterprise to mobilise on a Dalit Muslim identity imply that movements dissenting official boundaries might alter and redefine these. It first appears to indicate that state classification does not entirely define nor freeze social identities, but if scrutinised more closely it synchronously validates the firmness in state categories. There seems to be a set of constraints on the parameters of political involvement, empowerment and ability to articulate identity imposed by state classification. In order to create space for themselves, Dalit organisations are forced to adopt and adjust to a depiction of society as basically divided into religious entities: an efficient way for low-caste Hindus to

escape discrimination is to change their religion; the choice of low-caste Muslims has been to assert both their religious and Dalit identity. Claims to equal treatment and participation in the political process, hence, appear to be restrained by the macro-level standards of division. A further confirmation is the existing divide between Dalits belonging to different religions. There is no solidarity linking low-caste Muslims, Hindus and Christians. Although these three groups share socio-economic and political interests, the prospect for inter-communal concord and cooperation is limited; the harsh competition adjoining reservation quotas, the Hindu Right's consistent labour to establish a pan-Hindu identity and the widespread sense of insecurity among Muslims are all underlying reasons.

5 Muslim Personal Law

A major emotive issue and political controversy, pertaining to Muslim identity in India, emanates out of disagreements on the role and function of the Muslim personal law. A tense political debate surfaced around it and attracted particular attention on a national level during the mid-1980s. At this historical intersection, it came to signify a nodal point through which a range of political antagonisms relating to national and community identity could be articulated. Disagreement on the legitimacy of its existence has profound historical roots, discernable while exploring conceptualisations of the legal system during the colonial era, but also obtainable in analyses exposing the formulation of the Indian constitution. The magnitude and significance ascribed to Muslim personal law did, nevertheless, gain a novel centrality within the political sphere during the opening years of the 1980s. Its contours, substance and consequences became elevated into an imagery onto which the most potent and sensitive political topics in India could be projected. A central element, articulated in the wake of this discursive momentum, was the political proclamation of an essentialized version of identity by Muslim organisations. Simultaneously it enabled the Hindu Right to disseminate and propagate its totalising idea of the Indian 'nation'. It was especially the Supreme Court's handling of the Shah Bano case in 1985 that imposed a crucial catalysing impact, elevating the matter into the political limelight. The judges' verdict managed to stir up disputes regarding decisive matters, such as rights of minorities, the function of law as a device to safeguard justice for subjugated citizens, and the meaning of secularism (Das 1995: 95).

5.1 Instituting Space for Minorities

Why did Muslim personal law evolve into a major theme in contemporary identity politics? To enable a genealogy that could answer this, let us advance from a general description of the legal system, via an account of the historical legacy, and finally end in a contemporary positioning. Firstly, India's legal system is characterised by its pluralistic design. The Constitution distinguishes specific rights of minorities by supplying a dual set of rights sorted under the captions 'common domain' and 'separate domain' (Massey 2003: 43). The former includes those rights valid for all citizens, while the latter contains rights entirely corresponding to minorities. These are formulated in order to safeguard minority identity. An intrinsic ambivalence and impasse in the Constitution is the concurrent promotion of universal citizenship and a devotion to group rights. In dissecting the Constitution it is possible to extract both an explicit support for a uniform civil code and a justification of religion-based personal laws. This

indistinctness is most properly grasped if illuminated in the light of Partition. After the traumatic events during Partition the authors of the Constitution felt a compulsion to create a secure and specific space for Muslims.

The main objective of legal pluralism is to recognise the diversity of Indian society. Community-specific laws exist as an attempt to accommodate the multitude of practices and conflict solving found within various groups (Vatuk 2001: 232). The system of allowing separate legal compartments has by Galanter been denoted 'principle eclecticism' (1984: 567). It formally grants minorities the right to conserve and cultivate their respective cultures and to make appropriate institutional configurations to realise this. In legal cases involving Hindus, Christians, Muslims or Parsees matters defined as 'personal' are administered by religious laws (Galanter & Krishnan 2001: 274). These separate legal spheres are, accordingly, labelled *personal laws* and hold constitutional recognition as 'laws in force' (Mathew 1998: 15). They deal with issues of succession, adoption, religious institutions, marriage and divorce (for a more comprehensive description, see Ramu 2003:22ff). Apart from in the exclusive case of personal laws, Indian citizens are subordinated uniform laws, e.g. in the case of the criminal code. Another important factor to bear in mind is that Muslim personal law differs from other personal laws by its lack of official codification. These two aspects are, as we shall see, both sources of controversy.

The administrative and judicial responsibility of the personal laws is officially the undertaking of state judges. It is, however, imperative at this juncture to emphasise that Indians generally avoid bringing personal law disputes to civil courts or as Vatuk describes it, 'the family court is a place of last resort; only a minuscule percentage of those who experience marital difficulties ever use it' (2001: 232). As an alternative, people in general prefer to resolve their problems via the existing parallel structure of non-state and informal bodies. These institutions are administered by various communities and religious fractions. India has, in other words, in addition to the formal structure of criminal and civil courts based on codified law, a vast range of legal organs operating outside the boundaries of direct state influence and supervision. For the Muslim population the substitute structure is comprised, among others, by '*qazis*' offices, [*s*]hariat courts, caste, *qaum* or sect *pancayats*, and *jamat* committees or councils of elders associated with local mosques' (*ibid.* 232).

Let us examine the incongruity between the personal laws and legal uniformity more closely. A reason behind the emergence of conflicting perspectives emanates out of contradictory formulations within the Constitution. Article 25, which delineates freedom of religion, declares that '[...] all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion'. There are obviously numerous possible ways to read this quotation, but the one preferred by orthodox Muslims, construe it as conveying an absolute right to distinct personal laws for Muslims based in *shariat*¹⁴ (for example Khan 2001:

¹⁴ *Shariat* is a legal system developed by jurists through inferences leading back to Koranic verses, the practices and teachings of the prophet, and the consensus reached by his bereaved disciples and companions (Kader 1998: 1). It communicates a comprehensive way of life regulating rituals, beliefs and practices, personal as well as public law (Mujeeb 1967: 57). Diverging deductions and

20). The meaning of the article, if inferred in this way, appears to conflict with the recommendations made in article 44 that reads, '[t]he state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India'. Article 44 is included in part IV of the Constitution, which is the section comprising the Directive Principles of State Policy. It means that the definite implementation of a uniform civil code requires both parliamentary will and resolution. So far, governments have abstained from making substantive interventions, hence, allowing the orthodox reading of article 25 to take precedence over the push for a uniform civil code.

How is an article urging the enacting of uniform civil code compatible with the preservation of community-specific personal laws? To understand the underlying rationale to the instituting and endurance of these contradictory articles, we need to take two contextual restraints into consideration: the urgency after Partition to create a 'home' or space for Indian Muslims and the emerging receptiveness to Hindu Right ideology since the 1980s. A second tension seems to conjure in the borderland between these two articles. As Sona Khan—the lawyer of Shah Bano—enunciates, it appears as if the Constitution prescribes a right to freely propagate and practice religion at the same time as it advocates a right of all Indian citizens 'to live with dignity' (11 Jan 2005). The latter is here conceived as equivalent to social and gender equity. This seeming collide between the furtherance of community rights and the realisation of universal equality is another backdrop to the antagonisms related to Muslim identity.

An additional source of disagreement is the dissimilarity between the status of contemporary Hindu and Muslim personal law. The Muslim personal law in India formally corresponds with regulations stipulated in Islamic law (the *shariat*). Since the enactment of the Shariat Act in 1937 'the rule of decision in cases [regarding provisions of personal law] where the parties are Muslims shall be the Muslim Personal Law (Shariat)'. While the position of Muslim personal law has remained intact since 1937, the Hindu counterpart underwent a series of reforms during the 1950s, in which it became codified in a manner similar to general law (Austin 2001: 15). The various reformed laws¹⁵ were denominated Hindu Code and ascribed a broadened definition, according to which the term 'Hindu' was expanded to incorporate Buddhists, Jains and Sikhs. As a consequence, the Hindu Code came to apply to the overwhelming majority of Indian citizens. The codification and widened scope of Hindu personal law seemed to detach it from issues of Hindu identity and Hinduism. Through its similarity with general law it appeared as if it had been released from particularity. As such, it opened up a possibility for Hindu nationalist organisations to criticise the continued existence of Muslim personal law.

interpretations of the sources have resulted in a wide array of juristic comprehensions and a diverse assortment of legal schools. In India the majority of Muslims belonging to the Sunni fold adhere to law of the *Hanafi* School, while most Indian Shia subscribe to the doctrines of the *Atnah-asharia* sub-school (Kader 1998: 5).

¹⁵ The Hindu Marriage Act 1955, the Hindu Succession Act 1956, the Hindu Minority and Guardianship Act 1956 and the Hindu Adoptions and Maintenance Act 1956.

5.2 The Orientalist Legacy of Colonialism

An aspect of colonial discourse having direct impact on Muslim identity and the formation of Muslim personal law is available in the British depiction of Indian society as essentially religious (Nair 1996: 21). The colonial authorities discarded certain aspects of religious laws, such as the Islamic Law of Crimes, and progressively installed the Indian Penal Code and Code of Criminal Procedure that applied to all subjects irrespective of caste, gender, religion or class (Verma 2001: 124). At the same time, it abstained from codifying or interfering in the family laws of Muslims and Hindus. Instead of challenging practices, as in the case of the criminal code, the British administration, through this reluctance, enabled a notion of the family as an uncolonised and pure entity (Nair 1996: 181). From the British perspective, changes in family structures and relations could only transpire through intra-community initiatives. The personal laws were looked upon as naturally belonging to the domain of religion. As a result the family symbolically remained the only untouched and ‘pure’ quarter of Indian society; a seed to nationalist aspirations and an autonomous sphere encircled by, yet beyond, foreign influence. It is interesting, at this point, to interpose Spivak’s comment on the reversal of imperialism (1996: 164). The postcolonial nation institutes itself as a rejection of the old system—in India’s case the ‘originality’ involved among other things democracy, national identity and secularism. According to Spivak there is, however, a space that remains untouched by the reversal of colonialism, a space equivalent to that which did not establish an ‘agency of traffic with the *culture* of imperialism’. In our case, the family emerges as an entity regarded as beyond colonisation and, hence, afar from the need of decolonisation. Another noteworthy aspect of the British hesitation to interfere with family laws was that the meaning of religious laws and personal laws became interchangeable (Nair 1996: 181). This arrangement was a novel phenomenon, since prior to colonialism the entire legal system had been derived from religious laws.

According to Deshta, the urge for uniformity within the legal framework ought to be apprehended as a brainchild of independent India (2002: 2). I would, however, like to question this proposition by making a historical reference to policies enacted during British colonialism. Although the British administration did not implement or foster the introduction of uniform laws concerning family matters, the idea emerged during the colonial period. The British did introduce a notion of uniformity through its gradual codification of procedural and criminal law¹⁶. An additional, but less apparent, uniformity was attributed to the personal laws of Muslims and Hindus. The British courts had initially entrusted Brahmin priests and Muslim jurists as legal experts in cases involving their co-religionists. It changed in 1864 when the legal system was restructured and Hindu and Muslim law officers were debarred from their service within the courts (Nair 1996: 30). Thereafter the personal laws of the religious communities were entirely interpreted by British judges in agreement with translated manuals and available

¹⁶ These are the Code of Civil Procedure (1859), the Penal Code (1860) and the Code of Criminal Procedure (1861).

precedents. The bodies of religious law were shrunk into texts cut off from the surrounding context (Galanter & Krishnan 2001: 273). Scriptural depictions became elevated into a dominant position within the sphere of jurisdiction, resulting in an official muting of local and liminal customs. The reorganisation of the court system, hence, elevated certain interpretations into a dominant position.

The British notion of Islamic law as static and inflexible aided the forging of communal sentiments and identities. To counter the British perception it seems necessary to exhibit the various perspectives on Muslim personal law. As Hasan has shown, there was a lucid debate between Muslim scholars in post-Partition India whether to adopt a conservative or reformist position on Islamic law (2001: 248f). Should it be regarded as beyond interference and modification or considered possible to situate historically and adjust to present circumstances? Another apt example of conflicting readings is the ongoing debate on the need to reform Muslim personal law (see for example, *The Telegraph* 10 May 2005; *Frontline* 21 May 2005). The discussions have in the last years mostly revolved around the use of triple *talaq*¹⁷, but also other issues, such as polygamy and maintenance, ignite disputes. Islamic law in the Indian context should, hence, not be conceived as an inert entity. The most dominant interpretation since the mid-1980s has been that embraced by the AIMPLB, which has meant that the main objective has been to preserve and protect—not reform. Each attempt to change or abolish Muslim personal law is perceived as part of an assimilation strategy (Quraishi 31 Jan 2005). The organisation’s role is, however, constantly debated and contested within various strata of the Muslim population. Since the beginning of 2005 both a separate Shia Muslim Personal Law Board and Women’s Muslim Personal Law Board have been established. The character of these discursive struggles is, however, informed by the framework of structural and contextual limitations. That is why it is vital to analyse the controversy stemming from the Supreme Court case on Mohammed Ahmed Khan v. Shah Bano Begum in 1985.

5.3 Shah Bano – Politicising Muslim Maintenance

The Shah Bano case refers to a lawsuit filed by a Muslim woman seeking maintenance from her former husband under section 125 of the Code Criminal Procedure and his subsequent appeal heard in the Supreme Court. The ‘individual’ background to the litigation was a story about how Shah Bano had been evicted by her husband from their joint home in 1975 without receiving sufficient compensation or alimony. Therefore, she filed a petition to the criminal court system, requesting maintenance at the rate of 500 rupees per month (Das 1995: 94). Shortly afterwards the husband divorced Shah Bano by uttering an irreversible *talaq* (male divorce), which is acknowledged by the Muslim personal law. By doing this, he could justify the suspension of further alimony, since Shah Bano was no longer considered his wife. If we, however, widen the perspective

¹⁷ Triple *talaq* might be defined as the (male) declaration of divorce three times at the same occasion, which according to the present application of Muslim personal law ends the marriage.

we find that the general backdrop to the case might be located in two preceding cases, wherein divorced Muslim women had been admitted maintenance under section 125. Orthodox segments within the Muslim population regarded this as an encroachment on minority rights (Hasan 1998: 74). When the Shah Bano case reached the Supreme Court it had, as a result, developed into something more than solely a personal dispute. Could the Code of Criminal Procedure outdo the *shariat*? What originally was submitted in 1978 as an appeal for adequate maintenance, in other words, gradually evolved into a fundamental dispute regarding the applicability of section 125 to Muslims. It became ‘a signifier of issues which touched upon several dimensions, including the nature of secularism, the rights of minorities and the use of law as an instrument of securing justice for the oppressed’ (Das 1995: 95).

Adding fuel to the mounting controversy was the remark by the five judges—who were all Hindus—on the need to progress towards a common civil code¹⁸. They also made explicit attempts to interpret Islamic law and its prescription regarding the maintenance of divorcees. The Supreme Court judgement in April 1985 corresponded to the tacit tension of general law and the separate bodies of personal law. As such it became a potent intersection for political contest. It, in addition, touched upon a growing insecurity among Muslims regarding the rise in Hindu Right influence. The court’s verdict pronounced the validity of the Code of Criminal Procedure also in cases involving Muslims and as such endorsed the earlier High Court decree that Shah Bano had the right to maintenance. What was exceptional in the treatment of the case was that interventions of external parties were allowed; the construal was not limited to the litigating parties, but the Supreme Court openly commented upon suggestions made by orthodox Muslim organisations, such as the AIMPLB and the Jamiyat ‘al-*ulama* (Pal 2001: 31).

In the aftermath of the verdict hundreds of thousands of Muslims across India participated in rallies in support of the Muslim personal law objecting to the Supreme Court’s judgment. In response to the widespread and substantial agitations the Congress government passed a bill annulling the court verdict in May 1986. In its place the Muslim Women (Protection of Right on Divorce) Act was introduced. It stipulated that the legal responsibility of a Muslim husband—when the marriage was made in accordance with Muslim law—is limited to a period of three months. This came to be looked upon by many, including both supporters of the Hindu Right and secular-minded Indians, as a concession to the orthodox Muslim leadership. Many also saw it as a political strategy aimed at securing the support from Muslim voters or the so-called ‘Muslim vote bank’. The decision, to discard the verdict and replace it with the Muslim Women Act, should probably be conceived as related to a general tendency of the Congress to make electoral sensitiveness the primary guideline, while dealing with policy issues linked to Muslim personal law (Hasan 2001: 155). The decision, however, appears to have justified the interpretation propagated by orthodox Muslim organisations. It was, in other words, a remission to orthodox groupings and lead to a cementat-

¹⁸ ‘It is also a matter of regret that Article 44 of our constitution has remained a dead letter’; ‘A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies (AIR 1985 SC 945; cited in Kader 1998: 105).

ion of a specific definition of the substance and formal boundaries of Muslim personal law. It stalled potential reforms directed at the uplift of women and gender equality. The explanatory variable to the controversy should not only be sought in the political climate of the 1980s, but as suggested above, in the vagueness inscribed into the Constitution as well as in the activities of the colonial state.

6 The Blind-Alley of Gujarat

To be a good Muslim you need proper education, a little bit of economic stability, a little bit of propagation and sense of responsibility to our family and society. These things will make a good Muslim. The communal riots have made good Muslims bad Muslims. We have created hatred among ourselves and this hatred will lead us nowhere. (Anonymous)¹⁹

The most tragic symptom of communalism, since the post-Ayodhya rioting, was ignited in early 2002. From late February to May, nineteen out of twenty-four districts in the western state Gujarat evolved as the scene of near pogrom-like atrocities directed against Muslims. During this period a minimum 2,000 Muslims lost their lives and more than 100,000 had to leave their homes and reside in refugee camps (Concerned Citizens Tribunal 2002: 121f). The backdrop to this extensive brutality and bloodshed was a ferocious incident taking place in Godhra, a minor city in the eastern part of the state. In the morning of 27 February a train coach was set ablaze with fifty-eight passengers inside, not long after it had left Godhra train station. Someone had pulled the emergency handle and shortly thereafter the carriage was put on fire. The assumed motive is that some of the passengers, soon identified as VHP-activists returning home from a political congregation in Ayodhya, had harassed Muslim vendors and a Muslim woman on the train station. The perpetrators were promptly branded as Muslims living in the adjacent area, where the majority of station hawkers had their homes.

The rumour of the carnage in Godhra spread rapidly raising fear of retaliation among Muslims. Then Union Home Minister Lal Krishna Advani swiftly deemed the act as being orchestrated by Muslim extremists and Pakistan's intelligence service ISI, while Gujarat Chief Minister Narendra Modi designated it as genocide (Punwani 2002: 45). These statements were made before any investigation had been conducted. The morning after, the people of Gujarat woke up to a statewide strike initiated by the VHP with support from the state government. Although many of the dead passengers did not live in Ahmedabad—Gujarat's main city—the bodies, which included women and children, were brought to Sola Civil Hospital for a religious ceremony arranged by the same organisation (Concerned Citizens Tribunal 2002: 118). The placard of the local Hindi newspaper *Sundash*, in addition to a headline on the arson, exclaimed that '10-15 women had been dragged away by a fanatic mob from the railway compartment' (Women's Panel 2002: 304). During the entire 28 February large mobs, consisting of angered Hindus, attacked Muslims throughout Gujarat leaving hundred people perished by nightfall (Engineer 2002: 19). In contrast to these fatal assaults staged against

¹⁹ For obvious reasons the two interviewees referred to in this chapter have been ascribed anonymity.

Muslim neighbourhoods, both the involvement of foreign agencies and the allegation concerning abductions were sheer fictions. No Hindu women had been abducted or raped and the premeditation of the sad event in Godhra has been severely questioned in many investigations—including the interim version of the Banerjee Commission report (*The Telegraph* 18 Jan 2005). There is, however, no ambiguity surrounding the violent riots targeting Muslims that in the following days spread all around Gujarat like wildfire. In the first day of violence, a curfew were imposed in twenty-six towns and cities, including places previously untouched by Hindu-Muslim enmity (Parshuram 2002: 26). Trucks belonging to Muslims were stopped on highways and set ablaze. The crowds entering Muslim neighbourhoods were equipped with petrol bombs, gas cylinders and swords, looting, killing and destroying.

In commenting the deadly retribution on the bodies of innocent Muslims, Chief Minister Modi described the ongoing vengeance as natural since ‘every action has an equal and opposite reaction’ (*The Times of India* 2 March 2002). The hostile brutality that fell upon Muslims was, hence, portrayed as a spontaneous and likely reaction, whereas the Godhra tragedy became depicted as a calculated act by Muslim extremists. The well-organised coordination of attacks on Muslim areas does, however, convey a different picture. As mentioned above, the perception of the fire in Godhra as planned, and accomplished with foreign assistance, was disseminated almost instantly by the Gujarat government and the government at the centre—both dominated by the BJP. Many Muslims in Gujarat have resultantly told stories narrating widespread demands on them to ‘return’ to Pakistan (Human Rights Watch 2003: 34). The label of terrorism was attached and discursively linked to deeds carried out by Muslims. At the same time, Hindus were portrayed as simply responding in an expected and justified manner. Here we, once again, encounter the reproduction of a dichotomy between Muslim and Hindu behaviour. Violent conduct by Muslims cannot be impulsive, since there is an emblematic Muslim reaction, exposing their aggressive, subversive and plotting nature. As Engineer has underlined, the violence in 2002 should not be regarded as an isolated response to the Godhra incident (2002: 16). The boundary delineating the majority community from religious minorities has been progressively reinforced through recurring outbreaks of communal violence against minorities since the 1980s (Varshney 2005: 99). There has also been a progressive infusion of Hindu Right influence in state bureaucracy and civil society. Since at least 1998, Gujarat has been experiencing a gradual communalisation of its state apparatus, as affiliates of the Hindu Right have been installed at central positions (Varadarajan 2002: 10).

Although all corners of Gujarat were affected by violent rioting, Ahmedabad became its epicentre. In its report, the *Concerned Citizens Tribunal* (CCT) lays down that in the cases wherein Muslim localities were attacked, sometimes under constant siege for eight hours, the mobs consisted of thousands of partakers (2002: 25). In the Ahmedabad slum Naroda Patia, where over hundred Muslims were burnt to death in front of the police, the number of attackers has been estimated as numbering 25,000 at one occasion (Engineer 2002: 21; CCT 2002: 39). The CCT report furthermore asserts that most participants as well as the

leaders of the mobs seem to have been affiliated with Hindu Right organisations (2002: 28). The assaulting crowds were carrying detailed address lists marking out Muslim homes and shops. In an interview held with one of the persons leading the relief work in Ahmedabad, I was told that only those Muslim shops, which had paid municipal tax were attacked (anonymous). Other similar accounts, regarding lists from state authorities being employed by the attacking mobs, circulate and are verified by the fact that establishments with Hindu owners were left unscathed.

Several commission reports, including two separate accounts by Human Rights Watch (HRW), bear witness to the complicity of state authorities as well as the police (2002: 21ff; 2003: 27ff). In numerous cases the police stood passively by, watching Muslims get killed. In a few cases police officers have been accused of assisting the attackers, even partaking in the killing of Muslims themselves. Instead of firing at the mob in attempts to disperse it, the police pointed their guns towards the attacked Muslims. Partiality of police is not, however, a distinctive occurrence in Gujarat. The same pattern unfolds in many other instances of communal violence (Khalidi 1998: 29f; Brass 2003: 65). The scale of violence taking place in front of present inactive policemen was quite obscene: it beset human bodies, personal belongings, property and sacred places. Men, women and children were butchered with swords, burnt to death and forced to witness the killing of family members. Thousands of homes were looted, demolished and reduced to ashes (CCT 2002: 27). A substantial number of religious places, such as mosques, graveyards and tomb shrines, were desecrated or demolished (anonymous).

Apart from the unparalleled scale of violence witnessed in early 2002, the communal aggressions also were unique in their indifference to distinctions between elite and low/middle class Muslims. An illustrating example is the killing of the past Congress MP Ehsan Jafri who, despite repeated phone calls to the police and state authorities, was burnt to death with his family and neighbours seeking refuge in his house in Ahmedabad on 28 February (*The Hindu* 1 March 2002). The targeting of elite Muslims has further intensified the immense ghettoisation of major cities in Gujarat²⁰. In Ahmedabad affluent Muslims have either permanently moved to areas predominantly inhabited by other Muslims or bought an additional house for a secure retreat if violence erupts once again (anonymous). This tendency towards ghettoisation has been in progress in urban districts for quite some time, but today people from rural and semi-rural areas also migrate and transfer their homes and businesses to larger cities (anonymous).

Another novelty was the malignant treatment of women. In previous instances of communal violence in Gujarat, women have been marginally affected, but this time they frequently became the main target (anonymous). There was a systematic recurrent exercise of sexual abuse against women (Women's Panel 2002: 296). It is hard to illustrate the experiences of women without getting a feeling of sensationalism, but this is entirely due to the excessiveness of brutality. The testimonies from survivors narrate an image that contains gang rape, mutilation of

²⁰ The concept of ghetto is here appropriated as the combined spatial and social confinement of a group, which is perceived as homogenous (Bauman 2001: 116f).

breasts and sexual organs, objects inserted into women's bodies, the burning alive and hacking to death of women (HRW 2002: 27ff; CCT 2002: 38ff). The acts of rape and other kinds of sexual violence were so public—and the stories about them so widely disseminated—that Dutt, while interviewing women in refugee camps, came across an openness almost cancelling customary feelings of shame and silence (*Outlook* 13 May 2002). In an interview with a Muslim woman involved in the local women's movement, I was told that a high number of widows and unmarried rape victims got married in relief camps (anonymous).

What has ensued since the events almost three years ago? Perhaps the most striking manifestation of continual partiality of state authorities in Gujarat is discernable in the disparate legal handling of the Godhra arson and the subsequent violence²¹. While standard criminal indictments have been filed against those charged of participating in assaults on Muslims, the 123 persons arrested in the Godhra investigation have all been treated according to the special warrants made possible by the Prevention of Terrorism Act (POTA) (HRW 2003: 32). These warrants included the right to keep suspects in custody for three months without charge. POTA was issued promptly by the BJP government after 11 September 2002 and as summarily withdrawn with the inauguration of the UPA government last year. The removal of the act does, however, not mean that the POTA charges filed in Gujarat will be instantly reversed, since these were issued prior to the deletion of the act. An additional example of state bias might be illustrated by the imbalance in approved bail applications. In March 2003, 65 out of 68 arrestees suspected of partaking in the Naroda Patia violence were released on bail. When 56 of those detained for involvement in the Godhra arson demanded the same treatment one month later not a single appeal was accepted (HRW 2003: 33). The police and the judiciary in Gujarat continue to persist in their claim that the massacres, taking place after the initial incident, lacked the pre-planned and calculated arrangement, which they ascribe to the criminal operation in Godhra. No Hindu has, as a result, been indicted under POTA since the aggressive actions against Muslims are regarded as entirely 'spontaneous and unorganized' (HRW 2003: 7). It is religious creed and not criminal conduct that determines who fits the epithet 'terrorist'.

²¹ The post-Gujarat developments display a lot of similarities with the large-scale anti-Sikh riots flaring up in the wake of the assassination of Prime Minister Indira Gandhi in 1984. The twenty-year long process of convicting those responsible has been characterized both by accounts of police involvement and a spartan number of legal repercussions (*Frontline* 4 Jan 2003).

7 Conclusion

The political context has, as a result of the emergent Hindu Right influence, since late 1980s forced a new imagery on Indian Muslims. It is equally material and symbolic; conflicts are both manifest in concrete acts of violence and in the struggle to possess the power to define identities and community boundaries. I have above suggested that in order to understand the position of Muslims within contemporary Indian polity and society, we need to grasp contemporary currents as well as the dynamics at work in the institution of the Indian nation state. The Partition seems to have been a Derridean ‘coup de force’ (1992: 11*ff*), a moment wherein a novel political order and authority became instituted as ‘violence without a ground’. The Indian nation state obtained legitimacy by portraying itself as a reflection of a given objective reality. India was, in opposition to Pakistan, depicted as a secular, tolerant and truly democratic state accommodating cultural and religious diversity. The constitutive moment was inscribed with authenticity by excluding and suppressing anti-secular discourses and, thus, became a simulacrum²² lacking proper foundation. The rising endorsement of Hindu nationalism since the 1980s might be regarded as a revisit or return of that which was sought to be excluded in 1947. Other signs on the failure to fully naturalise secularism are detectable in state categorisation and in the ambivalent phrasing of the Constitution. Another argument, projected in the analysis, is that the Indian state, through its various schemes of categorisation, has aided the production and reproduction of cultural diversity based in essentialist thinking. State classification actively neglects the dynamic and complex composition of society by misreading the texture of social divisions. By obscuring the fluid nature of identity the state oversimplifies society. One of the most revealing areas is located by probing into the field of preferential treatment. By attributing the perimeters of the term ‘minority’ with a religious quality and by choosing to diffuse empowerment through policies propelling affirmative action, a specific demarcation of collective identities has been enacted.

Although communally differentiated identities both caused and enthused sentiments culminating in Partition, the value of religious pluralism and cultural diversity became recognised and inscribed into the Constitution. The prospect that the religious minorities might face various pressures to assimilate was taken into consideration while installing the new political order. What post-Independence history reveals, however, is that a constitutional sanction of equal treatment does not mechanically coincide with economic, social and political equality. Especially the last twenty years has been bearing witness to a persistent imbalance between the Hindu majority and the religious minorities. The combine of socio-economic marginalisation and the shrill enunciation of Hindu nationalism have imposed

²² In the Platonian sense of an identical copy to which there never existed any original.

severe external pressure on the Muslim population. The orthodox Muslim leadership and the Hindu Right both share the will to silence and erase syncretic and complex versions of religious identities. The transcending quality of identities not easily designated either as Hindu or Muslim threatens to undermine the scheme wherein the 'Other' of a monolith homogenous 'Hindu' identity is crystallised effortlessly. The primary effect of denying liminal and transcending categories of identity has been the cementing of primordial articulations of identity and the pitting of these against each other. What the Hindu Right has succeeded in during the last 20 years is to invest a widespread requisite for individuals to define themselves as either belonging to the religious majority or the minorities.

As illustrated in the analysis, the shift of focus away from material conditions and onto inter-communal relations effectively subordinates internal reforms. An example is the staling of equity between men and women. Since the primary antagonism orbits around the supervision and reinforcement of communal boundaries, gender issues become secondary. In the Shah Bano case, the political contest elevated an orthodox section into a position where it retained a function as interlocutor of the entire Muslim population. On the other side of the fence, stood the Hindu Right, propagating against Muslim narrow-mindedness and sectarian tendencies. The Supreme Court judgement and the subsequent political mobilisation of Muslims generated an environment wherein the frontiers separating communal identities along a religious axis were reinforced. What the debate on the verdict exposes is the existing tension between state attempts to, through the realm of law, ascribe values to its citizens, while still clutching to legal pluralism in the case of personal laws. It additionally lays bare the various ideological projects to define and delineate the 'Muslim community'.

To comprehend the salience of Muslim community as an appealing collective identity *for* Muslims, I would like to invert Young's remark that '[j]ust as community collapses, identity is invented' (1999: 164). It appears as if the proper analysis of the experiences of Indian Muslims is exactly the opposite: a disintegration of secular national identity indicates the return of community. If identity, in its utility as a substitute for community, means 'standing out' or 'being different', as Bauman claims (2001: 16), it seems appropriate to assert that community in the Indian context functions as a proxy for a failed or absent national identity. Let me be more precise, when Bauman proclaims identity to be a 'phantom of self-same community' and to sprout 'on the graveyard of communities' (*ibid.*), the argument appears to be reversed in the present case. The 'sameness' in Muslim 'community' grows on top of the dead bodies of multiple and fluid identities. The motivation to associate oneself with religious community does not grow out of an urge to stand out, but is rather an escape from the cemetery where the inclusive national identity lies buried.

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