Interpreting Rights Claims of the Displaced Citizen

The state’s practices in dealing with displacement due to communal violence have not showed many signs of evolving notwithstanding the frequency of incidents of communal violence. How do we interpret the claims of those displaced by the violence in 2002 that are referred to only by some NGOs, civil society groups and academicians and not the state as vishapit or internally displaced persons and are couched in the language of human rights? Due to historical reasons displacement has been seen primarily from an international lens and from a humanitarian perspective that developed as the discourse around refugees. However in the case of internally displaced persons who continue to be ‘citizens’ of nation states how do we locate their rights claims? Do the claims of those displaced have any resonance with existing debates that have dominated the discourse on citizenship or do they somehow occlude them?

The most unusual dhamaal

For people who live in communally sensitive areas in Gujarat, communal violence is localised violence that occurs every now and then but does not always disrupt their ‘normal’ lives. In Godhra, considered to be a communally sensitive town where riots occur frequently, a businessman explained, “Abhi har ghante do ghante mein hota hai, every hour or two hours it happens, (riots)...there would probably be one or two deaths, aur bas kuch nahi there was nothing more to it.”¹ In Wadi in the old city in Baroda for instance where narrow streets are lined with tightly packed houses on both sides in a densely populated and overcrowded living space that has a large Maharashtrian presence, riots have known to erupt among other reasons, over fights during religious procession like the Ganesh festival processions. However, such incidents did not lead to apprehensions about security, as a Maharashtrian lady explained that one has to just know how to get out of a troubled spot.² Abdul Majid Abdul Salaam who was a resident of Dariyapur, an area classified as communally

¹ Interview with Nuruddinbhai, Vadodara, 24/2/2009.
² Interview with Jyotsna, Wadi, Baroda, 25/2/2009. Jyotsna was sure of that her husband who grew up in Wadi and runs a garage there knew the alleys inside out would surely get me out should any trouble or riot arise.
disturbed, before moving to Naroda Patiya says about Dariyapur, that there “these little things keep on happening its nothing much. A little keeps happening. People who understand don’t do it; people who don’t understand do it.”

Previous instances of riots have caused displacement but never to the extent that they did in Gujarat in 2002. In the 1969 communal violence in Ahmedabad there were instances of displacement in the sites of violence such as in Saraspur, Gomtipur and Chamanpura. For Noorjahan Kalumiyan Sheikh who was 17 and newly married when the 1969 riots broke out, the atmosphere in 1969 was a dangerous as in 2002. Since the time she moved in to live with her in laws after marriage in 1969 till the 2002 violence, she lived in Asarwa Kadiye ki Chali in Chamanpura, a working class neighbourhood in Ahmedabad where Dalits and Muslims lived side by side, where she paid a miniscule amount of rent under the old tenancy laws. According to her account, during the 1969 riots 20-25 Muslims were burned alive and the women were raped in the house next to hers where Pathans lived. Noorjahan’s returned after 2-3 years but hers was the only Muslim family to go back to their house in Asarwa kadiye ki chali. According to her they could continue to live there because they lived just like Hindus. “Humara vyayhaar apne hindu jaise hi tha rehne pehanne mein” our behaviour and sense of dressing was like Hindus. After the riots in 1969 some Muslims moved out of the places that were the sites of violence such as Saraspur.

The Government of Gujarat had at that time given some of the displaced houses in Indira Garib Nagar in Bapunagar. However, in 1985 when the riots broke out against reservation and finally took a communal turn, Bapunagar became the site of pitched battles and some Muslims there were rendered homeless again and had to take shelter in camps. As was witnessed in 2002, even at that time marriages were conducted in the camp itself during that time of vulnerability. Heeding to the advice of people who cautioned her mother, “Where will you go taking your 4 daughters?” Shehnajbano Aslam Ali Sheikh and her sister got married in Aman Chowk camp where they were taking shelter. She recalls that even then, mobs had used gas cylinders to blow up walls of houses and that a girl in her neighbourhood had been raped. “The mohalla (neighbourhood) people faced them samna kiya but they were

---

3 Interview with Abdul Majid Abdul Salaam, Siddiqabad Relief Colony, Ahmedabad, 26/1/2009.
5 Ibid.
with tear gas, policewale were supporting them then what can we do.” After staying for about a year in the camp even after it had closed down, they eventually did return to their house in Bapunagar which had been burned. “We used to get scared no but then everyone got together, the Muslims. Then everyone started staying. For how long will we stay on rent they said. Then everyone went to their own houses.” In the later half of the 1980s with declining Mills and increasing incidents of communal violence some Muslims moved to the industrial periphery of Ahmedabad where over the years slums of Muslim concentration have developed. At that time, a lot of people moved in to this industrial area on the periphery by squatting and occupying land. Authorities apparently turned a blind eye to this development due to the cheap labour it provided to the industries nearby.  

During the 1990s, when Advani’s rath yatra from Somnath to Ayodhya sparked violent riots in various places, middle class Muslim houses were targeted by the VHP. A Muslim lecturer in one of the prominent colleges in the city of Ahmedabad recollected how she and her brother had to leave their house and stay with friends and relatives for a few days while their parents apprehensively stayed back after they found a note stuck on the door which said, Musalmano amaro vistar chodine do (Muslims leave our area). In two days even her parents moved out of their house in a prominent locality where the elite of Ahmedabad lived on the western side of the river Sabarmati. Their decision proved timely as their house was eventually burned and their possessions looted. When they returned after a few days they were shocked to find some of their possessions in their neighbor’s houses. The attack on their home in 1990 deeply etched their distinctness along with fear for this family of lecturers and civil society leaders that had until then chosen not to live in over crowded areas of concentration of their own community but among their associates in the more serviced part of a city which on the outside seems to have a cosmopolitan setting. After the attack they were among other Muslims in Ahmedabad who had to relocate to another place. 

However, the ghettoisation of the population was more in Ahmedabad than anywhere else in Gujarat. Given Gujarat’s history of communal violence, a significant

---

7 Interview with Fr. Cederick Prakash, Director, Prashant (NGO) on 16/3/2010 and Interview with Afroze and Altaf Sayyed, Sayyedwadi, Vatwa, 4/12/2008.
9 Ibid.
number of people interviewed for this study had at some previous instance in their lives witnessed communal violence in their village, town or city through acts of arson, rioting etc. had but these had not always caused displacement. Rabiya Ismailbhai Vohra from Nadiad even witnessed a man, a Hindu lose his life by a stray bullet of the police during the 92 post Babri masjid violence in her own courtyard. But that was not reason enough to shift because there was no threat to her life. “Earlier they used to only burn Muslim shops”, they would not do anything more says Imtiaz Pathan’s mother who has seen rioting on more than one occasion around Gulbarg Society that was the site of a major carnage in 2002 where 69 people lost their lives and where she sustained major burns and injuries herself and also lost her husband along with 10 members of her family. Even in the old city there are instances of those whose houses were in the ‘site’ of communal violence who would choose to return to their homes, even if it meant living in anticipation of violence.\(^\text{10}\)

Sarfarazbhai Munshi a rickshaw driver who lived in Chamanpura, Ahmedabad and has witnessed at least 2-3 riots echoes what seems to be a common refrain, where people have memories of times when riots took place in the past but they say they have never seen one like what happened in 2002 “Aisa toofan humne kabhi nahi dekha”.\(^\text{11}\) Despite having lived in a communally sensitive area like Dariyapur for several years before moving to Naroda Patiya, Abdul Majid Abdul Salaam will not brook any comparison between what happened in 2002, and the small riots that break out every now and then in parts of the old city and working class neighborhood localities, “See don’t bring the name of Dariyapur in this at all, bekar baat hai don’t bring Dariyapur in here at all. This thing that happened, in Patiya where I stayed there for 7-8 years…. such a riot has happened, and Allah knows, talking much about it is not a good thing, all wrong things happened.”

When within the first week after the news of the burning of a coach of Sabarmati Express 500 people were left dead in the worst carnages involving rape of women, murder of children and mass crimes such as burning or stabbing of groups of people in both urban and rural areas and Muslim homes, businesses and other property were comprehensively and methodically targeted by mobs of thousands that

\(^{10}\) One lady who lived on the border in Kalupur whose house was burned down and looted whenever there was a major communal conflagration in the area. After the violence in 1969, she kept her valuables packed and ready in potli (sac made by tying together the ends of a large piece of cloth) to move when needed. Interview with Interview with Zakia Jowher. Op.cit.

\(^{11}\) Interview in Siddiqabad, Relief Colony, Ahmedabad, 30/11/2008.
roamed the streets with impunity, the right to life of Gujarati Muslims was seriously compromised and Muslims on other parts of India as well felt a deep sense of insecurity.

In parts of north and central Gujarat where the violence was most intense, neither power, wealth nor influence seemed to be a guarantee of access to the state’s protection for Muslims at that time when an ex Member of Parliament (MP) of the Congress party, Ehsan Jafri was hacked to death in front of his colony in the working class area of Eastern Ahmedabad. Such was the level of insecurity that even retired and serving functionaries of the state and those among the influential and elite who had access to police protection left their homes despite police protection. It is telling that Professor Bandukwala fled his house minutes before it was burned without informing the picket of two armed policemen standing guard there as did retired judge of the Gujarat High Court Justice Shri Divecha who fled his house in Paldi when a mob pelted stones and eventually burned his house. Even the sitting judge of the Gujarat High Court Justice Kadri who had a police guard moved to another place Vastrapur at the peak of the violence and then subsequently moved back to his house. According to the Gujarat government, “after observing the situation, the Hon’ble Judge of his own accord, shifted to Vastrapur”, a which was a more cosmopolitan place compared to rest of where official designated bungalows for judges exist.

Panicked phone calls made to the police, fire brigades, and even ambulance services generally proved futile as fire engines were prevented from reaching troubled spots by mobs being stopped by mobs from reaching affected areas. When attempts were made to return to their homes after initial attacks had subsided, there were incidents of stone throwing and even a case of lynching in Baroda. Elsewhere people were only allowed to return if they agreed to compromise and take back their complaint filed in an FIR against people who had attacked them. Such was the alienation towards the state that some didn’t even register an FIR saying “police bhi unki sarkar bhi unka”, the police is theirs and the government is also theirs.

---

12 Interview with Professor Bandukwala, Pratap Gunj, Vadodara, 19/2/2009.
Civil society interventions as ‘citizens groups’ and human rights groups

Since within 10 days after the violence broke out human rights activists from organizations within and outside the state, at the national and international level as well as women’s groups, professionals such as psychiatrists and journalists, political parties and a delegation of parliamentarians sent teams to visit and fact finding teams to Gujarat to assess the situation. Not satisfied by the Gujarat government’s “perfunctory” report which asserted the restoration of normalcy within 72 hours of the outbreak of violence while the National Commission for Human Rights (NHRC) continued to receive letters and complaints of human rights violations, the NHRC Chairperson led a team of members that visited Gujarat from 19th-22nd March to assess the situation itself. In its preliminary report subsequent to this visit the NHRC held that “most of all, the recent events have resulted in the violation of fundamental rights to life, liberty, equality and the dignity of citizens of India as guaranteed in the Constitution.” Thereafter, Amnesty International was among the first voices to invoke the UN Guiding Principles on Internally Displaced Persons on 28th March in a ‘Memorandum to the Government of Gujarat on its duties in the aftermath of the violence’ in relation those displaced by the violence while also grounding the Principles to fundamental rights already guaranteed in the Constitution in the right to life (Article 21), prohibition of discrimination on grounds of religion (Article 15) and equality of all persons before law (Article 14).

At the outbreak of the violence civil society groups in Ahmedabad came together as ‘Citizen’s Initiatives’ to coordinate relief work in the city. Another collective of retired judges and prominent citizens from all over India called the ‘Citizens for Justice and Peace’ held a ‘Citizens Tribunal’ that toured three affected cities within two months of the outbreak of the violence and recorded testimonies of events and atrocities against affected people. The Tribunal headed by retired Chief Justice Krishna Iyer included lawyers, judges and academics that collected 2,094 oral and written testimonies and collected documents and testimonies which was compiled in to a three volume report called ‘Crimes Against Humanity’.

After a visit to Gujarat on the third week of March the international human rights group Human Rights Watch presented a report that documented major incidents

of violence. The report held that there was state participation and complicity in the violence.\(^{16}\) Two other reports, one by a women’s rights group and another by a team of independent citizens that visited Gujarat to assess first hand the effects of the violence, collected testimonies of victims who had witnessed burning, rape and killing of loved ones and who were living in relief camps. Their assessment of the Gujarat after two months of violence was that the violence was nothing short of a genocide against the Muslims.\(^{17}\) The report by independent citizen’s groups highlighted the plight of children who had lost one or both their parents in the violence and those who were traumatized after watching violent acts such as the burning, killing and rape of their loved ones. People’s Union for Civil Liberties (PUCL) and Vadodara Shanti Abhiyan documented women’s experiences with police atrocities on one hand and mobs on the other.

By the end of the month of May 2002 when the government started pushing for the closure of relief camps two independent reports drew attention to the fact that although the government wanted to close the camps, there continued to be displaced Muslims who did not want to and had no means to leave the camps because “they had no resources to repair and rebuild their homes.”\(^{18}\) In the light of these reports a writ petition was filed by noted human rights activists for the reopening of camps and the continued existence of camps in addition to other pleas such as entrusting criminal investigation to CBI, constitution fast track courts to expedite criminal cases, for reasonable compensation, for monitoring the situation, for appointment of an independent National/Statutory body to monitor relief and rehabilitation, for future disaster management schemes etc.\(^{19}\) After another Public Interest Litigation (PIL) was filed by the Citizens for Justice and Peace through journalist Anil Dharker and Communalism Combat Editor Teesta Setalvad in the state High Court that appealed for camps to not be closed till rehabilitation work was over, the government assured the Court that the camps would not be closed till those in camps were rehabilitated.

\(^{16}\) ‘We have no orders to save you: A report on state participation and complicity in the communal violence in Gujarat’, Human Rights Watch, April 2002.


\(^{19}\) Writ Petition (Civil) No. 530/2002, Mahashweta Devi versus Union of India and Others, Supreme Court of India.
Questions raised by the long and winding road to justice

Civil society organisations also moved the Supreme Court which has made unprecedented interventions in cases related to the violence. This is because within a few months of the violence, of the 4,256 cases registered, more than 2108 had been closed including 1,960 under “A summary”, i.e. that those responsible could not be found or that police did not have enough evidence to even file a charge-sheet.20 In a trial for an incident on 1st March 2002 where 14 people were burned to death in a bakery called Best Bakery owned by Muslims in Vadodara city, first a sessions court and then the Gujarat High Court acquitted all the accused. In the court in Vadodara majority of the witnesses including Zahira Sheikh and her mother who lost members of their own family in the incident “turned hostile”. Excerpts from statements in the judgment are telling on the rationale of the court for delivering the judgments such as "The policy of industrialization, following the example of the Soviet Union, helped create conditions for communal riots" or "It needs to be said that if one's identity and loyalty do not lie toward one's land, one is likely to be destroyed."21 The case grabbed national attention when Zahira Sheikh and her mother testified before the National Human Rights Commission that they “turned hostile” i.e. retracted their statements in court as they were threatened by an MLA of the party in power in the state, the BJP.

In addition to the Best Bakery case of the 4,256 cases registered related to the violence, more than 2,108 had been closed including 1,960 under “A summary” i.e. that those responsible could not be found or that police did not have enough evidence to even file a charge-sheet. This was because in an alarming number of cases where victims went to file an FIR with the police, the police wrote omnibus FIRs that clubbed a number of offences that occurred in the area under a single FIR and recorded the alleged offenders as tola or mob instead of individual names which rendered investigation fruitless at the first stage. In 2004 the Supreme Court, in response to an affidavit filed by the National Human Rights Commission and activist Harsh Mander, ordered the reopening of the 1,960 cases that had been summarily closed and further ordered the reopening of 2,108 cases which had been closed by the state government on the basis that those responsible could not be found or that the

21 People’s Union for Civil Liberties (PUCIL), Press Release, July 7, 2003. www.pucl.org /Topics /Religion.../2003/best-bakery.htm. According to the PUCL the public prosecutor in the case is known to have a bias against Muslims while his deputy was known to be affiliated with the right wing RSS.
police did not have enough evidence to file a charge sheet. In 2006 after much campaigning by activists the state government finally reopened the cases.

Subsequently other cases that involved mass murders also moved to the Supreme Court for trial outside the state of Gujarat citing a hostile environment where they feared they would not receive justice. The Supreme Court has also responded by taking unprecedented measures such as in 2003 when it stayed proceedings in all 14 major cases related to the violence including the Sabarmati Express burning case at Godhra where 59 passengers of the Sabaramti Express died, and those of Naroda Patiya where over 95 people have estimated to have died,\textsuperscript{22}Naroda Gam case, Gulbarg Society case where an estimated 69 people died,\textsuperscript{23}Sardarpura case where 32 people were burned alive in a house,\textsuperscript{24}pending a decision on whether they should be tried outside Gujarat and went on to appoint a Special Investigation team (SIT) headed by the former director of a central police agency the Central Bureau of Investigation (CBI) to investigate them.

In addition to pursing the courts for justice in the large number of cases related to death and destruction of property during the violence, NGOs have sought to highlight and bring the court’s attention to human rights violations during the violence in connection with police atrocities, sexual violence against Muslim women, relief and rehabilitation and perhaps for the first time, the displacement of Muslims as a rights issue. Several reports by national and international NGOs, media reports and even the indictment of the constitutional body of the NHRC point to not just the negligence of the state government and but even its complicity in the large scale human rights violations against Muslims.

These acts listed as criminal offences in the Indian Penal Code did not however lead to convictions in almost all cases of communal violence barring less than a handful of exceptions in 2002 as the police registering the complaints in First Information Reports (FIRs), a crucial aspect of the recording and further investigation of crime, merely mentioned the attackers as ‘mobs’ without specific names which subsequently led to a majority of cases related to the violence being summarily closed for lack of evidence. This meant that those who had indulged in acts of arson and

\textsuperscript{22}Times of India, 19\textsuperscript{th} March 2010.
\textsuperscript{23}Interview with Intizaz Pathan, Ahmedabad, 12/7/2008 and Noorjahan Lalsahab Sheikh, Siddiqabad Relief Colony, Ahmedabad, 30/11/2008. See also Concerned Citizens Tribunal Report, Crimes Against Humanity: An Inquiry into the Carnage in Gujarat, Vol. 1.
\textsuperscript{24}Interviews on 29/3/2009 in Satnagar Relief Colony with survivors who said 31-33 people had died while The Hindu reported 30 deaths, The Hindu, 28/5/2008.
even murder and rape have continued to roam after the violence. Also, as Vibhuti Narayan Rai has pointed out, "in practice senior officers are rarely held responsible for their lapses. At the most junior level officers are placed under suspension after the outbreak of a riot. This in most cases is an eyewash since officers under suspension are reinstated soon after the fury of public criticism subsides. Since suspension cannot be termed as punishment, in most cases practically no punishment was awarded to any guilty official."²⁵ That the verdict in the Bilkis Bano rape case was upheld by some lawyers and human rights activists as the first conviction in a communal violence rape case since independence is indicative of a lacuna in the system for the delivery of justice in cases related to communal violence. This is because in a situation of mass violence such as those witnessed during communal violence when masses are mobilised and they take to the streets instances of destruction of property, killings, rapes and even mass crimes (as in 1984 anti Sikh riots and 2002 violence in Gujarat) can occur. The established practice in law however, is to treat all such cases as criminal offences under the Indian Penal Code. In the logic of criminal law, a criminal act is seen as a crime against the whole of society which is why the state’s prosecution agency, and not the victim, goes to court against alleged criminals and higher penalties such as incarceration are available. The higher penalties available also mean the burden of proof is higher than in for instance civil tort law, which is extremely difficult to produce given the anonymity afforded by mobs in situations of communal violence not to mention possible bias against victims by state authorities. Moreover, criminal law takes punitive action of incarceration and a fine if imposed is to be paid to the state and not to the victim (except in the instance of 2 recent rape cases that are a recent development where judges ordered the rape victim be paid monetary compensation by the rapist)²⁶. This is also evident in the practice of the state’s offering gratuitous payments to victims who have been displaced and dispossessed that is far removed from the logic or terminology of compensation and is indicative of a lacuna in the law that does not hold the state accountable for its responsibility to maintain law and order.

A 1996 Delhi High Court judgment however, can be considered a hallmark judgment in that it asked that “compensation” to be paid to riot victims of 1984 anti

²⁶ In Baldev Singh and Ors. versus State of Punjab (AIR 1996 SC 372) and Dinesh vs the State of Rajasthan, Criminal Appeal No. 263 of 2006 (Arising Out of S.L.P (Cr.) No. 5753 of 2005).
Sikh riots. This verdict by Justice Anil Dev Singh which ensured that the compensation paid to 2,700 victims of the 1984 anti-Sikh riots in New Delhi was increased from Rs 20,000 to Rs 2 lakh held that, "The state cannot escape the liability to pay adequate compensation to the family of the person killed during riots as his or her life has been extinguished in clear violation of Article 21 of the Constitution which mandates that life cannot be taken away except according to the procedure established by law." The court had held that the state cannot escape the liability to pay compensation to the 2700 victims who died, whose right to life had been violated in the 1984 anti Sikh riots. This judgment did subsequently seems to have influenced central government decisions on payment of relief in case of victims of communal riots.\textsuperscript{27} The landmark judgment of the Delhi High Court in 1996, held the Delhi government as liable for its failure to protect the life and liberty of its citizens and used the term ‘compensation’ instead of the established practice of ‘ex gratia payment’ to victims of the 1984 anti Sikh riots. Even financial compensation however does not take into account the principles of reparation and can be arbitrary.

The events of 2002 seem to have reiterated existing fears among Muslims that the state cannot be relied on to guarantee fundamental rights and access to basic resources and fuelled segregation among the two communities. Muslims have historically lived together in mohallas in Gujarat as in other parts of India, however growing insecurity due to incidents of communal violence has increasingly removed the element of choice in their decision to live in areas of concentration of Muslim population that also become easy targets for neglect by municipal and government authorities. Water, sanitation, schools, public health facilities, banking facilities, public distribution facilities and transport facilities are all in short supply in these areas.\textsuperscript{28} While some middle class Muslims would rather live in a mixed locality than in a ‘ghetto’ not just because these places were more densely populated and not as serviced as other parts of Ahmedabad but also because of the increased social and religious expectations that come with living with members of one’s own community,\textsuperscript{29} they have little choice but to live in ghettos. On the one hand in 1991

\textsuperscript{27} This payment of relief by the Central government in case of Gujarat 2002 post Godhra violence as well as the 1989 Bhagalpur riots was brought on par with the compensation paid in the anti Sikh riots. \textit{The Hindu}, 13/6/2008.

\textsuperscript{28} Social, Economic and Educational Status of the Muslim Community of India: A Report, Justice Rajindar Sachar, Prime Minister's High Level Committee, Cabinet Secretariat, Government of India, New Delhi, 2006. p 14.

\textsuperscript{29} Interview with Zakia Jowher, Indian Social Insitute, New Delhi, 7/1/2009.
the state government belatedly enacted the ineffectual 'The Gujarat Prohibition of Transfer of Immovable Property and Provisions for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1986 under which certain areas of Ahmedabad which declared as communally disturbed property so that could not be bought or sold without the permission of the Collector and on the other institutions such as banks and residential housing societies boards create conditions that occlude Muslims.\textsuperscript{30} For instance public and private sector banks for instance are known to have designated Muslim concentration areas as 'negative or red zones' where they do not give loans for housing or other purposes.\textsuperscript{31}

In 2002 itself plans were afoot in Juhapura, Ahmedabad to construct 38 new residential houses, 7 schools, 3 general hospitals in addition to restaurants and mosques.\textsuperscript{32} In 2002 an informal residents committee in Juhapura in Ahmedabad had reportedly identified professionals such as doctors, engineers, retired government officers etc. who lived around the area and whose services were to be retained in the area itself. These developments seem to suggest an attempt by the Muslim community to make Juhapura self sufficient and independent even during times of violence.\textsuperscript{33} Similar developments have taken place in other areas North and Central Gujarat in areas like Tandalaja in Vadodara and Ismail Nagar/ 100 feet road area in Anand which until then had inter mixed living spaces.\textsuperscript{34} These are processes among those who had the means to relocate, while those who didn’t have had to fall back on relief colonies built by Muslim organizations and some have returned to their original places of residence.

At the time of the violence given the situation of uncertainty the Chairman of the National Commission for Minorities had recommended that the displaced in camps be given land "so that they can create a new settlement and get a sense of security,"\textsuperscript{35} a suggestion that was rejected by the Chief Minister Narendra Modi. The displacement continued to be ignored until acting on a complaint by the head of an

\textsuperscript{30} According one upper middle class interviewee, “I wanted to stay in another place but they said we will not give you a place. You change your name, publish it in the gazette and we will give you a place, which is basically saying become a Hindu, which I refused.” Interview with Dr.Lakdawala, Director, Sanchetna NGO.
\textsuperscript{32} Times of India 1/6/2002.
\textsuperscript{33} Times of India, 1/6/2002.
\textsuperscript{34} Interview with Shabbirbhai Kachwala and Faqruddin Ibrahimbhai in Anand city, 9/3/2009.
\textsuperscript{35} Times of India, 16/3/2002.
NGO called Citizen's Justice Initiative and Janvikas, the National Commission for Minorities (NCM), visited 17 relief colonies in 4 districts in 2006 and recommended that displaced Muslims be given the status of Internally Displaced Persons and a fair monetary compensation. Pointing to the lack of basic amenities like potable water, sanitation, electricity or ration cards in the colonies and to the government's responsibility to provide for these displaced, the NCM suggested that a larger policy should be formulated to address the plight of those displaced due to communal violence.\textsuperscript{36} Given the development of policy initiatives and mechanisms for relief for disaster, attempts were also made to appeal to the newly constituted Disaster Management Authority of India however this did not meet any success. Also while there was an outpouring public sympathy and aid after the massive earthquake in Kutch in 2001, the aid that came in for the victims of the violence in 2002 and the government measures for relief for the same paled in comparison.

In 2007, Antarik Visthapith Hak Rakshak Samiti or Committee for Internally Displaced Persons which claimed the existence of approximately 25000 internally displaced Gujarati Muslims scattered across 7 districts was formed of displaced persons with the help of human rights activists. The committee collects and maintains records of internally displaced persons, helps displaced with administrative work in connection with obtaining relief sanctioned from the government and organizes public meeting to campaign for the rights of internally displaced persons. The basic demands of AVHRS are for the government to address the following issues of the displaced: (1) basic amenities and livelihood issues (2) prepare a central government economic package, and (3) formulate a National Policy on Rehabilitation and Internally Displaced due to violence on the lines of the Draft National Rehabilitation Policy 2006. Importantly the AVHRS has demanded that the government recognize them as internally displaced persons and include them as beneficiaries in government schemes for the poor such as the granting them giving them BPL cards (Below Poverty Line cards in the Public Distribution System that subsidises food grains and other items for the poor), enabling them to work in NREGA schemes (National Rural Employment Guarantee Act), relaxing age limit to claim widow pensions etc.\textsuperscript{37}

\textsuperscript{36} The Indian Express, 18/10/2006.
Locating the rights claims of the displaced

Where do we locate the rights claims of the displaced? Should the rights claims of the displaced be justified within the de-ontological justification of rights as intrinsic and valuable in themselves such as in the human rights framework or as should they be justified teleologically within a larger goal such as citizenship? The AVHRS and some other NGOs have employed the category of internally displaced persons (IDPs) to highlight the plight of those displaced in the violence in 2002. The category of IDPs is an important normative advance in the way it draws on existing advances in humanitarian law, international law and refugee law but locates the responsibility of the displaced on national authorities. According to Principle 1 of the UN Guiding Principles on Internally Displaced Persons, “National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.” The category of IDPs has made thus made the rights language available to victims of communal violence where earlier they were at best given ‘assistance’ and ‘relief’ gratuitously and not as a matter of right. However the category of IDPs that has been created by the UN comes with a humanitarian focus and is couched in the language of human rights. Liisa Malkki among others point out that the overtly humanitarian emphasis on studies on the displaced often has the effect of depoliticizing the issue of displacement.

Hannah Arendt on the other hand saw displacement as symptomatic of a malaise inherent in the very structure of nation state from the beginning where despite the existence of constitutional structures and the rule of the law in the Europe of her times “the transformation of the state from an instrument of the law to an instrument of the nation had been completed.” The acceptance of the right to self determination of nations in Europe meant that in effect, “the supremacy of the will of the nation over all legal and “abstract” institutions was universally accepted.” For Arendt the rise of stateless people, people to whom no national government was willing to guarantee protection was proof that “a transformation of the state from an instrument of the law

---

to an instrument of the nation had been completed; the nation had conquered the state, national interest had priority over law long before Hitler could pronounce “right is what is good for the German people.”\textsuperscript{42} Prior to the genocide of the holocaust the state had transformed into the instrument of one majoritarian nationalist vision and had become a majoritarian state. It is important to note here that Arendt saw the displaced as “the most symptomatic group in contemporary politics.”\textsuperscript{43} Importantly, she also asserted that history could very well repeat itself if people conclude “quite democratically, namely by majority decision, that for humanity as a whole it would be better to liquidate certain parts thereof.”\textsuperscript{44} This danger namely, of constitutional structures becoming irrelevant in the face of the “will of the people” is a danger she saw inherent in the structure of the nation state from the very beginning.

It is significant that civil society groups came together as ‘citizens’ groups such as ‘Citizens Initiative’ and ‘Citizens for Justice and Peace’ that conducted the ‘Citizens Tribunal’ to organize efforts for relief and rehabilitation for affected people, collected 2,094 oral and written testimonials, deposed before the state appointed Nanavati-Mehta Commission and appealed to the courts through Public Interest Litigations (PILs) on atrocities committed during the violence in 2002. After the violence in 2002 as in other instances of violence in Gujarat in 1969 and 1985 as well as other instances of major violence in other parts of India people have appealed to their rights as citizens. What is it about citizenship, this principle of membership in nation states, that one finds it being invoked in rights claims in polarized situations as well as for issues of basic rights such as livelihood or food?

This faith in the membership of the nation state as the guarantor of rights has often been traced to the French Revolution. The \textit{Déclaration des droits de l’Homme et du Citoyen} or the Declaration of the Rights of Man and of the Citizen defined the rights of all the estates of the realm as universal. The Declaration however was the declaration of the rights of ‘men’ and as Agamben importantly points out, in the \textit{Declaration des droits de l’homme et du citoyen} there is a dovetailing of human rights with national rights.\textsuperscript{45} Subsequently in the years to come the nation state which was to

\textsuperscript{42} Ibid. p 275.
\textsuperscript{43} Ibid. p 277.
\textsuperscript{44} Ibid. p 299.
be the guarantor of the rights of man and thereby lead to national emancipation was so narrowly defined that “only nationals could be citizens” i.e. “only people of the same ethnic origin could enjoy the full protection of legal institutions, that persons of different nationality needed some law of exception until or unless they were completely assimilated and divorced from their origin.”\textsuperscript{46} At this time the principle of self determination set alight the powder keg of Eastern Europe where homogenous ‘modern nation states’ were sought to be created by a series of international treaties called ‘Minority treaties’ where states denaturalised and denationalised minority populations. In a few years, France, Belgium, Italy and Germany also firmed up their citizenship laws further till in Germany, under the 1935 Nuremberg laws, citizenship was qualified into those who had full citizenship and those who had citizenship without political rights.\textsuperscript{47} By this time as the form of the modern nation state, soon to spread across the globe had spread across Europe so that for an increasing number of people who didn’t fit into these nations because of some ascriptive condition, no national government was willing to guarantee their protection. They were therefore stateless and consequently rightless. The term “displaced persons” was coined at this time to describe these people. The humanitarian crisis that stateless people posed after World War II for Europe led to the development of the articulation of the rights of those who were displaced in international terms, outside the boundaries of nation states that would not accept them and under the refugee regime. Quite ironically the universality of rights of ‘citizens’ was defined in exclusive terms, for those ‘within’ the nation state.

It was TH Marshall who much later in 1950 famously put words to what this universality of rights within the nation state had entailed in substantive terms through his seminal essay ‘Citizenship and Social Class’ that traced the evolution of modern citizenship in Britain through centuries to constitute civil, political and social rights.\textsuperscript{48} The civil element of citizenship he described as the rights necessary for freedom associated with the institutions of rule of law and system of courts; the political element of citizenship as the right to participate in the exercise of political power associated with parliamentary institutions and the social element of citizenship as “the whole range from the right to a modicum of economic welfare and security to the

\textsuperscript{47} Gorgio Agamben, \textit{Op.cit.}
right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society. The institutions most closely connected with it are the educational system and the social services.”\textsuperscript{49} Civil rights are rights of individuals against the state but Marshall saw in them “a form of power” as they could be used to create groups and associations and movements of every kind. Social rights on the other hand, for Marshall refer to individuals as consumers and not as actors and are not designed for the exercise of power at all.\textsuperscript{50}

The social context in which Marshall sought to understand the ideal of universal rights of citizenship was Britain where social class determined what ideologically and material goods people eventually got. For Marshall therefore, the citizens’ “integration as equals” for a Britain much divided by class and reeling under the effects of unbridled capitalism meant a “civilising” of capitalism so that every citizen would have access to the prevailing standard of life and the social heritage of society as a right. He studied citizenship as a process of expanding equality against the inequality of social class.\textsuperscript{51} He therefore described citizenship as the right to be admitted as full and equal members, “to be admitted to a share in the social heritage, which in turn means a claim to be accepted as full members of the society, that is, as citizens.”\textsuperscript{52} J. M. Barbalet has argued that social class is very central to Marshall’s thesis and cannot as easily be supplanted by other social movements.\textsuperscript{53} However, in translating the ideal of universal rights in substantive terms, social class figured in Marshall’s thesis due its importance in Britain’s social landscape in determining access to social, ideological and material goods and the same can be true of other categories that stratify and produce hierarchies in societies such as caste or religion.

In our globalised times there has been unprecedented interest in citizenship where changes such as globalised economies, vast improvements in technology that have enabled communication regardless of national boundaries and increasing mobility have even led to cosmopolitan and post national imaginations of citizenship beyond the boundaries of the nation state. However these imaginations addressed to humanity in general are not without ambiguities where the legal aspects of such claims are far from being even theoretically congealed. Partha Chatterjee also

\textsuperscript{49} Ibid.
suggests that before moving on to the post national framework, it is perhaps important to pass "first through the disturbed zones within the nation-state".  

Historically, two broad traditions that have dominated thinking on citizenship are republican notions characterized by notions of civic participation, public spirit, common good and citizen engagement and liberal notions that emphasize the citizen as unencumbered self with individual rights and private interests. Although these debates can be traced to the classical tradition, more recently debates associated with the republican tradition congealed around the interrogation of welfarism in the 1980s where citizens obligations and duties were not seen to be highlighted enough along with the entitlements they received as citizens. In the liberal tradition on the other hand, citizenship is a status and entitlement that gives access to rights. Many a debate on citizenship contend with this contest between more passive notions of citizenship associated with the liberal tradition and those of a more robust, participatory, republican ideal. A central issue in this contest appears is whether the unit of apportioning rights should be the individual or the community.

The other strand can be discerned from debates on citizenship is the question of universality explored in the contest between civic universalism and cultural particularism that has animated debates. While modern citizenship can be described as a declaration of a universality where equal enjoyment of rights was considered to be enabled by disregarding particular circumstances of individuals i.e. of masked citizens in the 'universalism' for instance in Western constitutional democracies that had to contend with the 'particularism' of the claims of specific communities to preserve their ways of life. The tensions therefore were between those of guaranteeing effective equality to citizens under an ideal of civic universalism and the place of diversity and different cultural attachments. These debates are very similar to the debates on multiculturalism for cultural equality that have emerged since the 1980s. In the concept of multiculturalism diverse cultural communities are categorized as majority or minorities. In modern democratic polities the state is usually identified with the majority culture, while communities that differ from it are designated as minorities. Multicultural arguments point to the disadvantage put to minority

communities in the framework of liberal citizenship which does not take into account social, economic and cultural contexts that continue to determine people’s access to resources and cannot be easily dissociated from. The masked citizen, it is argued is already marked as male, upper class, upper caste, Hindu or white.\textsuperscript{57} Instead of masking difference in the allocation of rights Iris Marion Young argued for ‘differentiated citizenship’ that regarded citizens not just as individuals but also as members of groups, and their rights as well depended partially on their membership to groups.\textsuperscript{58}

However, the question of displacement somehow seems to have escaped these dominant strands of thinking on citizenship. Joseph Caren’s argument for open immigration\textsuperscript{59} and Seyla Benhabib’s argument for human rights norms to govern laws of immigration and naturalization are important instances of the examination of the citizenship dimension of the question of displacement.\textsuperscript{60} However, theorizing on citizenship in relation to displacement has instead been considered under the domain of ‘refugee studies’. While in refugee studies were concerned with protection of rights of those who flee their home country "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion" and was later to also include persons who had fled war or other violence, and dominant debates on citizenship rights that quite centrally engage with question of discrimination due to membership to different social groups and majority and minority cultures within the state and within the polity. There are historical reasons for the occlusion of the question of the displaced in these debates. The problem that stateless people posed for Europe where no nation was willing to guarantee the rights of Minorities, led to the development of the refugee regime. In the aftermath of World War II, displaced persons were dealt with as a military problem by the retreating armies and there was spatial segregation of displaced in refugee camps often modeled as military barracks. With the formation of the United Nations Human Rights Commissioner for Refugees (UNHCR) refugees came to be seen as an international social or humanitarian problem. One reasoning is that this was

due to a “powerful sense of postwar shame and responsibility for the predicaments of the people who were fleeing the holocaust and yet were so often refused entry when they were in most desperate need of asylum” that shaped principle elements of international refugee law and related legal instruments. The consequent development of ‘refugee studies’ came to be characterized by an international and humanitarian lens.

Modern Citizenship and Communal Violence in India

The displacement of up to 12.5 million people with estimates of loss of life varying from several hundred thousand to a million that marked the formation of the modern nation states of India and Pakistan shaped the definition of Indian citizenship in the constitution of India. There was much contestation among the elite subscribers of various imaginations of political community such as the Indian National Congress, Hindu Mahasabha and the Muslim League over geographic boundaries for the ‘Boundary Award’ that partitioned the two provinces with the largest Muslim populations namely Punjab and Bengal and separated by a huge land mass as belonging into sovereign nation states of India and Pakistan. “We have now a homogenous country, though our frontiers have shrunk” was one of the observations in the Constitutional Assemblies after the Boundary Award was given in remarkable time despite the enormity of the task and the gravity of consequences. However the demographic shifts did not fall in place as hurriedly as the cartographic redrawing of boundaries causing the largest population displacement in contemporary history. According to one estimate as many as 15 million people crossed the newly created western borders, half of them Hindus and Sikhs seeking refuge in India and about the same number of Muslims seeking refuge in Pakistan in the opposite direction while as many as one million people died in the accompanying violence of genocidal

64 Matthew J Gibney and Randall Hansen (Ed), Immigration and Asylum: from 1900 to the Present, Vol 1, California, p 301.
proportions and sporadic localised fighting, particularly in the western region of Punjab from August to December 1947. On the eastern side of Bengal, while refugee populations did not move in a wave of an exodus refugees continued to trickle in for more than half a century and by 1973, 6 million Hindus from what had become East Pakistan had crossed over to India while about a million and a half Muslims crossed the border in the opposite direction. Along with land there was also a division of state structures from ‘British India’ such as British Indian Army, the Indian Civil Service and other administrative services, the Indian railways, and the central treasury among the nascent sovereign states of India and Pakistan. In the midst of the power transfer in this historical moment (an extended one for a few millions) the population flows in either direction involved for the mobile masses, although in many instances unbeknownst to them, a forced choice of citizenship and belonging that brought in its wake dispossession, ruptured families, relationships and communities.

The moment of officially becoming a nation state when the Government of the dominion of India became the Government of India and assumed and affirmed sovereignty through territoriality and citizenship from subjection to colonisers was thus accompanied by the movement of masses in millions. The massive displacement due to partition of British India on communal lines of religious demography that occurred during the defining moment of nation state formation in India affected the defining of citizenship laws that were set largely in the context of Partition. Out of the articles 5-11 in Part II of the constitution titled Citizenship, Article 6 deals with the rights of citizenship of certain persons who have migrated to India from Pakistan, Article 7 pertains to the rights of citizenship of certain migrants to Pakistan, Article 8 deals with the rights of citizenship of certain persons of Indian origin residing outside India etc. Provisions of citizenship related to naturalisation, birth, descent, registration or through incorporation of territory were formulated and enacted later in the Citizenship Act of 1955 which has been subsequently amended in 1986, 1992, 2002,

---

66 Ibid. pp 997-998
67 Feminist scholars such as Kamala Bhasin, Ritu Menon and Urvashi Bhutalia among many others have in particular chronicled the suffering of women, children and lower castes in the Partition. Also, initially some of the refugees were under the impression they were fleeing till danger had tided over. They didn’t have the time or inclination to prepare for a permanent shift. See Matthew J Glibney and Randall Hansen (Ed)
68 In the imperial ideology of the colonial British the native Indians were subjects and not citizens as they were not considered adequate to be citizens. Dipesh Chakrabarty, ‘Postcoloniality and the Artifice of History: Who Speaks for the Indian Past’, Representations, No. 37 (winter) p 6.
2003 and in 2005 to deal with migration from other countries and to accommodate Non Resident Indians (NRIs).

The chapters in the Indian constitution on Fundamental Rights and Directive Principles of State Policy though not ostensibly on citizenship can be said to contain the essence of citizenship rights. Rights such as article 13 and Articles 19-28 provide for equality before law and guarantee various liberties and the protection of the citizens from the state. These can be described as civil rights in that each right is a right permissive of human action. Anupama Roy holds that "the strands of citizenship rights that Marshall sees as having evolved over the last three centuries in British constitutional tradition had a synchronous birth within the Indian constitution." While this can be said for civil rights as illustrated above and for political rights such as universal adult suffrage which was introduced all at once at the commencement of the constitution on 26th November 1949 enabling men and women above the age of 21 of all social backgrounds to participate in the political process by the right to vote, there are significant differences in what could be called social rights in the Indian context.

Basic rights such as right to work, shelter, health care (and until recently even education) are not part of Fundamental Rights in the Indian constitution. While the Directive Principles of State Policy and Fundamental Duties mention welfare, these are not justiciable and cannot be enforced as a right in the court of law. Moreover state intervention in the economy in India, the germs of which date back to provincial government in colonial India, was for planned economy or mixed economy not so much for providing equal access to prevailing standards of living to all but rather for the creation of them. Under the leadership of India's first Prime Minister Jawaharlal Nehru whose influence went on for decades after his term, the market was not given a free run in the new life of the nation and the state was the centre of industrialisation and redistributive policy not in the Marshallian sense of civilising capitalism for a substantive experience of citizenship but rather as an exercise in nation building.

---

69 Barbalet describes civil rights as not only property rights but also rights to freedom of thought and speech, religious practice and of assembly and association as they are unified in so far as each is a right permissive of human action. J.M. Barbalet, Citizenship, World View, Delhi, 1988, p 19.


71 Right to Education instituted as 'The Right of Children to Free and Compulsory Education Act or Right to Education Act' (RTE), under Article 21 (a) of Part III, Fundamental Rights of the Constitution came into force on 1st April 2010.

In a society where ascriptive characteristics were of paramount importance in one's standing in society and the availability of life chances, the "integration as equals" in a modern nation state required for the state to address age old existing inequalities. Indeed citizenship would be a token one had the constitution not addressed the social inequalities that had plagued the subcontinent for centuries. B. R. Ambedkar was instrumental in including preferential treatment for groups that had been historically discriminated against by the caste system in the fundamental rights section of the constitution to ensure their participation and access to public resources. Redistributive measures for such groups have been provided through a system of reservation of seats in national and state legislatures, government jobs, educational institutions and in electoral constituencies. Categories identifying such groups such as Scheduled Castes (SCs) and Scheduled Tribes (STs) and Other Backward Classes/Castes (OBCs) that were already created by the British administration were carried forward in the Indian constitution. While the categories of SC and ST were clearly defined at the time of the framing of the constitution, the category of OBC was sought to be defined later and continues to have some ambiguity. State specific schedules for groups identified as SCs and STs were prepared under the constitution and reserved quotas to SCs and STs of 14 per cent and 7 per cent respectively were granted. In both the categories of SC and ST however, the point of reference was largely the Hindu social structure. The determination of the criteria for identifying other backward groups (OBCs) for similar preferential treatment was to be determined by commissions to be appointed by the President. The question of how to determine the criteria of backwardness through class, caste or community has been a bone of contention in various commissions instituted at the central and state level, in courts of law as well as on the streets where protests have turned violent. The National Backward Classes Commission (NCBC) formed in 1993 issued a set of guidelines based on social, economic and educational indicators for castes and communities to be included in the central list of OBC however discrepancies between the central and state lists continue to exist. Due to reservations set by the state, caste became a category for access to public resources and social mobility and therefore an important category in the construction of citizenship.73

73 Ornit Shani argues that due to state reservation policies, caste became a basic category in the construction of citizenship. *Op. cit.* p 64.
The ‘Muslim question’ that was vigorously debated prior to the Partition of India and at the time of the framing of the constitution did not however find mention in redistributive policies. With the exception of Kerala and Karnataka, where Muslims have historically been recipients of preferential treatment policies as a result of social movements and where Muslims as a distinct category (minus the creamy layer) are eligible for reservations, in other states such as Bihar, West Bengal, Andhra Pradesh, Uttar Pradesh, Assam and Jharkhand among others, some Muslim communities find themselves listed under the OBC category among other backward communities. In Gujarat although there is no separate quota for Muslims, nearly 50 Muslim groups are included in the OBC list. Backward groups among the Muslims found mention in redistributive policies along with backward groups of other religions that were identified under the Mandal Commission Report for Central Government services. Even though the perception of deprivation among Muslims is widespread 41% of which defined themselves as OBCs in 2004-05, there was no systematic effort until as late as 2006 to analyse the socio economic conditions of religious minorities in what is called the Sachar Committee Report. The Report found that conditions of Muslims in the general category are lower than the Hindu OBCs who though lagging behind in terms of all India data have the benefit of reservation.

The citizenship rights explicitly in relation to minorities such as Muslims were articulated along with the rights of cultural groups and linguistic minority groups in Articles 25 to 30 that have collectively been termed as ‘cultural and educational rights’. These rights form the basis of rights of minorities to practice, profess their religion and to maintain and manage their own affairs in matters of religion, including the running and administering of institutions and acquiring property and to preserve their language, script, culture etc. by what are known as personal laws. However, while there are a set of non religious civil family laws, in a continuation of the colonial legacy there are 4 sets of family laws defined and applied according to religion that enjoy much currency with the practitioners of various religions. These

---

74 Interestingly minority issues have always been posed as questions, presumably to the nation state such as ‘the Jewish question’ or the ‘Muslim question’.

75 Uttaranchal, Delhi, Maharashtra, Rajasthan, Madhya Pradesh, Haryana, Tamil Nadu, Orissa, Himachal Pradesh, Chhattisgarh and Punjab are the other states where some Muslims communities are included in the OBC reservation list. Justice Rajindar Sachar, Op.cit. pp 191-214.

76 Ibid.


have come to be known as personal laws and they cover a whole host of ‘private’ aspects such as marriage, divorce and even land through inheritance laws etc. Over the years there have been moments of tension between personal laws and civil law, most famously in the Shah Bano case in 1985 over the question of alimony for the Muslim woman.79

The universalizing ideal of citizenship80 is seen to be played out through such contests over redistribution (through the reservation system) and recognition leading to acrimonious debates and even conflicts that have sometimes turned violent. While caste and increasingly religion have been viewed through the lens of the universalizing ideal of citizenship, the phenomena of communal violence, described as endemic to India despite other kinds of violent conflict that occur, has received much analytic visibility primarily through the lens of secularism.81 Arguments for secularism have ranged from those that see it as intrinsic to traditional ways of life developed over centuries of conflict resolution that must be revived82 to those that see it as the introduction of an ideal essential to enabling people of different faiths to live together.83

Communal Violence and Displacement

The phenomenon of communal violence has been viewed as an antithesis to the secular ideal of the Indian constitution in these works. The significant body of scholarship on communalism is primarily concerned with the causes of communal violence seen as if it were peculiar to India. Explanations for communal violence have

---

80 Anupama Roya describes this as the promise of equality, Anupama Roy, Ibid.
82 In the case of Gujarat Achut Yagnik argues that in traditional mercantile tradition conflict was seen as inauspicious kafiyanu mon kalu and therefore to be avoided by conflict and compromise. Such values, he argues have been steadily eroded through the ethics of aggressive entrepreneurship. Achut Yagnik and Suchitra Sheth, The Making of Modern Gujarat, Penguin Books, New Delhi, 2005; Asish Nandy, Ibid; T. N. Madan, Ibid; Partha Chatterjee, Ibid; Achin Vanaik, The Furies of Indian Communalism, Verso, London, 1998; Aijaz Ahmad, ‘Fascism and National Culture: Reading Gramsci in the Days of Hindutva’, Social Scientist, vol. 21, no. 3-4, March- April 1993. pp 32-68.
ranged from the economic, social science, anthropological and psychological lens employing essential, instrumental and constructivist arguments that seeks to elucidate causality to actors such as the communities involved, the state or society or a combination of these. In a recent addition to this significant body of literature Ormit Shani makes argues the growth of communal violence cannot only be explained by Hindu Muslim antagonisms alone but in the way caste has changed primarily due to state policies and political discourses that have led to instability. Despite the compelling argument that shows caste as inextricably linked to the rise of communalism since the 1980s in what she calls 'ethno-Hinduism', she sees these changes as an explanation for communalism. With the exception of Satish Deshpande, who sees communal violence as part of a hegemonic spatial strategy in ideological and material contests of 'nation-ness', in all this literature, displacement is seen as a peripheral consequence of communalism.

Displacement is a consequence of violence or the fear of it in polarized situations however, as previous chapters have demonstrated, it has an enduring effect not just in the collective memory of people but tangibly in localities and in the experience of citizenship rights. The events of 2002 however have brought to sharp relief the effects of displacement due to communal violence. The very event of displacement caused by communal violence seriously compromises a host of rights not to mention civil rights such as the right to life (Article 21), freedom of religion (Article 25) and the right to reside and settle in any part of the territory of India (Article 19 (5)). Displacement can also cause a denial of political rights such as after the

90 Ibid p 12.
91 Satish Deshpande, “Hegemonic Spatial Strategies: the Nations- Space and Hindu Communalism in The Twentieth-century India”, in Partha Chatterjee and Pradeep Jeganathan (Ed.), Subaltern Studies XI, Community, Gender and Violence, Permanent Black, 2000. Although Deshpande foregrounds ‘space’ in this contest he also sees communal violence as “the displaced anger of the urban middle classes at shrinking public spaces” that were till then dominated by “ocular Hindu hierarchies”. p 196
92 Ibid. pp 167-211
violence in 2002 when the displaced who did not have voter identity cards were unable to participate in the assembly elections.93 Prolonged and long term displacement such as that witnessed in the relief colonies in Ahmedabad compromises social rights.

However despite the many instances of displacement due to communal violence in India, there are very few instances of state responses that reflect awareness of the rights at stake. The scale of the violence in 2002 and the role of the state documented in several independent reports have brought to sharp relief the lacuna in the law and in the system. In instances of extended periods of communal violence in the past in other parts of the country as well, where in the time taken to restore public order crimes against a particular community have been committed with impunity under the anonymity offered by the mob, there have been very few instances of individuals that have been convicted of such offences. In a landmark judgment of the Delhi High Court in 1996, the court held the Delhi government as liable for its failure to protect the life and liberty of its citizens and used the term ‘compensation’ instead of the established practice of ‘ex gratia payment’ to victims of the 1984 anti Sikh riots. This judgment has been cited as a precedent in the central government package for the victims of the 2002 violence as well as for the Bihar government’s recent package of assistance for the 1998 Bhagalpur riots and is a definite improvement from the practice of governments of offering gratuitous payments that is far removed from the logic or terminology of compensation to victims of communal violence who have been displaced and dispossessed and is indicative of a lacuna in the law that does not hold the state accountable for its responsibility to maintain law and order. Even financial compensation however does not take into account the logic of tort law and is arbitrary and not mandatory on the state.

Perhaps due to the frequency of situations of communal violence or the sedentary bias of social sciences, communal violence has been seen as peculiar to India. The Sachar Committee report at the outset highlighted certain issues that were common to minorities around the world namely, issues relating to identity: where given the differences in socio cultural practices and backgrounds of minorities make them different from the rest of the population, communities face problems of mutual adjustment; issues relating to security: where a distinct set of people that are small in

---

number to the rest of society may feel insecure about their lives, assets and well being, and; issue relating to equity: where a sense of inequity that may be real or perceived where minorities may remain deprived of the benefits or opportunities that become available through economic development.  

Despite previous instances of communal violence it was the events of 2002 in the post Godhra violence in Gujarat that have brought to sharp relief displacement and lacuna in the system to deal with it. Previous instances of communal violence did cause displacement but not to the extent that it did in 2002. During the time of the violence when large mobs roamed with impunity especially in North and Central Gujarat attacking Muslim residences and property, no Muslim regardless of their power, wealth and status was safe and an ex MP was killed in front of his residence. The plight of displaced Muslims has been articulated in the language of human rights using the recently coined category of Internally Displaced Persons.

Although the category of IDPs is an important normative advance it is couched in the language of human rights and has a humanitarian emphasis. For Hannah Arendt however displacement was symptomatic of a larger malaise inherent in the nation state from the very beginning. Taking a cue from Arendt this chapter pursues the questions raised by the situation of the displaced Muslims in the framework of citizenship rights. Previous chapters have demonstrated the violation of civil, political and social rights of displaced Muslims. However while state policies see communal violence as a law and order problem, in the significant scholarship on communal violence, it has primarily been seen as a problem peculiar to India and located in the larger discourse on citizenship only in the context of secularism. This chapter argues that the phenomena of displacement fundamentally violates citizenship rights that must be remedied by substantive guarantees for victims of communal violence.

---