

MODULE A

Pandemic, Protection and Politics of mobility

Introduction

Human mobility has been an organic phenomenon prevalent through various phases of history, from the ancient ages to the modern times. The discourse on migration underscores this significance of mobility across all population, at all ages. Irrespective of whether the migration is forced or voluntary, mobility is the primary facilitating factor that enables the migration of individuals. But the recent pandemic of COVID-19 has brought about a new politics of human mobility that has adversely impacted the dynamics of migration across the globe. As mobility and physical proximity are the key drivers in the spread of corona virus and thereby the pandemic itself, various governments throughout the globe have instituted restrictive policies such as complete or partial lock-downs, border closures, travel bans etc. These constraints on freedom of movement have precipitated an asymmetric impact on migrants, both in terms of livelihood and life. Many countries such as Malaysia¹, Thailand² and India had brought about migrant crackdowns under the pretext of containing the COVID spread situation. This is in clear violation of the 13th objective of Global Compact for Safe, Orderly and Regular Migration (GCM) that espouses to “prioritize non- custodial alternatives to detention”³. The ramification of such restrictive measures is even worse for the forced migrants like refugees and stateless individuals whose protection is conditioned by their mobility. The paper attempts to make the observation that by curtailing or enabling the mobility of different segments of people without giving due regard to their specific vulnerabilities, the state is undertaking a performative act of providing protection to its population. Governance of the state during pandemic thus showcases the state performativity of protection that transmutes to the politics of mobility/immobility. This consequently reasserts the dichotomies of inclusion and exclusion- ie who can access protection and who is denied protection. It creates a hierarchy of inequality where migrants and refugees transmute to potentially disposable bodies while the citizen becomes the indispensable entity of body-

¹<https://www.scmp.com/week-asia/politics/article/3082529/coronavirus-hundreds-arrested-malaysia-cracks-down-migrants>

²<https://www.thestar.com.my/aseanplus/aseanplus-news/2020/07/13/thailand-to-crack-down-on-illegal-migrants-to-prevent-spread-of-covid-19>

³ GCM

politic who is worth the protection that state has to offer. In the given context, this paper tries to examine the ways in which the pandemic has conjured a new politics of mobility/immobility that impacts migrants and refugees adversely. The paper also looks at how India in particular has implemented its domestic policies and laws during COVID, so as to curtail the protection of citizens, migrants and refugees.

State and performative protection

The very existence of state is rationalized primarily by the duty of the state to protect its citizens. The “nasty, short and brutish” state of nature portrayed in Hobbes’s Leviathan indicates the anarchy and chaos prevalent due to the absence of a state government that would protect and guard its population. Even in the current world order, the most important aspect that distinguishes a ‘failed state’ from others is its inability to protect its citizens through the preservation of law and order of the land. The duty of the state to protect its people entails protection from both internal and external threats. While every other state tries to fortify its borders, implement stringent border surveillance measures, augment its military capacity by spending billions under the justification of protecting its population from war and other external threats, the protection within the country is largely reduced to the notion of effective governance and implementation of rule of law. A threat like COVID pandemic necessitates effective measures including dissemination of information on the disease, access to effective testing and diagnosis techniques along with affordable treatment that ensures timely recovery from the perspective of prioritizing public health. But it also entails the state ensuring the non-discriminatory protection of all its citizens without covertly differentiating them as citizens who are worthy of protection and citizens who are rather disposable in terms of comparatively inferior protection they receive. The paper attempts to make the observation that by curtailing or enabling the mobility of different segments of people without giving due regard to their specific vulnerabilities, the state is merely doing a performative act of providing protection to its population. The implementation of such performative protection precipitates a ‘politics of mobility’ that in turn creates an inherent hierarchy of people that reaffirms the state dichotomy of inclusion and exclusion.

The hyphenation between state and the notion of protection in Western political theory can be seen in “the common law tradition and natural rights theory” cherished in British constitutionalism (Heyman,1991).According to Sir Edward Coke, the reciprocal obligation between the sovereign and the subject is conditioned by the responsibility of the sovereign to

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“govern and protect his subjects” and the duty of the subject to owe his allegiance or obedience to the sovereign⁴. This conceptualization is central to the constitutional theory in English legal tradition. In the Anglo-American constitutional tradition, the notion of protection can be traced back to social contract theory. Both Locke and Rousseau approved of the idea that the primary cause for individuals coming together to form societies and bearing with the authority of the government was to ensure their safety and “preservation of their property”⁵. According to Coke’s earlier postulation, the reciprocity between sovereign and subject was based on the organic pledge of allegiance between the two, but Locke postulates the foundation of such reciprocity on the consent of people rather than the allegiance (Kettner, 1978, Heyman, 1991). The constitution of modern states, such as the Indian constitution itself embodies this notion of protection through various fundamental rights. Inspired by the American constitution, the Indian constitution has included the more specific equal protection of laws clause that can be understood as state’s liability to give similar protection to all without discriminating between the citizens. Though per se it does not translate to a formal right to protection, it implies the need to maintain impartial equality in the event of state choosing to provide protection to its citizens. The dilemma in the COVID pandemic is not that the state denies protection to its citizens, rather that state tries to perform the responsibility to protect, thereby leading to the discrimination between citizens.

The concept of performativity was coined by J.L. Austin (1975) in his work *How To Do Things With Words*. In his attempt to differentiate what constitutes constative and performative utterances, Austin (1975:10) considers constative utterances as statements that state facts or methodical philosophy either correct or wrong whereas performative utterances as those which by themselves do not explain or testify anything, but merely enact what it intends to describe. Performative acts though do not specifically mean much in itself when compared to what it tries to enact, it can have varied outcomes. Judith Butler has built on this notion of performativity for explaining gender as a performative construct in “constituting the identity it is purported to be”⁶. This notion of performativity being an enactment of a pre-

⁴According to Edward Coke, Institute of the laws of England -The subject's right to protection entails "the safety of his person, servants and goods, lands and tenements, whereof he is lawfully possessed, from violence, unlawful molestation or wrong." -As cited in Heyman

⁵ John Locke, *The Second Treatise of Government* 54 (Thomas P. Peardon ed., The Liberal Arts Press 1952)

⁶In *Gender trouble*, Butler elaborates that the normative heterosexuality that we subscribe to is the procreation of established behavioural patterns and perceptions that are confirmed by conventions and social institutions. Gender then is constituted through the continued enactment of socially constructed behaviour that fabricates differential identity traits to both man and woman. Gender thus is a performative construct.

existing normative idea can be appropriated in the case of state behavior as done by scholars like David Campbell and Cynthia Weber. In *Performative States*, Weber counters the notion of sovereignty as an ontological reality and instead postulates the state conjures legitimacy through the performativity of sovereignty. Taking this notion of state identity being shaped by the constitutive action it performs, the paper suggests that performativity of state can be seen in the way it enacts the responsibility to protect its population. State legitimizes the reciprocal obligation between the sovereign and subject by performing the responsibility to protect its citizen in return for their allegiance towards the state. This enactment of responsibility to protect is implemented as unequal measures adopted by the state towards various groups in its attempt to contain the pandemic. While the emigrant community from Middle East who were crucial to the inward remittance received by the southern states of India like Kerala were brought back to their native places through chartered flights and ‘Vande Bharat mission’, the same politics of mobility denied even the permission for migrant labourers to move back to their states of origin. Both despite being the citizens with the same rights and privileges, the differential treatment is an indicative of prevalent inequalities and power asymmetries. The later section of this paper elaborates on the state’s various crisis response measures to contain the spread of pandemic and protect the citizens by regulating their mobility. This state performativity of protection adopted through gradational practices towards various groups, constitutes a politics of mobility/immobility that showcases a pattern of protection that is distorted along the various fault lines of the society. Before engaging with politics of mobility during pandemic, the next section analyses the significance of mobility for migrants.

Mobility, Migration and Refugee Protection

People undertake migration for diverse reasons including “economic, social or political factors or a combination of all of these”(Ghatak and Sassoon, 2011:1). The term ‘migration’ often advances an understanding of a phenomenon that involves regular or rather voluntary movement of people across the borders in pursuit of better living conditions and/or financial prospects. In comparison, forced migration entails the involuntary movement of people who flee their places of origin in response to adverse situation of war, conflict, violence, poverty or even persecution. Hence while economic factors figure as prominent determinants of voluntary migration, the forced migration of individuals is marked by the predominance of socio-political factors that can in turn precipitate the economic factors. Regardless of the type of migration involved, the mobility becomes the single most important element that

underpins the notion of migration. Increased mobility of individuals across borders is not just a phenomenon that can be reduced to its geographical understanding. Along with individuals, it simultaneously entails the mobilisation of discourses linked to comparatively static constructs such as states, territories and boundaries. The transnational mobility of individuals across borders complicated the linear understanding between people and the territories they occupy, thereby generating fear and insecurity among nation-states on the impact of such mobility. The drive to control migration has resulted in a gamut of measures adopted by the state which go beyond the traditional border control strategies and increased surveillance practices which Antoine Pecoud (2013) refers to as “disciplining of transnational human mobility”. Such attempts showcase the effort to align the patterns and practices of migration with the interests and goals pursued by the state. These objectives of the state include preserving the status-quo so as to not instigate obstructions to the autonomy and sovereignty of the state in control of its people. It also entails state’s reassertion of its freedom and authority in determining who needs to be included and who should be excluded. This does not suggest that the state is the single actor in controlling the mobility of people through the administration of migration policies. Rather, various non-state actors and specialized international organisations like International Organisation of Migration or UNHCR work independently or in collusion with the state to augment its capacity or ameliorate its burden in managing the people who crosses over to its borders for a variety of reasons. Scholarship on migration studies have widely acknowledged the formation of a “migration industry” (Betts, 2013; Hernandez-Leon, 2013) where multiple stakeholders with varied agendas associate with the state often to pursue their own interests, inside the evolving “political economy of mobility management” (Geiger, 2013:15).

Interestingly, the discourse on human mobility is inextricably linked with the nation-state’s monopoly to regulate and control it. The Westphalian system, not only upheld the territorial sovereignty of nation-states, but also gave the states the authority to demarcate its citizens from the non-citizens based on the same territorial sovereignty (Hollifield, 2004:888).”This eventually resulted in states invoking an elaborative administrative system that institutionalized the inclusion of citizens and exclusion of non-citizens. Even those included citizens were subject to the state’s monopoly of regulating their ‘to and from’ movement across the national borders through a well lubricated surveillance mechanism enabled through documentary perquisites like visas and passports. This also emboldened the linear hyphenation of an individual’s national identity with a single country. Mobility being a

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pervasive phenomenon that aided the socio-cultural evolution of human being, there was a continued movement of people between states causing the state to develop the narrative of non-citizen being the “outsider” (Weiner, 1996:442; Geiger, 2013:17; Behr, 2004). Hence transnational mobility of individuals that enabled their inter-state migration posed a threat to the construct of homogeneous nation-hood based on uniform ethnicity/culture/religion (Zolberg, 1991:301; Agnew, 1994; Geiger, 2013). The citizens were full-fledged members of the body-politic, whereas the migrants were casted to the zone of being denizens (Hammar, 1990) or partial citizens (Baubock) who were precluded from accessing the rights offered by the state. More than often, the welfare of the migrant in the host state was juxtaposed with the safeguarding of rights and privileges of the citizen. In Foucauldian terms this instituted a “governmentality” that involved the bio-political control of migrant bodies so as to secure the wellbeing of citizens. Hence the restrictive migration policies brought about by the state to curtail the influx of foreigners should be seen as the exclusionary policies directed at the non-citizens (Hammar, 1990; Brubaker, 1989). Geiger (2013) postulates that the state’s “organized control and regulation over access, stay, employment and return” of migrants that constitutes the “government of migration” can be reduced to what Jurgen Mackert(1999) refers as the “struggle over membership” in the nation-state. It is to this context that the onset of COVID pandemic cause additional complexities. The measures of lockdown and border closures although prima facie is an attempt to regulate human mobility(regardless of the underlying causes that necessitate the mobility- economic or humanitarian) so as to contain the spread of virus, eventually divulges the state’s rationality of protecting those individuals that it deems worthy. In its performativity of providing protection, state attempts to maneuver human mobility as the primary response to the pandemic. This reflects Antoine Pecoud’s (2013:2) observation that controlling mobility is an attempt to preserve the “national order of things” (Malkki, 1995) where state reasserts its sovereignty in not just determining who can enter and who cannot, but also in mandating who qualifies for protection of the state by the same logic.

Controlling the mobility has similar adverse impact on the refugees as well. The agency of mobility that the refugees exerted in fleeing their country of origin due to threat of persecution is one of the important aspects in securing their protection. For those in protracted exile in the host country, the mobility becomes important aspect in securing livelihood as well. Refugees even otherwise live in a condition of partial lock down in host country, mostly restricted to their camps. Their freedom of movement is conditional on the

authorization provided by camp administrators. These restrictions cause an impediment to the sustainable protection of refugees in terms of reconstituting their lives, securing livelihood and being self-reliant. The pandemic has constrained their access to protection in two ways. The decision to close the borders of the country of asylum prevents their attempt to flee persecution in their country of origin and precludes any chances to obtain protection. For those a few of them who are already entered the host country, miserable living conditions makes them more vulnerable to the pandemic. But the perception of being the ‘outsider’ and the reality of being a non-citizen in the host country, limits their access to any effective health care. This is also in violation to the ideals of International human rights law and international refugee law. The next section looks at the ways in which state performativity of protection constitutes the politics of mobility that impacts these vulnerable sections of domestic migrants and refugees differently than the rest.

Pandemic and the Politics of mobility

Cresswell (2010:21) considers politics on anything to entail the social relations enmeshed in the “production and distribution of power” and as an extension, the politics of mobility comprises of the “ways in which mobilities are both the products of such social relations and are produced by them”. Cresswell also explains that mobility is one of the principal resources of 21st century so much so that it’s differential and discriminatory allocation and distribution is instrumental in the production and perpetuation of some of the harshest disparities that we see around us. A similar opinion is postulated by Bauman (1998) in opining that mobility has emerged as the “most coveted stratifying factor”⁷. As much as mobility is about the individual’s capacity to be mobile, it also involves the constrictions that can potentially maneuver an individual’s mobility in a different tangent so as to create patterns of immobility. As a person’s mobility is what enables him in accessing his livelihood or sustaining his societal and personal relations, it is inextricably linked to the constitution and reconstitution of power relations within the society (Cresswell,2010; Cook &Butz, 2018). The statutory and non-statutory provisions intended to enable or curtail the mobility and thereby the partaking of individuals across various aspects of life ensures the disproportionate endowment of mobility along the pre-existing fault lines of class, religion, ethnicity or even gender. As opined by Cook &Butz (2018:612) both mobility and immobility are interconnected as it can exist concurrently amid different social groups

⁷As cited in Kysu an, L., &Macková, L. (2016). *The History and Politics of Human Mobility*.

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“creating complex and uneven mobility landscapes”. *How has the state invoked a politics of mobility during the pandemic so as to make these uneven landscapes of mobility assert itself along the pre-existing disparities in the society?*

The irony in the COVID situation is that the Corona virus spreads from people to people without discriminating with respect to borders and territories, whereas the response measures adopted by every state is territorial in nature. The state brings in a gamut of provisions which mainly emphasizes on restricting the movement of people, so as to prevent the spread of pandemic. Curtailing the mobility of people has been central to the response measures adopted by the state often implemented as complete or partial lockdown and border closures. Within the countries, idea was mooted on the basis of developing a spatial conception in understanding the spread of pandemic by demarcating spaces to corona free zones and corona containment zones and limiting the interaction of people between these two types of spaces. Various statutory restrictions were enacted to confine each individual to the zone he was occupying at the moment, not because that would guarantee his protection but more so that he doesn't become a potential threat as a carrier of virus to others. In essence, these measures is also an effort by the state to showcase its attempt to provide selective protection to its citizens. But the differential measures adopted by state towards different segments of its population institutes a gradational pattern of protection, dependent on the pre-existing hierarchies of class, caste and even religion.

The domestic migrant labourworking in urban areas of India was the first ones to bear the brunt of measures such as lock down that was promulgated internally within the country. Afore mentioned fault lines of society is explicit in the absence of dignified life for the migrant labourer in the country, despite of being a rightful citizen. Rights of these labourers are denied from time to time both by the state and capital establishments that employ them for informal labour (Kumar, 2020). The profits that enable the luxurious lifestyles of most elites are accrued by letting these labourers hang on the verge of subsistence, pushing them to the margins of society. The pandemic has elevated their situation to that of hyper incarceration. The loss of livelihood due to lockdown translated to lack of accommodation and even access to food, pushing them to dire poverty. Their precarity was compounded by the restriction of mobility imposed through lock down that effectively curtailed any remaining means for them to reach back to their native villages. The curtailment of mobility of individuals were being improvised even before the declaration of the Janata Curfew of

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March 20 as trains were cancelled from March 18 and completely stopped functioning from March 21, along with the cessation of air travel from March 22. Many of the labourers undertook perilous journeys on barefoot from their areas of domicile to their native places. Out of those, many succumbed to death either due to accidents, run over by train or even due to the exhaustion or hunger. The measures then adopted by the national government to address the violations of restrictions imposed on mobility were to enforce more stringent closures of state and district borders, prosecution for violating the disaster management act and forcefully constraining them to make shift shelters and quarantines (Srivastava, 2020). Newspapers and social media were sprawling with reports on usage of tear gas and lathi charge against those travelling home defying the state dictums. The assistance in cash and kind announced for alleviating the conditions of the migrant labour, most remained on paper with only a few percentage able to access the benefit of same. Central government released a standard operating procedure (SOP) for facilitating the transportation of “stranded migrants” which was supposed to enable the deployment of those migrants in various shelter homes and facilities for work in the same state in which they were sheltered⁸. They were also prevented from moving out of the states in which the shelter was provided⁹. On a later date of April 29, Central government released another statement that permitted the “stranded migrants” to go back home using only bus as the means of transport, and by adhering to mandated protocols¹⁰. Center delegated the moral, material and financial responsibility of coordinating and implementing the modalities of such transport to the respective states involved in the process. According to Ravi Srivastava (2020), such measures were aimed at curtailing the extensive movement of migrants from Southern and Western states to Eastern states, simultaneously employing their labour in the states where they were stuck. Later on May 1, incidentally the labour day, Central government declared the permission for migrants to move from one state to another and authorized the Ministry of Railways with clear instructions on the running of ‘Shramik trains’ for the purpose. The government’s response was on the lines of firefighting a situation that according to them, had emerged due to spread of misinformation and rumors amongst the migrants rather than addressing their compounded vulnerability from pandemic and the larger systemic exclusion that had pushed the migrants to the margins. Certain states like Uttar Pradesh and Madhya Pradesh, also used the context

⁸<https://www.mha.gov.in/sites/default/files/MHA%20Order%20Dt.%2019.4.2020%20with%20SOP%20for%20movement%20of%20stranded%20labour%20within%20the%20State%20and%20UT.pdf>

⁹Ibid.

¹⁰https://www.mha.gov.in/sites/default/files/MHAordernew_29042020.PDF

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of Pandemic and the uncertainty caused as an opportunity to roll out the ‘Temporary Exception from Certain Labour Laws ordinance, 2020’ after cancelling 35 existing labour laws relevant to factories and manufacturing establishments. The labour ministries of Gujarat, Himachal Pradesh and Madhya Pradesh have similarly invoked section 5 of Factories Act so as to prolong the work hours in factory to 12 hours a day. Through these changes does not meddle with minimum wage criteria, employers would be relieved from the social security obligations towards their employees as they are not mandated to pay anything more than the minimum wage¹¹. Employers can hire and fire workers with much elasticity but without recompensing them or engage the contract labour on a need basis. This ordinance is supposed to balance the monetary damage caused by the broader macro-economic scenario during pandemic, but it does so at the expense of pushing the labour force to a situation of hyper precarity instead of protecting them. A substantive protection measure would have considered the safety and amenities of work environment, health checkup provisions, redressal mechanisms or any such measures of security for the informal migrants labourers during these testing times.

The government’s consent for the mobility of these migrants were later followed up by an explanatory circular from Home secretary to Chief secretaries of all states, explicitly stating that the earlier order of May 1 was intended for enabling the mobility of not all stranded people, but only those distressed individuals who had moved from their native/work places “just before lockdown period”, and unable to return to their work/indigenous places due to restrictions imposed as a part of lock down¹². It effectively stated that the “stranded persons” did not include those people who were residing “normally” in places other than their place of origin for work functions and those who “wish” to go back to their native places in the “normal course”¹³. Srivastava opines that this clarification on those who reaches their workplace/ native place just before the lock down as constituting the stranded migrant labor , overlooks the larger gamut of migrant labour community involving the circular migrants of India. The Indian government’s census report categorizes an individual as a migrant, only if they are counted in documented in a region which is different from their place of origin. In order to qualify for listing in census in a place different from place of origin, the individual

¹¹Read the detailed analysis of labour ordinance 2020 in <https://thewire.in/labour/labour-laws-changes-turning-clock-back>

¹²<https://dgrpg.punjab.gov.in/wp-content/uploads/2020/05/MHA-letter-to-Chief-Secretaries-and-Administrators-clarifying-movement-of-distrressed-stranded-persons-03.05.2020.pdf>

¹³ ibid

has to be residing in that place for a minimum of six months. Hence such categorizations seem to discount the larger number of temporary/ seasonal/ circular migrants¹⁴ in the country that occupy the lion's share of informal work force in the urban and semi urban areas of the country. Even though the census data may be symptomatic of the data on permanent migrants effectually and semi-permanent migrants partially, it is not indicative of the data on temporary migrants. This category of temporary migrants which include short term seasonal migrants and circular migrants are a heterogeneous group including low caste and tribal populace who often migrate from their native hamlets to the urban spaces in search for informal works in the construction sites, brick kilns along with agricultural sector like sugar cane fields etc- often constituting the lowest rungs in the hierarchy of labor (Shah & Lerche, 2020). The usually precarious nature of their work elevates to a degree of "hyper precarity" during the pandemic for migrant workers (Lewis et al., 2015). While global north perceives this hyper precarious of migrant labour's situation as one that is emanating from the interaction between "neo-liberal labour markets and highly restrictive immigration regimes" (ibid).

When compared to Indian situation, the global scenario of mobile bodies like migrants are habitually instituted and positioned along a continuum by the border regimes of nation-states. One end of this continuum is occupied by legal immigrants who are perceived to be accepted by host society where as the other end is occupied by the illegal immigrants who comprise the undesirable lot (see Mezzadra and Neilson, 2008; Isin, 2012; Lewis et al, 2015). Often the latter end of the spectrum coincides with the "security continuum" (Bigo, 1994) where threats emanating from activities like terrorism and criminal activities are predominantly showcased. This has caused the countries of global north to adopt a "managerialist approach to migration", so as to curtail the potential risks associated with the undesirable immigrants (Kofman, 2005, Lewis et al, 2015). Even within the countries of global south like India where intra state migration is predominant, the mobility of the migrant labour puts him in a position analogous to the above-mentioned spectrum. The migrant labour in India is not homogeneous category. The fault lines of caste, class and gender and the diversity of their inherent skill set have placed them in hierarchies of labour. Those who belong to the lowermost levels of this hierarchy overlaps with the latter end of spectrum where undesirable migrants are seen as a

¹⁴Srivastava and Sasikumar (2005) makes a distinction between various types of migrants such as permanent and semi-permanent migrants. While the former category included those migrants who have settled in the areas to which they migrated and do not maintain a strong association with the areas or places of their origin, the latter includes those migrants who maintain strong bonds and associations to the place from which they migrated..

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liability for the state. While government makes a distinction on the vulnerability of migrant labour during pandemic by differentiating them and addressing them as “stranded” due to the lockdown provisions, it simultaneously implies the existence of a category of migrants who are not equally “stranded”. Such haphazard categorizations that does not acknowledge the diverse nature of migrant labour is manifestation of politics of mobility that determines the extent of exclusive/inclusive protection during pandemic.

Like human mobility that is prevalent from ancient times, the mobility of pathogens such as viruses that causes epidemics and pandemics are equally antique. Instances of diseases like small pox, Spanish flu or even HIV/AIDS that were present on a global scale and the response mechanisms adopted has also been important in the way state allocates protection to its populations. Extra- territorial nature of pandemics has figured it in the list of biosecurity threats that the state has to handle along with other conventional problems like war, terrorism or even illegal immigration. Tangibly, even though pandemics are a matter of medical concern, the handling of the same gets entwined with the political response of the state. Nation-state being the central variable in the political configuration of society, the state mediated protection of society against such public health concerns would be channelized through political channels and institutions that would be in turn essential in devising and imposing legally binding response mechanisms (Luhmann, 1974:26; Palma, 2016). In India, the protective measures adopted for the well-being of population is fortified with statutory backing through bringing its implementation under the legal ambit of Disaster Management Act of 2005. Apart from the citizens within the territory, gradation of individuals to bodies in which some deserve protection more than others has also impacted vulnerable individuals those who seek to enter the borders of the state seeking asylum. Effectively the pandemic has imposed severe restrictions on the ability of people to avail the protection of the state in both ways -that is for citizens in terms of limiting protection through restricted access to the rights, privileges and services provided by the state within its territory and for vulnerable non-citizens like refugees and stateless individuals this manifests as restrictions on the humanitarian protection that they seek to attain on crossing the borders and entering the territory of the state. In the context of a pandemic where to each individual, every other individual would be seen as bearing the possibility of being a potential carrier of the virus, the migrant labourer and refugees were clearly being cast to the constructs of ‘outsider’ or ‘other’. The sovereign authority of the state to shut and secure its borders so as to enable only regulated and restricted entry of individuals during a pandemic is seen as a justifiable means

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to ensure the health and well-being of its population¹⁵. But such regulations ought to be in alignment with the principles of global framework of refugee protection and international rule of law as otherwise the challenges posed by the exclusionary nature of such regulations may persist even after the subdual of the pandemic (Gilbert,2020). The closure of borders during the extraordinary situation of a pandemic that jeopardizes the very existence of the population of a nation can be justified in accordance with the clause of “public emergency” of Article 4 of the International Covenant on Civil and Political Rights and “ exceptional circumstances” under Article 9 of 1951 Refugee convention. But such regulations are not supposed to implement a “blanket ban” on every individual who crosses over the borders from another territory without giving due regard for his/her specific vulnerability as most states have the capacity to adopt and improvise measures required to protect their own population without pushing back the vulnerable forced migrants to persecution in their countries of origin (Guttentag, 2020; Gilbert, 2020). Even for countries like India, which are not party to the 1951 refugee convention such a blanket ban on the entry of refugees and stateless can amount to a violation of the principle of ‘non-refoulement’. The humanitarian protection offered by the states to these refugees are often done in collaboration with international humanitarian organizations or done independently by agencies like UNHCR by virtue of their unique mandate¹⁶, for which access of these organisations to these vulnerable populace is instrumental (Turk and Eyster, 2010). The limitations imposed on the mobility of the various humanitarian agencies and organizations will also be in contradiction to the norms of international rule of law¹⁷ and also to the provisions of the recently adopted Global Compact of Refugees¹⁸. Those a few refugees, who are already within the host-state should

¹⁵This discretion of states is acknowledged by the international humanitarian organisations like United Nations Human Rights Committee and UNHCR as evident in ‘UN Human Rights Committee in Aumeeruddy-Cziffra and nineteen other Mauritian women v Mauritius’ (Communication No. 35/1978, UN Doc. CCPR/C/12/D/35/1978, 9 April 1981, para. 9.2b(2)(ii)3) ; ‘The Committee Against Torture in Agiza v Sweden’(Communication No. 233/2003, UN Doc. CAT/C/34/D/233/2003, 24 May 2005, para. 13.1)- Cross cited from Gilbert (2020)

¹⁶Refer to the provisions outlined by the ‘Global protection cluster’ led by UNHCR so as to achieve “ well coordinated, effective and principled protection preparedness and responses” that is central to all humanitarian actions as seen in <https://www.globalprotectioncluster.org/about-us/who-we-are/>

¹⁷Geoff Gilbert and Anna Magdalena Rusch (2018), has cited that the United Nations General Assembly had acknowledged that all states and international organisations need to adhere to rule of law and “predictability and legitimacy” of the activities of the state should be determined by the “respect and promotion of rule of law and justice”-from the ‘*Declaration of the High-level meeting of the General Assembly on the Rule of law at National and international levels*’.

¹⁸The Global Compact of Refugees (GCR) considers the humanitarian access indispensable to achieve the outlined goals of operationalizing the “principles of burden and responsibility sharing to better protect and assist refugees and support host countries and communities” based on the notions of “humanity and international solidarity” – Refer Global Compact on Refugees (GCR), UNGA Res 73/151, 18 December 2018, para. 5.

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have the access to health care and information on the “symptoms, prevention, control of spread, treatment and social relief” associated with the pandemic¹⁹. But living conditions of the most of the refugee camps within the countries of South Asia make it difficult for refugees to practice adequate social distancing, let alone availing the health and sanitation services. Without necessary water and sanitation facilities, the COVID precautionary dictum of frequent hand wash becomes a nearly impossible scenario for these refugees sheltered in camps.

The exclusionary nature of performative protection provided to migrants basically flouts the principles of non-discrimination and human rights enshrined in the Global Compact of Migration, even though the compact itself is anchored on the principles of state-sovereignty (Allotey et al, 2020). In India, the migrant labour was arrested for not adhering to the restrictions of mobility and undertaking journeys on foot for home villages. On an international level, such arrests and arbitrary detentions are in violation of the 13th principle of Global Compact of Migration (GCM) which mandates the states to seek “non-custodial alternatives to detention” and thereby explicitly indicating the aversion for usage of detention on migrants. But the unilateral measures adopted by various nations showcase the affirmation of a nation- state determined world order and the re-assertion of each of its inherent socio-economic fault lines in the wake of a pandemic. The politics of mobility and protection during pandemic has displayed the otherwise covert strand of “ultra-nationalism” that has caused a stringent “state control through surveillance, repressive laws and radical populism”(Dixit, 2020). Dobusch and Kreissl (2020) has opined that the nature in which states handle the response measures for COVID can be likened to the way in which the crisis management transmutes as a “im-/mobility governance”. For a pandemic crisis where mobility induced proximity of individuals is the primary causative factor, the curtailment of the very same mobility emerging as the principal response mechanism of the state was perceived to be fairly just. According to Dobusch and Kreissl (2020), the politics of mobility/immobility during pandemic thus entails maneuvering a subtle poise amongst “public health, maintaining the infrastructure of basic supplies and the demands of a capitalist economy”. But the implementation of such response mechanisms exhibits the inequalities and asymmetric power relations of each society.

¹⁹Principle 6 in ‘*Human mobility and human rights in COVID-19 pandemic: Principles of protection for migrants, refugees and other displaced persons*’, Columbia, Cornell, Zolberg Institute - <https://zolberginstitute.org/covid-19/> cross cited from Gilbert (2020).

Conclusion

The moral responsibility of the state to provide protection to its citizens during pandemic has resulted in the state performativity of protection. While enacting this responsibility to protect its population, states have used the curtailment of mobility as the primary response mechanism. As mobility and physical proximity between people aggravated the chances of spread of COVID, such spatially aligned response mechanism was deemed appropriate to ensure the protection of people. These restrictions on mobility like lock downs and border closures does not effectively protect the vulnerable migrants or refugees from the wrath of the disease, rather it only ensures that they do not become potential carriers who threatens the health of others. Normatively, protection framework from a public health perspective during the pandemic would have ideally comprised of dissemination of timely information on the disease, adequate testing mechanisms for timely diagnosis and access to affordable treatment that ensures apt recovery. Instead by opting for a blanket measure of curtailing the mobility of all sections of people without due regard to their specific vulnerabilities, state verifies that it is merely performing its responsibility to protect. This state performativity of protection has precipitated a politics of mobility/immobility showcases the differential gradation of its citizen into two categories- those citizens who are worthy of protection at the expense of others and those who are not. This reinstates a hierarchy of inequality where migrants and refugees become the perpetual outsiders who are rather disposable at the outset of a pandemic. As rightly opined by CarolinEmcke²⁰ COVID response mechanisms have conjured a “contrast medium” that amplifies and reveals the “ills that affect our society”.

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²⁰Based on interview “The pandemic is an authoritarian temptation that invites repression” given to web24.news <https://www.web24.news/u/2020/04/the-pandemic-is-an-authoritarian-temptation-that-invites-repression.html> cross cited from Dobusch and Kreissl (2020)

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