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Assessment of research policies and **resources**



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WAYS OF POWER, MINORITIES, AND KNOWLEDGE ON MINORITIES: AN ASSESSMENT OF RESEARCH POLICIES AND PRACTICES

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WAYS OF POWER, MINORITIES, AND KNOWLEDGE ON MINORITIES: AN ASSESSMENT OF RESEARCH POLICIES AND PRACTICES¹

I. Introduction

Empires or imperial states had always an awareness that several communities, some major some minor, inhabited the imperial societies, and besides the subjects professing the religion of the state there were other faiths and other religious communities as subjects of the empire. These other groups, “the minority religious communities”, would at times get special favourable treatment from the emperor and imperial administration, at times subjected to harsh treatment, particularly when suspected of disloyalty or of hiding wealth. The histories of the Ottoman, Austro-Hungarian, Mughal Empires (the empires of late Middle Ages and the early modern age), bear this out. We can also say that while this was a situation bearing out the existence of proto-minorities, yet the societies and states were not still majoritarian societies and states, and official majority-minority situation and policies did not exist. We can call this policy and situation as being produced out of a reason of the state (*raison d’etat*). This reason of the state had more to do with considerations of empire’s security, occasional requirements relating to revenue and taxation, and the anxiety that the divine power the empire represented must not be threatened by any other notion or belief in divinity. This was the divine reason that mixed with imperial reasons and produced the reason of the state. Even if the case in question was not an empire, but a monarchy, etc. it would always and invariably be a strong centralised state. Reasons of state, laws, centralisation (which meant the gradual formation of standing professional armies) went together.

However what we are discussing in this report is not an issue exemplifying the reason of the state, but *reason of government* - minorities being produced not as consequence of *raison d’etat*, but out of governmental history. Governmental reason has relation with state reason, they overlap, but governmental rationality has its specific ways of functioning, such as reasons of managing culture, turning an anonymous mass of population into identifiable, governable population units, laying down norms of representation through elections, combining the policy of guaranteeing rights with ensuring methods of control of the subjects who are becoming citizens, an agenda of creating of a society that would be synonymous with a governable whole, adding political value to number (statistics), etc. etc. Security, taxation, and revenue raising

¹ We thank EURASIA-Net Partners and Associates for their inputs to the preparation of the paper.

still remain important, but they now become parts of a vast repertoire of governing methods and technologies of rule. The significant question here is: Where does the nation stand in this division of state reason and governmental reason (and transformation from the former to latter)? We can guess the answer, namely, that the nation as a form of political society stands on the divide, the intersection of the two. It means that it builds on both kinds of reason. Considerations of national security, national representation (known as national will), and national administration and governance - all these three factors predicate the emergence and the perpetuation of the modern minority problematic. There is one factor however that marks the histories of all these three considerations: it is the factor of the colonial past, which is a part and parcel of the nation question. In this respect the histories of Europe and South Asia bear similarities. Both regions carry the *post-colonial predicament*, which is as follows: how to democratize the nation/region to such an extent where minority as category of powerlessness vanishes (that is numbers lose political value), while we all know that democracy and modern nationhood having roots in the colonial past keeps on creating what may be called fictive ethnicities, majority-centric values and passions, and hierarchic structure with regard to access to resources - in short the minority question.

We must keep in mind these dynamics in order to appreciate how knowledge of minorities has been produced, what and how policies have guided the research agenda, and how changes in these policies have occurred. While this report deals with the Indian situation in particular, readers of this report will find similarities and commonalities with situations in other South Asian countries as well as references to Europe. Equally significantly the readers will realize the closeness with various European situations in which the once colonized *other* finds its past as well as possible futures.

Thus as we begin this report with a brief description of the India's colonial past whence began the project of "knowing the minorities", it will be good to recall the European situation in order to be cognizant of the likely directions that the post-colonial project of "knowing the minorities" can take. We must not be astonished at the fact that the compulsion to "know the minorities" is same in both cases that is India and Europe - namely, retaining liberal democracy, nationhood, and encouraging trans-national links. The question is same (of course again broadly speaking): Can liberal democracy abolish the "minority question" while retaining its principal modes? This question propels most of the researches. At the same time for us in writing this report the more specific question will be: What specific rationality today determines the existence of the minorities as a problem and thus what is the specific reason guiding today's researches on minorities?

Europe as we know produced its minorities out of the long religious wars, Napoleonic wars followed by other national wars, collapse of the two empires (Austro-Hungarian and Ottoman), and then the inter-state wars of the

nineteenth and twentieth centuries. The process continued till the last decade of the twentieth century, when several national minorities emerged in the wake of the collapse of socialism and the transition in Eastern Europe. Once again wars followed. And then new minorities emerged everywhere in form of the itinerant communities, indigenous population groups, immigrants, etc. indicating at times a return of the minority question. Yet we must also remember that this history has been marked by several attempts to innovate conflict resolution mechanisms (such as partition, different autonomous arrangements, international and regional guarantee mechanisms, treaties, inspection, standard setting exercises by the European Union, courts of human rights, charters of rights, OSCE functions such as commiserating on the observance of human rights norms, particularly minority rights, punitive provisions, Council of Europe mechanisms, etc.). Treaties to protect minorities have marked the last two centuries. In many cases new constitutionalism also has set norms and mechanisms for minority protection. In terms of relevance of this history, we can say that (a) the European experiences of the simultaneous expansion of nationalism and democracy, (b) recognition and protection of minority rights in the wake of this double expansion, (c) regionalization of the issue and mechanisms, and (d) the emergence of a body of laws - present for the post-colonial world a likely scenario towards which the minority question may evolve in countries like India. Yet, in spite of all these developments, the nationalist legacy and the colonial residues have remained strong in Europe. Added to these two factors now there is a renewed concern with security often affecting minority communities. Multiculturalism as a consequence is now regarded as having mixed success. No wonder, studies on minorities, concerned policies, definitional quibbles, constitutional-juridical readings, legal commentaries, sociological researches, economic studies, analyses of cultural institutions, linguistic studies, and finally the security scenario - all these studies propelled inter-governmental programmes, inter-university researches, various foundations, research grant schemes, human rights bodies - bear the marks of the ways the minority question has emerged in Europe in the last two hundred years, and re-emerges today. We can also see how these studies bear the mark of the shifting locus of rationality - from reason of the state to governmental reason (a transformation we have briefly portrayed just now), also an increasing mix of the two. As a consequence we have also new lights on issues of sovereignty, rights, welfare doctrine, and rule of law - for after all the minority issue hurts most the established ideas and notions on all these four.

The shift in locus from state reason to governmental reason is aided by a whole host of factors including of course the Constitution and a body of laws emanating from it and also a growing albeit unenforceable repertoire of policies, among other things. The states of South Asia nevertheless play a part in this great transformation and are seen to deploy a veritable mix of law and policy. The Constitution and laws aim at accommodating the minorities either by redrawing and reorganizing the administrative units in a manner that they

no longer remain reduced to a minority or by conferring some measure of autonomy on them or a combination of both. The formation of hill states in India's northeast particularly during 1972-1987 is a case in point. Reservation of seats and posts in state-run educational institutions and government offices was viewed by the Constitutional fathers of India as a temporary measure which according to them will remain in force till such time when the Scheduled Castes, Scheduled Tribes and Other Backward Classes become equal partners in the nation-building enterprise and gradually an integral part of the body politic. These measures are meant for alleviating their conditions till such time they come socially and politically at par with others. The quota of reservation has already become a bone of contention in a country like India. While there are many (including the highest-caste Brahmins of Rajasthan) who want to be certified as a Scheduled Caste, there are others who although recognized as Scheduled Caste (like the Gujjars of Gujarat and the Rajbangshis of Assam) want to be recognized as Scheduled Tribes, for, this according to them would make them face relatively easier and reduced competition for the quotas earmarked for the more backward Scheduled Tribes. Besides in India, caste 'untouchability' has been abolished by the Constitution and made a 'punishable offence'. Such anti-discriminatory laws are also supposed to play a role in incorporating the minorities into the larger body of which they may remain a minority but only without becoming a politically volatile category and any threat to it. While the Constitution and the body of laws are enforceable barring some exceptional circumstances, policies are not. A new trend is discernible in the countries of South Asia. Since the 1990s, these countries seem to govern their minorities more through policies and less by laws. We now have a flurry of policies aimed at securing and protecting minority interests. National Rehabilitation Policy, National Rural Employment Guarantee Scheme are two such examples in present-day India aiming at providing relief and rehabilitation to the internally displaced persons² and employment to the rural poor in India.

We can see the same shift taking place in India, how imperial and state reasons have gradually given way here also to governmental considerations, how the two considerations have overlapped, and how knowledge of minorities produced out of scholarly investigations, administrative inquiries, government policies, funding strategies for beneficiaries, mega research programmes, has followed the trail of power in form of state and governmental rationalities. But we must equally appreciate that not all knowledges are primarily marked by considerations of policies and governmental reasons; there are minor knowledges on what is conventionally termed as the minority question - knowledges that break the boundaries of the historical liberal project of "knowing the minorities" and can give us rare glimpses into possible solutions to the most vexing question of democratic deficit, namely how to redress the

² By all accounts, the Scheduled Castes and Scheduled Tribes disproportionately constitute the bulk of the internally displaced persons in India.

inadequacy of democracy, which tries to solve the minority problematic through governmental mode. But this further means that we cannot make a neat typology of these encoded forms of knowledge. Such a classificatory exercise while serving some heuristic purpose should not be taken very formally, because research policies and the resultant knowledges may reflect the same state of mixed reasons and legitimacies.

The mix of rationality we are referring to was evident from the first well-known tract or report in India on “the minorities”. Lord Mayo, who on assuming the post of Governor General and the Viceroy of India (1868) had expressed his determination to “put down Wahabeeism in India as (he) had put down Fenianism in Ireland”, had engaged W.W. Hunter to conduct an inquiry into whether Muslims were bound by their religion to rebel against the Queen. Mayo’s brief to Hunter was clearly around the “vexed question of loyalty” in those transitional times of post-Mutiny India. Yet Hunter cautioned against war-like measures adopted by a civilian administration against a section of subject population. But as town after town on the frontier on the West in the last decade of the nineteenth century was razed to the ground and the frontier was ablaze in those closing years, of the colonial officials Sir William Hunter was one of the first to realise this when he wrote of the “chronic conspiracy within our territory”. Any inquiry into the dynamics of knowledge and power in the colonial project of knowing the minorities must therefore begin with W.W. Hunter, the Director General of Statistics, who had written on being commissioned by Lord Mayo, *Our Indian Mussulmans: Are They Bound in Conscience to Rebel against the Queen?* (1876, reprint 2002). Hunter’s work was quickly followed - in fact in little over 30 years - by the Morley Minto Report and the reforms the Report suggested in terms of instituting separate electorate for religious communities. After Morley Minto Reforms came other reports, commissions (notably the Simon Commission, 1927), recommendations, awards, and when the Constituent Assembly finally met in the backdrop of the Great Partition, the situation was marked by several competing discourses each backed by enormous scholarly outputs.

Researches on aspects such multi-cultural existence, presence of multi-faith communities, norms of protection, fundamental rights, rule of law, uniformity of civil code, linguistic minorities, indigenous population groups, high values of the nation, representational modes, violence on minorities, riots, virtues of majority strength, protection strategies such as reservation - were already on. The Constituent Assembly proceedings show the clash of various discourses and provide us with clues regarding ways in which subsequent researches would develop including those propelled by considerations of national unity, national integration, secularism, or regulated autonomy, as well as those propelled by liberal societal considerations of augmenting social capital and trust networks, enlightenment, managing political behaviours of communities, and improving modes of governance. Awareness in various forms remains: awareness of rights including women’s

rights, right to autonomy, fundamental liberties, of the need to democratize administration and most importantly the need to persist with rights based arguments in face of an overwhelming atmosphere of national (in)security, and finally an awareness of social justice most recently illustrated by the debates on the provisions for positive discrimination. All this is indicated by a still evolving juridical discourse (based on case laws, judicial interpretation, legislations, commentaries, constitutional provisions, and international human rights laws).

Yet this juridical discourse is as much legal, administrative, and political discourse also reflecting the continuing clashes over norms, resources, social and material spaces, and political opportunities. These clashes (particularly the accounts of the riots) are also biographies of political entrepreneurs who have risen through the ranks of community mobilisations; these are also testimonies of what is called, “opportunity hoarding” (a situation, when members of a categorically bounded network acquire access to a resource that it considers valuable, renewable, supportive of the network, and enhanced by the network’s modus operandi, and thus subject to monopolistic control), “the root of persistent or durable inequality”. As readers go through this report, they will see the footprints of the political scene on the ways knowledge has been produced in form of various discourses. To say the least, this phenomenon continues till this day, and what is to be noted in the present context of discussion is that the knowledge produced in this way becomes subsequently a part of the problem. Finally all these also demonstrate how governmental imperatives and rationality (as examples we can refer to all the issues mentioned in the preceding and this paragraph) that began with a specific *raison d’etat* (recall how Hunter was commissioned and what he finally wrote), now overwhelm researches and research policies. Our political imagination as a consequence is today severely constricted.

Readers will appreciate this point if they take particular notice of the institutional locations of these researches. The institutional story is significant in any comprehensive mapping exercise on production of knowledge on minorities, and formation of various discourses. The various governmental institutions in India on studies in social sciences (Indian Council of Historical Research or ICHR, Indian Council of Social Science Research or ICSSR, Indian Council of Philosophical Research or ICPR), social sciences associations (IHC, IPSA, ISC) have promoted a distinct type of research, marked by social science discourses. National human rights institutions (NHRC, NMC, and NCSC & ST and various state counterparts) have produced their distinctive type of knowledge, emphasizing socio-economic inquiries. There are some minority bodies (for details one can access CRG website - <http://mcrq.ac.in/inst1.htm> and <http://mcrq.ac.in/ad.htm>), which have produced a distinct rights-centric narrative of minorities. People have produced resource handbooks. Foreign academia has also been a prominent actor in this field, bringing in research paradigms that bear the mark of different liberal and neo-liberal thinking.

Finally human rights organizations (PUCL, PUDR, APCLC, APDR, etc.) foundations, particularly human rights foundations, have encouraged rights sensitive writings. These institutionalized knowledges reflect on property relations, state of legality and legitimacy, possibilities of autonomy, state of the rights discourse, anthropological views of communities, and their past and current histories. It is important to keep this map in mind because it brings out the contradictory nature of the situation: These institutionalized researches, almost all or at least the majority of them, begin with the assumption that India is a democracy, that *rule of law* exists; only the quality of governance is low. And then faced with the starkly physical nature of violence, dispossession, attrition, and the social war, they end with emphasizing the need to strengthen rule of law, while certainly suggesting some new governmental measures. In their attempt to comprehend the new social rationality (new in the sense of being post-colonial, independent, free, democratic, and encouraging the ethos of what is conceived of as civil society) that tolerates and reproduces discrimination, often pushing discrimination to dispossession, their tools are all old, marked by conventional governmental ideas. The ideal of governance, which can make up for the democratic deficit, remains the unreachable, always deferred, goal inspiring these researches. By the same logic, therefore, they remain caught up in the mix of *raison d'état* and *governmentality*, producing in the process a sense of what the sociologist Chetan Bhatt calls "hyper-governmentality".³

In making a research policy review that places South Asia in a comparative format involving European experiences, we cannot help but note that as policy makers throughout the world bid farewell to the twentieth century, they knew that the success stories (of regulated autonomy and protection of minorities by humanitarian interventions) were getting more and more restricted in their relevance in face of the massive tide of what they termed for lack of better words, "ethno-nationalism". The reports issued out of the Helsinki process are worried and complex, reflecting almost exactly the worries of a world that began one century back. Ethnic politics whether through more autonomy, or merger with neighbouring ethno-kin polities, or through outright secession, haunts all countries. With a century of understanding of "people" as a narrow collective definition of a people, countries do not know how to combine the two principles - of protection of minorities and self-determination (including the right of secession) of the people. President Wilson's self-determination was allied to *jus solis*, deriving from Locke's tradition of universal rights. This was mixed with the more romantic tradition of a nation marked by cultural commonalities of language, religion and history, and was further mixed up with the tradition of *jus sanguinis*, and the principle of collective rights of groups of peoples large and small who were now invited to participate in the dismemberment of the

³ Chetan Bhatt (2007): 'Frontline and Interstices in the Global War on Terror', *Development and Change*, 38 (6).

multinational empires and unions.⁴ Large parts of the globe thereafter have started pursuing the still unrealised dream of achieving polities based on homogeneous population. That has been Europe's legacy for the rest of the world including South Asia where minorities have clamoured for self-determination in face of state-induced ethnic intolerance, persecution and genocidal politics, ranging from mass expulsions to mass killings. Theoretically, at the heart of the problem lies the failure of Locke's principles of universality to take roots. With each break up of states and formation of new ones, new minorities emerge. One has to only take note of Russian minorities in Central Asia where out of 25 million Russians some 4 million have left for "home", others do not know where their destiny would take them. Geo-political frontiers have been bolstered by ethnic frontiers and ethnic peripheries, in the process creating landscapes of inequality.⁵ And yet, in face of the evident failure of the *universal* principles of rights and equality, the principles of self's right to recognition and creation of states on the basis of self-recognition, we are still thinking of somehow crossing this phase of "blood and belonging" after which the world of equality, universality and brotherhood would emerge. Actually, in spite of the fact that ethnic cleansing has been sanctioned by democratic public opinion, in as much in Bangladesh as in the Balkans during the Yugoslav secession war in the 1990s, on many occasions ethnic cleansing has been considered, and still is, a "deprecate, but inevitable event" on part of the policy makers and scholars of democratic regimes. Their hope, or illusion, is that ethnic, language, and religious homogeneity might settle the question of self-determination and secession, stabilizing the political map once and for all. Researches along the line of Dayton agreement thus carry the ghost of Versailles. If Versailles is remembered for the ghost of Locke that it carried on its shoulders, Dayton carried the ghost of Wilson. In this entanglement, there is an admission that local autonomy as a container of tensions may fall short of being the mark of a "constitutive people". And here in lies the crucial argument in terms of the agenda of a dialogic politics, namely, that it is the closure of a discursive situation on rights that provokes the new conversation. After all, does not this history of self-determination, which is much local and aspires to take on universal relevance, and fails repeatedly in realising that aspiration, become in this way instrumental in new dialogues? As we have indicated, to the neglected peoples and nations, self-determination came through anti-colonialism and not secession or a resolution of the minority question (which was undoubtedly a related issue but not the fundamental). Anti-colonial leaders such as Ho Chi Minh and Sun Yat Sen had pleaded with Wilson in Versailles to help them gain independence, declare a process of decolonization, and allow them to invent their own democratic forms. Wilson

⁴ On old and new theories of nationalism, Roger Brubaker, *Nationalism Reframed* (Cambridge, MA: Cambridge University Press, 1996). Also, Y. Tamir, "The Right of national Self-Determination", *Social Research*, 58, 1991, pp. 565-590

⁵ We borrow the term from the excellent book on Israeli politics of borders and boundaries, Oren Yiftachel and Avinoam Meir, *Ethnic Frontiers and Peripheries - Landscapes of Development and Inequality in Israel* (Boulder, Colorado: Westview Press, 1998).

expectedly could not oblige. Finally when at the end of the two wars through the process of de-colonization independence arrived in large areas on earth, it came as a fruit of a poisoned tree. Democracy and nationalism were decoupled. Independence came in form of partition. Minority issue became ethnic issue. Massive cross-border population movements ravaged homes, hearths, and settlements. Soon national independence turned into majority-centric politics and the long history of co-existence, tolerance, and accommodation was (at least temporarily) submerged in the new history of national hatred, "forgeries",⁶ and wars. This history has relation to, but different to a great extent from the history that Versailles had set in and had reached its apogee in Dayton.

Meanwhile in this period, our common experiences went ahead. Democracy was re-conceived in terms of protection (reflected best in the development of international human rights and humanitarian law). Thus the Convention on Genocide (1948), provisions on non-discrimination in the UN charter, the Covenant on Civil and Political Rights (1966), the Optional Protocol to Article 27, the Helsinki Final Act (1975), the ILO Convention on Indigenous Populations (1957), and various other conventions and enactments, identified the weak and dispossessed, and sought to give them protection including providing them with varying degrees of autonomy. In South Asia, as elsewhere in the de-colonised world, the strategy worked partially. While what we may call as new nationhood lapped up the protective strategy, studies are showing that democratic politics is re-appearing in regions and lands - whose features are not conflictive assertions, but a politics of understanding, justice, reconciliation and restoration of trust. This is a politics, whose roots are in a different history and whose contours are barely visible, but whose power is sufficient to lend imagination to a different project and to inspire the victims of discrimination to move along a different political morality. Typically historians and other researchers are lagging behind to unearth the history of this alternative spirituality.

In this interplay of European and South Asian experiences built around the colonial history and the post-colonial present, European researches on the issue of autonomy for protection of minorities have also attracted considerable attention in South Asia and elsewhere. In the context of the European experiences, the question may be asked, why do some forms of autonomy (at least seem to) work, and some prove unworkable and collapse? Can we have thus a broader understanding of the practices of self-determination in terms of a politics of accommodation? At the same time, we have to remember that, what is a success-story today may not remain so tomorrow. In South Asia Kashmir was a success-story in the sixties and seventies of the last century, but

⁶ Ivan Ivekovic uses the word forgery to explain the Yugoslav situation in his "Identity - Usual Bias, Political Manipulations and Historical Forgeries - The Yugoslav Drama" in Stefano Bianchini and George Schopflin (eds.), *State Building in the Balkans - Dilemmas on the Eve of the 21st Century* (Ravenna: Longo Editore, 1998), pp. 251-274

not in the nineties. The union of England with Scotland was till recently considered a success, but has to be re-negotiated anew. In this background, the works of jurists, constitutionalists, and other scholars on the various practised models and types of autonomy (including horizontal forms of autonomy), for instance in the principality of Andorra, a landlocked small unit of 450 square kilometers between France and Spain, in the eastern Pyrennes in Southwestern Europe, or the arrangements of the Gibraltar or of the Holy See, Greenland, or the Inuit lands in Northern Scandinavia, South Tyrol, Catalonia, Liechtenstein, or Scotland, and certainly not to leave out Belgium - all these have gained interest and attention.

In the background of the interaction of experiences of Europe and South Asia, this paper proposes to (a) make an assessment of the research policies and resources on the minorities of South Asia and argues that the current research boom in the field under review is seldom associated with any coherent research policy being followed in the region and (b) raise a few questions and issues that remain un-addressed in the existing body of researches and seeks to draw the outline of a possible research design that might guide future researches in South Asia with a view to provide them better Constitutional, legal and political protection.⁷ Besides, the paper is the product of a joint research exercise conducted in dialogical mode by the members and researchers of CRG and a draft of it was discussed in the EURASIA-Net Project Steering Group meeting held in Bolzano on 29 and 30 August 2008.

II. The Landscape of Minorities in South Asia and the Contemporary Research Boom on Minorities sans Central Research Policy

II.1 The Landscape of Minorities

Bangladesh

In Bangladesh the British had enacted for the Chittagong Hill Tracts (CHT), an area inhabited by the minorities, the CHT Regulation Act of 1900 that had been preceded by the Act XXII of 1860 whereby they had introduced indirect rule in the area by declaring it an administrative district. Introduction of such autonomy provisions was not uncommon in colonial rule when the colonial authorities had combined a variety of methods for administering the country. Thus, inner line regulations, declaration of excluded and partially excluded areas, quasi autonomy in land regulations and dispensation of justice were some of the methods that accompanied the introduction of rational administration over the entire sub-continent. The constitution of independent Bangladesh however does not recognize minorities as groups distinct from the

⁷ Please see EURASIA-Net “Stocktaking report” prepared by Javaid Rehman (Brunel University).

Bengalis; everyone is a "Bangladeshi". And though Article 23 enjoins upon the state to conserve cultural traditions and heritage of the people, again the purpose is to enrich "national culture". It was a situation of severe loss of autonomy compounded by the complexities of partition of 1947. The construction of the Kaptai dam affected about one hundred thousand people, inundated 400 square miles including 54,000 acres of arable land, rehabilitation and compensation was minimal, and the demographic balance also changed in a short period dramatically. In the Hill Tracts whereas in 1947 indigenous population was nearly 97 per cent, in 1991 the rise in Bengali population was from 2 per cent to 48.5 per cent. The re-introduction of provisions of autonomy through the Chittagong Hill Tracts Agreement in 1997 following the almost twenty year long insurgency goes halfway in ensuring the right of the people there to self-determination. Fiscal and economic autonomy is limited to taxation of local trade and items such as land and buildings, holding tax on industry, part of royalty from forest resources, fishing, supervision of local health, education, transportation. Autonomy in cultural affairs is predicated by the use of Bangla as the only official language. Yet, one must remember that this limited measure of autonomy, legally but not constitutionally ensured, is not available to other minorities spatially concentrated or dispersed. Thus, for indigenous people in other areas of the country, or for religious minorities dispersed in the country, (as in the hill areas) the constitution does not provide any measure of economic, cultural, or political autonomy. On the contrary, the country still retains the act related to vested (earlier enemy) property whereby an unaccounted amount of land (nearly ten per cent of total cultivated land) has been transferred by force or threat of force from the Hindus to many Muslim landowners/peasants/speculators and profiteers. In an overwhelmingly Muslim and Bengali country whose constitution proclaims Islam and Bengali as two main characteristics of the nation, the state only exceptionally recognizes rights and identities of other groups. The land rights of plains and hill indigenous people are often un-recognized. Independent surveys complain that the number belonging to these groups is often underestimated. The 1981 census estimated the number to be 6,23,216; the figure was revised in 1989 to 8,97,828, and the census of 1991 estimated the figure as 12,05,700 - 1.13 per cent of country's total population. The land wealth (often the only wealth) of these groups further is now whittled down by market forces, such as the ADB (Asian Development Bank). Displacement, deforestation, dispossession of land, and the very weak nature of decentralization symbolized by the frail local councils, provide the backdrop in which autonomy remains provisional, exceptional.⁸ Certain powers have been given or conferred and devolved. But the power to self-rule, the essence of political autonomy, remains unrealised.

⁸ On the incomplete nature of the accord and the implementation acts, see the deliberations of the peace audit on the CHT in Jehan Perera (ed.), *Report of a Peace Audit on Nagaland and the Chittagong Hill Tracts*, SAFHR Paper 4, Kathmandu 1999; on land rights of non-religious minorities, see the detailed discussion in Philip Gain and Shishir Moral, "Land Rights, Land Use and Ethnic Minorities of Bangladesh", SEHD, Dhaka, 1998.

Nepal

In Nepal, about 20 per cent of the population belongs to hill groups such as Magar, Tamang, Rai, Gurung, Limbu, Sherpa, Lepcha, Chepang; there are the indigenous people of the Terai, the *janajatis* of the foothills, such as Tharu, Dhimal, who may constitute another 10 per cent of Nepal's 18 million population. The Muslims also live in the Terai region. Religion-wise, Hindus constitute 86 per cent; the Buddhists are 8 per cent and Muslims about 4 per cent of the people. Nepali is the first language of about 50 per cent of the population, and in 54 districts out of a total of 75, it is the first language.⁹ Yet in this polyglot and poly-ethnic society, dominated by the upper castes and the Kathmandu valley, there is little presence of any protective measures for minority rights. One observer has reflected on the process with these words,

The politics of constitution making was characterized both by an unprecedented euphoria and by a sense of frustration among ethnic communities...though among the nine members of the Constitution Recommendation Commission...six were Bahuns, and three were one each from the three ethnic communities - Newar, Lama and Tharu. Yet, they could not be called as ethnic representatives because of their own social status and recognition as politician (Lama), Attorney General (Tharu) and Chief Secretary and Chairman of Public Service Commission (Newar).¹⁰

The constitution¹¹ of course declares Nepal as a "multi-ethnic, multi-lingual, democratic, independent, indivisible, sovereign, Hindu and a Constitutional Monarchical Kingdom". But even the inadequate recognition of plural selves is diluted further in several articles such as Article 2 that declares the people to be united by a bond of common aspirations and faith in the integrity of the nation, or Article 20 that says that the state while maintaining diversity will adopt a policy towards strengthening national unity. There are several administrative arrangements for the improvement of the *janajati* communities. But these are welfare measures, at best they succeed in producing a "creamy layer", at worst they institutionalise corruption in one more way. Exceptionally they can become part of a devolution strategy. But all these have nothing to do with autonomy or federalization. Though by standards of the region the degree of tolerance and consciousness about pluralism in Nepal is more than that in other countries in South Asia, yet with no decentralization and no devolution of power, and with extreme conditions of

⁹ Cited from a study conducted by the Centre of Nepal and Asian Studies, Tribhuvan University, on the basis of the 1991 census, in Lok Raj Baral, "Ethnicity and Constitutional Reforms in Nepal" in Iftekharuzzaman (ed.), *Ethnicity and Constitutional Reform in Asia* (Dhaka: University Press Limited, 1998), pp. 84-107.

¹⁰ Lok Raj Baral, "Ethnicity and Constitutional Reforms in Nepal", pp. 95-96.

¹¹ In view of the abolition of monarchy and the transitional state of affairs in Nepal, we do not know what the future constitutional-legal-political arrangement will be. These comments are written with the old constitution in mind, which still remains partly valid.

deprivation, the movement for self-determination has already begun. Since the current situation is one of transitional time, it is difficult to tell how the new constitution will evolve.

Pakistan

In Pakistan, typical of the state of contemporary political vision, aspirations and demands for democracy have been viewed as "ethnic" demands; in more sophisticated but actually shallow language, it has been termed as "rise of ethnicity". Take again the plural composition of the country. Punjabis are 68 per cent, Sindhis 13 per cent, Pathans about 9 per cent, and the Baluchs form about 3 per cent of the country's population. In terms of political units, Punjab has 56 per cent, Sind 27 per cent, North Western Frontier Province (NWFP) 13 per cent, Baluchistan 5 per cent and the Federally Administered Tribal Areas (FATA) have 2 per cent of the population.¹² Yet Pakistan carries the legacy set in 1955 when various provinces of West Pakistan were integrated in one single unit to counter the Bengalis who constituted 55 per cent of the Pakistan's population, and to kill democratic movement in West Pakistan also. It is a legacy strengthened by the suppression of the movement for self-determination in Baluchistan, the repression and massive killings of the Bengalis who demanded autonomy and later on independence, and the repeated take over of power by the military oligarchy.

The constitution of 1973 failed in protecting the autonomy of the minority provinces such as the NWFP and Baluchistan. The Council of Common Interests (CCI - Article 152) apart from helping some inter-state dispute on water sharing failed in protecting the autonomy of provinces. The National Finance Commission (NFC), another constitutional body set up under Article 160, similarly failed in protecting financial autonomy of the states. In any case from 1973 to 1991 the CCI and the NFC did not have any meeting, and the constitution itself was not functional for much of this time. And reminiscent of the experiences of India and Nepal, articles in the constitution ritually spoke of preservation of language, script and culture (Article 28), protection of minorities (Article 36), promotion of social justice (Article 37), at the same time the same constitution ensured loss of provincial autonomy, domination of one language group and one province, and an unprecedented centralization of power - a process capped by repeated assumption of all powers and authority by the armed forces. Therefore whatever limited provincial autonomy was given in the backdrop of the struggle for self-determination of the Bengalis became even more limited by the absence of any measure of autonomy for the minorities. Indeed, the constitution does not even recognize the non-religious minorities at all.

¹² *Pakistan Year Book 1992*, Karachi, 1993, p. 6.

In this context some experts in Pakistan speak of a "new social contract". But we do not know as yet, if this new contract will give any lead to any creative or innovative federalism. Clearly, simply federalism were enough, it could not in the first place ensure the rights of the different categories of minorities.

Sri Lanka

In Sri Lanka the rulers have traditionally thought that if liberal principles of multi-party democracy, parliament, independent judiciary and a written constitution are reinforced by a devolution package, then the issue of minority rights and self-determination can be successfully negotiated. Indeed, the fundamental question arising from Sri Lanka's political history is, can constitutional reform become a successful instrument for settling demands for self-determination? In cases such as Sri Lanka where national groups are not given an equal status and are not a party to decision-making process, and a certain unilateralist politics prevails, constitutional reforms have sometimes failed in evoking or restoring trust. In Sri Lanka, the Sinhalese language became the sole official language in 1956. Before that the Soulbery constitution, that guided the country from 1948 when the country gained independence to 1972 when the republican constitution was introduced, in the name of equality of all communities had made positive discrimination of any community very difficult (Section 21, sub-section 2). Thus protection of minorities was completely dependent on the government from the beginning. Even the thirteenth amendment to the present constitution brought in the wake of the Rajiv Gandhi - J.R. Jayewardene pact in 1987 entailing provincial constitutional councils and a limited devolution of powers was cancelled later. Thus the constitution reflects no awareness that this is the basic law of a society where the Sinhalese are 74 per cent (of this 74 per cent, almost 70 per cent are Buddhists), Tamils 18 per cent (of this 15.5 per cent are Hindus) and Muslim minority groups constitute 7 per cent of the population. Of the Tamils constituting 18 per cent of the country's people, 12.5 per cent are the so-called Sri Lankan Tamils and Indian Tamils 5.5 per cent. The Senanayake government had curtailed citizenship and voting rights of the Indian Tamils in 1948 and 1949 through a series of legislations. The new republican constitution of 1972 abolished whatever safeguards had been accorded by the Soulbery constitution. It not only declared the Sinhalese language as the only official language, it granted special status to Buddhism. It abolished the second chamber one of the reasons for the foundation of which was that the body could act as a restraint against discrimination of minorities. The system of nomination of representatives of under-represented groups in the Lower House, somewhat like the Indian system, was also abrogated. The 1978 constitution gave Tamil the status of a national language, accorded statutory recognition to its use in various fields of administration and education, abolished the distinction between a citizen by descent and registration that helped the remaining Indian Tamils to some extent. But all these concessions continued with unabated

violence against minorities, riots, the pogrom of 1983, and full-scale military offensive against own citizens with the help of a foreign power.

Even the very limited devolution under the thirteenth amendment was whittled down in conditions of extreme executive centralization in Colombo, the political manipulation of various Tamil groups by the government in the name of running the councils, the revocation of the sixth amendment of the constitution, and then the dissolution of the council in the north-east. With virtually no autonomy and fruitless clamour for democracy for years, the Tamil demand for self-determination arose. The history of the Tamil self is as important as the foregoing story of the constitutional denial of the recognition of the self. The Citizenship Acts of 1948 and 1949 had made the vast majority of the Indian Tamils stateless. Out of eight lakh Indian Tamils, only 16 per cent got citizenship, rest had to melt away in the vast plains of the south Indian countryside under the Sirimavo-Indira pact and through other means. Tamils formed the Federal Party, which objected to a single national flag, and called for a federal union with an "autonomous state" for the Tamils. The deliberate and non-deliberate settlement/migration of the Sinhalese in the north and the east, the language policy, statelessness of a huge number of people, racial discrimination, and riots completely destroyed faith of the Tamils on the successive constitutions. The policy of the Sri Lankan state to make domestic politics ethnicity-oriented in the name of redressing balance between various groups bore the poison fruit by early eighties of the last decade. The Bandaranaike-Chelvanayakam Pact that had provided for recognizing Tamil as a minority language and the dominant language of the Tamil areas and had envisaged a plan for regional councils was withdrawn on the pressure of the Buddhist clergy. Again, we have a similarity here with a less-discussed chapter of Indian history when the C.R. Das-Fazlul Haq Pact, popularly known as the Bengal Pact was repudiated by the Hindu-dominated Congress soon after Das' death in the second half of the twenties of the last century, and that abrogation marked the irrevocable phase of communalisation of Bengal politics. The Federal Party withdrew from the government in 1968, the radical Tamils censured and threatened the Tamil M.P. s who had collaborated in the enactment of the 1972 constitution that denied any recognition to the minorities, and Tamil consciousness reflected in the merger of the Federal Party and the Ceylon Workers Congress in the form of Tamil United Front and later the Tamil United Liberation Front.¹³ Even this was not enough. The radicalisation of the Sinhalese youth reflected in the struggle of 1971 had

¹³ There is an ever-increasing volume of literature on the political history of the Tamil movement. For my purpose that seeks to see the constitutional history of the country and the evolution of many selves, see, W. Howard Wriggins, *Ceylon - Dilemma of a New Nation* (Princeton, N.J.: Princeton University Press, 1960); C. Manogaram, *Ethnic Conflict and Reconciliation in Sri Lanka* (Honolulu: University of Hawai Press, 1987); S.U. Kodikara, "The Separatist Eelam Movement in Sri Lanka - An Overview", *India Quarterly*, 37, 1987; and R.N. Kearney, "Ethnic Conflict and Tamil Separatist Movement in Sri Lanka", *Asian Survey*, 25 (9), 1985.

impact on Tamil youth also. The collaborationists were denounced, TULF had to give the call for Tamil *Eelam*, and this spurred the Tamil youth all the more for decisive action doing away with rhetoric into which the constitutionalism of the country had pulled the Tamil politicians and had hitherto subsumed. The rest of this history is well known.

To take a leaf out of Sri Lanka's recent constitutional history again, Article 9 of the present constitution of Sri Lanka says, "The republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha *Sasana*, while assuring to all religions the rights granted by Articles 10 and 14 (1e). Article 10 says, "Every person is entitled to freedom of conscience and religion, including the freedom to have or adopt a religion or belief of his choice". In other words, Tamils have the right to be Hindus, but the state will be Buddhist.

India

The Indian constitution provides for special status for certain states such as Jammu and Kashmir, Nagaland, Sikkim, Assam, Manipur, Arunachal Pradesh in Articles 370 to 371H. The constitution also embodies the principle of non-discrimination in Articles 14, 15, 16, 19 and 29. It assures freedom of conscience in Article 25 and freedom to manage religious affairs in Article 26. Article 30 ensures right of minorities to establish and administer their own educational institutions. Under the special protection clause in Article 371, tribal customary laws, procedures, and land rights are protected. Part XVI ensures special provisions for scheduled castes, scheduled tribes and other backward classes. There are arrangements for zonal councils. The States Reorganization Commission ensured statehood for major linguistic groups. There is provision for autonomous district councils in scheduled tribe dominated districts. The 73rd and 74th amendments to the constitution ensured devolution of powers at village and town level. Similarly the constitution arranged for financial autonomy of the states through constitutionally prescribed division of resources and the National Finance Commission. Apart from creating new states (some very recently created) and autonomy for some states in particular, a range of accords and unilateral measures on Darjeeling, Bodoland, Leh, North Cachar Hills, Karbi-Anglong district, Khasi district, Jaintia Hills district, Tripura Tribal Areas district, Chakma, Mara and La districts in Mizoram, created autonomous areas and district councils under the fifth and sixth schedules.

The Indian pattern of combining nationhood with exceptional autonomies is significant. Is autonomy part of the basic features of the constitution that the Parliament should not touch? There is no clear answer whether the provisions of autonomy are inviolable or not in the context of the erosion of Article 370 providing for autonomy of the state of Jammu and

Kashmir. In any case, autonomy never captured the nationalist imagination. Thus the Supreme Court never had autonomy in mind when commenting upon the in/violability of the basic features, that primarily meant fundamental rights, which have only one among it dealing with autonomy.¹⁴ The nationalist mood sways the overwhelming part of rights. Thus provisions such as Articles 14-16, (again combining exceptional discrimination on positive grounds), Articles 22-23, Article 25 (combining exceptional right), Article 29, Articles 38-39 defining *common* welfare, securing *common* good and indeed laying down the constitutional basis of a welfare state, Articles 46-47, Articles under Part IX (the *panchayats*) - create a polity based on republicanism that while allowing autonomies will be the ethos of one nation, one people, and one land. Therefore provisions such as Article 244 (administration of scheduled areas - fifth and sixth schedules) cannot counter the wave of majoritarianism that arises out of the republican spirit. There is more to this unequal co-existence of nationalism and autonomy. For example, there is no uniform civil law, on the contrary a variety of personal laws, and linguistic autonomy in some measure. Indian constitutional and political system has evolved through at least seventy years history of a range of forms of autonomy - administrative, cultural, religious, fiscal and legal-juridical. Yet, demands for right to self-determination ranging from more autonomy to secession have arisen frequently, and if some have mellowed, others have persisted and have grown insistent notwithstanding massive state-suppression and loss of lives. It began with the Muslim demand for self-determination in the pre-independence time and continues in various forms and at various levels still today. The constituent states have said that their legislative, administrative and financial autonomy is inadequate or has diminished. Kashmir says its autonomy is fictive. Insurgents in the northeast have said that grant of statehood is a ploy to subsume them in Indian polity. Religious minorities say that they are under unprecedented attack of the fascist communal forces belonging to the majority community backed by the state. The scheduled castes and tribes say that their deprivation, poverty and disempowerment have only grown. The legal-administrative measures for protection of autonomy such as the Minorities Commission, Human Rights Commission, Women's Commission, are severely limited in their powers. These national commissions have their state counterparts even more limited in powers and functions. So are weak and inadequate the commissions in the states for protection of minority languages and cultures, interests of scheduled castes and tribes. In short, we have in the Indian instance the most extra-ordinary juxtaposition of measures of autonomy and a relentless centralization - seen from another angle, the most relentless constitutionalism and the most insistent cry for the self to achieve recognition.

¹⁴ The "basic features" of the constitution cannot be amended by exercising the power of amendment under Article 368. The Constitution 42nd Amendment Act, 1976 had inserted in Article 368 (5) a provision that there was no limitation on the constituent power of the Parliament to amend the constitution. Though the Supreme Court invalidated this, ambiguity still remains. See *Keshavananda Bharati v. State of India* (AIR 1973 SC 1461), *Minerva Mills v. Union of India* (AIR 1980 SC 1789), and *Srinivasa v. State of Karnataka* (AIR 1987 SC 1518).

It is also a narrative of how and when a group refuses to accept at some historical moment the identity of a *minority* and claims the status of a *people*, a *nation*.

Indian law permits different family laws on religious lines, even permits different public laws according to different religions on matters like religious trusts, permits compensatory discrimination in favour of disadvantaged groups, and is sometimes extremely solicitous of religious sensibilities. The broad regulative powers that the state has ("subject to public order, morality and health" vide Article 25.1, and Article 25.2a) are rarely comprehensively enforced. The result is a paradox: we have on one hand a publicly equal system with broad state powers to regulate practices of separate identity so that they do not go against equality, we have also differential provisions to help the disadvantaged, and then besides these two features we have a public system accessible to a group determined to impose its values in a large or total measure thereby almost equalizing the *public* and *group* interest. In such situation, as Marc Galanter shows, the stress on judiciary is excessive. The political failure is sought to be compensated by judicial activism to the extent where a judge is compelled to define "who is a Hindu", or the boundaries of faiths.¹⁵ Galanter goes further. In analysing what he termed as "symbolic activism", he shows, how compensatory measures sit so unhappily with the broad doctrine of equality as a fundamental right. Should these measures be seen as defining equality, so that the court should now force compensatory measures, or should they be seen as guidelines to the state towards making unequals equals?¹⁶ The implication is that, if we take the first view, a view that bifurcates Indian society into two broad groups - the scheduled castes and tribes, and other dispossessed minorities on one hand, and the rest on the other, we cannot have a republican constitution promoting public politics. If we take the second view, that is prescriptive policy to the state to provide succour to some disadvantaged groups, we herald an unending series of demands for classification on the basis of which the discrimination will be made. Both possibilities show the dilemmas of a liberal constitution trying to grapple with the issue of inequality and autonomy. This engenders what I term here as "constitutionalism" that ironically produces even more inequality, dispossession, and clamour for autonomy. The *politics of recognition* has to be seen in this context.

¹⁵ Galanter examines in this context the history of a case (1966) that involved the Swaminarayana sect and went to the highest court of the land where eminent jurists such as Gajendragadkar, Wanchoo, Hidayatullah had to decide who was a Hindu and the various sects traditionally within the Hindu fold could opt out and claim rights of minorities. See, Marc Galanter, *Law and Society in Modern India* (Delhi: Oxford University Press, 1997), pp. 237-256.

¹⁶ In the context of judicial activism, one can read, R. Dhavan, R. Sudarshan, and S. Khurshid (eds.), *Judges and the Judicial Power - Essays in Honour of Justice Krishna Iyer* (Bombay: Oxford University Press, 1985).

Finally, one can take the case of caste as an example of the impossible politics of a constitution producing an enduring form of autonomy in India. Though the constitution finally did not include a whole series of draft enunciations relating to lower castes and tribes that aimed at defining them as minorities, and had suggested an entire separate part for this in the constitution, clearly the text as we find it today aims to define the place of caste in Indian life and the role of law regulating it. The constitution takes a dim view of the place of caste in Indian life, is ostensibly not concerned with that, the ties of ascription remain beyond its domain; but it sees itself as the fundamental instrument to ensure that these ascriptions do not lead to hierarchy, inequality and invidious treatment in public life. Caste therefore with its own internal order and rule promulgating powers and functions may continue as an *autonomous association*, but this autonomy is supervised so that this does not spill over into public politics. Doctrine, ritual and culture - all remain outside the juridical bounds till these affect the constitutional mission of promoting equality. If they do, court and the law become active. In such a perspective, caste becomes both a religious body in the sense that its own prerogative on such matters such as marital rituals, devotional methods, or representation to bodies like relevant commissions is allowed, and a non-religious body in the sense that the constitution tries to detach it from the wider perspective of the Hindu society and determine its character (advantages and disadvantages) among Muslims and Christians as well. But the institution of caste securely tied to the "Hindu world", few can opt out of a caste-fold and receive protection. The entire controversy over the right to be converted to another faith shows the limits of a constitution in upholding the autonomy of an individual or a group to choose faith.¹⁷

II.2 The Research Boom

Even this very brief introduction to the possibilities of minority groups of gaining protection measures in South Asia will convey the reasons of a multi-layered, multi-direction research agenda history. In fact the scenario is so disparate, that compared to earlier researches, institutionally conducted researches on the minorities of contemporary India do not speak of any centrally coordinated research policy.

Researches on minorities in South Asia are conducted at various levels. While the state continues to play an important role in encouraging and sponsoring higher education in most of the South Asian countries, various statutory agencies like the University Grants Commission, Indian Council of

¹⁷ On the legal complexities arising out of the position that caste occupies in public life, see, D. E. Smith (ed.), *South Asian Politics and Religion* (Princeton, N.J.: Princeton University Press, 1966); Marc Galanter, "Law and Caste in Modern India", *Asian Survey*, 3, 1963, pp. 544-559; F.G. Bailey, *Caste and the Economic Frontier* (Manchester: Manchester University Press, 1957).

Social Science Research (ICSSR) in India enjoy varying forms of autonomy vis-à-vis the state. Although funded in a very substantial way, universities are seldom directly controlled by the state. But it is true that most of the institutions of higher education have to function within the state's broad policy framework and researches on minorities constitute one of the top priority areas in the list maintained by University Grants Commission in India. Besides, researches in certain minority-concentrated areas receive special grants-in-aid as in the case of India's Northeast. All the ministries including that of Human Resource Development directly under the administration of the Government of India have to keep 10 percent of their budgetary allocation for the Northeast and the money gets accumulated in the non-lapsable pool of the Central exchequer. The availability of funds has given a new - albeit unsustainable - fillip to researches on India's Northeast. While it has triggered off a new spate of researches on the minorities in South Asia, the state or for that matter its statutory agencies have very little control over the findings and outputs of such research. Researches driven by the imperative necessity of fund utilization have very little shelf life and do not reflect any consistent policy having been followed in the field under review. In a country like India the state has very little control - if at all - for example over the kind of Ph.D. dissertations being done from different university schools and research institutes. The states of South Asia may have a policy towards the minorities, but not on researches conducted on them.

A good deal of researches on the minorities rolls out of the research institutes and centres of higher education beyond the established institutional framework. International Centre for Ethnic Studies (Sri Lanka), Lokayan of the Centre for the Study of Developing Societies and Calcutta Research Group (CRG) - both in India - provide some examples. While most of the senior members of the faculty and researchers (along with some activists) happen to be associated with various universities and research centres, insofar as they work under institutional auspices, they are not obliged to follow the state's rules and regulations. Research centres like CRG enjoy comparatively greater autonomy than the established universities and research centres. They evidently follow a research policy that (a) provides their researches a collective and coherent focus, (b) breaks new directions and coordinates researches conducted under their aegis and (c) serves as centre of policy advocacy. The spate of violence that followed the 'demolition' of historic Babari mosque in Ayodhya (1992) and Gujarat riots (2002) in India, Post-election violence against the religious minorities in Bangladesh in 1996 and subsequently in 2001 have been instrumental in producing a number of investigative reports and researches. Most of them have been done beyond the state auspices and are very critical of the state policies towards the minorities. Of late, countries of South Asia have witnessed a steady growth of this variety

of centres and institutions.¹⁸ Moreover, there is another genre of researches, which are commissioned by a proliferating body of state institutions as National Human Rights Commissions, National Women's Commissions, National Commission for Scheduled Castes and Scheduled Tribes, National Commission for Minorities etc and their state equivalents. Besides, researches based on individual initiatives are by no means rare particularly in a country like India. Such researches are made known to us only by their publications.

Researches on the minorities in other words are conducted at various levels sometimes acting at cross-purposes with one another. In the absence of a clearly laid out, central and coherent research policy on minorities, we find considerable difficulties in assessing it. We propose to compare the present researches with a state in which researches are conducted without any central policy guiding, directing or administering them. Strange but true, the current research boom on the minorities does not seem to coincide with the presence of any central and commanding research policy. As we argue in this fashion, we need to add a couple of caveats lest we should not be misunderstood: First, this should not give us the impression that what we call the current research boom has resulted in only haphazard and scattered researches on the minorities. Quite the contrary, it is possible to trace the sources of current boom to discourses on the minorities circulating within the larger society. The discourse only makes it possible to raise only a given body of issues and questions and not others. The point is: researches on minorities today are guided more by the reasons of government than by those of the state. The dominant discourses prevailing and circulating within the society and contributing in no small measure to its government have acquired a measure of autonomy from the state. Second and complementary to the first, while the current research boom is still in this state, this does not mean that framing a research policy is either impossible or unwarranted. In fact, we need to raise some issues and questions from within the mandate of our project so that we can change the terms of our present discourses. Research policy in that sense can serve as a catalyst for changing the terms of our ongoing discourses. This in fact leads us to call for establishing a Eurasian think tank that will help in coordinating knowledge amongst diverse sources.

This paper proposes to (a) raise a few issues and questions that have hitherto remained un-addressed in the existing stock of researches by way of assessing the research policies and practices and (b) accordingly call for designing our research policy in a way that will prepare us for a discourse shift. The discourse shift envisaged in our project intends to (a) study country-specific Constitutional and legal experiences within a comparative

¹⁸ A Directory was compiled by International Centre for Ethnic Studies in collaboration with Calcutta Research Group and others. We have made it available to EURAC for reference. See, ICES et al. (2008), *A Directory of Minority Rights and Institutions*. Colombo: ICES (<http://www.ices.lk/>).

framework¹⁹, (b) take stock of the regional and supra-national sources of standards-setting initiatives in South Asia and (c) probe into the best practices and model cases of minority protection and resolution of minority problems and explore into the possibility of disseminating them.

III. A Brief Assessment of Research Policies

Researches on the minorities in South Asia in general and India in particular have been highly uneven in character and there is reason to think that these have primarily built on the general institutional practices and discourses circulating within the larger society. The British administrative writings seemed keen on tracing the essentially divergent nature of Indian society and its innate inability to form a homogeneous nation. Since many of the groups do not form parts of any single nation, the term 'majority' or 'minority' becomes irrelevant unless their nationhood is recognized. More than branding a group as a majority or a minority, it was interested in discovering how they could be held together without interrupting the colonial rule. Colonial policy for a considerable length of time was guided by the reasons of state. Thus with the initiation of Morley-Minto reforms of 1908 referred to above began an era of reserving seats and posts in Government establishments and decision-making bodies etc. so that minorities do not feel threatened by the political institutions oriented to serve the majorities. British ethnographic writings are replete with the racial and ethnic stereotypes (like 'martial races', 'criminal tribes' etc) that in their combination refuse to make India a nation. Besides, the colonial rulers also made an implicit distinction between the 'primitives' and the 'savages' residing in India's Northeast who do not deserve to be 'ruled' and 'civilized' and the 'subjects' - who have 'submitted to our authority' and for whom 'white men have a burden'. Parts of the Northeast never constituted parts of British India and were administered as 'frontier' by them. Given that Indians do not form a nation, the mediation of the British - as this genre of writings would have us believe - in holding the society together can never be doubted. This discourse gradually gave birth to the idea that the Hindus and the Muslims form 'two nations' who are entitled to two 'sovereign' states to be carved out by partitioning the subcontinent - once the colonial rulers stage their exit.

The first batch of historians who became interested in studies in the minorities is also known as the Cambridge School (for their association with the Cambridge University) represented by such eminent scholars as Anil Seal,

¹⁹ Since the exercise has already been done elsewhere, we refrain from repeating it here. See for example, Nepal Institute of Peace, *Guide to Minority Rights: Directory, Personnel and Publications* (Kathmandu: Nepal Institute of Peace, 2004). Also, Rita Manchanda, *The No-Nonsense guide to minority Rights in south Asia* (New Delhi; Impulsive Publications, 2006). Also, Ananda Wanasundera (ed.), *Protection of Minority Rights and Diversity* (Colombo; international Centre for Ethnic Studies, 2004). Sumanta Banerjee, *Shrinking Space: Minority Rights in South Asia* (Kathmandu: SAFHR, 1999).

James Gallagher, John W. Broomfield and Rajat Ray etc. Starting from the assumption that India is a land of minorities where numerous majorities are distributed at various layers and levels of society and polity - in their favourite phrase 'locality-province-nation' - thereby preventing them from forming one homogeneous entity, the school draws our attention to the extremely strategic and contingent nature of the political alliances that are designed and brought into existence by different elite groups claiming to represent diverse ethnic groups in relation to power - whether to acquire it or to dislodge others who have been successful in already acquiring it. The contestation over power determines the dynamics of diverse alliances between elite groups. The essentially minority nature of the components of these alliances confers on the alliances certain flexibility and temporality that also serves as an antidote to their homogenization, entrenchment and durability. Besides, the shifting nature of the alliances also provides scope for new leaderships and elites to emerge and further contest any form of political entrenchment by the already established elites. These alliances have a two-fold impact of democratizing the power base by constantly extending and making power available to newer claimants and deethnicizing and secularizing the claims of ethnic groups and minorities. By virtue of entering into alliances with others, ethnic groups are called upon to shed their exclusivist and ethnic character and discover issues that are common with those of others. The Neo-Cambridge school - a contemporary version of the early Cambridge school - points to the constantly expanding nature of power base in South Asia. The writings on factional politics in Bengal, Uttar Pradesh and South India are a case in point. The involvement of castes in politics in India in the famous words of a very eminent political scientist in the words of Rajni Kothari resulted - not in 'casteization of politics', but 'politicization of castes'.²⁰

It seems that the Cambridge School has run a full circle. While at one level it is now widely recognized that the dispersal of political layers and levels has become almost complete with the advent of globalization and loosening control of the states over their populations including the minorities, the imperatives of elite alliances have started working in reverse. Emma Tarlow's study on the Sikh minorities who have been victims of the anti-Sikh pogroms organized across India in the wake of Indira Gandhi's assassination in 1984 in the hands of her Sikh bodyguards speaks of the new compulsions of local politics over which the regional and national politicians have little or no control. Hansen's study on the street politics of Bombay/Mumbai bears testimony to the complex nature of processes that have helped sever the connection between the national and the local and contribute to the latter's emergence as an autonomous terrain. They are as it were forced to come to terms with the new realities and minority politics today refuses to be subsumed

²⁰ Rajni Kothari (ed.), *Caste and Politics in India* (New Delhi: Orient Longman 1976).

under the elitist models. Minority politics is also visited by the sudden torrents of mass politics that the Cambridge historians fail to appreciate.

The state's policy towards the minorities is best exemplified by the Constituent Assembly Debates in India - one of the most prolonged debates in history on the question of minorities in any country. The philosophy of the state has attracted some scholarly attention in recent years. Partition, according to Bishnu Mohapatra, represented a traumatic event to the Indian elite and paradigmatic shift in the state's vision of minorities insofar as it sparked off paranoid fears about the Muslim minorities.²¹ Thus, when the issue of reservation of seats and jobs for the Muslims were discussed on the floor and the subcommittee set up for the purpose recommended it, the framers of the Constitution scotched it off on the ground that 'they opted for Pakistan'. In simple terms, they were in favour of making a distinction between the minorities who declare them as nations like the Muslims and the national minorities like the Scheduled Castes and the Scheduled Tribes - often synonymously used as 'Hindu minorities'. The Constitution provided a template that also tamed and transformed the minorities declaring them as nations into national minorities and shunned any reservation or special provisions for them.²² Summing up the whole debate as well its record of minority protection during the last six decades, Samaddar observes that the Indian state looked upon the minorities as objects of 'government' rather than rights-bearing subjects.²³ While much has been written about the backwardness of the Muslims laid down in the recently released Sachar Committee report on them, the same tradition of viewing the minorities as objects of government and power continues since the late-colonial times.

The early Marxists were probably the first to have brought the phenomena of violence and riots to the centrestage of social and political inquiry. Moin Shakir's pioneering study on *Politics of the Minorities* (1979)²⁴ shows how violence and riots between the communities serve no collective interest of any of the communities involved in them. Instead, they are organized by their respective elites who take advantage of the preexisting religious differences and exploit them while pursuing their own narrow social and economic interests. The division between religious majority and religious minority, according to him, has no material basis and is intended to breach the growing 'revolutionary unity' amongst the masses. Thus the more economic conditions worsen and revolutionary unity is in the process of coming into

²¹ Bishnu Mohapatra, 'Understanding the Discourse on Minority Rights in Contemporary India', (2001) mimeo.

²² Samir Kumar Das, 'Social Justice in the Constitutional Mirror' in Ashok Aggrwal & Bharat Bhusan (eds.), *State of Social Justice in India, vol. 2: Law and the Constitution* (New Delhi: Sage, forthcoming)

²³ Ranabir Samaddar, *The Materiality of Politics: The Technology of Rule* (London: Anthem, 2007), pp.133-188.

²⁴ Moin Shakir, *Politics of the Minorities* (Delhi: Ajanta, 1979).

being, the more such divisive forces are played out in order to keep people's opposition divided and tide over the social and economic crisis. 'Communalism' and 'minority-ism' therefore constitute an ideology - a 'false consciousness' that stands in the way to the development of 'revolutionary unity' amongst the masses. People do participate in riots but they surely lack agency and fall prey to elitist machinations. A series of studies conducted on the riots having taken place in the 1970s and the early 1980s particularly in Maharashtra, Uttar Pradesh and Bihar point out in greater detail how the relative affluence and prosperity of the Muslim elite in brassware, stitching (particularly *zari*, *zardozi* and *chikankari*) and other such industries was sought to be contested and stalled by a rising Hindu elite by way of accentuating and widening the communal divide and mobilizing their respective communities against each other. The reverse has also been true.²⁵ A 'scientific' and revolutionary ideology that is capable of transcending the religious divide between the majority and the minority needs to be brought from outside in order to make a social revolution possible in the countries of South Asia. Not all Marxists however agree with Shakir on this issue. Asghar Ali Engineer's comparatively recent writings for instance question the very thesis of 'preexisting religious differences'. While at one level religions in India including Islam have been 'syncretic', 'plural' and 'tolerant' unlike in other parts - thanks to the specificity of Indian culture that has made them so, at another any 'revolutionary ideology' that makes the claim of becoming popular cannot be completely divorced from the cultural context within which it operates and must draw on their 'progressive elements' in order to remain rooted to it. The otherwise 'secular' cultural tradition of Kashmir, according to him, is in jeopardy insofar as the 'fundamentalists' take over and a composite and syncretic Islam of Kashmir (*Kashmiriyat*) undergoes radical transformation.²⁶

While the exact nature of Indian culture has been a source of conflicting interpretations amongst the Marxists as we have pointed out above, it is now widely believed that violence and riots cannot be attributed to diversity of religions per se in South Asia. The transformation of loose and composite 'faith' that existed in history into 'organized religion' with its inviolably sacred text and a determinate ecclesiastical authority under conditions of modernity - as suggested by Ashis Nandy - is said to lie at the root of violence and riots. In other words, interfaith differences did not necessarily push their adherents into conflicts and riots. It is only with the advent of modernity and the modern state's 'statistical' enumeration of populations through census operations into neat and precise categories that such populations started differentiating themselves from each other. There are communities across countries of South Asia (like the nomadic snake-charmers etc) whose religious identities are not definable - at least not clearly so. It is only with the introduction of modern

²⁵ See, Asghar Ali Engineer & Moin Shakir (eds.), *Communal Riots in Post-Independence India* (Delhi: Ajanta, 1984). Also, Asghar Ali Engineer, *Bhiwandi-Bombay Riots: Analysis and Documentation* (Bombay: Institute of Islamic Studies, 1984).

²⁶ Asghar Ali Engineer (ed.), *Secular Crown on Fire: The Kashmir Problem* (Delhi: Ajanta, 1991).

census operations that such people are obliged to state their religious identities in contradistinction with what they consider as their other. Violence and riots according to this streak of sociological writings are catalyzed not so much by cultural traditions of South Asia but very much by the advent of modernity and most importantly by the introduction of modern governmental technologies by modern secular state.²⁷ A more or less similar view was reiterated by Madan:

... the religious, traditional view of life has not really been the source of conflict between peoples, that it is the perversion which has been so. The scope of interreligious understanding is ... immense, and it is in no way contradicted by the holism of religious traditions of mankind. And yet one surely may not turn a blind eye to the conflicts between religious communities which have for so long caused untold suffering to innocent people everywhere. The historicity of such conflicts does not however, constitute an argument against religion or signify its irrelevance; it only points to the unrealized promise of cultural pluralism.²⁸

While the debate is continuing and shows no sign of subsiding in the near future, it took a slightly different turn with the intervention of the multiculturalists and social capital theorists. The project is more or less the same for both these streams of scholars. What they basically intend to achieve is convert the minorities from a political category of powerlessness into a simple numerical statement so much so that it as a category loses all political salience. Both in other words seem interested in depoliticizing the category. The importance of some 'basic values' (like popular sovereignty, individual rights and human dignity etc) in holding the mutually hostile communities together under one social and political fabric can never be denied. But on the one hand, a group of multiculturalists express their doubt over whether such values are already existent in the prevalent religious traditions of South Asia. In this respect, state as a secular and external agency can serve as a harbinger of social reform and transformation. As Rajeev Bhargava argues: "The removal of oppression and subordination has been a function of a successful and democratic state. The state has had to democratically intervene in religious and cultural practices to get rid of oppressive practices".²⁹ On the other hand, there are others amongst the multiculturalists who in fact emphasize on the important role that non-state agencies particularly strong social networks play in building strong 'civic ties'. Varshney's study on as many as six riot-affected cities of contemporary India for example shows how the existence of such

²⁷ Ashis Nandy, 'The Politics of Secularism and the Recovery of Religious Tolerance', *Alternatives*, 13, 1988.

²⁸ T. N. Madan, 'Religion in India', *Daedalus*, 118(4), Fall 1989, p.117.

²⁹ Rajeev Bhargava, 'Introducing Multiculturalism' in Rajeev Bhargava, Amiya Kumar Bagchi & R. Sudarshan (eds.), *Multiculturalism, Liberalism and Democracy* (New Delhi: Oxford University Press, 1999).

strong 'civic ties' cutting across communities and often facilitated by the state and quite ironically its security agencies (as in the case of Bhiwandi) serve as an effective antidote to the occurrence of communal and ethnic riots.³⁰ His study (true to Putnam's writings on social capital) treats communal and civic ties as two clearly separate and separable categories. A few studies on the other hand point out how civic ties at times have a 'regressive effect' on structures of conflict resolution and peacemaking.³¹ Moreover, Varshney's analysis does not seem to take into account the role of heterodoxies within Hinduism and Islam in India and the role they play in mitigating Hindu-Muslim conflicts. Similarly, in all these writings there is seldom any reference to civic ties that cut across the existing international borders. The writings of both these streams of multiculturalists aptly show how democratic state and civil society complement each other in depoliticizing the minorities and contribute to the overall governmental operations.

With the introduction of the Subaltern School to history since the late 1970s by Ranajit Guha and his associates, researches on the minorities have changed substantially over the years. While critiquing the earlier schools of having denied agency and subjectivity to the subalterns including the minorities of indigenous peoples, the ex-untouchables, the dalits (the downtrodden) and the tribal³² communities, women and children, linguistic and sexual minorities and minority religious cults and so on and so forth. Even if agency and subjectivity are extended to them, they encompass only the elites that have slowly grown amongst them and not the common people. The Subaltern School brings their agency and subjectivity to the centre-stage of history by making at least two very significant departures: One, the agency and subjectivity of the subalterns consisting of a motley group of people mentioned above are expressed through everyday resistance in ways specific to them. The culturally defined means of minority resistance are highlighted in their writings. Minorities instead of becoming objects of protection become the agents and makers of history. Two and this follows from the above, minority resistance does not necessarily hold together the society. Nor does it abide by the requirements of networking and strategic resistance. The School tends to write history in its ruptures and fissures. Minorities do not write the same history inhabited by the majorities; their histories run parallel to those of others. Historical narratives are separate and separable. Their separation is a precondition of unearthing the significance of minority politics. Minority history is not a history that is added to it as a minor appendix - but a history by its own right with its own archive that can be made sense of only by deploying critical reading strategies. Subaltern consciousness has its paradigmatic features

³⁰ Ashutosh Varshney, *Ethnic Conflict and Civic Life: Hindus and Muslims in India* (New Delhi: OUP, 2001).

³¹ Dwaipayan Bhattacharyya, Niraja Gopal Jayal, Bishnu N. Mohapatra & Sudha Pai eds., *Interrogating Social Capital: The Indian Experience* (New Delhi: Sage 2004).

³² Used widely in official and popular circles in South Asia without any necessarily pejorative sense.

outlined in Guha's epoch-making work entitled *Elementary Aspects of Peasant Insurgency in Colonial India*.

A comparatively recent stream of writings led by such scholars as Paul R. Brass, Philip Oldenburg, Lloyd & Susanne Rudolph etc based mainly in the US schools and universities emphasizes on the 'embedded' nature of minority politics and the riots and pogroms in South Asia that take a toll on these countries particularly during the last one and half decades. Riots are seldom, according to them, one-shot events, whose impact gets exhausted with their happening, but are deeply embedded in narratives and discourses that lend different meanings to them at different times of history. The circulation of and contest over these narratives and discourses makes reality of riots and pogroms not only unknown but also unknowable so much so that these are as it were 'produced' through them. Viewed in that sense, understanding riots and pogroms in South Asia is a cent percent political act. As Brass argues:

The struggle to control the representation of riots is ... one to cast and divert blame. If the people are responsible, the government is not to blame. If the government is not to blame, the argument can also be made that its powers and authority need strengthening in order to prevent further such events. If the police are blamed, then the politicians are saved. If the politicians are blamed, then the police may be freed from blame and their hands and those of their supporters strengthened in state and society. It is, in fact, one of the most astonishing features of riots that the very process of casting blame widely, of justifying, explaining, and interpreting riots contributes to the failure to prosecute the perpetrators of violence even when their identities are well known.³³

These narratives and discourses are used in structuring the relations: 'to define the majority and minority, to differentiate the loyal from the disloyal, the weak and the strong, those that are privileged and the disprivileged, and to distribute rewards and punishments'. Thus, our notions about the minorities (like 'Muslims are headstrong and intolerant' and that they are 'out and out disloyal to India' etc) are deeply embedded in these widely shared narratives and discourses. Accordingly, the state discourse too is not neutral to the majority Hindus and the minority Muslims by way of offering to mediate between them, but is based on 'an imagined nation which defines those who are not part of the "nation" as "minorities" who must accept a secondary position within the state.'³⁴

It seems that minorities have become a hot topic of researches in South Asia - thanks to the initiatives taken by some of the leading civil society groups

³³ Paul R. Brass, 'Introduction' in Paul R. Brass (ed.), *Riots and Pogroms* (London: Macmillan, 1996), p.5

³⁴ Ibid, p.37

like SAFHR, Calcutta Research Group and Lokayan etc. At one level, they too emphasize on the dispersal of levels and layers in the body politic that have made the functioning of the established democratic dispensation in India based predominantly on the majoritarian principle problematic. Both systematic exclusion of the minorities and active discrimination have severely impaired the democratic framework. At another level, the state continues to proceed with the old principles and institutions. States are slow in thinking about institutional reforms to accommodate this situation. Political parties based on the principle of interest aggregation for gathering popular support are becoming increasingly incapable of representing the emerging minority interests that refuse to be aggregated into the larger wholes. Lokayan in particular has been flagging these issues for long and drawing our attention to the cases of emerging mediating institutions that are at the forefront of the new social movements.

IV. Issues and Questions

While most of the studies in South Asia focus on minorities within their respective countries, there have been very little - if at all - in the existing literature either by way of comparing them or discovering their continuities and linkages.³⁵ The researches on the minorities in South Asia reflect little pan-regional awareness. Historical and cultural continuities provide as it were with an ideal case for comparing the minorities across the countries of the region. This practice of studying the minorities within their national frontiers in isolated ways speaks of the persisting impact that the framework of nation-states makes on the research agenda and the typical nationalist fear ('cartographic anxiety') that any cross-border linkages and continuities between minorities are a potential or actual threat to the sovereignty and integrity of the states of South Asia. Minorities are held by the nation-states first of all as 'national minorities' and therefore fall under their sovereign domain. Governing the minorities in this context has turned into a problem of emplacing them within a national body. After all, minorities as a category of powerlessness can wither away only by being governmentalized (variously termed as 'domesticated', 'institutionalized' and 'routinized' in the literature) into 'national minorities'. 'National minorities' may be numerically smaller groups but certainly not disempowered groups as long as they form part of a nation. Entry into the nation is the means of minority empowerment.

Besides, any comparison between minorities across the countries of South Asia is likely to reflect on the relative performances of the states vis-à-vis the minorities within their respective countries and has the potential of

³⁵ There are of course exceptions. The transnational linkages and connections have been emphasized, for example, in Pfaff-Czarnecka, Joanna, Darini Rajasingham-Senanayake, Ashis Nandy & Edmund Terence Gomez (eds.), *Ethnic Futures: The State and Identity Politics in Asia* (New Delhi: Sage, 1999).

being used and exploited by others. States of South Asia not quite known for being friendly to each other have the record of humiliating their rivals in diplomatic, regional and international forums on the count of discriminatorily treating their minorities. Any comparison reflecting on the state performances in this regard is likely to be politically volatile - if not inflammable. One can therefore say that the practice of studying the minorities within their respective 'national' settings is as old as the evolution of nation-states around the world. It is for this reason that comparisons (as in one case between the minorities of India and Malaysia) considered as politically benign and safe are attempted.

By all accounts, migration across nation-states has increased manifold over the recent years. Although an early attempt to study some of these population flows was made by Myron Weiner, it certainly requires to be revisited in the changed context of globalization in South Asia.³⁶ The 'mixed and massive' population flow has not only created new minorities but also triggered off schisms between the locals and the migrants and many of the societies of South Asia seem to be bursting on their seams. While the host country may have its reasons to feel unhappy with the massive immigration from across its borders, the sending country conveniently 'dumps its excess population' and refuses to acknowledge it. This has sometimes caused diplomatic standoffs between the countries of South Asia. It is true that such 'Alice-in Wonderland' policy is unhelpful, for, a solution will always elude us if the problem is not recognized in the first place. On the other hand, there cannot be any unilateral solution to such issues. A platform like this is ideally placed to first of all recognize minority-producing cross-border migration as a problem and then to evolve possible strategies of addressing it. Researches on scenarios of individual countries can at best be partial in their understanding of the magnitude and impact of such immigration and the interruption it causes to governmental operations.

While comparisons across the countries of the region are welcome and discovering their historical and cultural continuities and linkages are an important step to any project of evolving regional instruments of minority protection, the role of comparison and continuities and linkages can hardly be blown out of proportions. The presence of historical continuities and linkages should not lead us to bundle the minorities of the same ethnic origin but scattered into diverse cultural and political contexts into one category - homogeneous and indivisible - agitating for and demanding the same charter of rights. The same minority gets differently configured - culturally and politically - in all different ways. The importance of studying the 'minorities within minorities' therefore can hardly be doubted. Both the processes of regional and contextual articulation are operative in South Asia and one has to find out

³⁶ Myron Weiner, 'Rejected Peoples and Unwanted Migrants', *Economic and Political Weekly*, 28(34), 21 August 1991.

when one acquires political salience over the other. In the existing literature, minorities of South Asia are generally never viewed with all these ramifications. Let us now formulate in more positive terms some of the issues that may form part of a research agenda necessary for a possible discourse shift.

IV.1 Minorities across States

Many countries of South Asia formed parts of a politically unified landmass called India for most of their history. Empires of pre-colonial times occasionally stretched from Herat and Kandahar in Afghanistan to the island of Sri Lanka. While such instances of political unification have only been intermittent and occasional, there is no denying that the cracking and splitting of empires and kingdoms would take place along a culturally continuous scale so much so that these events did not trigger off mass exodus from one region to another. Indeed, one or two attempts at making political boundaries coincide with cultural ones by way of ordering population transfers produced grotesque results. The colonial rulers sought to transform the vast tracts of undemarcated and loosely administered frontiers of the North West and the North East into sharply drawn 'lines' towards the end of the nineteenth century. Thus, Durand Line in the North West separating India from Afghanistan and Macmahon Line in the North East separating India from Tibet were drawn in 1893 and 1903 respectively. But it was only with the Partition of India in 1947 and consequent reorganization of international borders that the masses of people felt the necessity of adjusting themselves to the 'right' side of the border through migration. As a result, an estimated one million people lost their lives due to communal riots that broke up on the eve of Partition and in its wake and a few millions shifted themselves from one part to the other while drawing new and hitherto unknown cultural boundaries and making them coincide with the newly reorganized political borders. In simple terms, the emergence of modern states in the region has enjoined on them the obligation of making them coincide with each other. As 'lines' are drawn on maps as the Commission led by Sir Cyril Radcliffe had done it in the east and most importantly lines are plotted on ground, they bring into existence what Joya Chatterjee calls 'a new way of life'³⁷ and people are called upon to constantly adjust themselves to it. The region is caught between two diametrically opposed pulls of historically shared social, cultural and economic commonalities and linkages that otherwise cut across the newly reorganized international borders on one hand and the legal and political obligation of observing and remaining confined to them. The challenge of governing the post-partition nations in South Asia lay precisely in converting this new reality into 'a way of life'.

³⁷ Joya Chatterji (1999): "The Fashioning of a Frontier: The Radcliffe Line and Bengal's Border Landscape 1947-52", in *Modern Asian Studies*, 33 (1), February.

By all accounts, this essentially statist dream of creating culturally homogenous nations by encouraging mass migrations and population transfers was indeed shared by a good number of people who thought it 'unethical' to remain left in countries that was not theirs. The metaphor of Partition continues to live on and shapes much of the so-called post-Partition politics. Partition is not an event, but a process and a process that does not exhaust itself with one the event of the formation of nation-states. The same dream gets reenacted rather climactically and at great human cost in Gujarat, India (2002), Bangladesh (1996, 2001), Sri Lanka (1983) and Bhutan (1988) where violence is organized systematically more often than not at state's instance to exterminate the minorities whether by indiscriminately killing them or through expulsion. Many of the reports prepared by even the statutory agencies of the state like the National Human Rights Commission etc accuse the politicians and security forces of having done such acts of commission and omission, which heavily discriminate against the minorities. The dream continues to inspire and elude the states of the region. The mixed and complex demography of the region and the historically shared nature of the continuities amongst different people make it absolutely impossible for the states of the region to create culturally homogeneous nations. Minorities are bound to remain caught on the 'wrong' side of the border for time to come. Viewed from this perspective, an in-depth study of some of these yet under-researched or even one-sidedly researched (for, they have been studied with inputs from only one side of the border) cases of bilateral minorities is suggested here. Our project is ideally suited to study these bilateral or as even in some cases multilateral minorities strewn across borders.

The case of Southern Bhutan is one of trilateral minority subjected to discriminatory cultural policies informed by Partition albeit in a metaphorical sense. For, Bhutan was outside the massive surgical operation that accompanied Partition. Yet, the same metaphor of Partition also lives on in this case. Until 1985, there was hardly any hostility reported in the 'land of peace' notwithstanding its ethnic diversity. Crisis is said to begin with the passing of Citizenship Act in 1985. The Lhotshampas of South Bhutan - most of whom are of ethnic Nepali origin - have been branded by this Act as 'stateless people'. The subsequent Census of 1988 carried out only in the predominantly Nepali-speaking southern districts revoked their right to nationality in large numbers. The Royal Government of Bhutan encouraged a policy of 'one state, one nation' with the effect that the Lhotshampas were subjected to political and cultural discrimination. They were forced to wear the 'national dress', speak the 'national language' and deprived of their rights including that of landownership. Nepalese was replaced by the 'national language' in primary schools and other educational institutions. According to an early estimate, about 120,000 Bhutanese have been forced into exile in India and Nepal. Over 90,000 people were reported to have been living in UNHCR-supervised camps in Jhapa and Morong in eastern Nepal. Approximately 30,000 have been living outside the camps in Nepal and India. Their presence in the Dooars and Siliguri

subdivisions of northern West Bengal seems to have changed the demographic composition of the area. While the new leadership of the Gorkhaland movement lays claim to this area and demands its inclusion in the proposed Gorkha ('Indian citizens of Nepali origin')-dominated state of Gorkhaland within the Indian union, this has unleashed newer currents of tension and schism between them and the majority of local Bengalis.

Although a living testimony to the impossibility of carrying forth the logic of Partition based on ethnic and religious divide beyond a certain point (for its inability to take note of the divisions that are implicit in each of the entities thus partitioned), Bangladesh seems to reenact Partition insofar as the predominantly Buddhist and non-Bengali-speaking tribal communities of Chittagong Hill Tracts (CHT) were subjected to the discriminatory policies and forcibly ejected from their habitat. About 40,000 persons migrated to Arunachal Pradesh, India and an estimated 20,000 went over to the Arakan region of the then Burma. Those who migrated to India and their children born in the Indian soil continue to remain stateless. A movement was organized by the All-Arunachal Pradesh Students' Union (AAPSU) in the late-1980s with the demand of their expulsion to other parts of India - if not Bangladesh. While an investigation report commissioned by the National Human Rights Commission drew the nation's attention to the gross violation of human rights in Arunachal Pradesh, the Supreme Court of India in an epoch-making verdict upheld their right to life even for the no-citizens - and in this case right to 'decent' life - guaranteed by the Constitution and asked the Government of Arunachal Pradesh for their protection. Although forced migration occurred during the conflict between the mid-1970s and 1997 - the year when an accord was signed with the Jana Sangram Samiti (JSS), the roots of conflict and discrimination may be traced to the construction of Kaptai dam between 1957 and 1963. The construction led to the submergence of 54,000 acres of cultivable land and about 100,000 tribals were displaced from their homes. A Bangladesh Government Task Force estimated in July 2000 that 128,000 families were displaced due to conflicts in this region.

In 1987 as Burma erupted against the military rule, many of the leaders and activists of pro-democracy movement were forced to leave the country and take shelter in neighbouring India. India publicly extended her moral support to the movement. In 1988 alone, Burmese migrants came to India in three waves. In 1997 the scenario changed and India decided to develop a working relationship with the Burmese military junta. India's decision of 'doing business' with the military rulers of Burma was considered by the Burmese immigrants as a great blow to their movement and as a result their freedom was severely curtailed. Much of the pro-democracy movement was inspired by ethnic Burmans consisting of such groups as the Kachins, the Karens, the Chins and the Arakanese etc targeted largely by the military rulers and their policy of nationalization and forced labour for 'national' development. In 1990, the junta extended its control over the Sagaing Division of the Chin state inhabited

mostly by the ethnic Chins numbering between 1.5 and 2.5 millions. Chins are known to have migrated in trickles over the years from the Division - one of the poorest in Myanmar, again one of the poorest countries of the world. In 1988 when persecution against the Chins reached its peak, it is difficult to say how many of them were evicted as a result of political compulsions and how many due to economic reasons. A good many Chins are settled in the Indian state of Mizoram. By all accounts, a distinct change in attitude of the Mizos towards the Chins has been noticeable. While they were initially very hospitable towards these migrants because of the ethnic affinity they share with them, the early bonhomie seems to have been ruptured with too many people chasing after the limited pot of resources and growing cases of human rights violations reported against them.

The minority Tamils of Sri Lanka concentrated mainly in the North and the East are said to have shared their ethnic and cultural affinities with those of South India throughout history. The proliferation of Tamil political organizations in the 1970s was in many ways a response to 'the policy of nationalization' followed by the Sri Lankan state. Tamil representation in political and decision-making institutions, in bureaucracy and security forces has been incomparably low - much lower than their percentage vis-à-vis the total population. The Citizenship Act passed way back in 1948 made a distinction between the 'Ceylon Tamils' and the 'Indian Tamils' and the former were regarded as people of indigenous origin and therefore granted citizenship while the second category instantly became 'stateless'. In 1956 Sinhalese was declared the official language of Sri Lanka including in the Tamil-majority North and the East. But the matters came to a head when on 23 July 1983 a convoy of army jeeps and trucks was attacked a few kilometers away from Jaffna. The rest is part of the region's widely known history. The changing attitude of various Tamil groups and political parties towards the Tamils in general and the Tamil refugees migrating to South India in particular speaks of the bilateral nature of Tamil minority in the region. Some of these Tamil groups including of course Liberation Tigers of Tamil Eelam have released maps of Eelam or free Tamil land consisting of the Tamil-dominated parts of not only Sri Lanka but of South India.

The bilateral or multilateral nature the minorities mentioned above sensitizes us to the essentially supra-national nature of the minority question in South Asia. During the civil war in the then East Pakistan during 1971, about 10,000 Garos of Modhupur in Bangladesh crossed over to neighbouring Indian state of Meghalaya in order to escape violence and persecution in the hands of the Pakistani forces. Many of them went back as the dust storm of war gradually settled down. Going by the available researches, the Indo-Pak war of 1971 resulting in the formation of Bangladesh as a separate state in South Asia was triggered off by the imperative necessity of sending back about 9.8 million of Pakistanis who had taken shelter in the bordering states of India. While bilateral nature generally expresses itself through such mutual acts of seeking

refuge and shelter as in the cases of the Garos, the Tamils, the Chakmas, the Hajongs and the Chins, it more often than not is underlined by reflexive violence, acts of vendetta and revenge killings. Persecution of minorities in one country has its obvious repercussion in another where they are not necessarily in a minority. The demolition of the Babari Masjid by a section of fundamentalist and rightwing Hindu forces in 1992 left its almost instant impact on the minorities of both Pakistan and Bangladesh. Temples and places of worship of the minorities were systematically destroyed much in the same manner as the Taliban busted the ancient relics of Buddhism in the Bamian mountain of Afghanistan during its reign. Policy-oriented researches are called for so that early warning systems can be put in place and the mass violence resulting from unchecked communal pogroms organized at times with full state connivance does not take its toll on the societies of South Asia.

On the European side, in 1992 an OSCE High Commissioner for National Minorities was appointed with the main task to provide early warning and to activate mediation procedures when tensions involving national minorities seem likely to develop in such a way as to threaten peace and stability. So far, the entire work of the High Commissioner has been developed around the situation of national minorities with bordering kin-states, potential source of intra-state tension and conflicts. European researchers note that a substantial distance between public policy and law on the one hand and the pluri-lingual reality of almost every state to varying degrees on the other demonstrates that most European states have yet to conform their thinking and governance to either the socio-cultural reality of their population or the international standards to which they are committed.³⁸

IV.2 Linguistic Rights in Europe and India

The use, preservation and enhancement of minority languages represent one of the principal means by which minorities can assert and preserve their identity. Language is paramount to the protection of minorities and this issue is a cornerstone of the right of minorities to preserve their identity and characteristics. But which measures are applied by states to implement those fundamental rights in daily life? In most South Asian and European state constitutions different cultural and linguistic identities are recognised or the state is even constituted as a multinational and multicultural reality like India. But what are state authorities and legislatures doing to actively ensure their existence and promoting their development? Which is the situation of smaller or “lesser used” languages, which in no state and perhaps not even on regional or district level are used as an official language?

³⁸ See, John Packer, ‘The Protection of Minority Language Rights through the Work of the OSCE Institutions’ in S. Trifunovska (ed.) *Minority Rights in Europe: European Minorities and Languages*. (The Hague: Asser Press 2000), p. 274.

In the framework of minority rights language is probably the issue which in Europe has got major attention in both, the legislation and implementation, but also in research regarding its impact on social and cultural reality. Consequently the two major international covenants today in force in Europe (the Framework Convention on National Minorities and the European Charter for Regional and Minority Languages) attach to the language rights utmost importance. In Europe in many countries there is a certain record of application of linguistic rights of ethnic groups or national minorities. The FCNM State reports are extensively listing up the measures and efforts of public institutions and state agencies to promote minority languages and the results of those interventions. On the other hand, independent research and comment points out many critical situations of endangered languages and thus still very much has to be done.

The constitution of India has recognised the rights of minorities to use their own language (art 29). Art. 344 of the Constitution lists the officially recognised languages of single states with regard to the Union. Art. 345 grants the freedom of any state of India to adopt any or more of the languages in use in that state as the language to be used for all or any official purposes of that state (art. 347).

The states of the Indian Union - and this is an interesting similarity with most of the European states - are constituted on a linguistic basis, though other factors (economic, political and social) were also kept in consideration. Those states are free to adopt their own language of administration and educational instruction from the 22 languages officially recognised though it does not stipulate how the objective is to be achieved. Art. 350 A enunciates that it "shall be the endeavour of every state and of every local authority within state to provide adequate facilities for instruction in mother tongue at the primary stage of education to children belonging to minority groups, and the President may issue such directives to any state". This is of particular relevance for the Scheduled Tribes-dominated areas of India, but the application so far from meeting their cultural needs and rights. According to Art. 350 the linguistic minorities have the right to be taught and have instruction in their language, but again this is a discretionary provision, not mandatory for the state. From a European viewpoint it could be useful to compare Europe's and India's linguistic reality with the legal arrangements adopted so far. But how are those rights applied in reality? Which is the social and political reality of 50 years of application of linguistic rights? Which results have some State Acts in minority language matters produced? Which political tools and legal provisions on the contrary have failed?

Finally, Art. 350 B provides for the appointment of a Special Officer for Linguistic Minorities. This Commissioner of Linguistic Minorities operating since 1957, in pursuance of Art. 350 B of the Constitution is endowed with controlling the implementation of the rights deriving from that article for linguistic

minorities. He has submitted 38 annual reports so far. Again this institution finds a counterpart in Europe's international institutions with the OSCE High Commissioner for National Minorities who is monitoring and reporting on the situation of many smaller ethnic and linguistic groups.

The proposal is to work out a comparative study in linguistic rights of ethnic minorities of South Asia and Europe. This kind of comparison between Europe (the signatory states of the FCNM) and India in particular could be done focusing on some basic linguistic rights: the right of public use of its language, the right to use the language in public sphere in contact with public authorities and bodies, the right to be taught in its mother tongue, the right to information in minority languages. The comparison should analyse the legal provisions adopted in various states and evaluate the progresses and in different case studies. In some cases evaluation of linguistic policy is well established. What has been done so far in India and in South Asia so far? Which are the grievances and proposal of the concerned ethnic minorities? What's about the "threatened languages" and peoples" in Europe, India and other South Asian countries due to discrimination and denial of basic rights? This kind of research on a methodological level could also lead to a useful scholarly exchange with regard to methods of investigating and empirical measuring the "comprehensive situation of a language".

IV.3 Minorities within Minorities

In a region like South Asia and perhaps elsewhere, minorities can seldom be treated as a homogeneous category. There are individuals and minorities within minorities. As minority groups have become more vocal in demanding some form of accommodation, few have paid attention to the different types of 'minorities within' including women³⁹, children, gay men and lesbians, religious dissenters and linguistic minorities within religious minorities. The crucial question is: What happens to individuals or minorities who find that their community discriminates against them?

Even Muslim women in India like all minority women elsewhere in South Asia do not constitute a homogeneous category. If the Muslim women constitute a minority within minority, Muslim lesbians, let us say, constitute, yet another layer of minority - a minority within a minority within a minority. The regression of the minorities as a category seems infinite and as one sets out to deconstruct it, one literally peels an onion. The condition of the Muslim

³⁹ Women are regarded by a section of feminists as 'minorities' not so much because of their numerical position (which is true considering the declining sex ration in South Asian countries including India) but very much because of their relative powerlessness. See, Paula Banerjee, 'Mapping Minority Rights and Protection in India' in *Towards a New Consideration: Justice for the Minorities. Policies and Practices* 14 (Kolkata; Calcutta research Group, 2007). Also, Paula Banerjee, (ed.), *Women in Peace Politics*, South Asian Peace Studies 3 (Delhi: Sage, 2008)

lesbians, as a recent report prepared by Peoples' Union for Civil Liberties, Karnataka, puts it, amounts to 'a double bind'. The lesbians and the transgendered amongst the Muslims are to be considered as a special minority particularly in South Asia. As Amena Ali - an Indian living in Canada and a bisexual by confession - admits that she has to face far less social stigma than the kind of cruel social isolation that Rehan - the first Muslim woman to have changed her gender in West Bengal, India - does. Such cases are by no means rare.

Where do we go from here? The recent debates on minority women in South Asia seem to have taken a three-way normative course: One, it is argued that the rights claims of the minorities should not be stretched beyond a critical point where they become detrimental to those of the women belonging to these groups. The minority claims, it is argued, may be conceded provided they are not incompatible with the 'basic values'. There are some problems with this line of argument. Even if we choose to ignore the standard denunciation coming from the extreme cultural relativists questioning the existence of such universal 'basic values' in the governance of our moral lives, we cannot ignore the strong statist traces implicit in the argument. While the state is made the protector and defender of 'basic values', the states in South Asia seem to have refused to bring about radical transformation in the society at the risk of causing instability and violence. This is a point where the reasons of the state intersect those of government. Two, argumentation is often cited as a means to the 'advancement of the cause of equality in different spheres of life'. While in the first case, the rightfulness of rights claims emanates from their compatibility or lack of it with the 'basic values', the second does not seem to set forth any given and unalterable set of universal values but subjects all values to the processes of deliberation and argumentation. Three, there is assumed to be an inevitable correlation between minority assertion and subjection of women. Under such circumstances, women must be able to assert their rights claims independently of the minority groups they belong to. Their alliance with the women of the majority groups is likely to be more enduring and beneficial than the men of their own minority groups. The feminists of this genre call for an autonomous women's movement that will transcend all the divisions internal to their identity as a gender group - including the one between the majority and the minority.

On the European level, some countries as Latvia, Malta and the Czech Republic had not yet passed the necessary domestic legislation to implement the EU Racial Equality Directive of June 2000. In many countries there is no evidence, if in the last years even one legal action against discrimination on ethnic grounds has been taken, although most countries already have such acts and procedures in force. In order to assist member states in adopting EU law touching matters of fundamental rights, the EU's European Monitoring Centre on Racism and Xenophobia became the EU Agency for Fundamental Rights (FRA) in February 2007. This institutions is tasked with developing policies relating to

fundamental rights for EU institutions and member states, keeping a focus on xenophobia, racism and anti-Semitism.

VI.4 The Minority Accords

Minority accords of South Asia signed between two states of the region constitute yet another almost virgin area of research. While ethnic Accords signed between organizations claiming to represent ethnic groups especially minorities and the state have been one of the favourite subjects of research - thanks primarily though not exclusively to CRG⁴⁰ - accords between two nation-states focusing on the question of bilateral or multilateral minorities are yet to attract the attention of scholars and researchers. The accords signed between India and Sri Lanka on one hand and those between India and Pakistan/Bangladesh on the other may provide excellent case studies illustrating at the same time how minority problem has been one issue that has brought the otherwise rivalling nation-states of the region together. It shows yet another side of our story of how the states of South Asia eventually submit to the reasons of government. A close study of select accords may provide us with clues to supra-national bases of cooperation for minority protection in the region.

Europe has a long history of bilateral treaties, differentiating two types of accords. The first type is regulating different issues relating to bilateral relations, inter alia status of respective minority groups. The second type is devoted explicitly to the protection of minorities and stands typically at the end of a conflict or a period of suppressions. This could be observed in the case of the agreement concluded between Finland and Sweden on the status of the Aaland Island in the aftermath of World War I as well as in the Gruber-De Gasperi Agreement between Austria and Italy, which laid the basis for the autonomous status of South Tyrol after World War II. After the collapse of communism, in the first half of the last decade many countries in Central and Eastern Europe concluded bilateral agreements aiming at guaranteeing stability through respect of their borders, minorities and settlement of long-standing disputes. These accords are of particular interest elaborating instruments for comparison between Europe and South Asia.

Coming back to South Asia, we have already made brief mention of the Citizenship Act passed by the Sri Lankan Parliament in 1948. According to Government estimates, the Act rendered 800,000 Tamils stateless on the ground that they were 'Indian Tamils'. In order to overcome the impasse, an accord - popularly known as Shastri-Bandarnaike Pact - was signed between the two Prime Ministers of India and Sri Lanka on 30 October 1964. According to the

⁴⁰ See for example, Samir Kumar Das (ed.) *Peace Accords and Peace Processes*, South Asian Peace Studies 2 (New Delhi: Sage, 2005).

terms of this accord, Sri Lanka agreed to accept some 375,000 Tamils and regularize them as Sri Lankan citizens, India acknowledged her responsibility towards the rest and agreed to take them back to India. Afterwards, on 29 July 1987, Sri Lanka and Liberation Tigers of Tamil Eelam signed a tripartite agreement with India signing it as in the capacity of a third party vested with the special responsibility of monitoring and enforcing it. Subsequent course of events however tells us a different story. The Accord converted what was essentially a war between LTTE and the Sri Lankan state into one between LTTE and India resulting in the assassination of Rajiv Gandhi - then the prime minister of India. Sri Lanka as it were was watching the conflict from the sidelines. There were initial hiccups as the ruling United Nationalist Party showed its reluctance to ratify the Accord in Sri Lankan Parliament. But as the Prime Minister threatened to dissolve Parliament and seek fresh mandate from the electorate, United Nationalist Party did not take much time to ratify an Accord that was crafted not by Premadasa but by his predecessor - Junius Jayewardene.

We have already made a reference to the massive population movements that took place both immediately before and after Partition. The fear of being reduced to a minority propelled the Muslims of the East to migrate to East Pakistan as much as many Hindus living there did not feel any longer safe to remain there and migrated to India - although according to Amalendu De the flow from the East to the West was disproportionately more than that from the West to the East.⁴¹ The population flow seemed unstoppable so much so that much of the population flow that takes place now has its roots in the history of Partition. The leaders of both India and Pakistan appeared to be interested in stopping the flow of minorities and in ensuring safety and security in their own countries although for very different reasons. While Nehru - India's first Prime Minister - considered protection of minorities as the key to India's professed ideal of secularism, Liaquat Ali Khan - his counterpart in Pakistan - regarded it as central to Islam. One has to keep in mind that Pakistan was born as an Islamic state. Both Prime Ministers signed what is known as the Nehru-Liaquat Pact in 1950 that entrusted the respective states with the responsibility of ensuring safety and security of the minorities and provide for their protection in their own countries. While Bangladesh maintains that not a single Bangladeshi migrates to India, the now-dysfunctional 'Treaty of Friendship, Cooperation and Peace between India and Bangladesh' - popularly known as Indira-Mujib agreement named after the two signatories - vowed to settle all major international problems 'through meetings and exchanges of views at all levels'. The Treaty may not have made it in black and white; but Indira Gandhi - then the Prime Minister of India - is understood to have given the assurance to Sk. Mujibur Rahman - the Prime

⁴¹ Amalendu De, 'Bangladeshe Dharmiya Sankhalaghu Janabinyas: Manchitra Paribartan' (in Bengali), [The Demographic Composition of the Religious Minorities in Bangladesh: The Changing Contours] in *Parichay*, May-July 1992.

Minister of Bangladesh widely called 'Bangabandhu' (friend of Bengal) - that the immigrants settled in India before the civil war broke out in 1971 would be accepted by India and would not be sent back.

In 1950, the Indo-Nepal Treaty was signed between Chandreswar Prasad Narayan Singh and Mohan Shamshere Jung Bahadur Rana on behalf of the two Governments. Although not a treaty exclusively focusing on the minorities, it contains provisions for their protection and imposes on both the Governments the reciprocal obligation of protecting them in their respective countries. Due to the porous nature of the Indo-Nepal border and the landlocked nature of the Himalayan state, Nepali immigration to India has been historical by nature. Article 7 of the Treaty is designed to grant reciprocal rights to live and own properties, participate in trade and commerce and move without papers from one country to another to the citizens of another country. The Treaty - however controversial it is for having obliterated the distinction between the Nepalis and the Indian - is meant for protecting their rights in the alien country and should be regarded as a landmark treaty in the sphere of minority protection between the two contracting States.

An analysis of the minority accords is likely to give us an idea of the possible bases of governmentally induced cooperation on some of the outstanding issues like their mass exodus and reflexive violence. While states in the region are not going to wither away at least in the short term, the 'metaphysic of the nation-state' may not be an appropriate framework for understanding and analyzing the problems of minorities. Can such bilateral experiments provide the basis for a South Asian Treaty for the protection of minority rights including the right to protection of places of worship, in the signing countries? We also call for some of the intermediate policy regimes that may be placed between either of the two extremes mentioned above. We will discuss the highlights of this policy debate in one of the subsequent sections. Suffice it to say here, an analysis of the minority accords will lend to us a template within which the possible sources of international and supranational cooperation may be deciphered.

An example of best practice on supranational cooperation are the OSCE Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations, launched in October 2008 with the purpose to provide representatives of States, national minorities and international organizations with guidance on how to address the questions concerning national minorities that arise in the context of the inter-State relations in a way that protects and promotes the rights of persons belonging to national minorities, prevents conflict, maintains interethnic harmony and strengthens good neighborly relations.⁴²

⁴² OSCE-HCNM, The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations & Explanatory Note, The Hague, 2008, p. 8 and pp. 24-27 (www.osce.org/hcnm)

IV.5 Experiments with Regional Autonomy

Regional territorial autonomy - sometimes in combination with cultural or personal autonomy - in both concerned areas, Europe and South Asia - has been a major issue when it came to develop instruments for both ethnic minority protection and self-governance. Regional autonomy as a specific power sharing arrangement between the central and regional government level has a proven potential of conflict solving when addressing the needs of a homogeneously settling minority population or smaller peoples in given limited territory. Whereas Europe since 1921 has experienced the establishment of some 36 autonomous regions in 11 states (9 of whose are members of the EU + Moldavia and Ukraine), in South Asia regional autonomy so far has been adopted only in India. India has a decades old experience with territorial autonomies especially on the sub-state district level. Jammu & Kashmir, after a first period with fully autonomous status, in the 1950ies lost its special autonomy status (according to article 370 Indian Constitution), which contributed to the ongoing conflict and unrest in the area. Apart from creating new states, a range of accords and unilateral measures on several regions have been created either as autonomous areas or district councils under the Fifth and Sixth Schedules of the Constitution. Nepal with its new constitution, to be forged in the coming months, will probably transform in a federal republic in order to cope with its ethnic and cultural diversity, whereas in Sri Lanka the efforts of federalising the state's structure as a compromise with the Tamil minority dramatically failed re-igniting the civil war. In Bangladesh the long struggle of the Chittagong Hill indigenous peoples for their fundamental rights and territorial autonomy did not yet lead to a lasting and stable solution: the first treaty on which the central government in Dhaka and the concerned minority peoples convened, did not match their expectations and needs. In Pakistan, besides the general requirement to reform the federal structure, the issue of regional territorial autonomy is concerning especially the Northern Areas of Gilgit-Baltistan, a huge region trapped in the Indo-Pakistani conflict on Jammu & Kashmir, deprived not only of the right to self-governance, but also of the fundamental rights to democratic participation.

Europe, from a perspective of the concerned minority peoples and national minorities, has collected most positive experiences with regard to territorial autonomy and other forms of autonomy (e.g. cultural autonomy). Most of the existing regional autonomies are developing towards a more complete range of autonomous competencies and thus obtaining a higher degree of self-governance. This tool of solution of ethnic conflict is slowly emanating to other countries, particularly in Eastern Europe (e.g. in Romania with the Szeklerland, inhabited by a majority of ethnic Hungarians), although still several state parties are looking with suspicion to such proposals. But regional autonomy not only is a consolidated experience on the ground, but

also step by step approaching a stage of codification on the level of international conventions. In 1994 the FUEN (the *Federal Union of European Nationalities*) launched the “Draft Convention on Autonomy Rights of Ethnic Groups in Europe”, the Council of Europe with its resolution no. 1334 of 24 June 2003, the OSCE Lund-Recommendations on the Effective Participation of National Minorities in Public Life, and recently the recommendations of the Council of European Regions and Local Authorities in the same matter. Many of Europe’s national minorities and ethnic groups (out of more than 300 existing groups) have hopes of the further development of this juridical concept and its codification in international soft law.

Starting from this situation autonomy applications in South Asia and Europe in a comparative perspective could be an interesting issue for further research efforts, also oriented to policy consultancy, taking into account the diverse historical, political and juridical context and based on empirical evidence. First it should be empirically assessed which results the territorial autonomies in India and Europe have produced so far; second it could be analysed which are the major factors which still have prevented autonomy to unfold its positive potential for conflict solving and self-government, integrating other means of minority protection; and third which new proposals could be developed in order to face ongoing conflict in various areas. In this context regional autonomy should neither be considered a magic recipe for all times and all places, nor just a specific European form of territorial power sharing, but as a concept of state organisation which with due adaptations can be and is applied in all continents.

In this framework Eurasia-Net could elaborate three case studies for South Asia:

1. Pakistan and Gilgit-Baltistan: elaboration of a proposal of a procedure to start and run a negotiation process aimed to draft an autonomy statute by a platform of locally based scholars and activists.
2. Bangladesh and the Chittagong Hill Tracts: In-depth-analysis of the major flaws of the currently adopted self-administration of the CHT and elaboration of a proposal of an authentic and stable autonomy solution for the whole region.
3. Autonomy on district level in India: experiences, achievements and future requirements, starting from an assessment based on some examples like Darjeeling, Bodoland, Assam, Tripura and Mizoram Tribal Areas.

As for the cases of regional autonomy adopted in Central Europe, first of all South Tyrol could be chosen as one example, also for practical reasons, but Corsica would be a good example as well being a case on “uncompleted regional autonomy” which still is highly disputed and not meeting given minimum standards of political autonomy. In this context also the related

issues of local autonomy (self-administration) and cultural autonomy have to be discussed. Finally it could be analysed which conditions have to be created in order to introduce a “right to autonomy” in the framework of an international convention of fundamental minority rights within international (regional) soft law in both areas of Europe and South Asia.

IV.6 The Model Cases

The claim of a few cases of South Asia to serve as ‘models’ to be followed elsewhere for the resolution of minority problems should also be closely examined. For instance, the Indian state of Mizoram in the Northeast is showcased in official circles as a success story. The Mizo Accord (1986) has been described as the ‘only accord that has not fallen apart or spawned violent breakaway groups’. But empirical researches albeit sporadically conducted in the region tend to show how the Accord that did not result in any fatal split and factious conflict within insurgent ranks has slowly produced an ‘illiberal’ society in which individual dissent is more or less throttled and dissenters are forced to give way to the commands of the ex-insurgents or even Mizo civil society organizations. The so-called success story of the Accord will have to be read together with many other stories that compel us to read it against its grain. The Hmars fell apart from the Mizos the moment the separate state of Mizoram had come into existence in 1986. The demand for ‘Hmar Ram’ to be carved out from the newly formed state of Mizoram made by Hmar Peoples’ convention (HPC) symbolizes a deep ethnic divide between the two hitherto friendly communities of the Mizos and the Hmars. Interestingly Hmars joined the Mizos in their struggle for the statehood of Mizoram. Reangs constitute the second largest population group in Tripura spreading across several northern and southern subdivisions of Dharmanagar, Kailasahar, Kamalpur, Udaipur, Amarpur, Belonia, and the bordering states of Assam and Mizoram and of course, Bangladesh. Insofar as they are scattered over a number of territorial and administrative units, they face the problem of being reduced to minority everywhere. The general perception of the Reangs that transpires from the interviews with their political leaders is that their culture cannot flourish ‘because of the dominance of other majority groups within the recognized territorial spaces in Mizoram, Tripura or in Assam’. Mizo society’s intolerance to dissent is exemplified recently when Vanramchhaunvy - a leading Mizo woman activist, was threatened in May 2005 by Young Mizo Association (YMA) while protesting against the deaths of four persons and cruelty towards many others for their alleged involvement in peddling drugs and liquor. The YMA had launched a programme of curbing drugs and liquor and the victims who had died or had to suffer other forms of cruelty were ‘punished’ by the organization as part of its campaign for meting out instant justice to the deviants and offenders in the society. When she saw two women on the roadside apparently accused of some offence and made to wear large placards around their neck, she pleaded for turning them to the appropriate authorities and trying them according to the Constitution and the law of the land. She was

summoned the next day by the YMA and nine local YMA leaders descended on her place as per the orders of the Central Committee and threatened her. However, tensions are brewing within the ranks of the ex-insurgents. Today when the Peace Accord MNF (Mizo National Front - the rebel body that led the insurgency struggle) Returnees' Association (PAMNFRA) accuses the Government for not implementing the provisions of the accord, it blames itself for having signed it in good faith and not any of its rival factions.⁴³ In simple terms, the so-called model cases of governing the minorities in South Asia need to be investigated further in as much as the interstices and fissures involved in the process become increasingly pronounced.

Although the transferability of model cases for the protection of human and minority rights in different socio-political frame is a difficult aim (especially from Europe to South Asia), the creation of knowledge about existing mechanisms and instruments, developed under different circumstances, accompanied by the exchange of information about all regions involved is a fundamental starting point.

Looking in particular at the European experience, the developments and achievements attained within different pan-European organizations in the field of human and minority protection are quite remarkable if compared with other regions in the world.

IV.7 Debate on State Policies

South Asia as a region has generated a rich and growing body of literature particularly since the late 1980s. Yet it is important to note that much of this literature is not focused on any exploration into possible policy alternatives in order to address the issues and questions underlined above. The region is still a long way from evolving what may be called a policy culture where concerned people can continuously debate on minority problems and possible policy alternatives. An attempt will be made in this section to review some of the hitherto suggested alternatives and briefly discuss their successes and limitations. A thoroughgoing research into the debates on policy alternatives will go a long way in ensuring and guaranteeing better minority protection in future.

There are very few policy advocates in the region (excepting perhaps the official sources), who continue to recommend *pure* 'law and order' solution to the ethnic and minority problems. The measures suggested in this connection range from overhauling security structures in order to secure and protect the nation's interests and greater deployment of security forces to legislation and

⁴³ For a more critical understanding of Mizo accord, see, Samir Kumar Das, *Conflict and Peace in India's Northeast: Role of Civil Society*, Policy Studies 42 (Washington D.C.: East-West Center, 2008).

implementation of 'emergency' laws (like the controversial Armed Forces Special Powers Act of 1958 presently in force in many parts of the India's Northeast) often involving temporary suspension and abrogation of rights and liberties that are otherwise enshrined in and guaranteed by the constitution and laws of the land. The efficacy of 'multi-force operations' (popularly known as 'unified command') in Assam, India has already become a frequently referred topic of discussion. While law and order solution may be both desperately necessary and effective in the short run, it cannot be an answer to the region's ethnic and minority conflicts. The paradox that democracies all over the world face today is how to respond to the minority problems and insurgencies without reneging on its commitment to rights and liberties of the citizens including those of the minorities.

But there are others who advocate a change in policy regime in the countries of South Asia while addressing the problems facing the region. The change, according to them, will have to be brought about predominantly - though not exclusively - by the state and an entire series of measures is suggested to make the state move in this direction. A change in policy regime is possible through 'an alternative institutional imagination' that calls for salvaging ethnic identity from any notion of fixed and territorially rooted collectivity and encourages constant experimentation with diverse institutional arrangements till the disentanglement of identity from territoriality can be completed. It is indeed argued that the emphasis in policy interventions will have to be shifted from granting some form of politically enclosed and exclusive units or ethnic homelands (state, Autonomous District Councils, government by traditional institutions and in accordance with the customary laws etc.) to the minority communities in recognition of their particularistic identities to 'good neighbourliness and development'. But, how do we bring about such a transformation? Being deeply powered by the same state building imagination intent on throwing their weight in favour of minority demands for ethnic homelands, do most of the 'actually existing civil societies' in South Asia provide a solution? Being deeply powered by homeland imagination, actually existing civil societies can hardly be regarded as the site where any flexibilization of homeland regime will be possible. Civil societies in the region too require an alternative imagination so that these can provide the normative ground for the initiation of such a change in policy regime. Groups like Women in Security, Conflict Management and Peace (WISCOMP), Kali For Women, Pakistan-India Peoples' Forum for Peace and Democracy and CRG etc have been involved in civil society activism across borders. But there are not many of their ilk that are involved in similar work across South Asia. This is by no means meant for undermining their activism within the territorial confines of their respective countries.

The debate on institutions has already begun. Efforts are being made to break free from the paradox inherent in the early framework of state building in which consolidation of a particular community within a geopolitical space

necessarily creates its minorities. For example, the vicious circle in which a minority becomes a majority by way of getting the borders redrawn and thereby creates its own minority and the circle continues to roll with alarming regularity is inherent in India's established federal setup. Attempts are now being made to explore newer institutional alternatives. We may refer to at least three interesting strands, not necessarily mutually exclusive, of this debate: First, reform-minded scholars and activists recommend a Scandinavian SAMI-like multi-layered parliamentary system in which ethnic communities will have the right to represent themselves instead of being bound by the majoritarian commands of the existing parliamentary system. Secondly, some have argued that the 'first-come-first-served' electoral system in which the minorities dispersed over a large space are constantly under the subjection of the numerical, and therefore political, majority is incompatible with the pluralistic nature of South Asian societies. Even reservation of seats for them will not help the situation. Introducing proportional representation is considered as a means of protecting these groups from majority rule and retaining their autonomy. Thirdly, a case has been made for widening the consociational base of our democratic system. Lijphart (1996), for example, shows how the basic preconditions of a consociational (power sharing) democracy were met during the first few decades of India's independence and how that base has been weakened as a combined result of 'centralization of the Congress Party and the federal system' in the 1980s and growing 'attack on minority rights' in different parts of India.⁴⁴ He in fact pleads for resuscitating the institutions and practices of consociational democracy that, according to him, protected India reasonably well in the first few decades against inter-group violence and communal riots.

While suggesting the possible policy alternatives, one has also to explore how such non-territorial forms of minority representation might spill over the international borders and include more than one nation-state for consideration. For example, a 'Work Permit' regime that is believed to be situated between the formal principle of territorial sovereignty and complete impenetrability of international borders and the popular practice of disregarding them by way of immigrating from across the borders. The regime implies a certain blurring of the distinction between citizens and foreigners considered as central to the identity of any nation-state. A person working in the host country with a permit is not considered as a citizen and is obliged to leave it as soon as the tenure of permit expires. But such a regime is expected to address the problem of rising demand for cheap and inexpensive labour currently filled up by the 'illegal' immigrants for all practical purposes. The regime can operate provided both the sender and the host countries agree to introduce it. South Asia provides a vast and hitherto un-researched field of all such experiments with various

⁴⁴ Arend Lijphart (1996): 'The Puzzle of Indian Democracy: A Consociational Interpretation', *American Political Science Review*, 90 (2), June.

institutions and such an exercise may be initiated under the aegis of this project.

The European approach is not building on a differentiation of strictly separated groups of so called “old and new minorities”. Such approach could suggest that the national states are responsible for the protection of their “old minorities”, whereas the European Union is responsible for the integration of EU citizens, and that the treatment of migrants is increasingly a shared task. Within the EU system and the constitutional value of “cultural diversity”, it is argued that the moment of entry is characterized by quasi monopoly of the EU with regard to its citizen and increasing EU role with regard to third-country nationals. Integration is characterized by a strong interactive engagement of players, Union and Member States. Finally the moment of preservation, characterized by a quasi monopoly of the Member States, is related to old minorities. Each moment involve a different set of concerns and a distinct balance between national and supranational involvement.⁴⁵

IV.8 Regional Instruments

South Asia, by all accounts, has been slow in evolving supranational and pan-regional instruments for minority protection. A few of these attempts made in recent years mostly outside the scope of state initiatives however merit attention. It was South Asian Forum for Human Rights based in Kathmandu (Nepal) that made one of the earliest attempts in August 1998 towards this direction. While expressing their concern that ‘during the five decades South Asian States have drifted to a hegemonic and majoritarian political culture’, the participants of the Consultation meeting felt ‘worried by the failure of the governments to protect the minorities against the violations by the members of the majority community’. The participants preferred to define ‘minority’ not as a simple numerical statement but as groups with ‘ethnic, religious and linguistic features’ because of which they are actively discriminated against in the society.⁴⁶ The presence of Constitutional and legal provisions do not mean much to the minorities unless - as they argued - there is proper accountability in all cases of rights violations. Perhaps for the first time in South Asia, it raised the demand for the constitution of an independent National Minorities commission as a Constitutional body with adequate powers to intervene in all instances of infringement of minority rights. At a supranational level, they urged on the SAARC to create the office of a Special Rapporteur, who should

⁴⁵ See, Gabriel N. Toggenburg, ‘Who is Managing Ethnic and Cultural Diversity in the European Condominium? The Moments of Entry, Integration and Preservation’ in *JCMS* 2005 (Volume 43, Number 4), pp. 717-738.

⁴⁶ By contrast, Myron Weiner refuses to view them as victims of active discrimination. His argument looks upon minorities as victims without as it were victimizers. See, Myron Weiner, ‘India’s Minorities: Who are they? What Do They Want?’ in Myron Weiner *The Indian paradox: Essays in Indian Politics* (New Delhi: Sage, 1989).

be empowered to review and report every year the Heads of the States of South Asia on the status of minorities in the countries of the region. They also called on SAFHR to create in collaboration with other non-Governmental and civil society actors a forum for the preparation of an annual People's Report on the status of Minority Rights in South Asia. They also appreciated the importance of reforms in the educational institutions so that they play a role in promoting the values of tolerance, amity, respect for language, culture and religion of different communities. The meeting also underlined the need for 'impartial and independent mechanisms for monitoring minority rights' and ensuring easy access and speedy redress to all cases arising out of violation of minority rights.⁴⁷

SAARC Social Charter signed by the 7 states of South Asia on 4 January 2004 is considered as a remarkable advancement in the field of protection of minority and group rights including those of the elderly, the women and the children. Although the term 'minority' has never been explicitly used, the idea - as Clause 2 (XI) of Article II explains - is to secure for 'the disadvantaged, marginalized and vulnerable persons and groups' legal rights and make 'physical and social environment' accessible. While legalization of their rights is an effective first step, the Charter also puts emphasis on obtaining enabling conditions for their observance and protection. The immediately following sub-Clause calls for 'observance and protection of human rights and fundamental freedoms for all'. In simple terms, the Charter aims at protecting the rights of these groups as part of the larger project of investing each one of South Asia with rights and freedoms irrespective of their religion, race, caste, sex and place of birth and promoting 'effective exercise of rights in a balanced manner at all levels of society' and 'social integration'. Much in the same vein, Clause 1 of Article VI declares that 'discrimination against women is incompatible with human rights and dignity'. The Charter clearly rules out any exclusivist path to be pursued while protecting their rights and freedoms.

At the instance of the International Centre for Ethnic Studies (Colombo), a Statement of Principles on Minority and Group Rights in South Asia was drawn up and revised in April 2006. A South Asian Charter on Minority and Group Rights was elaborated on the basis of the Statement by a group of voluntary organizations across South Asia including International Centre for Ethnic Studies (Colombo), Centre for Alternatives (Dhaka), Human Rights and Democratic Forum (Kathmandu), Mahanirban Calcutta Research Group (Kolkata) and Human Rights Commission (Karachi).⁴⁸ The main aim of the Charter published in May 2008 is to effectively address minority issues and concerns, which cut across

⁴⁷ For details see, Sumanta Banerjee (ed.), *Shrinking Space: Minority Rights in South Asia*. Kathmandu: SAFHR, pp.211-213.

⁴⁸ International Centre for Ethnic Studies, Centre for Alternatives, Human Rights and Democratic Forum, Mahanirban Calcutta Research Group and Human Rights Commission, *A South Asian Regional Charter on Minority and Group Rights* (Colombo: International Centre for Ethnic Studies, 2008).

countries in South Asia and enhance regional responses to some of the current weaknesses in constitutional and legislative protection and promotion of minority and group rights. More specifically, the Charter may be used 'as a reference tool for Governments, non-State actors, human rights institutions, NGOs and human rights advocates and policy makers to draft national legislation, promote legislative reform, undertake advocacy, influence decisions, policies and programmes to ensure that they focus on the promotion and protection of minority and group rights'. The Charter - instead of formulating new norms for the protection of minority and group rights - builds on the existing instruments like SAARC Social Charter, International Covenant on Civil and Political Rights, Covenant on Economic, Social and Cultural Rights, Convention on the elimination of All Forms of Discrimination against Women and International Convention on the Elimination of All Forms of Racial Discrimination and adapts them to the specific context of South Asia. It not only urges the States Parties to 'reaffirm and adopt' the Covenant but provides for 'effective remedies' - should violations of these rights ever take place - 'for the purpose of promoting general welfare in a democratic society, without discrimination of the life and well-being of people'. The Charter views the question of protection of minority and group rights as part of the larger problem of inculcating some basic democratic values in the states of South Asia, rather than isolating their cause and ghettoizing them in the process. As a tribute to this principle, Article 5 of the Charter clearly lays down:

The States Parties to the present Charter guarantee the exercise and enjoyment of the rights recognized in the present Charter without discrimination of any kind as to race, colour, language, religion, caste, gender, political or other opinion, national or social origin, property, birth or other status, and protection against any acts of such discrimination, and any incitement to such discrimination.

But nothing in this Article prevents any state from 'protecting the existence and the identity of the minorities within their respective territories' and providing for 'affirmative action'.

On the one hand, the Charter entitles the minorities to the 'right to freedom of association' including that of establishing and maintaining 'free and peaceful contacts' with the other minorities as well as 'contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties'. On the other hand, Article 7B recognizes the connection between ethnic minority and ethnic homeland and provides for their protection 'within their respective territories'. Besides, the Charter serves as one of the unusually detailed documents for the recognition and protection of linguistic rights of the minorities. It envisages the establishment of a South Asian Human Rights Committee composed of nationals of the States Parties serving in their personal capacity in a bid to enforce its various provisions. Each State Party is empowered to nominate not more than two

persons from its nationals for the membership. The Committee is empowered to receive and handle 'communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Charter' provided it is submitted by a State Party that has made the declaration 'recognizing in regard to itself the competence of the Committee': "No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration." The provision is likely to reduce the otherwise widely prevalent diplomatic abuse of such a sensitive issue as minority and group rights and their subordination to 'national interest'. The issue proves critical insofar as the assertion of these rights is sought to be understood beyond the realms of national interest and governmentality. The same declaration from the allegedly 'violating' State Party is necessary for receiving communications from individuals accusing it of having violated the minority and group rights recognized by the Charter.

As a follow-up to this Charter, Basu Ray Chaudhury on behalf of Calcutta Research Group drafted another Charter on Minority Rights in India, which was subsequently published in August 2007.⁴⁹ While taking off from the assumption that 'the Constitution has not always been able to reflect the realities of majoritarian basis of the Indian polity, the poor state of the protection available in the country, and the low level of the constitutionally acknowledged minority rights', it lays down a set of 11 Principles on the basis of which constitutional and legal provisions are likely to function. In simple terms, the Principles do not seek to introduce any new principle to the Constitution or the legal system but aim precisely at reinforcing them and most importantly the secular ideal embodied in them. While the South Asian Charter is expected to be 'reaffirmed and adopted' by the States Parties, the Principles are laid down in the form of some moral imperatives to be followed by the Indian State because they are inconsonance with the legal and Constitutional provisions. The Principles per se are not enforceable, but only facilitate the enforcement of the already enforceable provisions. Besides, the Indian Charter envisages synergy between 'the State, authorities, public and private organizations, institutions, corporations, NGOs, groups or persons, public officials and private individuals, whether State or non-State actors and irrespective of their legal status' that, according to it, is absolutely essential for ensuring their enforceability.

Researches on minorities of South Asia - otherwise rich and growing - fail albeit with notable exceptions in lending a pan-regional and supranational focus to them. By contrast, South Asia provides the example of a region where both minorities and majorities are caught in a complex web of social, economic and cultural relations across the state borders reorganized particularly in the wake of Partition. The reality of supranational and cross-border linkages is

⁴⁹ Sabyasachi Basu Ray Chaudhury, 'An Indian Charter for Minority Rights' in *Towards a New Consideration; Justice for the Minorities, Policies and Practices* 14 (Kolkata: Calcutta Research group, 2007).

completely incompatible with the current research boom that mostly focuses on minorities insofar as they are confined to state territories and thereby become victims of discrimination. Solutions interestingly are sought at the national level by way of subjecting them to the reasons of government, by firmly emplacing them within the national body and converting the minorities as a category of powerlessness into a merely numerical category. A research policy that probes into these linkages and connections can throw light on the possible policy options of how we can provide for better and more effective protection of minority rights particularly at a time when minorities have increasingly become the object of active discrimination by various social forces including the states of South Asia within their borders.

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VI. ANNEX: EXECUTIVE SUMMARY

Ways of Power, Minorities, and Knowledge on Minorities: An Assessment of Research Policies and Practices

1. Researches on the minorities in South Asia are not centrally organized, or are not conducted according to any collaborative plan. Indeed, conducted at various levels sometimes they act at cross-purposes with one another. In the absence of a clearly laid out, coordinated and coherent research policy on minorities, we find considerable difficulties in assessing it. While the current research boom is still in this state, this does not mean that framing a research policy is either impossible or unwarranted. In fact, we need to raise some issues and questions from within the mandate of our project so that we can change the terms of our present discourses. Research policy in that sense can serve as a catalyst for changing the terms of our ongoing discourses.

2. Researches on the minorities in South Asia in general and India in particular have been highly uneven in character and there is reason to think that these have primarily built on the general institutional practices and discourses circulating within the larger society. It is evident that minorities have become a hot topic of researches in South Asia. At one level, they too emphasize on the dispersal of levels and layers in the body politic that have made the functioning of the established democratic dispensation in India based predominantly on the majoritarian principle problematic. Both systematic exclusion of the minorities and active discrimination have severely impaired the democratic framework. At another level, the state continues to proceed with the old principles and institutions. States are slow in thinking about institutional reforms to accommodate this situation. Political parties based on the principle of interest aggregation for gathering popular support are becoming increasingly incapable of representing the emerging minority interests that refuse to be aggregated into the larger wholes.

3. While most of the studies in South Asia focus on minorities within their respective countries, there have been very little - if at all - in the existing literature either by way of comparing them or discovering their continuities and linkages. The researches on the minorities in South Asia reflect little pan-regional awareness. Historical and cultural continuities provide as it were with an ideal case for comparing the minorities across the countries of the region. This practice of studying the minorities within their national frontiers in isolated ways speaks of the persisting impact that the framework of nation-states makes on the research agenda and the typical nationalist fear ('cartographic anxiety') that any cross-border linkages and continuities between minorities are a potential or actual threat to the sovereignty and integrity of the states of South Asia. Minorities are held by the nation-states

first of all as 'national minorities' and therefore fall under their sovereign domain. Governing the minorities in this context has turned into a problem of emplacing them within a national body. After all, minorities as a category of powerlessness can vanish by being governmentalized (variously termed as 'domesticated', 'institutionalized' and 'routinized' in the existing literature) into 'national minorities'. 'National minorities' may be numerically smaller groups but certainly not disempowered groups as long as they form part of a nation. Entry into the nation is considered as the sure means of minority empowerment. Besides, any comparison between minorities across the countries of South Asia is likely to reflect on the relative performances of the states vis-à-vis the minorities within their respective countries and has the potential of being used and exploited by others. States of South Asia not quite known for being friendly to each other have the record of humiliating their rivals in diplomatic, regional and international forums on the count of discriminatorily treating their minorities. Any comparison reflecting on the state performances in this regard is likely to be politically volatile - if not inflammable. One can therefore say that the practice of studying the minorities within their respective 'national' settings is as old as the evolution of nation-states around the world. It is for this reason that comparisons (as in one case between the minorities of India and Malaysia) considered as politically benign and safe are attempted.

4. By all accounts, migration across nation-states has increased multifold over the recent years. Although an early attempt to study some of these population flows was made, it certainly requires to be revisited in the changed context of globalization in South Asia. The 'mixed and massive' population flow has not only created new minorities but also triggered off schisms between the locals and the migrants and many of the societies of South Asia seem to be bursting on their seams. While the host country may have its reasons to feel unhappy with the massive immigration from across its borders, the sending country conveniently 'dumps its excess population' and refuses to acknowledge it. This has sometimes caused diplomatic standoffs between the countries of South Asia. It is true that such 'Alice-in Wonderland' policy is unhelpful, for, a solution will always elude us if the problem is not recognized in the first place. On the other hand, there cannot be any unilateral solution to such issues. A platform like this is ideally placed to first of all recognize minority-producing cross-border migration as a problem and then to evolve possible strategies of addressing it. Researches on scenarios of individual countries can at best be partial in their understanding of the magnitude and impact of such immigration and the interruption it causes to governmental operations.

5. While many of the countries of South Asia form parts of the same landmass called India and therefore share many cultural and historical continuities with her, the essentially statist dream of creating culturally homogenous nations by encouraging mass migrations and population transfers was indeed shared in the wake of Partition (1947) by a good number of people who thought it 'unethical'

to remain left in countries that was not theirs. The metaphor of Partition continues to live on and shapes much of the so-called post-Partition politics. Partition is not an event, but a process and a process that does not exhaust itself with one the event of the formation of nation-states. The same dream gets reenacted rather climactically and at great human cost in Gujarat, India (2002), Bangladesh (1996, 2001), Sri Lanka (1983) and Bhutan (1988) where violence is organized systematically more often than not at state's instance to exterminate the minorities whether by indiscriminately killing them or through expulsion.

6. In the framework of minority rights language is probably the issue, which in Europe has got major attention in both, the legislation and implementation, but also in research regarding its impact on social and cultural reality. Consequently the two major international covenants today in force in Europe (the Framework Convention on National Minorities and the European Charter for Regional and Minority Languages) attach to the language rights utmost importance. In Europe in many countries there is a certain record of application of linguistic rights of ethnic groups or national minorities. The FCNM State reports are extensively listing up the measures and efforts of public institutions and state agencies to promote minority languages and the results of those interventions. On the other hand, independent research and comment point out many critical situations of endangered languages and thus still very much has to be done.

7. The proposal is to work out a comparative study in linguistic rights of ethnic minorities of South Asia and Europe. This kind of comparison between Europe (the signatory states of the FCNM) and India in particular could be done focusing on some basic linguistic rights: the right of public use of its language, the right to use the language in public sphere in contact with public authorities and bodies, the right to be taught in its mother tongue, the right to information in minority languages. The comparison should analyse the legal provisions adopted in various states and evaluate the progresses and in different case studies. In some cases evaluation of linguistic policy is well established. What has been done so far in India and in South Asia so far? Which are the grievances and proposal of the concerned ethnic minorities? What's about the "threatened languages" and peoples" in Europe, India and other South Asian countries due to discrimination and denial of basic rights? This kind of research on a methodological level could also lead to a useful scholarly exchange with regard to methods of investigating and empirical measuring the "comprehensive situation of a language". After all, in a region like South Asia and perhaps elsewhere, minorities can seldom be treated as a homogeneous category. There are individuals and minorities within minorities. As minority groups have become more vocal in demanding some form of accommodation, few have paid attention to the different types of 'minorities within' including women, children, gay men and lesbians, religious dissenters and linguistic minorities within religious minorities. The crucial question is: What happens to

individuals or minorities who find that their community discriminates against them? Even Muslim women in India like all minority women elsewhere in South Asia do not constitute a homogeneous category. If the Muslim women constitute a minority within minority, Muslim lesbians, let us say, constitute, yet another layer of minority - a minority within a minority within a minority. The regression of the minorities as a category seems infinite and as one sets out to deconstruct it, one literally peels an onion. The condition of the Muslim lesbians, as a recent report prepared by Peoples' Union for Civil Liberties, Karnataka, puts it, amounts to 'a double bind'. The lesbians and the transgendered amongst the Muslims are to be considered as a special minority particularly in South Asia.

8. Minority accords of South Asia signed between two states of the region constitute yet another almost virgin area of research. While ethnic Accords signed between organizations claiming to represent ethnic groups especially minorities and the state have been one of the favourite subjects of research - thanks primarily though not exclusively to CRG - accords between two nation-states focusing on the question of bilateral or multilateral minorities are yet to attract the attention of scholars and researchers. The accords signed between India and Sri Lanka on one hand and those between India and Pakistan/Bangladesh on the other may provide excellent case studies illustrating at the same time how minority problem has been one issue that has brought the otherwise rivalling nation-states of the region together. It shows yet another side of our story of how the states of South Asia eventually submit to the reasons of government. A close study of select accords may provide us with clues to supra-national bases of cooperation for minority protection in the region.

9. Regional territorial autonomy - sometimes in combination with cultural or personal autonomy - in both concerned areas, Europe and South Asia - has been a major issue when it came to develop instruments for both ethnic minority protection and self-governance. Regional autonomy as a specific power sharing arrangement between the central and regional government level has a proven potential of conflict solving when addressing the needs of a homogeneously settling minority population or smaller peoples in given limited territory. Whereas Europe since 1921 has experienced the establishment of some 36 autonomous regions in 11 states (9 of whose are members of the EU + Moldavia and Ukraine), in South Asia regional autonomy so far has been adopted only in India. India has a decades old experience with territorial autonomies especially on the sub-state district level. Jammu & Kashmir, after a first period with fully autonomous status, in the 1950ies lost its special autonomy status (according to article 370 Indian Constitution), which contributed to the ongoing conflict and unrest in the area. Apart from creating new states, a range of accords and unilateral measures on several regions have been created either as autonomous areas or district councils under the Fifth and Sixth Schedules of the Constitution. Nepal with its new constitution, to be forged in the coming

months, will probably transform into a federal republic in order to cope with its ethnic and cultural diversity, whereas in Sri Lanka the efforts of federalising the state's structure as a compromise with the Tamil minority dramatically failed re-igniting the civil war. In Bangladesh the long struggle of the Chittagong Hill indigenous peoples for their fundamental rights and territorial autonomy did not yet lead to a lasting and stable solution: the first treaty on which the central government in Dhaka and the concerned minority peoples convened, did not match their expectations and needs. In Pakistan, besides the general requirement to reform the federal structure, the issue of regional territorial autonomy is concerning especially the Northern Areas of Gilgit-Baltistan, a huge region trapped in the Indo-Pakistani conflict on Jammu & Kashmir, deprived not only of the right to self-governance, but also of the fundamental rights to democratic participation.

10. The claim of a few cases of South Asia to serve as 'models' to be followed elsewhere for the resolution of minority problems should also be closely examined. For instance, the Indian state of Mizoram in the Northeast is showcased in official circles as a success story. The Mizo Accord (1986) has been described as the 'only accord that has not fallen apart or spawned violent breakaway groups'. But empirical researches albeit sporadically conducted in the region tend to show how the Accord that did not result in any fatal split and factious conflict within insurgent ranks has slowly produced an 'illiberal' society in which individual dissent is more or less throttled and dissenters are forced to give way to the commands of the ex-insurgents or even Mizo civil society organizations. The so-called success story of the Accord will have to be read together with many other stories that compel us to read it against its grain. In simple terms, the so-called model cases of governing the minorities in South Asia need to be investigated further in as much as the interstices and fissures involved in the process become increasingly pronounced.

11. South Asia as a region has generated a rich and growing body of literature particularly since the late 1980s. Yet it is important to note that much of this literature is not focused on any exploration into possible policy alternatives in order to address the issues and questions underlined above. The region is still a long way from evolving what may be called a policy culture where concerned people can continuously debate on minority problems and possible policy alternatives. The debate on policies and institutions has already begun. Efforts are being made to break free from the paradox inherent in the early framework of state building in which consolidation of a particular community within a geopolitical space necessarily creates its minorities. For example, the vicious circle in which a minority becomes a majority by way of getting the borders redrawn and thereby creates its own minority and the circle continues to roll with alarming regularity is inherent in India's established federal setup. Attempts are now being made to explore newer institutional alternatives. We may refer to at least three interesting strands, not necessarily mutually exclusive, of this debate: First, reform-minded scholars and activists

recommend a Scandinavian SAMI-like multi-layered parliamentary system in which ethnic communities will have the right to represent themselves instead of being bound by the majoritarian commands of the existing parliamentary system. Secondly, some have argued that the 'first-come-first-served' electoral system in which the minorities dispersed over a large space are constantly under the subjection of the numerical, and therefore political, majority is incompatible with the pluralistic nature of South Asian societies. Even reservation of seats for them will not help the situation. Introducing proportional representation is considered as a means of protecting these groups from majority rule and retaining their autonomy. Thirdly, a case has been made for widening the consociational base of our democratic system. Lijphart (1996), for example, shows how the basic preconditions of a consociational (power sharing) democracy were met during the first few decades of India's independence and how that base has been weakened as a combined result of 'centralization of the Congress Party and the federal system' in the 1980s and growing 'attack on minority rights' in different parts of India. He in fact pleads for resuscitating the institutions and practices of consociational democracy that, according to him, protected India reasonably well in the first few decades against inter-group violence and communal riots.

12. While suggesting the possible policy alternatives, one has also to explore how such non-territorial forms of minority representation might spill over the international borders and include more than one nation-state for consideration. For example, a 'Work Permit' regime that is believed to be situated between the formal principle of territorial sovereignty and complete impenetrability of international borders and the popular practice of disregarding them by way of immigrating from across the borders. The regime implies a certain blurring of the distinction between citizens and foreigners considered as central to the identity of any nation-state. A person working in the host country with a permit is not considered as a citizen and is obliged to leave it as soon as the tenure of permit expires. But such a regime is expected to address the problem of rising demand for cheap and inexpensive labour currently filled up by the 'illegal' immigrants for all practical purposes. The regime can operate provided both the sender and the host countries agree to introduce it. South Asia provides a vast and hitherto un-researched field of all such experiments with various institutions and such an exercise may be initiated under the aegis of this project.

13. Perhaps for the first time in South Asia, the human rights thinkers raised the demand for the constitution of an independent National Minorities commission as a Constitutional body with adequate powers to intervene in all instances of infringement of minority rights. At a supranational level, the South Asia Forum for Human Rights (SAFHR) led the formulation of a regional agenda on the issue of minorities. Human rights thinkers urged on the SAARC to create the office of a Special Rapporteur, who should be empowered to review and report every year the Heads of the States of South Asia on the status of

minorities in the countries of the region. They also appreciated the importance of reforms in the educational institutions so that they play a role in promoting the values of tolerance, amity, respect for language, culture and religion of different communities. The meeting also underlined the need for 'impartial and independent mechanisms for monitoring minority rights' and ensuring easy access and speedy redress to all cases arising out of violation of minority rights.

14. SAARC Social Charter signed by the 7 states of South Asia on 4 January 2004 is considered as a remarkable advancement in the field of protection of minority and group rights including those of the elderly, the women and the children. Although the term 'minority' has never been explicitly used, the idea - as Clause 2 (XI) of Article II explains - is to secure for 'the disadvantaged, marginalized and vulnerable persons and groups' legal rights and make 'physical and social environment' accessible. While legalization of their rights is an effective first step, the Charter also puts emphasis on obtaining enabling conditions for their observance and protection. The immediately following sub-Clause calls for 'observance and protection of human rights and fundamental freedoms for all'. In simple terms, the Charter aims at protecting the rights of these groups as part of the larger project of investing each one of South Asia with rights and freedoms irrespective of their religion, race, caste, sex and place of birth and promoting 'effective exercise of rights in a balanced manner at all levels of society' and 'social integration'. Much in the same vein, Clause 1 of Article VI declares that 'discrimination against women is incompatible with human rights and dignity'. The Charter clearly rules out any exclusivist path to be pursued while protecting their rights and freedoms.

15. At the instance of the International Centre for Ethnic Studies (Colombo), a Statement of Principles on Minority and Group Rights in South Asia was drawn up and revised in April 2006. A South Asian Charter on Minority and Group Rights was elaborated on the basis of the Statement by a group of voluntary organizations across South Asia including International Centre for Ethnic Studies (Colombo), Centre for Alternatives (Dhaka), Human Rights and Democratic Forum (Kathmandu), Mahanirban Calcutta Research Group (Kolkata) and Human Rights Commission (Karachi). The main aim of the Charter published in May 2008 is to effectively address minority issues and concerns, which cut across countries in South Asia and enhance regional responses to some of the current weaknesses in constitutional and legislative protection and promotion of minority and group rights. More specifically, the Charter may be used 'as a reference tool for Governments, non-State actors, human rights institutions, NGOs and human rights advocates and policy makers to draft national legislation, promote legislative reform, undertake advocacy, influence decisions, policies and programmes to ensure that they focus on the promotion and protection of minority and group rights'. The Charter - instead of formulating new norms for the protection of minority and group rights - builds on the existing instruments like SAARC Social Charter, International Covenant on Civil and Political Rights, Covenant on Economic, Social and Cultural Rights,

Convention on the elimination of All Forms of Discrimination against Women and International Convention on the Elimination of All Forms of Racial Discrimination and adapts them to the specific context of South Asia. It not only urges the States Parties to 'reaffirm and adopt' the Covenant but provides for 'effective remedies' - should violations of these rights ever take place - 'for the purpose of promoting general welfare in a democratic society, without discrimination of the life and well-being of people'. The Charter views the question of protection of minority and group rights as part of the larger problem of inculcating some basic democratic values in the states of South Asia, rather than isolating their cause and ghettoizing them in the process. As a tribute to this principle, Article 5 of the Charter clearly lays down:

The States Parties to the present Charter guarantee the exercise and enjoyment of the rights recognized in the present Charter without discrimination of any kind as to race, colour, language, religion, caste, gender, political or other opinion, national or social origin, property, birth or other status, and protection against any acts of such discrimination, and any incitement to such discrimination.

But nothing in this Article prevents any state from 'protecting the existence and the identity of the minorities within their respective territories' and providing for 'affirmative action'.

16. On the one hand, the Charter entitles the minorities to the 'right to freedom of association' including that of establishing and maintaining 'free and peaceful contacts' with the other minorities as well as 'contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties'. On the other hand, Article 7B recognizes the connection between ethnic minority and ethnic homeland and provides for their protection 'within their respective territories'. Besides, the Charter serves as one of the unusually detailed documents for the recognition and protection of linguistic rights of the minorities. It envisages the establishment of a South Asian Human Rights Committee composed of nationals of the States Parties serving in their personal capacity in a bid to enforce its various provisions. Each State Party is empowered to nominate not more than two persons from its nationals for the membership. The Committee is empowered to receive and handle 'communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Charter' provided it is submitted by a State Party that has made the declaration 'recognizing in regard to itself the competence of the Committee': "No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration." The provision is likely to reduce the otherwise widely prevalent diplomatic abuse of such a sensitive issue as minority and group rights and their subordination to 'national interest'. The issue proves critical insofar as the assertion of these rights is to be understood beyond the realms of national interest and governmentality. The same

declaration from the allegedly 'violating' State Party is necessary for receiving communications from individuals accusing it of having violated the minority and group rights recognized by the Charter.

17. As a follow-up to this Charter, Basu Ray Chaudhury on behalf on Calcutta Research Group drafted another Charter on Minority Rights in India, which was subsequently published in August 2007. While taking off from the assumption that 'the Constitution has not always been able to reflect the realities of majoritarian basis of the Indian polity, the poor state of the protection available in the country, and the low level of the constitutionally acknowledged minority rights', it lays down a set of 11 Principles on the basis of which constitutional and legal provisions are likely to function. In simple terms, the Principles do not seek to introduce any new principle to the Constitution or the legal system but aim precisely at reinforcing them and most importantly the secular ideal embodied in them. While the South Asian Charter is expected to be 'reaffirmed and adopted' by the States Parties, the Principles are laid down in the form of some moral imperatives to be followed by the Indian State because they are inconsonance with the legal and Constitutional provisions. The Principles per se are not enforceable, but only facilitate the enforcement of the already enforceable provisions. Besides, the Indian Charter envisages synergy between 'the State, authorities, public and private organizations, institutions, corporations, NGOs, groups or persons, public officials and private individuals, whether State or non-State actors and irrespective of their legal status' that, according to it, is absolutely essential for ensuring their enforceability.

18. Researches on minorities of South Asia - otherwise rich and growing - fail albeit with notable exceptions in lending a pan-regional and supranational focus to them. By contrast, South Asia provides the example of a region where both minorities and majorities are caught in a complex web of social, economic and cultural relations across the state borders reorganized particularly in the wake of Partition. The reality of supranational and cross-border linkages is completely incompatible with the current research boom that mostly focuses on minorities insofar as they are confined to state territories and thereby become victims of discrimination. Solutions interestingly are sought at the national level by way of subjecting them to the reasons of government, by firmly emplacing them within the national body and converting the minorities as a category of powerlessness into a merely numerical category. A research policy that probes into these linkages and connections can throw light on the possible policy options of how we can provide for better and more effective protection of minority rights particularly at a time when minorities have increasingly become the object of active discrimination by various social forces including the states of South Asia within their borders.

19. In the perspective of all these, any strategic policy of research must also take into account the historical interplay of European and South Asian experiences.

20. What is needed therefore is a programme for establishing a Eurasian think tank that will help in coordinating knowledge amongst its diverse sources.