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Accessing Refuge: India and Its 1971 Refugee "Problem"

By

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"And still they come..."
(Statesman June 7, 1971)

Introduction

"Do they know we are coming?"

In 1971, an estimated 10 million refugees crossed the border from East Pakistan into India.[1] The sheer magnitude of this movement of people - the largest single displacement of refugees in the second half of the 20th century[2] - is staggering. Writing from the town of Barasat, a city located in the outskirts of Calcutta, West Bengal, Sydney Schanberg, a journalist with The New York Times, describes the town as a "swarm" with refugees "so thick in the streets that cars can only inch through".[3] The refugees seemed to be everywhere - sitting in the streets, crouching in doorsteps, sleeping on porches, occupying empty buildings, and cooking in the fields.[4] They attempted to build lean-tos only to have the monsoon rains rip them apart.[5] The refugees, Schanberg writes, appeared "anxious and troubled ... look[ing] for someone to answer their questions ... 'Do they know we are coming?'".[6]

After having "trodden long distances on foot in grim agony and in a desperate effort to escape from the ruthless atrocities of the Pakistan Army",[7] to ask such a question seems out of place, even unnecessary. With its odd mix of apology, affirmation, and imposition, it is the question of a guest who is extended a welcome by the host and yet seems unsure as to the nature and extent of that welcome. Such an interaction reflects what Ranabir Samaddar describes as "the double imperative of how the State governs - a contradictory logic of power and care, and a paradoxical injunction built on the heritage of rule".[8]

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Like other mass influxes of populations that sought refuge in India - the Tibetan refugees who arrived in the 1950s and the Chakma refugees who arrived in 1964[9] - the 1971 refugees were indeed welcomed. However, unlike the two previous mass influxes of refugees, the 1971 refugees were extended a limited welcome and were accorded hospitality "only until such time as they were able to go back to their country of permanent residence with dignity".[10] The policy for the 1971 refugees, as articulated by the Indian state, makes no mention of rehabilitation, integration, and absorption.[11] Their existence in India was to be temporary and their status was to remain as foreign nationals.[12] Their existence would ultimately prove to be temporary when, on December 15, the Pakistan army with 93,000 soldiers surrendered in Dacca.[13] Following decisive military action led by the Indian army, the independent nation-state of Bangladesh was born.[14] Just as the 1971 refugees made history with their arrival, so too did they set a record with their departure. Beginning in December of that year, millions of the refugees returned to a new homeland in what would be and remains the largest repatriation operation of the post-Second World War era.[15]

The story of the 1971 refugees - their exodus, reception, and eventual return - forms part of a wider narrative that brings to life the disintegration of one nation - Pakistan - and the birth of another - Bangladesh; the revival of historic grudges between two bitter neighbours - India and Pakistan; the international indifference manifested against a backdrop of Cold War politicking; and the miserable conditions that greeted the 10 million souls who sought refuge in India. The story that serves as the basis of this paper is that of the Indian state, namely the way in which its articulated policies on the 1971 refugees shaped, on the one hand, the state's understanding of refugeehood and its response towards refugees, and, on the other hand, the refugees' own understanding of this label and the implications the policies had on their sense of belonging and identity formation. Through an analysis of the decisions taken by the Indian state, the labels administered, and the bureaucratic institutions established, this paper explores the tension between the notion of charity and the notion of rights[16] by asking: On what grounds did the Indian state justify repatriation as the only viable solution to the situation of the 1971 refugees? In this paper, I argue that the Indian state's response to the 1971 refugees, namely the way in which it defined and configured its responsibility as expressed through its policies of rights and care,[17] can best be explained through the conceptual framework of access. Such a framework reconciles the state's articulation of the refugee influx as problematic with its solution of repatriation while recognizing the interaction between agency on the part of the refugees and action on the part of the state.

Method

The events of 1971 and the resultant influx of refugees into India remains a relatively recent and controversial topic. Archival documents pertaining to that time (police records, security files, and state planning documents) are sealed and will remain so for several more years. Even when

these documents do become available, given their sensitive nature, there is no guarantee that the relevant information sought by researchers and the general public will be made accessible. In light of this challenge, I have structured my argument on the availability of hundreds of public documents, notably newspaper articles (encompassing both domestic and foreign sources), political speeches, political memoirs, secondary academic research papers, and firsthand research reports gathered by foreign aid workers stationed in the refugee camps. These accounts are far from neutral and offer narrow perspectives into the unfolding of the events of that year. They are also limited in coverage and content since the Pakistan Army expelled foreign journalists covering the events of 1971 and very few returned to the country to cover the story. That said, they do offer valuable insight into the realities of the refugee experiences as well as an accurate portrayal of the situation on the ground. Compounding this issue of access are a range of other practical challenges, many beyond my control - the limited number of sources due to language barriers, missing archive files, and an inability to travel to Bangladesh to gather testimony from the refugees themselves.

In order to make my argument, I carry out a threefold exploration (as outlined by Samaddar[18]) - first, of the definition of the term "refugee" and its scope; second, of the concept of non-refoulement (the principle of no forcible return) and its scope; and third, the administrative-judicial machinery to determine the status of a shelter-seeker as a refugee and once determined, the quantum of assistance the shelter-seeker needs and gets.[19] In so doing, I seek to synthesize the relevant literature while theorizing the 1971 refugee experiences and state response. This topic remains both under-researched and under-theorized. The work of Feldman,[20] Jacob,[21] Jahan,[22]Jalal and Bose,[23] Sisson and Rose,[24] and Van Schendel[25] offer valuable historical insight into the events preceding and following the refugee influx. Recent memoirs by the American diplomat Blood[26] and journalist Schanberg[27] present insightful perspectives on the response from the United States of America and the international community more generally. This response is contextualized well by Bass[28] and Rao.[29] The general media response has been the focus of work authored by Mascarenhas[30] and Mohaiemen.[31] The security dimensions of this topic have been covered by Franck and Rodley (1973) and Salehyan (2008). Literature documenting the intersection of state response and refugee experience has been carried out by Bose,[32] Chimni, [33]Kumar,[34] and Samaddar.[35] However, these works tend to prioritize the Indian state's response to refugees more generally. Three notable exceptions are the works of Mukherji,[36] Saha,[37] and Datta.[38]

Paper Outline

This paper proceeds in three sections. In the first section entitled 'Articulating the 1971 Refugee "Problem"' I outline the demographic data pertaining to the refugee influx and highlight the gendered, religious, and class dimensions of the refugee population. In the second section entitled 'Analyzing the 1971 Refugee "Problem"' I examine the concrete challenges

that gave rise to the articulated "problem" - employment, public health, and law/order - and analyze how these issues call into question the nature of citizenship, the allocation and distribution of social entitlements, and the capacity of the state to exercise authority and legitimacy. In the third section entitled 'Conceptualizing the 1971 Refugee "Problem,"' I situate the refugee influx within three different conceptual frameworks – the legal, the historical/political, and the managerial - and discuss the strengths and weaknesses of each framework. I then propose a fourth conceptual framework, that of access, as a new way to think through the 1971 refugee influx and the state's response.

Articulating the Refugee "Problem"

"This Time the Problem is Different in Size and Character"

On 24 May, 1971, Indian Prime Minister Indira Gandhi described the refugee influx as a "national problem".[39] Just over one month later, on 5 July, she would re-characterize the refugee influx as not merely "an internal problem of Pakistan" but rather a "problem which threatens the peace of South Asia".[40] Indira Gandhi offers three different descriptions of the same situation. In so doing, she positions the figure of the refugee at the intersection of three different political registers - the national, the bi-national, and the international. In this section, I outline the demographic data pertaining to the refugee influx and highlight the gendered, religious, and class characteristics of the refugee population.

The influx of refugees in 1971 was not unexpected. After all, the movement of refugees across borders has been an intrinsic aspect of India's post-colonial history.[41] In his reporting on the border between India and East Pakistan, journalist Alvin Toffler tells the story of one *chaiwala*, Sant Ranjan Ghosh, who had been operating his tea stall on the border post for over 20 years.[42] "I can't recall a day since partition when there weren't some refugees coming out of [East] Pakistan," Ghosh recalls. "At first they came, saw conditions here and went back. But for the last 20 years it has been one-way traffic – from [East] Pakistan into India." When asked to justify his response, he simply states, "I know because I am the first *chaiwala* on the Indian side ... Good business!".[43] What was unexpected was the size and magnitude of the influx. As Indira Gandhi noted in a speech at the Austrian Foreign Policy and International Relations Conference in Vienna on 28 October 1971, the movement of refugees in 1971 was different. According to Indira Gandhi, "Through the centuries India has offered refuge to the persecuted, but this time the problem is different in size and character".[44]

The initial movement of people first surfaced in the press reports towards the end of March. These reports featured movement in the single digits - the two non-Bengali tea planters who crossed into Indian Territory from the Sylhet District into Tripura[45] and the nine people who crossed into an Indian village from the Rajshani district in East Bengal.[46] Following the imposition of martial law in East Pakistan on 25 March 1971[47] and the

declaration of Bangladesh independence announced over Chittagong radio on 26 March,[48] the movement of refugees began to increase, with an average of 1,600 refugees entering India "every hour round the clock".[49] As the Pakistan Army began to raze villages and carry out a violent campaign of wanton killings, looting, and destruction,[50] the movement of refugees across the border accelerated - the daily rate of influx as high as 102,000 persons per day in May.[51] The monthly influx of refugees is summarized in Table 1.

Table 1: Month-wise break-up of the influx of refugees (Bandopadhyay 2000 36)

State	Month	Number (millions)
West Bengal	July August November-December	5.3 6.35 7.5
Tripura	July August November-December	1.2 1.28 1.45
Meghalaya	July August November-December	0.3 0.36 0.7
Assam	July August November-December	0.23 0.25 0.3

The refugees settled primarily in the four Border States of West Bengal, Tripura, Meghalaya, and Assam.[52] The distribution of the refugees in these states is summarized in Table 2.

Table 2: Percentage Distribution of Refugees in Different States (till November 1971) (Bandopadhyay 2000 35)

State	Number of Refugees (millions)	Percentage of Total
West Bengal	7.5	76
Tripura	1.4	15
Meghalaya	0.7	6
Assam	0.3	3
TOTAL	9.9	100

"Among the Refugees are Children, Expectant Mothers, Sick and Invalid Persons"

Articulating the refugee "problem" through distributions, rates, and density calculations is not simply a numerical exercise. It is also a deeply social one. Carried out by different actors, notably the state and the press, with a diverse set of agendas and interests, the information presented and the "problem" that is articulated can be assessed according to their gendered, religious, and class dimensions.

Gender

The initial statistics offered by the Indian state and reported in the press, are often complimented with a description that reads something like this: "Among the refugees are children, expectant mothers, sick and invalid persons".[53] Descriptions of the female population in the camps conform to what Prem Kumar Rajaram describes as a "representation [that] consigns refugees to their bodies, to a mute and faceless physical mass".[54] When an individual female's story is told, it focuses on her victimization and vulnerability.[55] Singh's interview with a "fair doe-eyed girl, pushed toward me by an old woman" concludes with the girl taking blame for the rape of the other females in her village.[56] "I did it! I did it! ... It was all because of me," the girl is quoted as saying[57]. She is not given a chance to explain herself and instead the reporter comments that she is soothed by her mother-in-law before being pushed back into the crowd of refugees.[58]

Like the female refugees, the male refugees are presented through particular narratives of representation. When portrayed in the press, the male refugee takes on the figure of either the fighter or the protector. Regarding the fighter label, the story of Intaz Ali, a 14 year old boy who lost contact with his parents while escaping from Jessore, serves as a good example. He is quoted in The Statesman as follows: "I came away when the Pakistani troops started their offensive. But I will go back and join the Liberation Force. I must do something for my country. I was not born to end my days in a refugee camp".[59] Regarding the protector label, the description of the first group of evacuees to flee East Pakistan serves as a good illustration. The Statesman describes the scene this way: "35 women and children with seven men escorts, reached the border check post here this evening ... they were all Muslims".[60]

Religion

While gender forms an integral part of the numerical presentation of the refugee population, the religious identities of the population do not. Apart from the note above describing the first group of evacuees as "all Muslims," very little (if any) attention in the domestic press is initially paid to the religious composition of the refugees. This seems odd given that the Hindus,

the minority population in East Pakistan, constituted over 67% of the total refugee population.[61] The story told in the foreign press (mainly The New York Times), however, was radically different. In separate pieces, Schanberg and John Kenneth Galbraith, the Kennedy administration's ambassador to India, wrote openly about the religious composition of the refugee population.[62] In one column, Schanberg writes: "Of the six million East Pakistanis who have fled to India to escape the army, four million or more are Hindus. The authorities are demolishing Hindu temples, regardless of whether there are any Hindus to use them".[63] This disjuncture between the two domains of the press - domestic and foreign - was both deliberate and heavily orchestrated by the Indian state. In a meeting with Indian diplomats in London, Indian Foreign Minister Swaran Singh candidly stated, "In India we have tried to cover that [religious composition of the refugees] up but we have no hesitation in stating the figure to foreigners".[64] Singh justified his approach on the grounds that "we should avoid making this into an Indo-Pakistan or Hindu[-]Muslim conflict. We should point out that there are Buddhists and Christians besides the Muslims among the refugees, who had felt the brunt of repression".[65] In a major speech given in the Lok Sabha on 24 May 1971, Indira Gandhi took up Singh's advice by misleadingly describing the refugees as being of "every religious persuasion – Hindu, Muslim, Buddhist, and Christian".[66]

Class

The press reports offer very little information regarding the economic composition of the incoming refugees. Stories that do identify the refugees as belonging to the lower economic classes frame the refugees as desperate and destitute. The story of one refugee, Dhierendra Das, illustrates this well. Das shares his experience this way: "We have lost everything. We have lost the crop, deserted out homes, and become refugees. Now we are ready to put up with more sufferings".[67] Stories that focus on the plight of the wealthier refugees are also marked by a tone of loss, desperation, and destitution; however, the stories tend to have a different effect on the reader. Mitra writes about the "lawyer who left behind his two houses and three cars" and the "film actress who had been signed for more than a dozen films [who] walked through rain and mud for 48 hours".[68] The case study carried out by Mukherji[69] offers valuable insight into the economic dimension of the incoming refugees however it is only applicable to the two camps that form the basis of his study - the Chandpara and Bokchora camps in the district of 24-Parganas. What may emerge generally from his study is the economic divide between those refugees who sought refuge in the camps and those who opted to live with family and friends. He writes:

> Assuming that the relatively better-off immigrants would have either stayed with their kinsmen and friends of improvised their own shelters at places having better advantage, the economic condition of the camps, we can reasonably accept, represented, by and large, the poorer strata of the immigration population[70].

In highlighting the gendered, religious, and economic characteristics of the refugee population, a more nuanced image of the population emerges. This image is one that captures the diversity of the population - in terms of identity as well as in experiences - and in so doing, challenges the homogenizing discourse prevalent in both the press reports and the official state response.

Analyzing the Refugee "Problem"

Far from being one unitary "problem," the refugee influx was comprised of a series of challenges that were met with a diverse set of responses crafted by the state. These challenges, manifested concretely through the themes of employment, public health, and law/order, call into question the nature of citizenship, the allocation and distribution of social entitlements, and the capacity of the state to exercise authority and legitimacy.

The Employment "Problem"

If the right to work in the domestic economy is one reserved solely for citizens, then the governmental restrictions placed on the refugees not only distinguished them from the citizenry but also marked them definitively as outsiders. The policy was clear - "Refugees will not be given any employment in India as, apart from being foreign nationals, such employment will lead to social and economic tensions within this country".[71] In addition to these tensions, there was the fear that economic integration would facilitate feelings of permanence instead of keeping the refugees "leaning toward their own homeland".[72] The intended effect of the policy is exactly what one refugee, Gobina Das, dismisses. When asked to describe his situation in the camp, he responds: "Had there been no trouble in our land, I would have been busy now in or near my village. Here I line up for hours for rations or do nothing. Just sit or stand or roam around aimlessly"[73]. The journalist covering his story, Hiren Phukan, describes his predicament (and one shared by millions of other refugees) as the "travail of uncertainty"[74].

While some refugees were unable to shake off this "travail of uncertainty," other refugees defied the state's policy and engaged with the domestic economy. These refugees worked primarily in four areas of economic activity - (agricultural) labour, fishing, business/enterprise operation, and trade. Labour was predominantly confined to the agricultural sector where the refugees' services were purchased at a level lower than the market price for the same labour.[75] As a result, the wage rate dropped (in some areas, it went from Rs 5/day to Rs 2/day).[76] This cheaper labour exacerbated social tensions within the host communities. However, host landlords were known to either give the refugee workers security or obtained their labour clandestinely.[77] Unlike labour, fishing did not generate the same social tensions. The refugee fishermen introduced more efficient fishing equipment to the local communities and assisted their hosts in catching a

more diverse range of fish[78]. Arrangements were established such that the local fishermen extracted a tax from the fishing.[79] In the camps themselves, some refugees operated small businesses by selling *pan*, *bidi*, and tea.[80] Selling the few belongings with which they arrived, these entrepreneurial refugees - like Gourpada Saha from Jessore - were able to earn up to Rs 25 per day selling tea leaves and cigarettes.[81] Those refugees who brought their rickshaws with them, however, were not as lucky as they faced stiff opposition from their local counterparts (ibid.). Finally, some refugees acted as local traders in the camp by exchanging better quality rice for the broken Russian rice that was disliked by many of the refugees[82].

Given the already precarious economic situation of the four Border States, the refugees' entry into the domestic labour market posed serious challenges. As labour prices declined, the already high unemployment rate climbed with many of the local landless labourers left without work.[83] The influx of refugees not only affected the labour market; it also skewed the balance of supply and demand by increasing commodity prices dramatically. Consider the rise in the price of rice[84] which rose from the already high price of Rs 1.30/kg to Rs 2.20/kg (ibid.). Other commodities, such as pulses, salt, and matches were made unavailable as demand stripped the supply[85].

Amidst the rising and the falling of costs, prices, and values, both the local population and the Indian state were left to make sense of their own situations. For the already 2.5 million unemployed living in West Bengal, the situation was marked by anger and resentment. As Luthra asks, with the unemployment rate as high as it was, "how can they (citizens) look kindly at the foreign refugees?"[86] For the state, the presence of the foreigner in the domestic market challenges the very nature of citizenship. In linking the right to employment with citizenship status and then denying the refugee access to both, there remains the question - to whom do the refugees belong? If not to the Indian state, then to which state? Seeking to delay public affirmation of the independent state of Bangladesh as well as to minimize any attention paid to the West Pakistani attempt to maintain its influence in the East, the Indian state delegated the refugees to the world at large. According to K.C. Pant, Union Minister of State and Home Affairs, India was simply holding the refugees "on trust for the international community"[87].

The Health "Problem"

If the employment "problem" posed by the refugees highlights the demarcation of citizenship, then the provision of public health care signifies the tension in the allocation and distribution of the social entitlements attached to that status. As sympathy for the refugees waned,[88] Indira Gandhi and her party were not immune from sharp criticism levelled by members of the opposition parties. One such critic, Congress (R) member, Viswanarayan Shastri, is reported to have questioned the state's actions on the grounds that "refugees are spreading into Assam and Meghalaya like an epidemic".[89] His unfortunate choice of words seems to overlook the fact that what was actually spreading "like an epidemic" was cholera. That epidemic would kill over 5,000

refugees according to unofficial estimates.[90] Although the state managed to eventually control the cholera epidemic, it struggled to combat the other health concerns "striking down large numbers of refugees daily"[91] - the malnutrition, the exhaustion, and the gastrointestinal diseases. A randomized survey on refugee health highlights the chief medical challenges in the refugee population as being malnutrition, diarrhoea, vitamin-A deficiency, pyoderma, and tuberculosis.[92]

Had that same randomized survey been carried out on the Indian population before the influx of the refugees, the findings may have very well been similar. Consider this statement in the context of child welfare, notably the infant mortality rate and child malnutrition. Regarding the former, the rate in the areas surrounding the camps was almost as high as that in the camps.[93] In some of the West Bengal districts, one-quarter of the children were dying before they even reached the age of 5.[94] Regarding the latter, malnutrition was deemed to be endemic in India with the rate as high as 30 percent.[95] According to Luthra, "some 40 percent of deaths in India are due to malnutrition amongst children".[96] While Luthra claims that only 14 percent of children in the camps suffer from malnutrition,[97] a field report prepared by the All India Institute of Medical Sciences found that approximately 50 percent of the refugee children under the age of 5 were suffering from "moderately severe or advanced malnutrition".[98] While the percentages may not be exactly comparable, the challenges facing the children are quite similar. If the challenges facing the two different populations (refugees and Indian citizens) are similar then the response of the state, whether that response is the same or different treatment, matters. To better understand this dynamic, I analyze one public health program, 'Operation Life Line' - its purpose, organizational structure, and results, and comment on the tension that emerges between the refugees and the host population on one level and the state and international aid agencies on another level.

Operation Life Line - comprised of the two distinct parts Alpha and Beta - sought to combat malnutrition in the refugee camps. While both parts were funded by the United Nations Children's Fund (UNICEF), the Alpha program was administered by the Indian Red Cross and the Beta program was administered by the government's Ministry of Rehabilitation[99]. Whereas Alpha was designed to be largely preventive (by providing under-8s, pregnant women, and lactating mothers with supplementary rations of skimmed milk, sugar, and other foodstuffs) (ibid.), Beta was designed to be curative (by establishing nutritional therapy centres as adjuncts to camp hospitals and providing intensive in-patient care for children)[100]. Both programs were administered with mixed results. The Alpha part was poorly coordinated with very little effort made to site the feeding centres rationally.[101] In assessing his own centre, Seaman states that of the 15,000 children catered, only half came regularly.[102] While the Beta part was better organized, the programme only reached half of the expected number of beneficiaries and the default rate was high[103].

Seaman attributed much of this failure to a range of state-related problems including a lack of early recognition of health problems and a delay

in the provision of adequate facilities for sanitation[104]. The lack of recognition, the delay, and the wider challenges associated with public health provisions can also be attributed to the challenges inherent with providing services to different populations with different sets of expectations and rights. According to Schanberg, the Indian state was reluctant to launch Operation Life Line only for the refugees "when the local population - though not quite as ravaged - was suffering from similar problems".[105] It was only when the relief officials assured the Government that seriously malnourished local children would not be turned away from the programs that the Government went ahead with the entire operation.[106] Still, the tension between the refugees and the local population remained. In the words of one farmer, Jogen Mandal, "They get free medical treatment, and they are much better off than most of us"[107].

The Law and Order "Problem"

Having crossed an international border, the very presence of the refugee on Indian soil calls into question the state's ability to manage its borders. In the context of the 1971 refugee influx, these borders were both external (those territorial limits that distinguish the foreigner from the citizen) as well as internal (those social limits that distinguish the good citizen and guest from the bad). Both types of borders operate within a regime of law and order, such that the violation of the borders and the resultant state response (whether adequate or inadequate) reflects the state's capacity to exercise authority and legitimacy.

The border between India and Bangladesh stretches over 1,750 miles and touches on the five states of West Bengal, Bihar, Assam, Meghalaya, and Tripura.[108] With the influx of refugees, the border presented the Indian state with two key challenges - the first being its ability to monitor the border itself and the second being its ability to monitor the people crossing the border. Snaking through rivers, jute fields, swamps, mountains, and the habitations of aboriginal tribesmen,[109] the exact location of the border in many areas is impossible to ascertain. In 1971, 70 battalions (approximately 70,000 men) of the Border Security Force (BSF), a paramilitary organization equipped with small arms[110] were tasked with securing not only the border between India and East Pakistan but also the more than 9,000 miles of border shared with India's other territorial neighbours in the east[111].

Given this already complex border situation coupled with the under-staffed BSF, very little stood in the way of anyone or anything from crossing the frontier. One press report tells the story of 80-year old Mujibullah Amin who crossed into Agartala and "wanted to know if he had to show any papers for entering India. An Indian policeman welcomed him saying: 'There is no need to show any papers'"[112]. The journalist Michael Hornsby describes a similar situation at Gede. At this isolated border post, the BSF "turn[ed] a blind eye as streams of people cross back and forth over what now appears to be a completely open frontier"[113]. With the influx of refugees came the influx of elements deemed undesirable and dangerous by the Indian state - Pakistani

spies (characterized as agent provocateurs),[114] arms and ammunition,[115] and gold.[116]

The capacity of the state to exercise authority and legitimacy was not only tested along its external borders; it was also challenged internally as extreme violence threatened the security and stability of the state itself. The cruel irony facing the refugees, particularly those who found themselves in West Bengal, was that they fled a situation of violence only to find themselves again in a situation of extreme violence. As the Marxist and Maoist (including the Naxalites) movement spread throughout the city of Calcutta, 1971 was a time when pipe guns and bus bombs shut down streets and when stabbings and brutal gang beatings sent bodies floating down the river.[117] As Doig writes: "The daily bulletins have seldom been so scary. Armchair pundits who thrive on hatches, matches, and dispatches have never had it so good: so many bodies a day, business collapsing, the Hooghly silting up, and all of us doomed to a fate worse than death"[118].

This extreme violence was not confined to the streets of Calcutta. Despite muted coverage from the press, the refugee camps were also sites of violence. Mukherji relates the violence within some of the camps to a "state akin to terror" where brutal beatings, stabbings, and bomb explosions took place as the camp commandants looked the other way[119]. Some episodes of the violence could be attributed to the conditions of the camp. At a refugee camp in Kalyani (Nadia), several hundred refugees attacked the camp office due to a shortage of rice[120]. Other episodes were the result of tense confrontations between the refugees and the local population. In one clash at Boyra, a local youth was stabbed to death by a group of refugees after the youth protested their forcible occupation of a house[121].

In response to the "problem" of law and order, the state exercised both physical and political force. The refugee would prove a strategic asset in this response as the influx enabled the state to justify its campaign of force on the basis of keeping the tensions along the external borders separate from the tensions along the internal borders. The state's use of physical force primarily consisted in strengthening urban police forces, dispatching security guards to the camps, and bolstering the presence of the military along the borders. A new post of Deputy Inspector General was created and an additional 80 officers were assigned to the intelligence wing of the State Government.[122] The state's use of political force took the form of a complete government takeover by the Centre in West Bengal. As the Centre replaced the Ajoy Mukherji regime, it proposed a programme of screening and registration, insulation, and supervision.[123] The screening and registration policy was carried out to "ensure that undesirable elements as well as *agents provocateurs* of Pakistan are not in touch with refugees".[124] The State Governments, with instructions from the Ministry of Home Affairs, advocated for the registration of the refugees under Section 3 of the Foreigners' Act (1946) and warned that any violations of the Act would be met with police action[125]. Despite this advocacy, not all refugees were registered. In the districts in and around Calcutta, for example, only 60 percent of refugees were registered and were presented with a registration card[126]. The insulation policy (sealing the camp

areas) was to prevent the refugees from being "used as convenient targets for the extension of Indian politics" and thus to keep the refugees "outside the pale of our national political controversies"[127]. The policy of supervision consisted mostly of strengthened monitoring by the Home Guards [128] and the introduction of a pass system.[129] According to Ananada Mohan Biswas, Minister of State for Refugee Relief and Rehabilitation, the refugees living in the camps would "not be allowed to leave the camps without the permission of the officer-in-charge of the camp. Whenever they go out, they will have to return to the camps within a specified time".[130] The rationale was similar to that provided for registration, namely to ensure that the refugees "do not become scapegoats of political parties"[131].

When considered together, the use of physical and political force reflect a state response that was presented as one that did not target a specific population but rather focused on the generalized threat of those "communal passions" perceived to be "generated not only in the refugee camps but between the camp inmates and the people around"[132]. As Schanberg writes, "What the Indians fear most is that tension might take on a communal colour ... and touch off a nationwide chain reaction in which India's majority Hindus would take revenge on the country's 60-million Moslems".[133] Schanberg's assertion of this communal tension echoes a story he filed in June of that year when he described the situation of a group of Hindu refugees who sought refuge from the monsoon rains in a mosque in Barasat. He writes: "Extra policemen had to be called in to avert religious rioting - the Government's greatest fear in all the Border States"[134]. While the fear of generalized communal violence may have been a pressing and real threat, Schanberg's assessment appears simplistic in its pitting of one religious community against another. Toffler offers a more nuanced portrait of the law and order "problem" in the context of communal tensions when he relates the same story but makes space for the voices of individual community members. According to the Muslim individual, "It was not like this at all. These fellows forced their way in and told us to get out and go to Pakistan. Why should we go to Pakistan? We are Indians. They should go back to wherever they came from".[135] In moving beyond the simplistic discourse of communal tensions, there emerges the base struggle over determining who belongs and who does not belong; of which individual passes as the 'good' citizen or guest and which one is labelled 'undesirable'. The player with the most to gain and lose in this struggle, the state, shows its own limits and capacity each time it makes a move. To monitor, regulate, and police borders is much more than lines being drawn across a map; it is ultimately about determining which groups are entitled to stake claims on which spaces--spaces that are already deeply contested.

The challenge posed by the law and order situation, as well as the challenges posed by the employment and public health situations, problematizes the public discourse framing the refugee influx as a unitary 'problem'. Instead, the refugee 'problem' was comprised of a series of related yet distinct issues that called into question the nature of citizenship, the

allocation and distribution of social entitlements, and the capacity of the state to exercise authority and legitimacy.

Conceptualizing the Refugee "Problem"

If the articulation of the refugee "problem" marks the beginning of the 1971 refugee narrative, then the realization of the refugee "solution" marks its end. This solution, according to the Indian state, was repatriation, a policy goal and outcome that structured both the refugee experiences and state response. In this section, I examine the relationship between these twin concepts - problem and solution - through various conceptual frameworks. To conceptualize the 1971 refugee influx is to construct it as "an object of knowledge, [rather than] describing something which is already out there"[136]. It entails an assessment of the language used to talk about the refugee, a language fraught with significant implications for thinking about and acting towards that refugee[137]. I compare three principal frameworks - legal, historical/political, and managerial - by assessing their ability to develop a "better understanding of the material reality they are conceptualizations of".[138] I conclude by proposing a fourth framework, that of access, which I believe represents a more integrated and representative approach to the 1971 refugee influx and state response.

The Legal Approach

Repatriation, along with resettlement and local integration, form the three durable solutions to refugee problems as recognized by international law and supported by the Office of the United Nations High Commissioner for Refugees (UNHCR)[139]. To repatriate, in its most basic form, is to send the refugee or asylum seeker from their country of asylum back to their country of origin.[140] The key principles underlying repatriation are the right to return (as codified in Article 13[141] of the Universal Declaration of Human Rights) and the right not to be forcibly returned to situations of persecution or serious danger i.e. the right of non-refoulement (as codified in the negative terms of refoulement in the 1951 Convention Relating to the Status of Refugees[142]. The solution of repatriation is thus premised on the country of asylum's right to withdraw refugee status so long as it has determined that protection in the country of origin is viable[143]. Once withdrawn, the refugee becomes subject to the regular rules of immigration control and may be required to return to their state of origin[144]. The challenge of situating the 1971 refugee influx and state response within the legal conceptual framework is that India is not a party to the 1951 Convention and its 1967 Protocol[145]. Furthermore, India only acceded to the two Covenants on Civil and Political Rights and Economic, Social and Cultural Rights in 1979, several years following the return of the refugees to Bangladesh[146]. The value of this conceptual framework therefore does not derive from what it tells us about India not signing these documents but rather the way in which this non-accession defined and configured the state's responsibility[147].

In a meeting with economic editors, Indira Gandhi described the solution to the refugee influx this way: "I am just going to send them back. I am determined to send them back"[148]. This policy of "sending them back" served as a constant reminder that the refugees "belonged to Bangladesh ... and were going back as soon as the situation returned to normal"[149]. Had the policy not been this clear and forceful, members of the Government feared that they would be giving the wrong impression, namely "that [the refugees] are going to be absorbed in this country".[150] The policy had two principal implications. First, it was used by the state to justify limiting the refugees' access to the labour market, relegating the refugees to camps, and discouraging the dispersal of refugees from the Border States to other parts of India[151]. Second, it was employed by the newly formed government in Bangladesh to encourage and foster feelings of patriotism for the new state. In his tour of the refugee camps, the Bangladesh Minister of Home and Rehabilitation urged the refugees to "not stay here as evacuees but go back and take part in the national reconstruction".[152] The policy of "sending them back" was realized in a surprisingly successful manner. Funded by the Indian state[153] and coordinated with international relief agencies and the administration of Bangladesh,[154] over 6.8 million of the 10 million refugees returned within two months of the end of the conflict[155]. Each family was given two weeks' worth of rations that included rice, wheat-flour, lentils, charcoal, cooking oil, and a small cash allowance.[156]

While the Indian state was not constrained by the international legal regime, refugee rights were recognized in practice, albeit in a limited sense. In an August speech, Indira Gandhi commented that repatriation would only occur if the "conditions for their (refugees) safe return were created"[157] and again in a September speech, where she articulated her vision of returning the refugees "in safety and dignity"[158]. In the absence of any legal regime according to which the state response can be evaluated, phrases such as "safety and dignity" become highly malleable, even strategic tools to be employed by the state according to its own needs and demands. One editorial roots the responsibility of the state in the notion of humanity.[159] However, to what extent does humanity guide state action? The editorial proposes one understanding of the term by focusing on housing, feeding, and clothing the refugees but argues against the "dispersal to other States or arrangements for permanent rehabilitation".[160]

There thus emerge two principal limitations with this legal conceptual framework. First, the legal framework is unable to account for the situation of those refugees who feared a return to this so-called "home"[161]. For some refugees, particularly the Hindu minority population, this fear stemmed from the threat of religious persecution whereas for others, a desperate economic situation in Bangladesh seemed discouraging.[162] Pervading both the religious and economic concerns is a questioning of this notion of "home." Toffler discusses repatriation with a group of refugees who respond to him this way: "'Why should we go back?' many replied.' This is our country.' To the Pakistani Hindu, India has always been Amar Desh – 'my homeland'".[163] The state's use of repatriation as the only solution is premised on the faulty

assumption that "everyone wants to return ... home" – a premise that the state did not assess since it appeared, "in the absence of other options, to be largely irrelevant".[164] Second, the legal framework is unable to evaluate the nature and extent of the voluntary dimension of the repatriation effort. Reports from the press describe the Indian state withholding rations and future transport to encourage the refugees to leave. According to Rangan, "although the refugees were not compelled to return they were not being given much choice either".[165]

The Historical/Political Approach

Whereas the legal approach focuses on how non-accession influenced the state's practices regarding the configuration of responsibility towards refugees, the historical/political approach seeks to contextualize the state's practices by situating it in relation to other refugee influxes, notably the movements associated with Partition. Jaswant Singh, a former Indian foreign minister, draws the comparison between 1947 and 1971 when he states, "It's a terrible human agony ... It was as if we were reliving the Partition".[166] Comparisons between 1947 and 1971 were not unfounded since some parallels can be drawn between the two historical episodes. Like 1947, 1971 can be understood in terms of nationalist and anti-colonial politics as well as the antagonisms underlying this politics.[167] 1971, like 1947, was also a time of cultural and personal disaster marked by incredible human suffering, trauma, and the uprooting of millions of refugees [168]. Some scholars look to the steady stream of people, some 5.28 million individuals between 1946 and 1970, which moved from East Pakistan to West Bengal as a testament to the lingering effects of Partition[169]. According to Bose, the 1971 crisis can be situated within the narrative of the:

> 1947 Partition and its aftermath, episodic riots within East Pakistan (especially in the districts of Barisal and Khulna), depressed economic conditions within the region, the introduction of passports by India and Pakistan to regulate travel (intended to stem the tide of migrants, but in fact resulting in the opposite due to insecurities this attempt caused), and conflicts within India and Pakistan itself, whose impact reverberated within both halves of the former Bengal and led to violence in each.

These lingering effects of Partition and the continued mistrust between India and Pakistan is a theme that plays a prominent role in Pakistan's heated rhetoric concerning the refugee influx. The spectre of Partition is manifested in two key ways. First, it is used to promote the idea that India threatens the very existence of the Pakistan state. In a press release dated 24 May, the Pakistani Government maintains that the "refugee problem has been deliberately allowed to take certain dimensions by the Government of India with some ulterior motive"[170] which was described in the press as the "harassment of the Pakistan state".[171] Second, it is used to challenge India's moral authority by calling into question the Indian state's "concern for the millions of Indian Muslims who have been driven out of their homes and who have been compelled to seek refuge in Pakistan".[172]

While the spectre of Partition seems ever-present in the Pakistan state's rhetoric, the policies adopted by the Indian state mark a clear break between the refugees of 1947 and those of 1971. First, India's appeal to the international community for aid distinguishes it from the Partition situation when "each country took up responsibility of rehabilitation of the displaced persons in their respective countries".[173] Second, the 1971 refugees were not integrated into the overall framework of planning and development[174]. The presence of the refugees was to be temporary making any discussion of rehabilitation and integration null. Third, the movement of the 1971 refugees differed dramatically from the movement of the 1947 refugees. Whereas Partition saw populations moving in both directions across the border, the 1971 crisis saw refugees moving primarily in one direction - away from East Pakistan and into India.

When considered together, Pakistan's rhetoric and India's policies highlight the necessity of approaching the 1971 refugee influx with some understanding of the 1947 Partition narrative. The effects of Partition were long-lasting and shaped the way India and Pakistan viewed each other. However, the parallels drawn between 1947 and 1971 are limited since 1971 ultimately marks a point of rupture with the Partition narrative.

The Managerial Approach

Both the legal and historical/political approaches influence, to some extent, the third conceptual framework, the managerial approach. This framework centres on the detailed actions of the state apparatus by focusing on the state's rehabilitation schemes and its institutional structure. The state's relief and rehabilitation scheme consisted of three principal goals - first, the enumeration and classification of refugees according to their social and economic backgrounds, second, the provision of doles and survival/sustenance assistance, and third, the preparation necessary to eventually return the refugees to their country of origin.[175]

This scheme was conceived and operationalized by four key actors – the Indian Government and its created camp administration, a special Branch Secretariat[176], the voluntary Indian organizations, the voluntary foreign organizations, and members of the surrounding local populations[177]. The Government tasked its Secretariat (based in Calcutta and led by Luthra) to "plan and implement any programme that the situation demanded"[178]. While other refugee departments were established in the states,[179] the Secretariat served as the focal point for receiving and distributing foreign aid.[180] Both the central and state governments managed camps with the funding coming entirely from the Centre.[181] The voluntary Indian organizations and members of the local population supported the initial refugees as the state apparatus struggled to organize itself.[182] Even when the Secretariat established itself in the camps, some of these organizations, such as the Abhoy Ashram, oversaw all of the major relief roles in the camp setting. Other organizations concerned themselves with specific programming initiatives such as children's education (organized by the Ramakrishna Mission for example).[183] The voluntary foreign

organizations played a limited role in the events of 1971 as they were not welcomed by the Indian state.[184] According to Seaman, all the foreign relief personnel left the camps by August.[185] Those that remained worked in the Salt Lake (Calcutta) camp which was "least bound by restrictions and the most visited by the Press".[186]

The managerial approach thus allows for a critical examination of the interaction and relationship between these various actors. It calls into question the capacity of the state apparatus in addition to the various political and social forces that influence this capacity. While the Centre controlled funding and managed a significant part of the relief and rehabilitation scheme, it was not immune from criticism and pressure from the states and international aid agencies. For example, in early June, the Orissa government decided "not to accommodate East Bengal evacuees ... and rejected the suggestion of the Government of India in this regard".[187] The approach also invites discussion regarding the tangible and concrete expression of state power on the lives of the refuges. The approach is not without limitations. In its state-centric focus, the managerial approach reduces (even eliminates in some instances) the voices of the refugees. In the initial weeks, press reports focused on the situation as being "totally beyond the capacity of the district administration to cope with".[188] No attention is paid to the needs and demands of the refugees, reducing them to the status of recipients of managed services and subjecting them to larger governance structures. When attention is paid to the voice of refugees, the discourse centres on the camp refugees and not those who either integrated into the local community or stayed with friends and family. Rehabilitation is far from being the mere handing out of goods and services; it is instead a "practice in which identities are produced, consumed, regulated, sustained, and invalidated".[189] More generally, as has already been mentioned, the managerial dimension of the 1971 refuge influx is ultimately informed, structured, and constrained by the legal and historical/political considerations of the state.

The Access Approach

The legal, historical/political, and managerial frameworks attempt to reconcile the twin concepts of problem and solution in different ways. In this process, they remain unable to capture fully the relationship between the lived experiences of the refugees and the response from the state. A new conceptual framework, one that recognizes agency on the part of the refugees and action on the part of the state, is thus needed. The framework of access brings both of these dimensions together while interrogating the "configurations of power and resource, statements of ideology and programme, formal organizational arrangements, and actual outcomes"[190] that underlie their relationship. Access is defined as the "relations between the administrative allocation of goods and services and the people who need them and for whom they are intended".[191] The approach analyzes those "actions about eligibility, priority and administrative encounters, how these are handled, how they are avoided".[192] Methodologically, it accomplishes this

analysis by considering on the one hand the perspective of the applicant (in this case, the refugee) and, on the other hand, the perspective of the institutional organization (in this case, the Indian state).

When applied to the situation of the 1971 refugees, the access approach would proceed in two parts. First, it would examine the Indian state's decision to label the refugee influx as problematic (thus recognizing a specific group of beneficiaries) and the institutional processes carried out to distribute resources[193]. Issues such as institutional arrangements, the decision-making process, and the process of feedback gathering would all be considered. Second, it would examine the response of the refugees towards both this label and the allocation and distribution of resources (characterized as "experiences of institutional life").[194] Issues such as inclusion and exclusion, the costs (monetary and social) associated with the label of refugee, the habits of refugees avoiding the institutional oversight of the state, and the way in which some refugees seek alternative sources of material and social support would all be raised. What emerges from this application is not only a thorough study of institutional decisions and their consequences (positive or negative) but also the "variety and complexity of contemporary reactions".[195]

Three principal implications emerge from the application of the access approach. First, it allows for a more honest and critical study of the different actors involved in the refugee crisis. It not only analyzes the state and the refugee separately but also in relation to one another. Second, it situates refugee agency and state action both within and beyond the camp space. It considers this wider space, characterized as a space of refuge, and the relationship that forms between the refugees who inhabit those spaces and the inhabitants of the local communities. Third, it recognizes the role played by law, politics, and history but considers them within a particular situation, namely one in which "societies are ... being bureaucratized, institutions built, central planning processes employed, and the expansion of the rationing functions of the state resorted to".[196]

Conclusion

In an editorial issued at the height of the refugee influx, The Statesman prodded its readers by asking:

> Have you the faintest idea, gentle reader, what is to be done about all this? Or do you think that anybody else has the faintest idea, including your beloved Government, in the short term or in the long term? Clearly, the border cannot just be sealed ... Or perhaps you think that they will one day go back again. Well, well[197].

Despite being couched in a light-hearted, comical, even mocking, tone, the editorials' message is serious and the challenges raised are real. As I discussed in the first two sections of this paper, the refugee influx posed a series of concrete challenges - employment, public health, and law/order - that called into question the nature of citizenship, the allocation and distribution of social entitlements, and the capacity of the state to exercise authority and legitimacy.

Despite an appreciation for the complexity of these problems, the editorial seems to dismiss the solution of repatriation as mere folly. Yet repatriation was taken seriously by the state which saw it as the only viable solution to the refugee "problem." As I argued throughout the third section of the paper, trying to make sense of this decision on the part of the state through the constraints of international law, the narrative of history, and the mechanics of the managerial, is ultimately limited. If decisions are merely, as Schaffer suggests, "convenient labels given post hoc to the mythical precedents of the apparent outcomes of uncertain conflicts"[198], then a new conceptual framework is needed to make sense of the interplay between the articulation of the refugee "problem" and the solution of repatriation. The way forward, as I have argued, must recognize the interaction between agency on the part of the refugees and action on the part of the state. The framework of access offers such a way forward.

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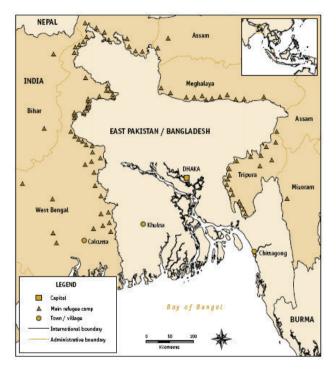
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Appendix 1

Location of main refugee camps in India, November 1971 (UNHCR 2000 61)

Appendix 2

List of Refugee Camps Established During the Period From April to November 1971 (Rahman Volume 8 691-703)

State: Tripura

District: North District
Ambasa, Kamalpur, Kumarghat, Miles, 85 Miles, Padmabil, Shrinathpur, Uptakbali

District: South District
Bagata, Chandrapur, Dhajanagar, Harina, Rishyamukh, Kakraban, Kalachara, Kawamara, Maichera, Phulkumari, Rajnagar, Shrinagar

District: West District
Amtali, Barjala, Brajapur, Chechuria, Dhanpur, Ghandhigram, Hapania, Ishanpur, Khowai, Madjupur, Matinagar, Melagarh, Mohanpur, Simna, Teliamura

State: Assam

District: Cachar
Chandranathpur, Chargola, Dasgram, Harincherra, Kathal, Lakshminagar, Silkuri, Sonakhira

District: Goalpara
Borkona, Fakirgram, Mankachar, Nidanpur, Sarfanguri

District: Mizo
Demagiri, Pachang, Rotlang

District: North Cachar Hills
Haflong

District: Nowgong
Hojai, Nilbagan, Sidabari

State: West Bengal

District: 24 Parganas
Hasnabad, Taki (2 camps), Basirhat (5 camps), Swarupnagau (7 camps), Baduria (5 camps), Gobardanga, Maslandapur, Kalupur (4 camps), Media, Ichapur, Suntia, Banipur, Pairagachi, Lakshmipur, Sadhanpur, Sahara, Barakpur, Digberia, Dattapukur, Kanapukur, Barasat (3 camps), Mamabhagina

(2 camps), Marighata, Bagdaha, Helencha, Ganrapota, Salt Lake, Nilganj, New Barakpur, Dogachia

District: Nadia
Karimpur, Palashipara, Betai, Nazirpur, Banpur, Chapra, Dompukuria, Purnaganj, Java, Bhaluka, Bhadurpur, Murgaccha, Dakshinpra, Kalyani (7 camps), Shikarpur, Majdia, Bhajan Ghat, Asannagar, Badkulla, Ulashi, Ranaghat (2 camps), Shantipur

District: Murshidabad
Daultatabad, Kaladanga, Baruipara, Choa, Hariharpara, Karimnagar, Nischintapur, Rukunpur, Sahajadpur, Amtala, Jhowbona, Madhupur, Nowda, Patikabari, Maganpara, Bhagirathpur, Bhatsala, Domkal, Katakobra, Sadikhandiar, Sahebrampur, Choapara, Hukahara, Jalangi, Kazipara, Natial, Sagarpara, Sahebnagar, Ashoke kunja, Lalbag, College Commerce Hostel, Jiaganj, Darapnagar Primary School, Nawab Bahadur Institution's, Lal Boarding, Lalbag, Muslim Hostel, Lalbag, Mission Hospital, Jiaganj

District: Murshidabad
College Commerce Hostel, Jiaganj, Govt. Sponsored Free Primacy School No. 1. Jiaganj, Govt. Sponsored Free Primary School No. 2. Jiaganj, Maharaj Babadur Hall Jiaganj, Darpnagar Primary School, Dilfarbad Ganja Farm, Nashipur Rajbati, Nishadbag Pry School, Lalbag, Mukundabag Jr. Basic School, Lalbag, Shripat Kumarpara, Jiaganj, Mahanta Ramdas Aulia Primary School, Jiaganj, Kurmitala Camp, Ashoke Kunha, Lalbag, Mackenji Hall, Azimganj, Puratan Dharmasala, Azimganj, Nutan Dharmasala, Azimganj, Nowlakshya Garden, Azimganj, Don Bosco Institute, Azimganj, M. Strimal's Godown, Jiaganj, Raja Bihoy Singh Stable, Azimganj, Debipur G.S.F.P. School, Raja Bihoy Singh Bidyamandir Hostel, Azimganj, M. N. Academy, Lalgola, Lahore Shed, Lalgola, School Boarding, Lalgola, Guest House, Lalgola, Basic School, Lalgola, Madrasa, Lalgola, Girls' School, Lalgola, Manick Chak, Youth Reception Centre, Lalgola, Raninagr Goas, Raninagar, Nabipur, Katlamari, Rakhaldaspur, Sheikhpara, Rambag, Habaspur Primary School, Bagdanga Primary School, Patamari Hanumantanagar, Akheriganj, Kharibona, Nashipur, Bhagwangola High School, Kalukhali Madrasa and Primary School, Bhagwangola Primary School, Asanpur Primary School, Darar Kandi Primary School, Ram Chandramati Primary School, Bhagwangola, Bhurkunda, Sabapur, Manigram

District: Maldah
Bamangola, Pakuahat, Maheshpur, Gouljoi, Paul Transit, Pakshagat Open Air, Gajol, Dohil, Hatimari, Kutubsahar and Adina, Kanchuadanga, Eklakshi, Rahutara Mission, Kendpukhur, Bulbulchandi (2 camps), Rishipur, Singabad (2 camps), Aiho, Bahutera Mission, Harishchandrapur, Bishapur, Kushidah, Tulshihatta, Masaldaha, Bringol, Borai, Konua, Chandipur, Golapganj, Kaliachak, Mothabari, Baisnabnagar, Pagla Bridge, Bangatola, Gayeshbari,

Sujapur, Cabindapara, Malatipur, Kharba, Kaligram, Ashapur, Paharpur, Nalahar Chatremohani, D.E.B. Dak Bungalow, Mahadipar, Nagharia, Raigram, Milki, Kalindri, Mathurapur, Nazirpur, Bechutala or Manikchak Diara, Araidanga, Ekborna, Haripur, Paranpur, Ratua School, Debipur, Samshi, Baharal, Bhaluka, Bahado, Bhagabanpur, Khapur

District: West Dinajpur
Kaldighi Godown, Gangarampur High School, Naya Bazar High School, Shibbati Station Junior High School, Chaloon High School, Sarbamangla, Sukdebpur High School, Thengapara High School, Nehamba Jr. High School, Bulbari Centre, Jahangirpur Jr. High School, Ratanpur Free Primary School, Tapan High School, Daralhat High School, Rampur High School, Chakbaligram Basic School, Kardaha High School, Vior Jalalia High School, Tilom Jr. High School, Laskarhat Panchayat Office, Patiram High School, Nazirpur Anchal Office at Jhorna, Barkali Jr. High School, Amritakhanda Anchal Office at Kamarpara, Malancha High School, J.L.P. Bidyachakra, Khadimpur Girls' High School, Chakkashi High School, Baul Parameswar High School, Nadipar N.C. High School, Chingishpur High School, Beltala Park High School, Khashpur High School, Hilli High School, Trimohini Rural Library, Teor Bharat Sebasram Sangha, Muralipur Jr. Basic School, Panjul Anchal Panchayat Office at Ramkrishnapur, Dhalpara Free Primary School, Muralipur Free Primary School, Daspara, Lakhimpur, Chopra, Patagora, Matikunda, Thakurbari, Ramganj, Goalpokhar, Darivir, Rashakhowa, Atiakhori, Sujali, Fakirganj Reception Camp, Jaidevpur Madrasa Reception Camp, Safanagar Reception Camp, Kumarganj Reception Camp, Gopalganj Reception Camp, Radhanagar Reception Camp, Botun Reception Camp, Dharmapur Reception Camp, Malone, Naoda, Dalimgaon, Maharajahat, Rampura, Banshihari

District: Darjiling
Kantivila

District: Jalaiguri
Sannyashikata

District: Jalpaiguri
Amaidighi, Jatiakali, Manuagach, Sakati (2 camps), Berubari (2 camps), Patkata, Drangi, Panijehati, Rangdhamali, Gumirapara, Manikganj, Saraulla Camp, Polytechnic, Blaramhat, Panbari, Bandhunagar, Jalpesh (2 camps), Mauagach, Dabgram, Dankimari (2 camps), Haldibari, Dewanganj, Duars Co-Operative Rice Mill Camp, Bashilarganga Bagjan, Dangi, Lakshmikanta, Rangati, Agrabhasa, Matiali, Barodighi

District: Koch Bihar
Dewanhat Railway Station (2 camps), Makkati Pushnabanga, Dhunpur, Natuarpar, Rajarhat, Madhupur, Pundibari Girls' School (6 camps), Patlakhaa

Complete Basic School, Karalirdanga Camp Nos. 1 & 2, Dineswari Jr. High School, Kharijakakribari, Dewanganj Transit Camp (Girimath), Sweedish Mission Camp, Huarerdanga Camp, Haldibari Jute Godown (2 camps), Changrabandha High School (5 camps), Jamaldah Somi Permanent (3 camps), Ranirhat School, Dhaprat School, Dangerbat School, Jaldhowa, Jorai, Buxirhat, Deocharai, Balarampur, Balabhut, Jhowkuthi, Paglarhat, Ratherdanga (2 camps), Nagarlalbazar (2 camps), Baramaricha (2 camps), Gosairhat, Dakalirhat, Dakghara, Khalisamari, Chotosalbari, Baraunidanga, Karjirdighi, Ranirdigni, Ghogrardanga, Krishnana Colony, Basanfababurdanga, Suanghat, Changhat, Nakati, Kaliganjerdanga, Baghmarardighi, Bamandanga, Golenwhati (3 camps), Nagarlalbazat Sukandighi, Dewantskot Joyduar (2 camps), Jatamari, Chhatlalbazar, Baramashia, Bhogramguri, Ashokebari, Angarkata Parodubi, Patakamari, Ghoksardanga, Burihat (2 camps), Khalisagosanimari, Kaliganj, Basantirhat (2 camps), Bnetaguri, Kisamatda Savam (3 camps), Boradanga, Nigamnagar (3 camps), Kharkharia, Balika, Putimari, Chrabari, etla, Rashbarir Math 'A', Baranachina, Chhotofalimari, Jamadarerbosh (5 camps), Sitai School (2 camps), Kayertbari, Chamla, Adabari, Balapukuri, Brahmatarohhatra, Bijalichhatka

State: Meghalaya

District: Garo Hills
Baghmara, Dalu, Chandabhui, Chichengpara Hat, Haljati Hat, Machangpani, Ampati, Chebenang, Myneng, Sibbari, Bikona, Poakasua Hat, Kalaipara, Domapara.

District: Khasi and Jaintia Hills
Pongtun, Madan Lynetd, Madan Baltah, Sowlong, Amtrong, Diengari, Amlarem, Amsohmaleng, Dalot, Lalpani, Mowasora, Pancharing, Munai, Syndai, Shella, Ishamati, Mylliem, Wahrengka.

The Plight of Dwelling: East-Bengali Refugees and the Struggle for Land in Kolkata[1]

By

Annemiek Prins [*]

Introduction

"We established our rights, not legally but practically" Mr. Roychowdry declared, while reminiscing over the days of struggle and insecurity that preluded his permanent settlement in Kolkata. Like so many others, he and his family migrated to Kolkata from East-Bengal after the region had been assigned to Pakistan[2] in the wake of independence. In 1947 the Empire of British India was partitioned into Muslim-based Pakistan and constitutionally secular India; an historic event that instigated a massive population exchange, as millions of Hindus, Sikhs and Muslims made their way to the country that best suited their religious background. The crude Partition of the sub-continent coincided with communal riots, extensive violence and unanticipated and multiple waves of displacement. Mr. Roychowdry and his family were among the early Hindu families that found their way to West-Bengal immediately after the Partition. He was only a kid at the time and spent most of his life in 'Chittaranjan Colony': one of the numerous refugee 'colonies' that mushroomed on the outskirts of Kolkata (see Bose 2006; Chatterjee 2006; Kudaisya 1996; Sanyal 2009). Over the course of his life Mr. Roychowdry witnessed the neighborhood change from "hut and mud to high rise". Today he lives in one of the many flats that are rapidly altering the landscape of the colony, yet he still recalls the first houses that sprouted in the locality: mud houses and bamboo huts that were built in the midst of Kolkata's swamp lands and drainage canals and poorly equipped to protect their inhabitants from water, weather and animals.

The plight of East-Bengali refugees, however, was not only characterized by the abominable conditions of these erstwhile houses and by the inhospitable nature of the land – but also by their precarious legal position within the city, for the land that they came to inhabit was largely acquired

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illegally through squatting, or '*jabardakhal*'[4]. It was only after nearly 40 years of struggle and protest that the refugees were gradually granted formal land titles and slowly managed to shake of the condition of tenure insecurity. It is this struggle for land rights that Mr. Roychowdry is referring to when observing that rights were established 'practically' rather than 'legally'. His observation is a remarkable one as it seems to imply a contradiction in terms, for rights are per definition institutionalized by rule of law. The question therefore arises on what basis land rights were granted, if the refugees could not legally support their cause? In other words: is it possible to assert one's rights in a way that circumvents the formal domain of law? In this article I will demonstrate that the way in which East-Bengali refugees claimed their rights had everything to do with the very practical way in which they literally claimed a physical place for themselves within the city. Hence, I seek to explore the convergence between the juridical act of seeking asylum and the everyday act of seeking shelter. In order to further illuminate this convergence I will focus on the dynamic relationship that East-Bengali refugees maintain with the land they came to inhabit. This interaction is expressed both in everyday struggles with the inhospitable environment that became their new home, as well as in the politicized strife for land rights and ownership. By continuously taking 'land' as my thematic point of departure I strive to underscore the importance of physical place in making sense of migratory experiences.

Within migration studies there is a strong focus on the politico-judicial relationship that migrants uphold with the state. It is my aim to diversify this legislative discourse on migration and citizenship by paying attention to the ways in which migrants interact and connect with the physical localities where they stay and settle. For migration is first and foremost a spatial enterprise that confronts those who partake in its process with new and unknown territories and landscapes. The spatial implications of migration become poignantly clear in the case of Kolkata, where post-partition refugees occupied "every tiny piece of vacant land they could find, whether on pavements or the 'set-asides' along the runways of airfields, in empty houses, on snake-infested marsh and scrubland, and even on the unsanitary verges of sewers and railway tracks"[5]. Sanyal[6], moreover, has rightly pointed out that the Bengali word for refugee, *udbastu,* literally means 'those without a home', and therefore directly refers to a notion of place. This in contrast to the Greek term 'asylum', which refers to the absence of rights rather than to the loss of place. On the other hand, it can be argued that the path to citizenship, the path of overcoming one's refugee status, is just as much an act of acquiring a home as it is of gaining certain rights.

The case of Kolkata's refugees therefore forms an apt point of departure for challenging the common notion that citizenship is a mere legal status that is equated with a bundle of rights and duties[7]. According to Sadiq, this popular conception is underpinned by the wrongful assumption "that *receiving states have a population that is documented* using standardized paperwork" and based solely on the institutional experience of Western states. That India's institutional experience with migration is an entirely different one becomes clear from the fact that over time East-Bengali migrants have been categorized

in a variety of contrasting and overlapping ways[8]. Since the government was not a signatory of the 1951 Convention of Geneva, its use of the term 'refugee' has been casual and "free from the legal niceties and obligations that are associated with it"[9]. This absence of a certain legislative rigor calls for alternative ways of imagining the interplay between migration, citizenship and the state. This challenge has recently been taken up by ethnographers like Sadiq[10], Das[11], Anjaria[12] and Chatterjee[13] that have all contributed to the conceptual broadening of notions of citizenship, by foregrounding the everyday negotiations that take place between citizens and the state. I seek to add to this debate by analyzing how post-partition refugees have claimed a place for themselves within Kolkata.

This article is based on three months of ethnographic fieldwork conducted within two refugee settlements in Kolkata: Chittaranjan Colony and Panchannagram. Both localities cover a variety of East-Bengali inhabitants – differing in terms of socio-economic background, caste, migration history and legal status. By focusing on two, very different, localities I hope to challenge the unified picture of the refugee struggle that exists throughout the literature. Rahman and Van Schendel[14] have observed that writings on partition tend to be characterized by a narrow focus on the migration experiences of the *bhadralok* (the educated upper and middle class people), with their nostalgic memories of a lost homeland typically emerging as an icon of Partition in national narratives. I want to nuance this iconic version of Partition, with its glorified account of the refugee struggle, by focusing on people's diverging and continued interactions with the land that they came to inhabit.

Theoretical Framework: Refugees, State, Citizenship

The historic event of Partition was aimed at creating two separate nations, two separate territories and two separate populations, and as such, mirrors the spatial mechanisms of bordering, ordering and othering[15] that underscore projects of nation-building. Chatterji[16] has pointed out that, in the case of India, the territorial emergence of the country has been typically depicted as the almost surgical "cutting up" of larger British India. In fact she has criticized the discursive tendency to "view partition as a single, definitive act, a clean-cut vivisection that was executed – with clinical precision – in a single stroke"[17]. Chatterji[18] herself, on the contrary, conceives of Partition as a messy, long-drawn-out process that was in no sense finally or tidily concluded. This unfinished, messy quality of partition comes to the fore when dealing with the massive population upheaval that was instigated by the event and that can be understood as the outcome of the territorial articulation of deep-felt differences between Muslims and Hindus.

The demographic impact of Partition was felt most strongly in the two border states that were divided: Punjab and Bengal. In Punjab the drawing of the so-called Radcliff line resulted in genocidal outbreaks of violence followed by an immediate and massive influx/exodus of refugees on both sides of the border[19]. In the province of West-Bengal, on the contrary,

the influx of refugees was gradual and more often the result of simmering hostility and distinct instances of communal riots rather than of widespread genocide[20]. In fact, for a long time the government of West-Bengal was reluctant to acknowledge the reality of the upheaval in Bengal and East-Bengali refugees were typically framed as less 'deserving' of a permanent place to stay than there Punjabi counterparts[21]. Samir Kumar Das[22], moreover, observes that "there was a time lag between preparing for Partition and preparing to face the consequences of Partition", as the government expected the refugees in the east to return to Pakistan after the dust-storm of Partition and communal riots had settled.

In order to uphold the myth that refugees would eventually move back to East-Bengal, government work was initially restricted to relief rather than to rehabilitation[23]. This narrow focus on relief coincided with a narrow definition of 'refugees' and therefore that of those that were actually entitled to relief. Refugees were initially defined as "persons ordinarily resident in East Bengal who had managed to get to West Bengal between the precise dates of 1 June 1947 and 25 June 1948, 'on account of civil disturbances or fear of such disturbances or the Partition of India'" (Chatterji 2001:77). Datta has observed that Government of India tied itself in various linguistic and administrative knots in trying to deny the East-Bengali refugees their 'refugee' status In fact, aftermath of Partition witnessed the constant reproduction and revision of the category 'refugee' (Datta 2012:127), as is epitomized by the government's discursive invention of categories such as 'refugees', 'old migrants', 'new migrants' and 'displaced people'. The government's attempts at narrowly stipulating who would be granted relief and rehabilitation and on what terms, was met with resistance from the side of the refugees. Refugee activists challenged the narrow administrative notions of 'refugeehood', by claiming fundamental rights for *all* refugees (Chatterji 2001:95), which included the right to determine how, when and where they would be rehabilitated (p. 96). Hence, the refugees' claims reflect their refusal to surrender to the legislative whims and quirks of the state.

The institutional ambivalence that besieged the notion of refugee status and the fact that the refugees of West-Bengal engaged in a highly dialectical relationship with the state calls for a theoretical approach that acknowledges the flexibility and elasticity of notions of citizenship. Sadiq[24] outlines such an approach in advocating a moving away from 'paper' notions of citizenship or, what he describes as, the problematic idea that citizenship equates a static bundle of legal rights and obligations. According to Sadiq this conception is based solely on the institutional experience of Western states, as it is underpinned by the assumption "that *receiving states have a population that is documented* using standardized paperwork"[25]. The case of Bengal poses a challenge to this idea of "documented citizenship" – not only because it epitomizes a lack of legibility when it comes to the classification of refugees, but also because of the dynamic dialogue that took place between the state and the refugees over what can be legitimately expected from the state. Chatterji[26] has observed that "[a]s both sides argued their corner, they were forced to spell out their own (often unexamined) assumptions on a range of

critically important issues about the ethical prerogatives of citizenship and the imperatives of *realpolitik"*.

A similar aspect of negotiation between the state and its (potential) citizens is brought to the fore by Anjaria[27] in his article on the spatial politics of unlicensed hawkers in Mumbai. Anjaria shows how abstract notions of sovereign power are undermined by "moments of compromise that enable people to make morally infused demands on the state that exceed a proceduralist regime"[28]. He illustrates these 'moments of compromise' by giving ethnographic examples that indicate the ways in which unlicensed hawkers negotiate with the Municipal Corporation over the release of their property, which is appropriated ever so often in an attempt to decongest the city. This negotiation can be verbal, but is also conveyed through the simple act of standing in front of the office and hence creating a presence that is considered to be a nuisance. Similar modes of negotiation can be observed in the case of East-Bengali refugees, whose physical presence can considered to be just as persuasive as their verbal claims to fundamental rights. Moreover, Anjaria's[29] conception of the state as a locus for the negotiation and legitimation of spatial claims, rather than an extension of disciplinary power, is particularly insightful in making sense of the ways in which refugees negotiate over the conditions of their rehabilitation.

The work of Veena Das[30] on slum dwellers in New Delhi can be rendered helpful in further elucidating the link between politics of claim-making and habitation. Das's approach resonates with the one outlined by Anjaria[31] as she conceptualizes citizenship as an everyday claim that people make. By means of addressing attention to the "minutiae of everyday life"[32] Das seeks to bypass the problematic dichotomy between political life on the one hand and biological life on the other. For, she argues that there is a scholarly tendency of reducing those who encounter the state from a position of marginality or illegality, such as slum dwellers, to notions of 'bare life' – stripping them of any political potential. The poor, for example, are often denied the capability of engaging in any meaningful form politics, as they are perceived as 'caught up' in the struggle of ensuring their biological existence. Das, however, hints at the possibility for a certain convergence between the pursuit of preserving biological life on the one hand and political claims to citizenship on the other. She demonstrates how slum dwellers' claims to public goods, such as drinking water, are often granted, not because of an articulation of civic rights, but because the masses of poor city dwellers form a potentially threatening biological presence[33]. Claims to drinking water, for example, were honored because the city municipality feared for massive cholera outbreaks. Hence, here claims are granted, not because of a political articulation of rights, but because of an expanding biological presence that becomes impossible to ignore. The East-Bengali refugees similarly became an un-ignorable biological presence in Kolkata and to some extent their acts of simply occupying space can be seen as a claim to citizenship. In this article I will further analyze the dynamic interplay between the refugees' physical act of settlement and the politicized struggle for land rights, and in doing so I will strive toward a theoretical conflation of biological and political life.

Research Population: The Refugees of West-Bengal

A powerful image that is often deployed when it comes to describing the plight of the Partition refugees is that of the 'penniless refugee', arriving in India with nothing but the clothes on his body. The imagery evokes a certain unanimity of despair, epitomizing the shared necessity of those who crossed the border. The academic literature on the Partition of Bengal, however, suggests that not all refugees were equally penniless. In fact, the refugees that came to West-Bengal comprised a great variety of people stemming from different socio-economic backgrounds and crossing the border for different reasons. Those who came first, immediately after India gained independence, "consisted of the more wealthy classes, mostly upper caste Hindu gentry and the educated middle classes with jobs, […] who could sell or arrange exchanges of properties"[34]. In the direct aftermath of Partition low-caste, Namasudra peasants were virtually absent from the groups of incoming refugees, as they lacked the resources that migration required[35]. They started fleeing from 1950s onwards, when Muslim/Hindu relations turned increasingly hostile and more and more riots broke out. Chatterji[36] remarks that "[w]hen low-caste peasants did migrate, they tended to do so under circumstances rather different from those which persuaded the better-off to get up and leave. By and large, they abandoned the little they possessed in the east only when they were driven out by extreme violence or by intolerable hardship". Chaudhury[37], moreover, has argued that people's motives to seek refuge in West-Bengal revolved around different notions of insecurity, notably that of *dhon* (wealth), *maan* (honour) and *pran* (life). The exodus of the *bhadralok*, immediately after the Partition, can be explained in terms of their fear of losing *dhon* and *maan* as the division of Bengal had made them into a numerically and politically subordinate group in a Muslim-majority state[38]. The generally poor Namasudra peasants that left East-Pakistan from the 1950s onwards, on the other hand, did so because they feared of losing their lives rather than their wealth or honour, as anti-Hindu sentiments in East-Bengal increasingly assumed the form of widespread massacres and bloodshed[39].

In the twenty-five years following Partition approximately six million Hindu refugees entered West-Bengal[40]. As we have seen this massive influx was diversified in terms of caste, socio-economic status, time of departure, and reasons for leaving. These differences are to some extent reflected in the modes of settlement among the refugees. Bandyopadhyay and Chaudhury[41] have observed that "[w]hen the first wave of mainly high caste Hindu *bhadralok* refugees had arrived in West Bengal, they had their own resources an kin-group support. Many of them resettled themselves in squatter colonies in and around Calcutta, and the government after initial hesitation endorsed that mode of rehabilitation". The practice of squatting, or *jabardakhal* (the 'forcible occupation of land') started from 1948 onwards and exemplifies the way in which refugees took destiny into their own hands and enforced their own rehabilitation[42]. These attempts at self-settlement coincided with considerable hardships, due to the inhospitable qualities of the occupied land and the

general condition of tenure insecurity, yet nonetheless self-settlement was in many ways preferable above settlement in one of the government camps. In order to deal with the unprecedented influx of refugees the government set up different types of camps: transit camps, work-site camps and permanent liability[43] camps[44]. It were typically poor peasants that ended up taking shelter in the camps, as they lacked the social and economic capital to settle on their own terms (Chaudhury 2009:20).

In addition to socio-economic status, time of arrival also affected people's mode of settlement. For, those who left East-Pakistan after the riots that occurred in 1950-1951, did so under circumstances of significant turmoil that compelled them to abandon their houses instantly and resulted in people arriving more or less empty-handed and without any means for securing shelter other than taking residence in one of the camps (Chatterji 2007:1009). The camps themselves proved painstakingly inadequate in their function: the provision of relief, notably *doles* and shelter. In fact, Chatterji (2007:1007) remarks that it became "a standard practice in the camps to starve the inmates into complying with government orders". One issue that the government and the refugees did not agree on was their future resettlement. The West Bengal Government advocated for rehabilitation outside of Bengal, as they took up the view "that the refugees were not its sole responsibility but, rather, a burden which ought to be shared jointly among the federal government and those of the neighbouring states" (Kudaisya 1996:29)[45]. The sites that were selected as resettlement schemes were typically inhospitable places where the refugees would be expected to engage in demanding forms of physical labor, such as crushing rocks, as a means of contributing to Government construction and infrastructural projects. The most infamous resettlement scheme was the Danadakaranya project, located at the intersection between Orissa and Madhya Pradesh. The refugees that were sent to Dandakaranya were used to clear and cultivate the thickly forested area that was suspected to be rich of unexplored mineral resources. (Kudaisya 1996:32). Although the scheme was meant to develop into a site of permanent settlement, the living conditions were appalling as "[e]lectricity was not available over large areas and there was often an acute shortage of drinking water. The lack of medical services and the rough terrain led to frequent epidemics with a high rate of child mortality that unsettled the refugees" (Sengupta 2011:107). These conditions of hardship increasingly led to cases of desertion and the horror stories of Dandakaranya strengthened the refugees back in West Bengal in their claims to "the right to determine how, when and where they were to be rehabilitated" (Chatterji 2001:96).

The two different colonies I focus on in this research are outcomes of different aspects of the struggle for rehabilitation in West Bengal. Chittaranjan Colony originated in 1950 as one of the many 'jabardakhal' communities that sprouted in South Kolkata at the time. In addition to squatting, which in itself can be viewed as an act of political resistance, the inhabitants of the colonies became very proactive in politically articulating their demands to housing and land (Sanyal 2009:77). They campaigned against evictions and advocated for "more equitable laws imposing ceilings on the amount of urban land which

the privileged could own" (Chatterji 2007:293). In doing so, they worked in tandem with the Communist Party. Chakrabarti (1990) has exemplified this relationship of mutualism by elucidating that whereas the Communists provided the refugees with leadership for their struggle for rehabilitation, the refugees provided the Communists with the electoral support that would eventually bring them to power in West Bengal. The fact that the Communists relied heavily on the support of the refugees, led them to encourage the camp refugees to agitate against rehabilitation outside West Bengal (Kudaisya 1996:32). Panchannagram, the second locality that I focus on in this paper, originated in 1967 as an outcome of this struggle, for the area was designated as an urban resettlement scheme for camp refugees that refused to be relocated outside of Bengal. By focusing on both self-settled and camp refugees I strive to do justice to the great socio-economic variety of the refugees that came to live in Kolkata. In addition, by presenting the narratives of residents from two very different localities, I seek to diversify our understanding of the 'refugee experience' and to help divert the trend in Post-Partition historiography of taking *bhadralok* migration as a *pars pro toto* for the large and complex set of cross-border migration that was fueled by Partition (Rahman and Van Schendel 2003:576).

Building A Place to Stay

Kolkata's experience with Partition has typically been framed in terms of relentless human congestion and a severe scarcity of space. Old newspaper photographs underscore the sheer magnitude of the refugee 'problem'; depicting fully crammed trains coming in from Pakistan to deposit their human load[46]. In Kolkata the platforms of Sealdah railway station were among the first urban spaces to be involuntarily transformed into refugee settlements. Many of those who arrived from East-Pakistan, especially people without relatives in the city, simply pitched camp amidst the everyday chaos of hurrying passengers, hoping that the government would eventually come to their aid (Sanyal 2009:70; Kaviraj 1997:104). Chatterji (2007:142-143) describes how this accumulating presence of East-Bengali arrivals gradually transformed the overall geography of West Bengal:

> "Refugees had literally filled up every empty space in and around the big towns, particularly in the great metropolis of Calcutta, occupying every tiny piece of vacant land they could find, whether on pavements or the 'set-asides' along the runways of airfields, in empty houses, on snake-infested marsh and scrubland, and even on the unsanitary verges of sewers and railway tracks".

The above quotation does not only demonstrate the challenging conditions under which East-Bengali refugees settled in the city, but also hints at a rather drastic process of spatial transformation incited by people's appropriation of urban spaces. In Kolkata, the absence of satisfactory places for settlement not only led the refugees to occupy and recycle certain public spaces, such as railway platforms, parks and garden houses (Kaviraj 1997:104), but also instigated the reclamation of land from water bodies and the

cultivation of low lying marshlands. In fact, the pieces of land that Post-Partition refugees came to inhabit in Kolkata hardly existed of actual 'land' at all. When asked to describe how their neighborhood used to look like, most of my informants would immediately start talking about water. The water used to come up to people's knees and formed the main element of a landscape consisting of jungle, swamps and wetlands. Hence, the struggle for settlement was a struggle with both land and water.

In Panchannagram the mastering of land and water proved to be a slow and rather painful process that was time and again undermined by the hostility of the terrain. Today Panchannagram scheme covers a large and congested area, located directly next to Kolkata's main transportation artery: the E.M. Bypass. In 1967, when the first residents came to the locality the E.M. Bypass was still a muddy, unpaved road that led through an area consisting predominantly out of water. A senior resident recalled that the nearest bus stop could only be reached by boat, as the water would reach five feet high. He was among the first 121 East-Bengali families that settled in Panchannagram and that set up modest tent camp at a small peninsula surrounded by ponds and fisheries. It took over seven years for the community to transform the nearby wetlands into useful and livable plots of land. To this end, the ponds were filled with a mix of mud and wasted coal. Ashim Biswas, a member of the local communist party, described how young men would stand in the water all day long to fill the ponds; the legs of their trousers tied tightly around the ankles as to prevent leeches from creeping up. It took a long time before the space that was generated in this manner actually served the needs of its inhabitants. In many ways this new place of settlement did not seem livable at all. The small island that formed the base of the first improvised tent camp was swarming with flies and mosquitos and used to function as a public toilet for laborers running a laundry business at the lakeside. Tara Bisas, a 70-year old lady, recalled not being able to see the mud of the soil when she first came to the area because it was covered in flies. The swarms of mosquitos, moreover, forced people to spend most of their time under a mosquito-net. "We became the guests of mosquitos and flies" emphasized writer Gopal Hira, citing from the small book that he has written on the history of Panchannagram. He described how people were no longer able to recognize each other as their faces had been altered beyond recognition by the many mosquito bites. Another resident, Shyamal Biswas, vividly described how people's arms would turn red because of the extensive scratching and bleeding. He moreover complained about the horrible smells that would suffocate their locality when the wind came from the direction of the nearby leather factory. All in all it seemed almost impossible for the East-Bengali residents of Panchannagram to effectively separate themselves from their challenging environment and to successfully secrete a distinct place of residence.

In Chittaranjan Colony (C.R. Colony), refugees found themselves in a similarly sensorial encounter with their direct living environment. This now thriving neighborhood, located south of Jadavpur University, used to look like a 'remote village' when it first originated in 1950. When asked to describe how

the area looked like in his youth Pankaj Roychowdry elaborated: "Imagine travelling by train, sitting next to the window. Land passing by; there is no petty, no cultivation, just barren land. There are some huts, but you cannot spot the last hut, because it is beyond the scope of vision. You will not find a single piece of brick, just some huts." In depicting this landscape of the past, my informants tended to use the word '*kaca*' in order to describe the erstwhile structures of their direct living environment. 'Kaca' means 'raw' or 'unpaved' and is opposed to '*paka*' which can either mean 'ripe', 'paved' or simply 'good'. The first houses, roads and drains were all 'kaca', something which resulted in relatively flexible boundaries between inside and outside. The first houses did not offer much protection to their inhabitants as they were typically made of *bera* walls (woven bamboo panels) and roofs consisting of *hugla* leaves. In fact, the overall landscape was characterized by the absence of adequate physical boundaries. Hori Chand Mondol, who is originally from Faridpur, for example explained how during the rainy season the many ponds in the area would overflow; causing houses to flood and streets to transform into canals where fish would swim. Pankaj Roychowdry, moreover, recalled how young men used to wade through the water and mud every day in order to reach the main road, from where they would start their daily quest for work.

Despite the considerable everyday hardships that the residents of the colonies faced in their efforts to inhabit the inhospitable terrain that surrounded them, their productive labor of creating a satisfactory place of settlement continued. Gradually the tents in Panchannagram were replaced by small houses made out of *bera* or '*pather kath*'[47] (a very thin layer of wood) and the vulnerable 'hugla' roofs in C.R. Colony were eventually replaced by tiles. Horidasi Mondol, a female resident of Panchannagram, saw her house evolve slowly over time: first the flimsy roof of *pather kath* was replaced by tiles, next the walls were transformed into *bera* structures before they were eventually entirely replaced by brick. The locality thus gradually improved as more permanent and effective dwelling structures were erected. Notwithstanding this slow process of urban development, the struggle with the landscape continued long after the actual plots of land had been developed. During the monsoon the nearby ponds and drains would overflow, causing the water to enter people's houses. Many of my informants recalled spending most of the rainy season sitting on the bed with the whole family in order to stay dry. Hori Chand Mondol, described how his family used to create a small barrier of mud and wood in front of the house in order to protect their belongings from all the water, but more often than not this boundary would prove insufficient and the family would simply seek refuge on the bed until the water would eventually withdraw. Another threat presented itself in the form of typhoons. Ashim Biswas described how those families whose rooftops were made of galvanized sheet instead of tiles used to hold on to the roof with ropes during the storm, in order to prevent it from blowing away. Despite those improvised attempts at protection many families went through the ordeal of respectively losing and rebuilding their house. "The houses were simply too

weak", Rabindranath Sorkar explained, "and often families would again be rendered homeless".

The constant process of building and rebuilding that the inhabitants of the colonies engaged in is indicative of their constant interaction with the environment. People were at times almost subsumed by the sensorial qualities of the wider landscape and, at first sight, their almost all-encompassing struggle for shelter and subsistence did not seem to allow much room for political potential, let alone resistance. Veena Das[48], however, has warned against the scholarly tendency of stripping poor city dwellers from their political qualities by framing their struggles solely in terms of 'bare life'. The notion of 'bare life' was first coined by Giorgio Agamben[49] in order to make sense of the lives and suffering of people placed outside the domain of law, and has been popularly applied by scholars dealing with issues of refugees and illegal migrants[50] has rightly pointed out that an application of Agamben's philosophy results in a rather rigid distinction between biological life on the one hand and political life on the other. In her article on citizenship among slum dwellers in New Delhi, Das circumvents this binary dichotomy by conceptualizing citizenship not as a judicial status but as a mere claim that people make. She shows how for example claims to clean drinking water are granted, not because slum dwellers have a legal right to drinking water, but because the municipality fears for cholera outbreaks that will eventually spread to the rest of the city[51].

This tension between notions of 'bare life' and the simmering spirit of possibility that is inherent to life itself was also apparent in the narratives of the refugees I spoke to in Kolkata. In fact, several of my informants evoked images of 'bare life' when describing the conditions under which they first arrived in Kolkata. Pankaj Roychowdry emphasized that the refugees arrived 'penniless' in Kolkata; they had no land, no house and no food. Mr. Dasgupta, moreover, stressed that most refugees arrived with only the clothes they had on them. Hori Chand Mondol further underscored the unified character of the refugee struggle, as he explained that: "At that time everybody was very poor. People struggled; everyone was new here. Everybody struggled to get shelter and food". These declarations of suffering and endurance, however, generally served a more uplifting story, as they were used to underline what had been achieved over time. Hori Chand Mondol emphasized the strength of his father during this initial phase of suffering; Mr. Dasgupta proclaimed that all refugees are hard workers as a consequence of the hardships they endured; and Pankaj Roychowdry spoke of a 'glorious history' when recalling how they fought unitedly to acquire a place to stay. He added proudly that he built the roads within the locality with his own hands. Hence, in these narratives the struggle for shelter and survival does not emerge as a degenerative, a-political strife for subsistence, but rather as a token of the strength, endurance and unity with which the refugees acquired a place for themselves within the city. This observation resonates with the line of arguing that Sanyal[52] unfolds in her analysis of practices of dwelling and building in refugee camps. Sanyal[53] states that the built environment within the camps bears testimony of a certain agency that refugees are often discursively

deprived off; observing that "squatting not only produces shelter but is also an act of rebellion". In the next paragraph I will address further attention to the rebellious potential that derives from inhabiting certain spaces, by focusing on the ways in which refugees' productive labor of generating land and shelter coincided with attempts to ensure a place within the political entity of the city.

Claiming a Place to Stay

The potential of resistance and political agency that, according to Sanyal[54], simmers beneath the surface of the built environment is inherent to the term that was used for the ways in which East-Bengali refugees appropriated land in Kolkata, namely '*jabardakhal*' or the 'forceful occupation of land'[55]. Chittaranjan Colony is an example of a settlement that originated through practices of 'jabardakhal'. Like in the case of so many refugee colonies, the occupation of land was overseen and initiated by Left Wing community leaders. In order to facilitate political decision making, a Colony Committee was founded immediately after the first people had settled in the area. Its members gathered regularly at the central *khelar math* (playing field) in order to plan and map out the development and distribution of the land. These first attempts at spatial organization were undermined by the fact that the land itself, though largely uncultivated, officially belonged to local landowners. These local landlords plead their case with the authorities, demanding that the police should evict the refugees. As a consequence, the new inhabitants of C.R. Colony found themselves literally battling over land. Sukhomo Roy, a 77- year old musician, recalled the police entering the neighborhood to evict them. However, they never succeeded in doing so as the refugees were united under the leadership of the Colony Committee and fought back – for once taking advantage of the inhospitable terrain that allowed them to effectively hide from the police. Pankaj Roychowdry explained that all families contributed 2 Rs to invest in a local night guard system. In fact, he himself used to be one of the night guards and recalls fighting the police with bamboo sticks.

The refugees, however, did not merely engage in a physical encounter with the long arm of the state, but also found more conventional political channels for objecting against their attempted eviction. Sanyal[56] observes that "[s]quatting was only part of the challenge refugees posed to the state regarding their rehabilitation. Refugees became proactive at a political level as well in order to demand the right to housing and squatting." The political potential of the refugees becomes evident in their effective opposition of the so-called Eviction Bill that was drafted by the government of West-Bengal in 1951. The draft stipulated that the government had the undisputed right to evict squatters in order to protect private property[57]. The refugees ferociously protested against the implementation of this law, as they united themselves under the umbrella group of the United Central Refugee Council (UCRC). UCRC's demand for the recognition of all refugee colonies and the massive rallies that were carried out in Maidan, eventually led to a revision of the

draft[58]. The exception was made that "no order for eviction or compensation would be executed against a displaced person, who on 31 December 1950 was in unauthorized occupation 'until the Government provided for alternative land'."[59] The new version of the bill was titled "The Rehabilitation of Displaced Persons and Eviction of Persons in Unauthorized Occupation of Land Act"[60] and can be seen as an attempt by the government to reconcile the property rights of landowners with the necessity of accommodating the requirements of the settlers[61]. For the compelling reality was such that there was little room left in Kolkata to accommodate the crowds of refugees. So here we have a fine example of how certain claims were granted, not on the basis of civic rights but simply because the refugees became too large of a group to ignore. The case of Chittaranjan Colony (and that of similar Colonies in South Kolkata) therefore epitomizes the capacity for effectively reworking the control over urban spaces that underpins acts of occupation, and as such, underscores the political potential of seemingly unimaginative everyday acts of using and inhabiting space.

        Although acts of squatting were implicitly allowed after the initial years of contest and combat over the land, the distribution of land titles and therefore the legal recognition of the fact that the East-Bengali refugees were in Kolkata to stay, took a great deal longer. On the first occasion that I spoke with leader Pankaj Roychowdry, he highlighted the plight of Kolkata's refugees by emphasizing that the inhabitants of C.R. Colony struggled for over 40 years to earn legal ownership over the plots they were inhabiting. During those years of struggle many community leaders were put behind bars, yet according to Mr. Roychowdry, this never resulted in a crisis of leadership as there would always be new leaders to step forward. Under the overall leadership of the URCR *lakhs* of refugees rallied and demonstrated in front of the State Assembly on a daily basis. Mr. Lahiri, who was only seven when his family came to Kolkata, recalled how throughout his childhood all his relatives used to demonstrate in front of the State Assembly. Everybody was marching in those days as they protested for 'recognition, economic development and social development'. The upsurge of the refugee movement went hand in hand with the rise of communism in West-Bengal. Manas Ray[62], who himself grew up in one of Kolkata's refugee colonies, writes: "[t]he Left very early on utilized the widespread frustration among refugees about the lackadaisical rehabilitation initiatives of the local government. In the course of time, the refugee population would provide the Communist Party of India (CPI) with cadres and also some of its prominent leaders". Considering this relationship of mutualism[63] between the refugees and the communist party, it is hardly surprising that it was shortly after CPI(M) – the Marxist affiliation of the CPI – came to power in 1977, that efforts were finally being made to grant the refugees legal ownership over the land. The land was (re-)distributed under the joined supervision of the Refugee and Rehabilitation Department and local Colony Committee and from 1981 onwards the inhabitants of the *udbastu* colonies gradually received their land deeds. The land-agreement was stipulated as a '99-year lease'[64], which was restricted by the condition that families could not sell the land within ten years after receiving their land titles.

In the case of Panchannagram the struggle for land evolved somewhat differently than in C.R. Colony, considering that this struggle by and large preceded the refugees' actual settlement in Kolkata. The first 121 families that arrived in Panchannagram invariably came from one of the worksite camps in West-Bengal. Taking shelter in one of the government-run camps was often the only option for the many agriculturalist refugees that found their way to West-Bengal in the early fifties[65]. This particular group of refugees typically belonged to the scheduled cast and often lacked the social and economic capital to settle on their own terms, also because the condition of increased violence in East-Bengal had given them little time to actually prepare for their migratory move[66]. The camp refugees were granted a minimum of food and cash, but those that were healthy and strong enough had to work in return. The work included digging canals, cutting mud and constructing roads and the laborers and their families were shifted from one worksite to the other[67]. Over time the government of West-Bengal came up with a plan to resettle the camp refugees in other states of India; finally recognizing that the refugee problem was by no means temporary. These plans were informed by the 'theory of saturation' which postulated that it was no longer possible for West-Bengal to receive and rehabilitate any more migrants. Consequently "it was officially decided that only those who were willing to move outside of West Bengal for resettlement would thenceforth be provided with Government help and assistance". The plans to resettle refugees outside of West Bengal were viewed with increasing distrust by the camp refugees themselves. Rabindranath Sorkar, who was among the first batch of refugees that settled in Panchannagram, remarked bitterly that the government's attempt at resettlement was just a way of getting rid of low-caste refugees. Rumor had it that the land that was reserved for the refugees was barren and not at all cultivatable. In some of these areas, for example the Dandakranya scheme[68], the government ran projects that required slave-like physical labor such as crushing rocks. People therefore grew particularly suspicious of the motives of the government for resettlement. Kalipada Datta, yet another inhabitant of Panchannagram, expressed the opinion that the Nehru government strategically sent low-caste refugees to areas where they would slowly die; forest areas where they ran the danger of being eaten by tigers or areas that were particularly dirty and unhealthy.

This growing distrust of the government resulted in an uprising of camp refugees who started demonstrating for resettlement in Bengal. Like in the case of C.R. Colony the struggle of the refugees was indissoluble intertwined with the political advance of the Left front. The fact that the Communists relied heavily on the electoral support of the refugees, led them to encourage the camp refugees' agitation against rehabilitation outside West Bengal[69]. Ghoshal[70], moreover explained that "[f]rom the early 1960s, the CPI started organizing *anasan satyagrahas* (hunger strikes) as an effective method of agitation". Gopal Hira recalled how the communist party would unite hundredths of people to demonstrate; using slogans such as: "We will not leave Bengal. Even if we have to sacrifice all our blood, we will not leave Bengal". Initially the government responded by cutting off food and other

services that were provided within the camps, such as medical treatment and education. Rabindranath Sorkar explained: "When we refused to take rehabilitation outside West Bengal the government stopped paying *doles*". He continued to elucidate how many refugees in the camps started weaving and trading mats, made out of *hugla* leaves, to earn some money. This new found profession was a reason for the refugees to demand settlement close to the city of Kolkata, as they needed a market for their products. It was in the year 1967 that some of the camp refugees eventually saw their demands being honored as they were granted the opportunity to resettle in the Panchannagram. In the selection of Panchannagram as a site for resettlement an important role was played by Debrendanath Sorkar, whose statue has been erected in Panchannagram to commemorate the legacy of his advocacy. He represented a group of likeminded camp refugees at the Refugee Rehabilitation Center; stressing their desire to settle near Kolkata. On a map of Kolkata Panchannagram scheme was pointed out to him as potential scheme of settlement. After an initial visit to the actual site, Debendranath Sorkar enlisted 121 refugee families with whom he would settle at the small island of rubbish that Panchannagram was at the time.

Although C.R. Colony and Panchannagram have distinct and diverging histories, both cases show how the refugees successfully put themselves in a position of negotiation with the state. On the side of the refugees this negotiation coincided with the politicization of their overall struggle for shelter and subsistence. This becomes clear in for example, the slogans that the refugees used during their marches of protest. Gopal Hira recalled one these slogans, which clearly revolves around a notion of basic needs: "Give us blankets or we will use force". Another story that the writer shared, similarly demonstrated the politicization of notions of necessity. He told how after the locality of Panchannagram had once again been devastated by flood he accompanied Debrendranath Sorkar to the Writer's Building to advocate their case. The community leader instructed that they should go in a *lungi* rather than putting on their finest clothes, so that the officials would be able to assess the severity of the situation. Hence, here we see how the articulation and performance of necessity serves to make moral, rather than legal, claims to the State. Veena Das[71] has argued that the texture of moral claims to citizenship is characterized by notions of life and law bleeding into one another. This is clearly visible in the case of East Bengali refugees in West Bengal, for Chatterji[72] has observed that "[m]uch of what the refugees claimed as of right was economic in nature: food, clothes, medicine, housing, education and jobs". In a sense, however, these very practical demands are implicit claims to citizenship. This is true in particular when it comes to claims to landownership; for the demand for land can both be seen as a practical claim to shelter and as an expression of the wish to obtain the legal right to stay. What the case of Kolkata and its refugees, therefore, aptly shows is that negotiations over citizenship do not only take place in the legislative, discursive sphere of formal politics, but are also carved out in the landscape of the city itself as people build and appropriate a place for themselves in the city.

This indissoluble relationship between notions of refugeehood/citizenship and the land that people came to inhabit becomes clear in the narratives of my informants as they reflect upon how the identity of their locality has changed over time. For, both colonies are perceived to have altered drastically after the initial phase of struggle gave way to the stable state of landownership. This change manifested itself, for example, in the outlook of the locality which had been gradually 'developed'. A shop owner observed: "Now it is developed here; there is electricity and there are roads. Now when an outsider comes here they cannot recognize that this used to be a colony if they don't know the history" Hori Chand Mondol also remarked that it would not be possible for an outsider to recognize this area as a colony, since all the houses are '*paka*' now. Sukhoma Ray, moreover, disclosed that only old people, like he himself, still refer to this locality as a refugee colony. He anticipated that the government would soon change the name. "In a sense", he observed, "the refugee colony ceased to exist after land rights were granted".

The view that refugee identity started to diminish after land rights had been granted was expressed by several of my informants. Mr. Roychowdry, for example, remarked:

> "The irony is that when we refugee people got the ownership over the land, our mental state radically changed. And a new course of thinking started to flow among colony people: that their fight is over and that they can survive alone. What is the irony? We have lost our integrity, our unity, our brotherhood".

He explained that when the security of shelter came a more individualistic way of thinking started to originate: "There is nobody to uproot me, so I don't need any association, or help, or friendship for survival". Hence, for Mr. Roychowdry it is the unity that characterized their everyday struggles both with and for the land that lies at the core of his experience of refugee hood. Pradip Kumar Lahiri, also described their community in terms of unity: "The unity was very strong, because everybody was struggling for land rights. Everybody used to gather in the field to play together, do theater together and celebrate Puja together". Gopal Ghosh, who like Mr. Lahiri grew up in Chittaranjan Colony, recalled that there was a strong unity among neighbors and relatives. If one person needed help everyone would come to their assistance. However Mr. Ghosh added that this situation changed gradually after 1989: "Everything changed after people got land rights. They got snobbish and people did not even recognize their own brother anymore. Nobody is helping each other". This perceived change of identity was also mirrored in name changes that occurred within the area. The United Refugee School in C.R. Colony, for example, became simply the 'United School' and Gopal Hira explained how parts of Panchannagram were renamed as well; as was the case for the area VIP Nagar. The writer, moreover, contemplated: "We don't call this a refugee colony anymore. Even in the address it only says 'Panchannagram'".

So bit by bit both localities were stripped of their refugee identity and gradually transformed into regular city neighborhoods. With the difference

that C.R. Colony has now established itself as a middle class neighborhood, whereas Panchannagram still exists as a squatter settlement. Also within both communities there are stark differences when it comes to the extent to which people have benefited from urban development. Both localities still have residents that did not yet receive their land deeds and within both localities emerging flats can be seen next to huts of *bera*. In C.r. colony I spoke to a man, Mr. Gopal Bonik, who still resides in a *bera* house. In his opinion the locality is still a refugee colony; he explained that some places are still not very developed and that some people are still waiting for their land deeds. Mr. Bonik still considers himself to be a refugee, considering that he still *lives* like a refugee. "Only when my sons grow up and get proper jobs" he remarked "I will stop calling myself a refugee". So here we see again that the aspect of struggle is elemental to ideas of refugee hood and, furthermore, that refugee identity is heavily invested with notions of place. This also becomes clear from the discourses of two sisters-in-law. Both ladies migrated from East-Pakistan, but when asked if they considered themselves to be refugees they explained that they had directly purchased their land from local landlords and therefore did not cling to a refugee identity. Their experiences not only point to the immense diversity that exists within the colony community, but also demonstrates once again that people's relation with the land had a profound impact on their journey toward citizenship.

Conclusion

I started this article with a quote by one of my informants, Mr. Roychowdry, who stated that the refugees established their rights not legally, but practically. In the course of this paper I have tried to demonstrate exactly how true these words are. Often the relationship between refugees and the state is framed as a predominantly judicial one that revolves around legislative notions and conditions that stipulate citizenship. In the particular case of West Bengal much scholarly attention has been paid to ways in which the government dealt with the refugee crisis and its frantic attempts to somehow make this immense crisis legible by constantly revising and narrowing down the notion of 'refugee'. It has been my aim to highlight a very practical dimension of the refugee struggle, by taking refugees' everyday acts of building and taking shelter as a point of departure for analyzing the ways in which they have acquired a (legitimate) place for themselves within the city of Kolkata. I have attempted to show that beneath the seemingly mundane and unimaginative acts of taking shelter, simmers a certain political potential that derives from the subversive act of appropriating space. In the case of Kolkata's refugees these spatial acts of appropriation seamlessly gave into more conventional ways of political action, such as marches and protests. Yet interestingly, even this outright political strive was informed by notions of necessity and practicality. In fact, it was people's everyday struggle for shelter and subsistence that provided refugees with a ground for claiming certain 'rights'. Hence, the everyday hardships that people faced in relation to the inhospitable environment that they came to inhabit cannot be disconnected

from the politicized struggle that they fought for land rights (and implicitly for citizenship). In a sense, the land itself became a medium for people's claims to the State, a battleground for conflicting interests and a breeding ground for resilience. It was in and through the city spaces of the colony that people's transition from refugee tot citizen gained shape.

Notes

[1] This research has been made possible by the financial support of the University of Amsterdam that has rewarded me with the annual AISSR Research Grant.
[2] Pakistan comprised both the area North-West of India and East-Bengal. After the Liberation War in 1971, the latter became Bangladesh.
[3] 'Jabardakhal' can be translated as the 'forcible occupation of land'.
[4] Sanyal, Romola. 2009. "Contested Refugeehood: Squatting as Survival in Post-Partition Calcutta". *Social Identities: Journal for the Study of Race, Nation and Culture.* 15(1), p.74.
[5] Chatterjee, Joya. 2007a. *The Spoils of Partition. Bengal and India, 1947-1967.* Cambridge: Cambridge University Press. p. 142.
[6] Sanyal,2009.
[7] Sadiq, Kamal. 2008. *Paper Citizenship: How Illegal Immigrants Acquire Citizenship in Developing Countries.* Oxford: Oxford University Press. p.5
[8] See Chatterji, Joya. 2007a.; Datta, Antara. 2012. *Refugees and Borders in South Asia: The Great Exodus of 1971.* Hoboken: Taylor and Francis; Van Schendel, Willem. 2000. "Repatriates? Infiltrators? Trafficked Humans?". *Sarwatch* 2(2):30-63; Bose, Pablo. 2006. "Dilemmas of Diaspora: Partition, Refugees, and the Politics of 'Home'". *Refuge: Canada's Journal on Refugees* 23(1):58-68.
[9] Das, Veena. 2011. "State, Citizenship, and the Urban Poor". *Citizenship Studies*, 15(3-4), p.107
[10] Sadiq, 2008.
[11] Das, 2011.
[12] Anjaria, Jonathan S. 2011. "Ordinary States: Everyday Corruption and the Politics of Space in Mumbai". *American Ethnologist* 38:58-71
[13] Chatterjee, Partha. 2006. *Politics of the Governed: Reflections on Popular Politics in Most of the World.* New York: Colombia University Press.
[14] Van Schendel, 2003, p.576
[15] Van Houtum, Henk and Ton van Naerssen. 2002. "Bordering, Ordering and Othering". *Tijdschrift voor Economische en Sociale Geografie*, 93:125-136.
[16] Chatterji, Joya. 1999. "The Fashioning of a Frontier: The Radcliffe Line and Bengal's Border Landscape, 1947-52". *Modern Asian Studies* 33(1):185-242
[17] Ibid., p.186
[18] Ibid.
[19] Chatterji, Joya. 2007a; Kudaisva, Gyanesh. 1996. "Divided Landscapes, Fragmented Identities: East Bengal Refugees and their Rehabilitation in India, 1947-79". *Singapore Journal of Tropical Geography.* 17:24-39.
[20] Chatterji, Joya. 2007b. "'Dispersal' and the Failure of Rehabilitation: Refugee Camp-Dwellers and
Squatters in West-Bengal". *Modern Asian Studies* 41(5). p.998
[21] Datta, 2012, p.126

[22] Das, Samir K. 2000. "Refugee Crisis: Responses of the Government of West Bengal". *In* Pradip Bose (ed) *Refugees in West Bengal: Institutional Practices and Contested Identities*. Calcutta: Calcutta Research Group. p. 12.

[23] Ibid.

[24] Sadiq, 2008, p.5

[25] Ibid.

[26] Chatterjee, Joya. 2001. "Right or Charity? The Debate over Relief and Rehabilitation in West-Bengal 1947-1950". In Suvir Kaul (ed) *In The Partitions of Memory: The Afterlife of the Division of India*. Bloomington: Indiana University Press. p. 78

[27] Anjaria, 2011.

[28] Ibid., p.168

[29] Ibid., p.58

[30] Das, 2011.

[31] Anjaria, 2011.

[32] Das, 2011, p.331

[33] Das, 2011, p.327

[34] Bandyopadyay, Sekhar and Anasua Basu Roy Chaudhury. 2014. *In Search of Space. The Scheduled Caste Movement in West Bengal after Partition*. Policies and Practices 59. p.3

[35] Ibid.

[36] Chatterji, 2007a, p.188.

[37] Chaudhury, Anasua Basu Roy. 2009. "Living another Life: Un-Homed in the Camps". Policies and Practicies. Pp 2-24. http://www.mcrg.ac.in/pp21.pdf accessed on December 27th 2014. p.7.

[38] Chaudhury, op. cit. and Sanyal, 2009, p.69

[39] Chaudhury, op. cit.

[40] Chatterji, 2007b, p.998

[41] Bandyopadhyay, and Chaudhury, 2014, p.3

[42] Datta , 2012 p.129

[43] In the permanent liability camps those who were perceived as otherwise 'unfit' for rehabilitation, such as the old, the invalid and the widowed, were accommodated (Das, Samir. K., 2003. "State Responses to the Refugee Crisis: Relief and Rehabilitation in the East". *In* Ranabir Samaddar (ed) *Refugees and the State: Asylum and Protection Policy of India, 1947-2000*, London: Sage Publications. p. 123.).

[44] Sengupta, Debjani. 2011. "From Dandakaranya to Marichjhapi: Rehabilitation, Representation and the Partition of Bengal (1947)". *Social Semiotics*. 21(1). p.101.

[45] In fact, the refugees that entered West Bengal between 1 January 1964 and 25 March 1971 (Bose, 2006, p.64), the so-called 'New Migrants', were only considered eligible for relief if they agreed upon settlement outside of the border states (Chatterji, 2007b, p.1005).

[46] This popular image is for example displayed on the cover of "Savage Harvest. Stories of Partition" (Singh Sarna 2013) and "The Holocaust of Indian Partition: An Inquest" (Godbole 2006).

[47] Literally 'pather kath' means 'wood leaves'.

[48] Das, Veena., 2011.

[49] Agamben, Giorgio. 1998. *Homo Sacer: Sovereignty and Bare Life*. D. Heller-Roazen, (Trans.), Stanford: Stanford University Press.

[50] (See for example: Lentin, Ronit. 2007. "Illegal in Ireland, Irish Illegals: Diaspora Nation as Racial State". *Irish Political Studies*, 2(4):433-453; Schinkel, Willem. 2009. "'Illegal Aliens' and the State, or: Bare Bodies vs the Zombie". *International Sociology*. 24(6):779-806; Pope et al. 2013).

[51] Das, Veena., 2011, p.327
[52] Sanyal, Romola. 2010. "Squatting in Camps: Building and Insurgency in Spaces of Refuge". *Urban Studies*, 48:877-891.
[53] Ibid., p.877
[54] Ibid.
[55] Ibid. p.72.
[56] Ibid. p.77.
[57] Chatterji, 2001, p.100
[58] Sanyal, 2009, p.77
[59] Das, 2003, p.145
[60] Sanyal, 2009, p.77
[61] Das, 2003:145
[62] Ray, Manas. 2002. "Growing Up Refugee". *History Workshop Journal*. 53(1):149-179.p.151
[63] See also Chakrabarti, Prafulla K.1990. *The Marginal Men: The Refugees and the Left Political Syndrome in West Bengal*. Lumière Books
[64] Ray, 2002, 175
[65] See Kudaisya, 1996, p.20
[66] Chatterji, 2007b, p.1009
[67] Das, 2000, p.17
[68] The Dandakaranya resettlement scheme, located at the intersection between Orissa and Madhya Pradesh, became particularly infamous due to its thickly forested and inhospitable terrain (see for example Kudaisya 1996).
[69] Kudaisya, 1996, p.32
[70] Ghoshal, Anindita. 2012. "Changing Mentality of the Bengalee Refugees: The Story of Tripura (1946-1971)". *Refugee Watch* 40:18-34.
[71] Das, 2011, p.324
[72] Chatterji, Joya. 2001. "Right or Charity? The Debate over Relief and Rehabilitation in West-Bengal 1947-1950". In Suvir Kaul (ed) *In The Partitions of Memory: The Afterlife of the Division of India*. Bloomington: Indiana University Press. p. 98.

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Legal Brief on Statelessness Law in the Indian Context

By

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Introduction

Statelessness poses one of the most complex problems both in terms of humanitarian intervention and for the creation and implementation of legal protection. By its very nature, statelessness challenges the citizen-state relationship of the contemporary state model in which provisions for formal membership either through nationality or citizenship laws are the state's prerogative, and international norms and commitments are largely effectuated through the enactment and implementation of laws, policies, and practices at the state level. Indeed, 'the very notion of statelessness exposes the essential weakness of a political system that relies on the state to act as the principal guarantor of human rights.'[1] Without a legal bond with any state, stateless people are left vulnerable to a variety of forms of exploitation and abuse, poverty and marginalization.

Addressing Statelessness

In the United Nations High Commissioner for Refugees' (hereafter UNHCR) much belated attempt to respond to the plight of an estimated 15 million stateless people around the world[2], the organization has suggested a four-pronged approach to statelessness involving identification, prevention, reduction, and protection.[3]
Identification: The number of stateless people worldwide remains unclear, and the complexity of their experiences in different regions remains under-documented. A number of factors complicate assessments of the global reality of statelessness, including the facts that the term "statelessness" remains ambiguous, that governments are reluctant to study and share findings about stateless populations, that some stateless people may opt not to

register for fear of persecution from state actors, that some people prefer to remain stateless than to have to take a particular citizenship, and that little is known about statelessness in detention facilities.[4] Therefore, the identification of stateless people and those at risk of statelessness is important. Mapping the complexity of the problem is the first step to developing appropriate responses.

Prevention: According to the UNHCR's António Guterres and UN High Commissioner for Human Rights, Louise Arbour, prevention is 'the easiest and most effective way to deal with statelessness is to prevent it from occurring in the first place.'[5] Indeed, responding to statelessness means looking at ways to avoid there being new cases of statelessness.

Reduction: This element of addressing stateless is focused on existing cases of statelessness. Essentially, reduction of statelessness refers to group and individual acquisition of nationality or citizenship.

Protection: Being stateless should not mean being without rights. Protection of stateless people means working to respect, protect, and fulfill their rights including but not limited to education, healthcare, judicial, and travel rights.

Defining Citizenship

There is a distinction between the legal meaning of the terms "nationality" and "citizenship" and the conceptual debates around their meanings in political theory, international relations, and sociology. Shared ideologies, customs, or institutions, feelings of belonging, or associations with particular territory, which may constitute a nation,[6] do not necessarily align with a particular state. In many contexts, the term "nationality" is tied to the idea of a nation and is thus distinguished from a legally recognized bond with a particular state. However, because some countries use the term "nationality" and others, "citizenship" to refer to persons who have a legal bond with a state by operation of law and because this brief is primarily concerned with the law, the terms "nationality" and "citizenship" will be used interchangeably in reference to persons with such bonds. Bonds of nationality and citizenship are both the result of applications of enacted legal instruments at the state level.

Citizenship in India

Unfortunately, mounting international pressures to respect a universal right to nationality have not coincided with an increased respect for the principle in India. Instead, India's changing citizenship laws demonstrate an increasingly strict approach to the granting of citizenship. In the wake of independence, India's 1955 citizenship laws were relatively inclusive. Except for those people whose fathers were diplomats or 'enemy aliens,' citizenship was accorded at birth to everyone "born in India on or after the 26th January, 1950, regardless of their descent, ethnicity, or national identity.[7] By the mid 1980s, this had begun to change.

Following the large-scale illegal migration of Bangladeshis into India and the resulting disaffection of the internally displaced and increasingly economically excluded local Assamese population, the Indian legislature adopted the Citizenship (Amendment) Act, 1987, which restricted the jus soli[8] mode of citizenship acquisition established in 1955.

The Government of India took 'a serious view of the entry of persons clandestinely into India,' citing 'fear about adverse effects upon the political, social, cultural and economic life of the State' and expressing concern over what it considered to be 'a large number of persons of Indian origin [who had] entered the territory of India from Bangladesh, Sri Lanka, and some African countries.'[9]

The amendments made it easier for those who were outside India and whose parents were citizens to gain citizenship than for those who reside in India and whose parents were not Indian citizens to do so. This change marks an important shift with regard to migrant stateless populations, because, in general, it is more difficult to incorporate provisions for granting citizenship to migrants and their children in countries whose citizenship laws are built on jus sanguinis. Indeed, the new centrality of Indian nationality to the granting of citizenship overwhelmingly limits citizenship to those who descend from existing nationals, leaving stateless people and their children significantly more likely to be caught in a cycle of statelessness.

Furthermore, since 2004, a new amendment to the citizenship laws has further restricted stateless populations' access to Indian citizenship. In addition to increasing the residency requirements and limiting the meaning of the expression "ordinarily resident in India," these new laws forbid those who are "illegal migrants" from accessing citizenship registration and naturalization procedures, which are the only two ways of acquiring Indian citizenship for those who cannot do so by birth, descent, or by being a national of a territory incorporated into India. While not all stateless people have migrated, unless they became stateless after their migration, stateless migrants are very likely to have entered into India without the required documents and so they are deemed "illegal migrants."

'Illegal Migrant' in India

Under Indian law, an "illegal migrant" is,

> …a foreigner who has entered into India without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time[10]

The language of this provision suggests two requisite elements. First, in all circumstances, the term "entered" suggests a cross-border movement from another jurisdiction into India. Secondly, people must find themselves without the required legal documents to validate their presence under India law either from the moment they entered India or from the point at which the

documents with which they entered India become no longer valid. While being deemed an "illegal migrant" does not necessary entail statelessness as those migrants judged "illegal" may retain an effective or ineffective bond with another state, people who are stateless are very likely to also be illegal migrants. Unless the person was either born in India or found herself or himself in India during independence such that s/he would not fulfill the cross-border movement requirement or they hold residency documents (such as an OCI card) that do no amount to citizenship, de jure stateless people will also be categorized as "illegal migrants." Illegal migrants may also not be de jure stateless but may be de facto by virtue of their inability to access effective citizenship from the state with which they hold a formal legal bond.

Being categorized as "illegal migrants" places stateless people in a precarious position. While India does not have any legislation in place to protect stateless people from being deported to regularize their status or grant them citizenship, it does have legislation in place that allows the state to deport illegal migrants. Since the Supreme Court of India deemed the legislation ultra vires[11] the Constitution of India, striking it down in 2005,[12] the Illegal Migrants (Determination by Tribunal) Act, 1983 (hereafter IMDT Act 1983), which gave migrants a right to appeal and placed the burden of proof on the government rather than on the migrants themselves, is no longer valid. Illegal migrants now find themselves again more vulnerable to deportation under the more liberal powers granted to the government in the Foreigners Act, 1946. This legislation grants the Government wide powers, including the ability to deport illegal migrants, which some argue have even been used in border regions against Muslim Indian citizens who were too poor to contest their deportation.

Children of those categorized as illegal migrants are also severely limited in their ability to acquire citizenship as was alluded to in section 1.2.2. on the granting of citizenship in India. Furthermore, on a discursive level, the categorization of certain people as "illegal" conflates the actions undertaken by people with their character. By using this term to describe them, India justifies their exclusion from the practice of the Rule of Law. The fewer rights they are granted in relation to citizens, the less their legal personality can be considered effective.[13]

Despite these many concerns, it could be argued that the term "illegal migrants" has been rendered practically redundant, because the very legislation that associated the term with a legal category ceased to exist when with the abolition of the IMDT Act 1983. Now, if people find themselves unable to prove that they are a citizen of India, they will be deemed a foreigner by the authorities vested with the power for such determinations. However, because the Supreme Court ruling that struck down the IMDT Act 1983 was enacted in 2005, two years after the latest amendment to Indian Citizenship laws, the term "illegal migrant" remains a legal category in Section 2(e) of The Citizenship (Amendment) Act, 2003, as defined above. It is now unclear if the limitations imposed by the 2003 amendment in relation to "illegal migrants" now only apply to those who were determined as such before the 2005 ruling or whether any of those considered "foreigners" under

the Foreigners Act, 1946 and their children are also affected by the 2003 amendments.

Indian Overseas Citizen

Under Indian law, an "Indian overseas citizen" is,

> …a person who is of Indian origin, being a citizen of a specified country, or was a citizen of India immediately before becoming a citizen of a specified country, and is registered as an overseas citizen of India by the Central Government[14]

Overseas Citizen of India's (hereafter OCI) cards must not be mistaken with Indian citizenship. First, unlike Indian citizenship, OCIs may be held in conjunction with citizenship or nationality. An OCI is granted certain privileges not usually available to non-residents of India such as the right to work, study and own property not used for agriculture or plantations; however s/he is ineligible for an Indian passport, has no voting rights in India, and cannot work in government.[15]

Defining Statelessness

International Law

Article 1 of the Convention relating to the Status of Stateless Persons, 1954 (hereafter 1954 Statelessness Convention) defines a stateless person as one 'who is not considered as a national by any State under the operation of its law.'[16] This definition is now widely understood to be customary international law. This means that it should be applied by all states even if, like India, they are not party to the convention. Indeed, domestic processes of recognizing people as "stateless" should use this definition as their basis.[17]It would, however, be misleading to suggest that there is global consensus on the definition of statelessness or acceptance of a set manner in which it should be applied. Due to varied attempts to respond to the complexity of lived realities and to the often tense geopolitics of nationality, procedures and requirements that govern the recognition of people as stateless differ around the world.

As matter of law, the 1954 Statelessness Convention definition is clear and allows for a relatively straightforward application given that bonds of nationality are themselves legal connections. Yet, it is very restrictive. The binary opposition of the national or citizen versus the stateless person on which it rests oversimplifies the reality of nationality as it is experienced by people the world over.

De Jure vs. De Facto Statelessness

Those who satisfy the 1954 Statelessness Convention definition are considered de jure stateless. This type of statelessness covers those who do not have a legal bond with any state. As such, it generally covers those who

are not automatically granted nationality at birth by the application of state legal instruments, those without nationality who are unable to obtain it through establish legal provisions for its acquisition, and those whose nationality is revoked or terminated for any reason and who do not have a second nationality.

De facto statelessness, on the other hand, remains an area of open debate. Broadly speaking, it refers to those who are unable to disprove the assumption that they have nationality and those whose legal bonds of nationality are ineffective.[18]However, there is no legal meaning for the term de facto statelessness. In fact, by virtue of its distinction from de jure statelessness, the term necessarily refers to people who are not stateless under the 1954 Statelessness Convention definition of statelessness in international customary law. However, given the strong similarities in their plight to those who are de jure stateless, there are a number of practitioners and scholars who advocate for their inclusion in international legal protection frameworks for statelessness.

Former UNHCR Legal Adviser on Statelessness and Related Nationality Issues Carole Batchelor argues that the history of the 1954 Statelessness Convention serves to explain that its definition is so narrow and that the "technical distinctions between de jure and de facto stateless persons should not be significant if the principles and intent of international law are fully recognized."[19] She argues that the drafters of the 1954 Statelessness Convention assumed that those for whom nationality bonds had become ineffective would be considered refugees when they adopted this restrictive definition of statelessness. Yet, the Convention relating to the Status of Refugees, 1951 (hereafter 1951 Refugee Convention) limits the definition of refugee to those whose experiences of persecution are based on one of five convention grounds. A refugee is one who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.[20]

In 1961, Paul Weis further warned the international community that the "borderline between what is commonly called de jure statelessness and de facto statelessness is sometimes difficult to draw."[21] More recently, Batchelor married this practical angle with a concern for the ethics of protection. On the basis that the central concern in addressing statelessness must be one of protection, she argues that protection on the grounds of the simple existence or non-existence of legal bonds creates an arbitrary exclusion of de facto refugees whose ineffective nationality puts them in a comparable situation to de jure ones.[22] In the end, however, the 1954 Statelessness Convention is unambiguous in its definition. Legally, it only covers de jure stateless people. That said, concerns about the lack of protection available to de facto refugees give good reason to question the appropriateness of this narrow definition and to consider ways to address the existing protection gap.

Stateless Refugees

It is important to note that while some people may be both stateless and refugees, the two words are not co-terminus. A stateless refugee is someone who is not considered to be a citizen or national under the operation of the laws of any state and satisfies the definition of a refugee under article 1 of the Convention Relating to the Status of Refugee, 1951 (hereafter 1951 Refugee Convention). Stateless refugees fall under the UNHCR's refugee mandate and are legally entitled to the protections of the 1951 Refugee Convention. When stateless refugees ceases to be refugees, they remain stateless if the resolution of their refugee status does not include acquisition of nationality or citizenship.

Prevention and Reduction of Statelessness

Attribution of Nationality

Since de jure statelessness is by definition a lack of nationality, acquiring nationality is its clear legal solution. However, closing nationality gaps requires action by the state, which in some cases is the very agent which has rendered the persons stateless in the first place through its policies of deprivation of nationalities considered legal by domestic laws.

Nationality legislation generally follows family links such as links to the state through one's parents or spouse or territorial links such as links to the state through one's place of birth or residence. In some cases of statelessness, these modes of acquisition are unavailable either by the language of the law or because there exist insufficient procedural guarantees. In other cases, stateless people have acquired nationality in these traditional ways, but because the laws in place allow for the deprivation or renunciation of nationality even in situations in which such actions render the person without a nationality, they do not, in fact acquire it.

While there has been a move away from the strict view that it is 'for each State to determine under its own law who are its nationals'[23] such that the 'manner in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction,'[24] the Government of India retains the power to grant citizenship. The right to nationality is framed by citizenship laws. This is why, for example, the UN Commission on Human Rights' 2007 call "to adopt and implement nationality legislation with a view to preventing and reducing statelessness"[25] was directed towards states.

The Right to Nationality in International Law

The very notion of statelessness is at odds with the right to nationality, which is guaranteed under international law. The idea that everyone has a right to nationality as a basic human right WAS developed in early 20th-century conventions and treaties and is now found under article 15 of the Universal Declaration of Human Rights (hereafter UDHR), which

states that "no one shall be arbitrarily deprived of his [sic] nationality nor denied the right to change his nationality."[26]

Since then, the 1954 Statelessness Convention and the Convention on the Reduction of Statelessness, 1961 (hereafter 1961 Statelessness Convention) have further developed this right. While India has not ratified either of these conventions, it did accede to the International Covenant on Civil and Political Rights, 1996 (hereafter ICCPR) in 1979, which also affirms that 'every child has the right to acquire a nationality.'[27] Other conventions have also reinforced the universality of the right to nationality. For example, article 5(d)(iii) of the Convention on the Elimination of Racial Discrimination, 1965 (hereafter CERD), which India ratified in 1968, explicitly prohibits racial discrimination in applications of the right to nationality and the Committee on the Elimination of Racial Discrimination has further held that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties' obligations to ensure non- discriminatory enjoyment of the right to nationality.[28]

Factors of Statelessness

Blitz's Typology: Primary & Secondary Statelessness

In his policy paper Statelessness, Protection, and Equality, founder of the International Observatory on Statelessness, Dr. Brad Blitz suggests a conceptual division be made between primary and secondary sources of statelessness. In his typology, primary sources of stateless are those which are the direct result of discrimination, while secondary sources of statelessness are those which 'relate to the context in which national policies are designed, interpreted, and implemented.'[29] Since all causes of statelessness are in some way the result of forms of discrimination and inequality, it is often hard to distinguish between them. Blitz suggests that primary sources of statelessness are those which are the result of direct discrimination while secondary sources are the result structural discrimination. In his analysis, denial, deprivation, and loss of citizenship are primary sources and political restructuring, environmental displacement, and barriers that impede accessing rights are secondary sources.

For Blitz, the denial and deprivation of citizenship caused by state discrimination either through explicit laws and onerous provisions is a primary source of statelessness. For example, citizenship laws based on ethnicity, religion, gender, lineage, or other identity factors may prevent certain people from obtaining citizenship. Moreover, provisions that impose particular requirements such as proof of birth or marriage on those seeking citizenship can prevent people who do not have those documents from accessing their right to citizenship.[30] He also refers to the 'revocation of laws and forced removals following xenophobic campaigns' as a "withdrawal and loss of citizenship," which he describes as a primary source of statelessness.[31]

Again, State succession that may result in violent nationality contests that forcibly displace people into other states or may not cause displacement,

but may mean that people remaining in the same geographic area find themselves living in new jurisdictions is considered to be secondary source of statelessness. In these cases, statelessness may result from "ill-defined nationality laws following conflict, de-federation, secession, state succession, and state restoration in multinational situations."[32]

Further forms of structural discrimination, such as onerous requirements in the procedures for acquiring necessary identity documents, high feeds, witness certification requirements, and lack of registration opportunities, constitute another secondary source of statelessness for Blitz.[33] He also warns that it is possible that, with the physical disintegration of certain states, populations will become stateless.[34] The possibility of displacement was certainly emphasized at the UN Conference on Climate held in 2009. While the possibility of an entire state ceasing to exist such that its population would become de jure stateless may not appear imminent, but it is certainly a prospect with which the international community may someday need to reckon. Meanwhile, it is foreseeable that climate change could result in more than just displacement. Situations where the state would no longer be able to provide effective citizenship to its citizens as a result of climate change are foreseeable. With the Intergovernmental Panel on Climate Change (hereafter IPCC) warning of rising sea levels in the Netherlands, Guyana, Bangladesh, and the Oceanic islands[35], Blitz's warning of the possibility of de facto statelessness as a result of climate change must not be dismissed.

Factors of Statelessness in India

Primary Factors in India: Denial, Deprivation, and Loss of Citizenship

In India, a number of explicit provisions provide the legal means by which a person in possession of Indian citizenship may lose that legal bond. Specifically, the Citizenship Act of India, 1955 states that Indian nationality may be lost through renunciation, termination, or deprivation.

Renunciation

Under the Citizenship Act of India, 1955,

> If any citizen of India, who is also a national of another country, renounces his Indian citizenship through a declaration in the prescribed manner, he ceases to be an Indian citizen on registration of such a declaration. If the person making the declaration is a male then when the person loses his Indian citizenship, every minor child of his also ceases to be a citizen of India. However, such a child may within one year after attaining full age, become an Indian citizen by making a declaration of his intention to resume Indian citizenship.[36]

This presents two serious problems for statelessness. First, it deprives children of their Indian citizenship on the basis of their father's actions in such a way that may leave them stateless until they reach the

mandated age to resume their Indian citizenship by declaration. Second, both in the case of the children who lose their Indian citizenship and the adults who renounce them, there is no provision to safeguard against statelessness. A person is in all circumstances entitled to renounce his or her citizenship even if by doing so, they would become de jure stateless.

Termination

Under the Citizenship Act of India, 1955,

> Any person who acquired Indian citizenship through naturalization, registration or otherwise, if he has voluntarily acquired the citizenship of another country at any time between January 26, 1950, the date of commencement of this Act, will cease to be a citizen of India from the date of such acquisition.[37]
>
> The Supreme Court of India's Constitution Bench held in 1962 that if a "person has acquired foreign citizenship either by naturalisation or registration, there can be no doubt that he ceases to be a citizen of India in consequence of such naturalisation or registration."[38] While this does not pose a problem for de jure statelessness as the language of the provisions is such that termination comes only when citizenship of another state has been acquired, there is certainly the possibility that this termination provision could result in de facto statelessness, because there is no guarantee that the non-Indian citizenship that has been voluntary acquired is, in fact, an effective one. Furthermore, it is important to note that a person may well satisfy the legal requirement of voluntary acquisition implied by the provision while still feeling varying degrees of social, political, or other pressures. Here, gender, generation, class, and other markers of identity are likely to have an effect on the experience of citizenship acquisition that cannot be recognized by the voluntary/involuntary binary of the legal provision.

Deprivation

Under the Citizenship Act of India, 1955, the government of Indian may deprive a citizen of citizenship if it is "satisfied that it is not conducive to the public good that the person should continue to be a citizen of India"[39] and

> …the registration or certificate of naturalization was obtained by means of fraud, false representation or concealment of any material facts; or that the citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or that citizen has, during any war in which India may be engaged unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or that citizen has, within five years after registration or naturalisation, been sentenced in any country to imprisonment for a term of not less than two years; or that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country

outside India or in the service of a Government in India or of an international organisation of which India is a member, nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.[40]

In no uncertain terms, this provision creates statelessness. It is prescribed as punishment for certain actions. In other circumstances, where the person is deemed to have established themselves outside of India according to certain temporal and geographic criteria and is guilty of inaction of sorts by failing to register, no consideration is given to the ease with which the person will be able to acquire another citizenship. This provision is irreconcilable with India's human rights obligations and a grave impediment in the prevention of statelessness.

Secondary Factors: State Succession and Lack of Access[41]

Secondary factors of statelessness are often particularly difficult to pinpoint, because unlike primary factors, no single specific laws, policies, or regulations can be identified as these secondary factors. In India, as in many other states, state succession and lack of access to rights are interwoven with factors of statelessness and informed by the complexities of decolonization in the region.

In India, state succession is of particular importance in the creation of statelessness. The 1947 partition of India into the sovereign states of India and Pakistan, and the 1971 secession of Bangladesh are two key periods in this regard. For example, most of those displaced by the partition in 1947 have since been granted citizenship in either India or Pakistan, but there are exceptions. Estimates suggest that approximately 20,000 Hindu refugees and over 100,000 Punjabi refugees from Pakistan remain stateless in India. [42] In many cases, their descendants are unable to acquire citizenship.[43]

In other situations, without political change at the level of state succession and without positive state action against discriminatory laws, people may find themselves in de jure and de facto situations of statelessness, because a lack of infrastructure to implement action has lead to deprivation of citizenship[44] or because the political, social, or geographic context in which they find themselves makes it impossible for them to access citizenship acquisition mechanisms. A prime example of the latter is the case of those who live in the Bangladeshi Chitmahals in India, which are enclaves within enclaves along the India-Bangladesh border. Though India introduced passport and visa controls in 1952, the government did not provide for those living in these enclaves.

Other Factors of Statelessness in India: Displacement, Migration, & Trafficking

The situation of statelessness is complicated by various forms of movement, be it forced or voluntary. Forced migration during periods of political development may 'generate new minority groups and give rise to

subsequent stateless populations' can 'raise nationality problems.'[45] Some argue that the human trafficking results in incomplete citizenship that is de facto statelessness.[46] Identity factors such as gender, generation, class, ethnicity, and religion often lead to additional forms of discrimination, which further complicates experiences of movement for stateless people.

Legal Remedies

Formal Legal Remedies

Under international law, the resolution to stateless IS implied by the very way de jure statelessness is defined. Since statelessness is a lack of formal legal bonds, and the acquisition of such bonds is its remedy. Indeed, in legal terms, the formal legal remedy to stateless is the granting of citizenship or nationality. Processes for the acquisition of citizenship in India are defined by the Citizenship Act of 1955 and its 1986 and 2003 Amendment Acts.

Informal Legal Remedies

Extra-Judicial Processes

The focus on state and international implementation agencies in the articulation of AN international and regional statelessness framework may give the impression that stateless people cannot themselves resolve their precarious legal situation, it would be erroneous to assume that they are passive actors in this regard. Instead, stateless people often demonstrate a great deal of agency. In India, by putting the right amount of money in the hands of the right person, many stateless people work outside the legal framework to find informal solutions to the difficulties of being stateless. From paying off a bank employee for the ability to open an account to bribing an election bureau official for an election ID card, there are numerous illegal means by which people acquire the elements that make up legal citizenship. In some cases, elected officials deliberately turn a blind eye to these processes, because they know that the populations fraudulently gaining the ability to vote are the very voters ensuring their re-election. Thus, the democratic nature of Indian elections becomes fuel for a 'selective blindness' of sorts.

Unofficial Citizenship

Situations in which people come to enjoy many of the rights associated with citizenship such that they are effectively treated as though they were citizens has led some to use the term "de facto citizenship." Yet, as Batchelor warns, this term does not carry any legal meaning and, as such, its use can be misleading. [47] Indeed, being described as having de facto citizenship can act as a discursive mask that hides the reality that people remains de jure stateless. Because their status is not officially recognized, these people are especially vulnerable to changing political and social contexts

in which their unofficial citizenship may cease to be recognize by those around them. In addition, because the means by which they acquired this unofficial citizenship are likely to have included illegal actions, these people may be more likely to find themselves in the criminal justice system, which may increase their chances of deportation and may lead to prolonged incarceration, abuse, or exploitation.

Protection of Stateless Persons

Statelessness Status and Status Determination Procedures

As a matter both of law and of policy, status determination procedures are generally conceived of as being the key to ensuring that those who are stateless are able to enjoy the rights to which they are entitled under international law. Indeed, in a system in which legal protection is afforded on the basis of legal status, such procedures are a necessary precursor to accessing rights. Therefore, those who are de jure stateless by application of the international customary law definition may be denied the relevant protection if they do not have access to procedures by which they can be recognized as such by those who would offer them protection. It is, therefore, a matter of primary concern for the protection of stateless people that there currently exist no statelessness status determination procedures in India.

The most basic distinction between those who are stateless and those who are not is that, at least by law if not in practice, those who are citizens of a state should have access to a number of rights guaranteed by that state. While not all states grant the same legal protection of rights to their citizens and many states are unable or unwilling to enforce rights that are legally guaranteed, the legal bond between a citizen and a state remains the basic means by which people are able to enjoy rights.

Recently, however, a move away from citizen rights towards human rights developed through a series of international legal instruments in the 20th century such that there has been an uncoupling of nationality from rights, meaning that there are international legal mechanisms that, if applied, ensure the enjoyment of certain rights for all people, including those who are stateless. The UDHR specifies in article 15 that nationality must be a guarantee of equal access to human rights.

Civil and Political Rights

The civil and political rights guaranteed by specific statelessness instruments are considerably more limited than those found in broader human rights mechanisms. In terms of civil and political rights, the 1954 Statelessness Convention provides for the right to freedom of religion[48], the right to legal personhood[49], the right to property[50], the right to access courts[51], and the right to freedom of movement[52]. It is, therefore, of great relevance that stateless people's rights are not only based on the Statelessness Conventions, but also on other human rights instruments that have since been created in so far as

they are applicable to stateless people. The ICCPR is of great importance in this regard, especially since India has ratified it. According to the UN Human Rights Committee, the civil and political rights outlined in the ICCPR are 'available to all individuals, regardless of nationality or statelessness [...] who may find themselves in the territory or subject to the jurisdiction of the State Party.'[53] So, unless otherwise specified, the rights outlined in the ICCPR should apply to stateless people.

The civil and political rights to which stateless people are entitled to include 'freedom of religion', which was considered of great importance in the post-Second World War context of the 1954 Statelessness Convention;[54] 'freedom of movement', which is most broadly espoused in the UDHR, which states that '[e]veryone has the right to freedom of movement and residence within the borders of each state;'[55] 'legal personhood', addresses issues of jurisdiction in matters of personal status, but it does not do so in the explicit way human rights law instruments do; 'right to access courts', is an important right for stateless people, because courts can be the means by which they seek redress for other human rights violations they have faced and because courts can provide the very means by which they resolve their status and have their right to nationality or citizenship legally recognized in a particular state.[56]

Civil and Political Rights Absent from the Statelessness Convention

It is important to note that there are a number of rights to which the drafters of the 1954 Statelessness Convention do not make explicit reference. The right to life and protections against torture and slavery were omitted from the 1951 Refugee Convention, because they were considered sufficiently established[57] and so, the same is likely true of the 1954 Statelessness Convention. They are, therefore, rights to which the stateless are entitled.

Other rights are omitted and cannot as easily be read into any of the provisions. As Van Waas aptly points out, both protections against arbitrary detention and minority rights are absent from the 1954 Stateless Convention, but are rights protected under human rights mechanisms that are of particular relevance to stateless populations.[58] The ICCPR explicitly provides that '[n]o one shall be subjected to arbitrary arrest or detention.'[59] Upon ratification, India made a two-fold declaration regarding this provision, which limits its generous language in its application to India. First, India declared that the provision would be 'applied as to be in consonance with the provisions of clauses (3) to (7) of article 22 of the Constitution of India' which authorize preventative detention of enemy aliens and of those envisioned by preventative detention legislation for up to three months with the possibility of longer detention if an advisory board that includes a High Court judge find sufficient cause for such an extension. Despite this clarification of the forms of detention that India will not consider arbitrary, the constitution provides a protection to all those detained such that they are to promptly communicate the grounds on which the person is being detained unless it would go against public interest to do so. Secondly, India limited the remedies for unlawful

arrest or detention, holding that neither are to result in compensation from the state. [60]

> With regard to minority rights, the ICCPR states that they
>
> …shall not be denied the rights, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.[61]

Assessment of Civil and Political Rights of the Stateless

As demonstrated in this brief overview of the civil and political rights of stateless people under the 1954 Statelessness Convention as compared to other human rights mechanisms, the Statelessness Convention provides no more protection than human rights mechanisms. Therefore, in this regard, the fact that India has not signed the 1954 Statelessness Convention should not prove influential at the level of civil and political rights to which stateless populations in India should have access. In fact, the UDHR, which India participated in drafting, and the ICCPR, notwithstanding the limiting declarations India made when acceding, both provide more substantial rights protection for the stateless which India is bound to protect.

It must, however, be remembered that rights of stateless people do not amount to those of citizens with political rights under any of these instruments. Free speech protections and the right to participate in organized governmental politics are not granted to the stateless.

Economic, Social, and Cultural Rights

Much like civil and political rights, the economic, social, and cultural rights guaranteed by the 1954 Statelessness Convention are considerably more limited than those found in broader human rights mechanisms. The International Covenant on Economic, Social, and Cultural Rights, 1966 (hereafter ICESCR), to which India acceded on April 10, 1979[62] is an especially important part of human rights law in this regard, because its interpreting committee, the Committee on Economic, Social and Cultural Rights has forcefully asserted that no group should be denied the 'minimum core content' of the ICESCR rights.[63]

The following is an overview of the economic, social, and cultural rights to which stateless people are entitled.[64]

Right to Work

Under the 1954 Stateless Convention,

> …the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances[65] with regards to remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining.[66]

Much like the aforementioned limitation of the protection of freedom of movement, this provision is limited to those who are lawfully on the territory, which inherently excludes a great number of stateless people who by virtue of their lack of citizenship or other circumstances find themselves unlawfully in a given territory.

The labour rights mechanisms that have evolved as part of human rights law offer an incomparable number of rights provisions, many of which apply to stateless people. The right to work and to just and favourable work conditions set out in the UDHR[67] are reflected in the ICESCR and have been elaborated in nearly 100 work-related conventions by the International LabourOrganisation (ILO)[68], which are meant to apply irrespective of citizenship, meaning they apply to those who are stateless.[69]

Article 6 of the ICESCR, for example, grants everyone

> …the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.[70]

Right to an Adequate Standard of Living

The idea of an "adequate standard of living" is considerably more fleshed out in human rights instruments than it is in the 1954 Statelessness Convention, which includes only 'adequate food, clothing and housing, and [...] continuous improvement of living conditions.'[71]

While the meaning of the right to clothing has not been authoritatively expounded, the meaning of "adequate" in relation to food and housing has been expounded IN human rights conventions and by their associated committees. The right to food is not only a right to be "free from hunger,"[72] but also a guarantee of a 'quantity and quality sufficient to satisfy [...] dietary needs'[73] and the right to housing is 'the right to live somewhere in security, peace and dignity.'[74]

Right to Social Security

Social security benefits were not traditionally understood as universal, but rather were seen as part of the state-citizen relationship, extended only to those citizens of other countries if there was a reciprocal arrangement between the state from which they were coming and the state in which they then found themselves.[75] Stateless people were, therefore, precluded from the traditional model in which social security provisions are provided to those not citizens of the given state.

Therefore, at first glance, the 1954 Statelessness Convention appears generous in this regard. Article 23 grants a right to "public relief and assistance" and article 24 a right to-

> …legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which according to national laws or regulations, is covered by a social security scheme[76]

In contrast, the ICESCR recognizes 'the right of everyone to social security, including social insurance,'[77] which has been understood to include virtually the same entitlements as the 1954 Statelessness Convention, but which applies to everyone without regard to the lawfulness of the person's presence in a given state. Therefore, under the ICESCR, stateless people are guaranteed 'medical care, cash, sickness benefits, maternity benefits, old-age benefits, invalidity benefits, survivors' benefits, employment injury benefits, unemployment benefits [and] family benefits.'[78] This is, however, only a progressive obligation rather than an immediate one, and there is a widespread implied understanding that social security benefits are only achieved by participating in contributory mechanisms.[79] As for non-contributory social security schemes, the ESC Committee holds that 'refugees, stateless persons and asylum-seekers, and other disadvantaged and marginalized individuals and groups should enjoy equal treatment' and specifically supports 'reasonable access to health care and family support, consistent with international standards.'[80]

Right to Education

The 1954 Statelessness Convention distinguishes between the right to education as it regards elementary education and as it regards more advanced education. Article 22 grants 'the same treatment as is accorded to nationals with respect to elementary education'[81] while 'access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships'[82] for non-elementary education is only granted on par with similarly situated non-citizens.

In human rights law, however, non-citizens were first granted equal access to education as the citizens of the given state with the adoption of the UNESCO Convention against Discrimination in Education.[83] While India has not ratified this convention, it has ratified the ICESCR which also addresses the right to education. Article 13 of the ICESCR extensively expands the components of the right to education so that it is 'directed to the full development of the human personality,'[84] so that it include compulsory primary education as well as progressively implemented free secondary and higher education,[85] so that it protects of the liberty of legal guardians to choose schools[86], and so that it affords people the right to 'establish and direct educational institutions.'[87] As Hathaway explains,

> …while poorer states may rely on the Economic Covenant's general duty of progressive implementation to justify an overall insufficiency of secondary education opportunities or the failure to progressively make such education free of charge, there must be no discrimination against non-citizens in granting access to […] education.[88]

Assessment of Economic, Social, and Cultural Rights of the Stateless

As demonstrated in this brief overview of the economic, social, and cultural rights of stateless people under the 1954 Statelessness Convention as compared to other human rights mechanisms, namely the ICESCR, the Statelessness Convention provides no more protection than human rights mechanisms. Therefore, much as was the case with civil and political rights, the fact that India has not signed the 1954 Statelessness Convention does not lower the bar for the level of civil and political rights to which stateless populations in India should have access. In fact, on the contrary, the UDHR, which India participated in drafting and the ICESCR to which India acceded in 1979 both provide more substantial rights protection for the stateless.

Access to Documents

There is no general right to documentation in human rights law, but the 1954 Stateless Convention ensures that those individuals who qualify for protection by satisfying the definition articulated in Article 1 are provided with documentation confirming their status as stateless persons.[89] The right to identity papers is found in article 27 of the 1954 Statelessness Convention. Some identity documents are necessary to prove that a person is stateless and that s/he has a right to reside in the state while other identity documents are useful in preventing statelessness by demonstrating a person's connection with a given state such that the state may not deny him or her citizenship.

First, Registration Certificates (hereafter RCs) are a form of documentation available in India for those who are not citizens to legalize their residency in the state. While there exists specific documentation for people from particular regions or with particular relationships to India, which are afforded on criteria other than the person's citizenship status, RCs are not inherently limited to any one group. These are cards which designate the holder as a foreigner within India. Valid for either six months or a year, there is no guarantee of their renewal. In practice, RCs are a form of informal status that enables the holder to reside in designated regions of India. RCs can also allow for limited domestic travel and, in certain situations, travel abroad. They are regulated by the Registration of Foreigners Act of 1939 and the Foreigners Act of 1946. The implementation of changing policies with regard to RCs are inconsistent across India. Those stateless people who are successful in obtaining an RC would not be considered "illegal" during the period in which their cards are valid.

Secondly, documentation of births and marriages are another form of identity documents, on which people may rely to prevent and resolve statelessness. Birth certificates can have an important role in legitimizing a person's claim to citizenship if the person was born in the state and the state follows jus soli methods of granting citizenship. Indeed, the UNHCR standing committee explains that ,

> while nationality is normally acquired independently and birth registration in
> and of itself does not normally confer nationality upon the child concerned,

birth registration does constitute a key form of proof of the link between an individual and a State and thereby serves to prevent statelessness.[90]

Marriage, on the other hand, may have an effect on the likelihood a person will be granted citizenship, especially if the person they have married is a citizen of the state. With regard to the registration of marriages in the Indian context, the CEDAW committee has expressed its concern "that India has not yet established a comprehensive and compulsory system of registration of births and marriages."[25]

Conclusion

The legal situation of stateless people in India cannot be understood simply by the fact that India has not acceded to either of the statelessness conventions. While this certainly demonstrates the state's reluctance to commit to addressing the issue of stateless, it must not be understood as meaning that India has no statelessness law. Instead, if we are to accept that statelessness law includes both the law which produces situations of statelessness and the law which seeks to address it then it is clear that India has a wealth of stateless law. First, India has numerous legal provisions with actively produce statelessness in the form of citizenship laws that allow for the denial, deprivation, and loss of Indian citizenship. Secondly, India is a party to numerous human rights conventions which offer protection to stateless people.

While acceding to the two statelessness conventions would no doubt be a decision welcomed by the international community of agencies and organizations concerned with statelessness, there is much for India to do to address the plight of those who are stateless besides considering accession to either convention. First, India must stop legally sanctioning the production of statelessness. It must revise its citizenship laws such that citizenship cannot be revoked from those who would be rendered stateless by such an act. Secondly, India must act on its human rights commitments. By acceding to the ICCPR and the ICSCER conventions, India has already promised to protect a wide range of civil, political, social, cultural, and economic rights of the stateless. It must turn those international commitments into domestic law and policy.

In the end, however, addressing statelessness in India, like elsewhere in the world, is not merely a legal question. While the de jure statelessness definition is defined by the existence or non-existence of a legal bond, the experience of statelessness is about much more than citizenship in name. It is about citizenship in practice. Indeed, the existence of effective rights and entitlements goes much beyond the courtroom, to the political arena and socio-cultural milieu. Statelessness is more than its de jure definition. It is a multi-faceted issue that required a multi-faceted response.

Notes

[1] Blitz, Brad.2009. "Statelessness, Protection, and Equality", Forced Migration Policy Briefing 3 .Oxford: Refugee Studies Center,
http://www.refworld.org/pdfid/4e5f3d572.pdf, last accessed December 2, 2014.

[2] UNHCR.2007. "The World's Stateless People", Refugees Magazine,147(3). It is, however, worth noting that ascertaining a clear number is difficult and UNHCR estimates have varied greatly. Practical difficulties in calculating numbers as well as continued disagreements about the definition of statelessness amongst political and academic actors serve to muddy the picture.

[3] UNHCR.2006.UNHCR Executive Committee, "Conclusion No. 78 on Prevention and Reduction of Statelessness and the Protection of Stateless Persons". Also available at http://www.unhcr.org/41b4607c4.pdf, last accessed August 27, 2014.

[4] Lynch, Maureen.2005. Lives on Hold: The Human Cost of Statelessness .Washington: Refugees International, p. 7.

[5] Guterres, António and Arbour, Louise.2007. The Hidden World of the Stateless Geneva: UNHCR.

[6] Connor, Walker.1994. "A nation is a Nation is a state is an Ethnic Group is a ..." .In Ethnic and Racial Studies, *ed.* John Hutchinson and Anthony D. Smith .Oxford ; New York : Oxford University Press.

[7] The Citizenship Act of India, 1955 (India), 1955, s 3.

[8] Jus soli is latin for "right of the soil." It refers to practices in citizenship law in which the right to citizenship is afforded by virtue of the person being born on the given state's territory.

[9] Statement of Objects and Reasons of the Amendment from The Citizenship (Amendment) Act, 1987 (India), 1987.

[10] The Citizenship (Amendment) Act 2003 (India), 2003, s 2(b).

[11] Latin legal term meaning "beyond the powers of."

[12] Roy, Anupama. 2010. Mapping Citizenship in India .Oxford: OUP, p. 193.

[13] For a more on universal look at the way foreigners are not considered complete legal subjects, see Crépeau, François and Samaddar, Ranabir. 2011. "Recognizing the Dignity of Migrants", Refugee Watch 37,
http://www.mcrg.ac.in/rw%20files/RW37/5.François.pdf, last accessed   May 5, 2014.

[14] Supra note 10, s 2(e).

[15] India Country Specific Information, online: US Department of State, www.travel.state.gov/travel/cis_pa_tw/cis/cis_1139.html#special_circumstances, last accessed November 12, 2013.

[16] 1954 Convention relating to the Status of Stateless Persons, 360 UNTS 117, art 1.

[17] See UNHCR. 2011.Regional Expert Roundtable on good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia .Bangkok: National Human Rights Commission of Thailand and United Nations High Commissioner for Refugees.

[18] Supra note 18.

[19] Supra note 18 at 172-175.

[20] 1951 Convention relating to the Status of Refugees, 189 UNTS 137, art 1.

[21] Paul Weis "Elimination or Reduction of Future of Statelessness" (Speech delivered at the Speech to the United Nations Conference on the 25 August 1961), [unpublished].

[22] Batchelor, Carol.1995. "Stateless Persons: Some Gaps in International Protection" International Journal of Refugee Law 7,p. 252.

[23]1930 Convention on Certain Questions relating to the Conflict of Nationality Laws 179 LoNTS 89, art 1.

[24]UNHCR.1997. "Statelessness and Citizenship". In The State of the World's Refugees - A Humanitarian Agenda Oxford: OUP, p. 251.

[25]Resolution 2005/45 on Human Rights and Arbitrary Deprivation of Nationality, UN Commission on Human Rights, 57th Meeting, UN Doc E/CN.4/RES/2005/45, (2005).

[26]Universal Declaration of Human Rights, GA Res 217 (111), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948), art 15.

[27]*International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47 (entered into force 23 March 1976), art. 24.

[28] UN Committee on the Elimination of Racial Discrimination, General Recommendation 30: Discrimination against non-citizens, 1 October 2004, para. 14.

[29]Supra note 1 at 1.

[30]Supra note 1 at 10.

[31]Ibid at 16.

[32]Ibid.

[33]Ibid.

[34]Ibid at 14.

[35] IPCC, Climate Change 2007: Impacts, Adaptation and Vulnerability (Geneva: IPCC, 2008).

[36]Supra note 7, s 8.

[37]Supra note 7, s 9.

[38]Izhar Ahmad Khan v Union of India, 1962 AIR 1052 at 248.

[39]Supra note 7, s 10(3).

[40]Ibid, 10(2).

[41] As the assessment of extra-legal factors in statelessness is beyond the scope of this brief, please refer to the Mahanirban Calcutta Research Group research programme on statelessness for more case-based analysis of these factors.

[42] The International Observatory on Statelessness. 2013. "India", 22 May, www.nationalityforall.org/india, last accessed March 24, 2014.

[43] For further explanations of the effects of state succession in India, please refer the three Mahanirban Calcutta Research Group reports on statelessness available at www.mcrg.ac.in.

[44]Supra note 1 at 10.

[45]Supra note 1 at 13.

[46]See McLean, Pascale. 2005. Incomplete Citizenship, Statelessness and Human Trafficking: A Preliminary Analysis of the Current Situation in West Bengal. Kolkata: Calcutta Research Group.

[47]Supra note 18 at 171.

[48]Convention relating to the Status of Stateless Persons, 1954, Article 4. . For details see, http://www.unhcr.org/3bbb25729.pdf, last accessed March 28,2014.

[49]Ibid, art 12.

[50]Ibid, art 13.

[51]Ibid, art 13(1).

[52]Ibid, art 26, 31.

[53] Human Rights Committee, General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Geneva: 26 May 2004, para.10. It must, however, be acknowledged that several of the ICCPR provisions are explicitly more limited, e.g. "juvenile offenders" or "pregnant women" (Art. 6).

54 For a more in-depth analysis of each of these rights, please refer to supra note 19 at 235.

55 UN General Assembly, Universal Declaration of Human Rights, 1948, Article 15. See www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf, last accessed June 23, 2014.

56Supra note 19 at 266.

57 Hathaway, James.2005. *The Rights of Refugees Under International Law.* Cambridge: Cambridge University Press, p.94.

58Supra note 19 at 285.

59 International Covenant on Civil and Political Rights, 1996, Article 9. For details see http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx, last accessed August 2, 2014.

60*Ibid*

61Ibid, art 27.

62 It should be noted that unlike the ICCPR, the ICESCR allows for progressive achievement. See International Covenant on Economic, Social, and Cultural Rights,1966, Article 2(1). . For details see

http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf, last accessed March 21, 2014.

63 *Ibid*

64 For a more in-depth analysis of each of these rights, please refer to supra note 19 at 301.

65Convention relating to the Status of Stateless Persons, 1954, Article 17.

66Article 24, paragraph 1(a) of the 1954 Convention relating to the Status of Stateless Persons.

67 See articles 23 and 24 of the Universal Declaration of Human Rights, 1948.

68Supra note 19 at 312.

69 Hathaway, 2005, p. 485.

70Article 6, paragraph 1 of the ICESCR.

71 ESC Committee, General Comment 4: The right to adequate housing, 13 December 1991, para. 6.

72Article 11, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights.

73 ESC Committee, General Comment 12: The right to adequate food, 12 May 1999, para. 8.

74 ESC Committee, General Comment 4: The right to adequate housing, 13 December 1991, para. 6.

75 Hathaway, 2005, p.773.

76Article 24, paragraph 1(b) of the 1954 Convention relating to the Status of Stateless Persons.

77Article 9 of the ICESCR.

78 ESC Committee, Revised general guidelines regarding the form and contents of reports to be submitted by state parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/1991/1, 17 June 1991.

79Supra note 19 at 238

80 ESC Committee, General Comment No. 19 - The Right to Social Security, Advanced unedited version, February 4, 2008, para. 38. in Van Waas, p.331.

81Article 22(1) of the 1954 Convention relating to the Status of Stateless Persons.

82Article 22(2) of the 1954 Convention relating to the Status of Stateless Persons.

[83]Article 3, paragraph e of the UNESCO Convention against Discrimination in Education, 14 December 1960.
[84]Article 13(1) of the ICESCR.
[85]Article 13(2) of the ICESCR.
[86]Article 13(3) of the ICESCR.
[87]Article 13(4) of the ICESCR.
[88] Hathaway, James. 2005. *The Rights of Refugees Under International Law*. Cambridge: Cambridge University Press, pp 611-612.
[89]Supra note 19 at 375.
[90] UNHCR.2010. "Birth registration: A topic proposed for an Executive Committee Conclusion on International Protection", EC/61/SC/CRP.5,
http://www.refworld.org/docid/4b97a3242.html, last accessed January 25, 2015.

Reducing Statelessness:
A New Call for India

By

Shuvro Prosun Sarker [*]

Introduction

> "Moder kono basha nai, Moder kono desh nai….
> Moder kono disha nai, moder kono dyash nai"[1]
>> - Bengali Folk Song by Abbasuddin

The principal objective behind any research on statelessness in India should be to find out the communities/groups within India who are lacking nationality, rather protection of nationality, and to find out the means and methods to cover them under state protection or international protection. However, there is possibility that, this kind of research may trace communities/groups from both ways that 'do not have the nationality of any state legally' or 'do not count on their state for protection'. It is noteworthy for a country like India that the second category has emerged from neighbouring states in relation to episodes of irregular migration because of sustained or systemic violation of basic human rights towards some communities/groups by their own state/ majority community. The situation actually leaves the victims virtually unprotected by the agencies of the state. This category of persons indicates that effective statelessness may no longer reflect in the relationship between the state and the person concerned. In one side there is hope that the host state will play a compassionate role and in other side there are strict law of the land which is defining the nature of nationality.

Though there are two UN conventions on statelessness, but India is not liable to abide by their terms as India has not acceded/ ratified/ adopted/ signed the conventions. The limitation of these conventions to reduce statelessness for a country like India is a writ of bit large as there is a growing number of people who are stateless *de facto*.[2] Their human rights are more

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vulnerable as they have left the state to which they have a formal connection and also do not get protection by the host state as doubtful citizens. The relationship between protection of these stateless persons and human rights is one of the primary issues in India. It is necessary to consider for alternative protection for these stateless persons under the two human rights covenants as the hierarchy of non-citizens in a state highlights the gap between protection and human rights. There is expansion of non-derogable rights and the concept of social, economic and cultural rights and the demand to adhere to such rights, started in the twentieth century, along with international affirmation of universality, indivisibility, interdependence and interrelatedness of human rights. All these should come together to consider the identification of specific groups/ communities whose human rights require special protection.

With regard to customary practices of international law, non *refoulment* is the principle with regard to refugees and stateless-refugees which is non-derogable in nature. Apart from that there is a significant body of international law that has elaborated the principle of nondiscrimination as a non-derogable norm that prohibits discrimination on the basis of race, ethnicity and related criteria. India's acceding of ICCPR[3], ICESCR[4], CRC[5] and ratification of ICERD[6] and CEDAW[7] have widened the scope of protection from the idea of compassion to rights. This development of a body of international law which triggered the prohibition of nationality based discrimination has been further encouraged by the advocacy efforts of international organizations, non-governmental actors, and particular states. Also the recent increase in public information and advocacy has served to remind international bodies and non-governmental organizations that the persistence of statelessness is a complex matter that underlines the centrality of effective protection. There is growing pressure from international NGOs, refugee organizations, and human rights monitoring bodies to provide protection to those who do not fall under either the refugee convention or the conventions on statelessness.

There is a specific case pertaining to the *Chakmas* from CHT, East Pakistan (presently Bangladesh) where the Supreme Court had given a verdict in favour of the *Chakmas* with specific direction to process their citizenship application through the process established by law.[8] It is mentionable here that a new public interest litigation, *Swajan & Anr. Vs. Union of India & Anr[9]*, is pending before the Supreme Court right now urging for specific direction to confer citizenship/ refugee status to the Bangladeshi minorities staying in the State of Assam and the Court has already issued notice to the respondents Union of India and State of Assam. So it is evident that the expansion of human rights regime of stateless persons of the second category has gathered momentum in India along with the expansion of *locus standi* of foreigners staying in India.[10] Now it's time to see whether Supreme Court comes out with a decision based on human rights consideration or on the ground of internal security and economic constraint of India. Countless number of deemed stateless or deemed nationals are looking forward to get Justice!

Defining Statelessness and the Indian Scenario

Citizenship has become a political weapon and treatment meted out to non-citizens is worsening as states are increasingly bestowing, denying, or retracting citizenship through various acts.[11] It is difficult to determine the number of stateless persons in the world as there is lack of systematic methods of collecting data and most importantly the lack of consensus on inclusion-exclusion policy.[12] Here the dilemma begins.

Historically state has the right to determine or define who is a citizen of that state.[13]A person who is rendered a non-national by the citizenship laws, his status is that of a *de jure* stateless[14] and 'it is a purely legal description; the characteristics and value of a particular person's nationality as it is realized in his particular home state is irrelevant to the definition'[15].The 1954 Convention in Article 1 defines stateless as a person , 'who is not considered as a national by any State under the operation of its law'[16].This *de jure* situation is also recognized by the 1961 Convention on the Reduction of Statelessness.[17]It is believed by many legal scholars that the concept of statelessness should encompass more than *de jure* statelessness. The conventional definition is too narrow and limited as this does not cover those persons who have a nationality technically but not fruitfully or cannot prove their nationality on the basis of evidence.[18] The prior statement should be well understood with the following statement:

> The definition of statelessness outlined in the 1954 Convention precludes full realization of an effective nationality because it is a technical, legal definition which can address only technical, legal problems. Quality and attributes of citizenship are not included, even implicitly, in the definition. Human rights principles relating to citizenship are not delineated, despite the inspiration of the Conventions themselves by article 15 of the Universal Declaration of Human Rights. The definition is not one of quality, simply one of fact.[19]

The same author further clarifies her opinion as follows:

> The definition of a *de jure* stateless person was chosen in order to exclude the question of whether the person has faced persecution, as there are conflicts of legal issues which might result in statelessness without any willful act of neglect, discrimination, or violation on the part of the State. *De facto* statelessness, on the other hand, was presumed to be the result of an act on the part of the individual, such as fleeing from the country of nationality because of persecution by the State. The drafters of the 1954 and 1961 Conventions felt that all those who faced persecution, and who did not have an effective nationality, would be considered refugees and would receive assistance from the international community under the terms of the 1951 [Geneva] Convention relating to the Status of Refugees. Quite intentionally, then, the drafters of the 1954 Convention relating to the Status of Stateless Persons adopted a strictly legal definition of stateless persons.[20]

From this point it may be argued that persons without effective nationality should be treated as stateless.[21] These persons may have a legal bond with a country but no longer be able to utilize it or enjoy the benefits for various socio-political reasons or cannot prove it with sufficient evidence.[22] In this regard the definition of statelessness should be broadened to include *de*

facto statelessness.[23] Categorically there are three groups who may be considered as *de facto* stateless[24]:

    i.   Persons who do not enjoy the rights attached to their nationality;

    ii.   Persons who are unable to establish their nationality, or who are of undetermined nationality;

    iii.   Persons who, in the context of State succession, are attributed the nationality of a State other than the State of their habitual residence.

In this context a definition of *de facto* stateless adopted by the Council of Europe's Group of Specialists on Nationality may be considered as timely with regard to the expansion of statelessness regime[25]:

> persons [who] do possess a certain nationality, but where either the state involved refuses to give the rights related to it, or the persons involved cannot be reasonably asked to make use of that nationality, yet it has to be underlined, that it is up to the states to determine what de facto statelessness is and thus which persons are to be covered.

The Inter-American Court on Human Rights in the Case of the Yean and Bosico Children v. The Dominican Republic[26] held that:

> States have the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons. This condition arises from the lack of a nationality, when an individual does not qualify to receive this under the State's laws, owing to arbitrary deprivation or the granting of a nationality that, in actual fact, is not effective.

As the primary responsibility of States includes, prevention and reduction of statelessness[27], India should attempt to identify effectively stateless persons and find ways to reduce it. In India it is a fact that we will find people without effective nationality due to the effects of partition, decolonization, internal politics. Security issues in India, negative legislative intent, civil war in Sri Lanka and Bhutan, Indo-China relationship, etc. coupled with the lack of measures in Indian citizenship law to deal with this grave situation, worsens the situation. At the same time India is not bound by the terms of any of the Conventions relating to Statelessness as India has not acceded/ ratified/ adopted/ signed those. However, India is a party to various other international instruments which makes India liable to protect the stateless population in India.

The general comment under International Covenant on Civil and Political Rights on the issues of position of aliens upholds that the rights guaranteed under this covenant should guarantee without distinction to aliens and citizens.[28]The general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant.[29] Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to aliens. However, the Committee's experience in examining reports shows that in a number of countries other rights that aliens should enjoy are denied to them or are subject to limitations that cannot always be justified under the Covenant.[30]

The drafters of the Convention on the Elimination of All Forms of Discrimination Against Women were preoccupied with ensuring that women attain equality with men with regard to their own nationality and that of their children.[31] It is assumed that if women do not receive equal treatment with men, then that amounts to discrimination and again women may face discrimination for which they may not find adequate redress.[32]

The Convention on the Rights of the Child states, that the child shall have the right to acquire a nationality, while State Parties have to implement these rights according to their national law and obligations under relevant international instruments to prevent the child from becoming stateless.[33] This convention further provides that State Parties undertake to respect the right of the child to preserve his or her nationality as recognized by law without 'unlawful interference', and declares that State Parties shall provide assistance and protection to a child 'legally deprived' of, in this case, nationality, for its speedy restoration.[34]

Parliamentary Discussions and Judicial Pronouncements Related to Citizenship in India

The issue of granting citizenship of India to the various effectively stateless persons has stormed the both houses of the Indian Parliament. On various occasions the Members of the Parliament have asked specific questions about the process of granting Indian citizenship to the *Chakma* and *Hajongs*, Pakistani and Bangladeshi migrants in various Indian states. There has been a continuous discussion starting from 1993 to present day where the Members of the Parliament actually showed interest in reducing statelessness in India. However, there has been no discussion on the definitional aspect, and by and large it is derived from the discussion that the Members of the Parliament are considering any group who are present in India without an effective nationality as stateless as they are continuously insisting the government to grant citizenship, expedite the citizenship granting process, propose a new bill, delegated powers etc. The following paragraphs will be addressing these parliamentary proceedings in a nutshell.

Nyodek Yonggam, MP, had asked the Minister of Home Affairs the process through which citizenship was being granted to *Chakma* refugees settled in various parts of India.[35] The Minister of State for Home Affairs replied that *Chakma* refugees who were residing in Arunachal Pradesh and who had arrived in India before 25March 1971, were under consideration for the granting of citizenship by the Ministry. However, *Chakma* refugees living in other parts of India had not been considered for citizenship granting.

Drupad Borgohain, MP, had asked the Minister of Home Affairs about the latest decision of the Ministry to grant Indian citizenship to *Chakmas* and *Hajongs* who migrated from Bangladesh to Arunachal Pradesh and whether there would be any bill to come before the parliament on this issue.[36] The Minister of State for Home Affairs replied that the granting of citizenship was under consideration but there was no such proposal to introduce a bill in the parliament regarding this issue.

Further, A. Vijayaraghavan, MP, had asked the Minister of Home Affairs if the Ministry had received any representation to grant Indian citizenship to Pakistani citizens settled in Malappuram district of Kerala during the time of independence and whether there was any attempt in denying Ration Cards by the District Magistrate in 2003 to family members of these persons who are citizens of India by birth.[37] The Minister of State had replied that the Ministry did not receive any such representation. If they would apply for Indian citizenship, proper action would be taken by the Central Government as per the Indian Citizenship Act, 1955 and Citizenship Rules, 1956. However, no such information on denying ration cards was available at that time and the Minister of State assured that the information would be collected and laid down in the table of Rajya Sabha. Mr.Vijayaraghavan, another member of parliament, in 2005 had asked the Minister of Home Affairs, whether the Ministry extended time frame of the delegated powers of the District Magistrates of Gujarat and Rajasthan to grant Indian citizenship to persons who came from Pakistan, and the State wise number of persons who were granted Indian citizenship in the last year.[38] The Minister of State replied that the Ministry extended the time frame of this delegated power by one year and the number of Indian citizenship granted in the last one year to migrants from Pakistan in Gujarat and Rajasthan were 1,469 and 11,298 respectively.

The Minister of State for Home Affairs in 2013 while discussing the resolution and answering the questions related to formulation of an action plan to rehabilitate persons displaced from Pakistan finally requested the members to withdraw the resolution.He said the following[39]:

The Minister of State in the Ministry of Home Affairs (Shri Mullappally Ramachandran):

…A very important issue has been raised by Shri Meghwal relating to the rehabilitation of displaced Hindu families presently coming from Pakistan. It is worthwhile to mention that in order to solve the massive problem of mass influx of displaced persons from the erstwhile West Pakistan -- as a result of partition in 1947 and to rehabilitate them -- the Government of India, during 1950's, had taken a series of measures by enacting a series of Acts. As the major works of claims, compensation and also rehabilitation, more or less, had been completed by 1970, the Central Government repealed all these Acts in 2005. At present, we do not have any Act in this connection because this august House has repealed all these Acts…

I would like to state that the Central Government has been very sensitive to the issues faced by the Pakistan nationals who migrated to India at various point of time. For instance, it has been decided that the cases of the Pakistan nationals who entered India prior to 31.12.2004 would be processed on a case to case basis, and if an applicant files an Affidavit before the authority prescribed under Rule 38 of the Citizenship Rules, 2009, that is, the Collector, District Magistrate and Deputy-Commissioner, it may be accepted in lieu of the Renunciation Certificate. The State Governments and UTs concerned have been duly requested to deal with these matters as per instructions given by the Ministry of Home Affairs. In fact, the Ministry has also stipulated a Standard Operating Procedure for dealing with foreign nationals who claim to be refugees.

Madam, another important issue has been raised, that is, delegation of power to the District Collectors in the States of Gujarat and Rajasthan for grant of Indian Citizenship to Pakistan nationals. This is a very important issue which has been raised by some Members. The powers to grant Indian Citizenship to nationals of Pakistan belonging to minority Hindu community were delegated to the Collectors of Kutch, Patan, Banaskantha, Ahmedabad of Gujarat and Barmer and Jaisalmer of Rajasthan in 2004 for one year to grant citizenship to Pak nationals of minority community staying in the border districts of Rajasthan and Gujarat as a special case. This delegation was extended up to 2007 on year to year basis. Such powers were not delegated to any other State. Sufficient time was given to these two States to decide such pending cases...

The provisions of applying for Indian Citizenship continue to be available as per provisions of Citizenship Act of 1955. Normally, the Central Government takes about four months in processing cases and issuing acceptance letter in consultation with security agencies. In order to make the procedure simpler, faster and transparent, the Home Ministry has decided to introduce what is called online submission of application for grant of citizenship with effect from 1.12.2001.

I would like to reiterate that the Government of India is very sensitive to the issue related to the welfare of all foreign nationals in India including Hindu Pak nationals who deserve support and attention subject to the laws of the land and policies of the Indian Government…

It is clear from the abovementioned questions by the Members of the Parliament and the answers of the Ministry of Home Affairs that the parliamentarians of India and also the Government of India are not concerned about the two conventions of statelessness and precisely they have clubbed these two categories. They have never tried to refer to these two conventions anywhere during these proceedings.[40]

India is not a party to the stateless conventions, however this does not mean that India is under no obligation to protect. The principle of non *refoulement* has been accepted as a principle of customary international law. This goes on to add that the other principles regarding refugees enumerated in various international law instruments have to be taken into consideration. This leads to the international law and municipal law debate. Thus stands out a question- Why would a nation respect international principles and policies unless they have been incorporated in the municipal laws of that nation? The Supreme Court of India deserves a laud in this regard. The way Supreme Court of India has interpreted the Constitution in its decisions to highlight the duty of the state to accord refugee protection is phenomenal.

In its two major decisions the Supreme Court had referred to Article 14 of the Universal Declaration of Human Rights and Article 13 of the International Covenant on Civil and Political Rights to uphold the obligation of refugee protection.[41] The first instance was the case of *Khudiram Chakma v. State of Arunachal Pradesh[42],* where the Supreme Court of India had referred to the Universal Declaration of Human Rights in the context of refugees in India in the following words:

Article 14 of the Universal Declaration of Human Rights, which speaks of the right to enjoy asylum, has to be interpreted in the light of the instrument as a

whole, and must be taken to mean something. It implies that although an asylum seeker has no right to be granted admission to a foreign State, equally a State which has granted him asylum must not later return him to the country whence he came. Moreover, the Article carries considerable moral authority and embodies legal prerequisite of regional declarations and instruments.[43]

The pro refugee protection approach was further reflected in the case of *National Human Rights Commission v. Sate of Arunachal Pradesh*[44]. The Supreme Court of India held that *Chakma* refugees who had come from Bangladesh due to persecution should not be forcibly sent back to Bangladesh as they might be killed or tortured or discriminated, and in result of this they would be deprived of their right to life under Article 21[45] of the Constitution of India. The Supreme Court in the same case made a number of observations relating to the protection of *Chakma* refugees in India:

> We are a country governed by Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to the procedure established by law. Thus the State is bound to protect the life and personal liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons…to threaten the chakmas to leave the State, failing which they would be forced to do so…the State government must act impartially and carry out its legal obligations to safeguard the life, health and well being of chakmas residing in the state without being inhibited by local politics. Besides, by refusing to forward their applications, the chakmas are denied rights, constitutional and statutory, to be considered for being registered citizens of India.[46]

A subtle derivation from the above trend would stand to claim that the obligation to protect refugees or particularly the stateless persons is paramount. The importance of Article 21 of the Constitution can be well inferred from the decisions rendered by the Supreme Court. Article 21 is a non-derogable right. It would be therefore not incorrect to claim that the term "reducing statelessness" with regard to the groups who are staying in India for a long period or for generations have been fully incorporated into Indian Law via Article 21 of the Constitution of India.

However, with regard to illegal migration from Bangladesh, the Supreme Court had declared the Illegal Migrants (Determination by Tribunal) Act, 1983 unconstitutional in the decision given in *Sarbananda Sonawal v. Union of India*[47]. The Act was enacted by the Indian government, partly to prevent a witch-hunt against illegal migrants, but also with the professed aim of making the detection and deportation of illegal migrants easier. This Act resulted in the establishment of tribunals to determine whether or not a person is an illegal migrant. This was specifically and exclusively applicable to foreigners in Assam, while foreigners in the rest of India covered under the provisions of the 1946 Foreigners Act.[48]While the Foreigners Act specifically provides that the onus of proving citizenship status rests on the person accused of being a non-citizen[49], whereas the 1983 Act contained no such provision, and in *effect,* its provisions accorded greater protection to anyone accused of being a foreigner in placing the burden of proof on the prosecution to establish that

he or she is not a citizen of India. In this case, the petitioner, a former president of the Assamese Students Union, stated that the 1983 Act was unconstitutional as it discriminated against a class of citizens of India, making it impossible for citizens resident in Assam to secure the detection and deportation of foreigners from India. The petitioner claimed that the Act had actually ended up protecting illegal migrants. The Court declared the Act unconstitutional on the ground that it violated article 355 of the Indian Constitution.[50]This judgment has a very long standing effect in determining the issue of granting citizenship in India where in one side there is threat to security and in another side there is a possibility of social integration.

Conclusion

It is noteworthy that stateless persons have not been historically distinguished from refugees; however they are now of different categories where refugees are identified and stateless persons are mostly unidentified.[51] For a country like India statelessness emerges mainly for the following reasons rigidity of Indian citizenship laws, administrative obstacles by Indian authorities and neighbouring countries, laws that revoke citizenship in some of the neighbouring countries, arbitrary and discriminatory denial of citizenship in India in case of children, State withdrawal of Citizenship in some of the neighbouring countries, laws affecting women rights of nationality and subsequent rights, transnational migration, etc. This is the time for India to deal with this situation of effective statelessness or in a new future likely after fifty years the number will grow in such huge that the government machinery will not be able to deal with their demands may be for new independent country for each and every groups. Though in this present world political scenario it will not be favourable to adopt any of the conventions of statelessness by the Indian government as there is a growing concern over the third world approaches to international law, precisely public international law.[52]

So the most important possibility to deal with statelessness in India would be to deal with human rights approach as humanism and compassion have been India's ageless heritage and is a fundamental duty under Article 51[53] of the Indian Constitution. The recent judgments[54] of the Delhi High Court and Karnataka High Court dealing with citizenship rights of *Tibetan* children who were born in India from 1950 to 1987 can now exercise their right to vote, have excelled the opportunity for other groups present in India to make their way towards Indian citizenship!

Notes

In case of India there is no legal distinction between nationality and citizenship. So these terms will be used interchangeably in this paper.
[1] This Bengali folk song may be translated as "we have no residence, we have no village; we have no direction, we have no country". This song with its excellent lyrics and music portrayed the misery and sorrow of every person who became homeless,

rather refugee, during the dawn of independence of India. Even today this song has relevance with regard to misery and sorrow of refugee and stateless persons staying in India. The song is available at http://www.youtube.com/watch?v=LrwYo5-DLpI.

[2] On *de facto* statelessness see for example, Section II.A. of United Nations High Commissioner for Refugees, *Expert Meeting on the Concept of Stateless Persons under International Law (Summary Conclusions),* 2010 (hereinafter referred to as the *"Prato Conclusions"*):

> "1. *De facto* statelessness has traditionally been linked to the notion of effective nationality and some participants were of the view that a person's nationality could be ineffective inside as well as outside of his or her country of nationality. Accordingly, a person could be *de facto* stateless even if inside his or her country of nationality. However, there was broad support from other participants for the approach set out in the discussion paper prepared for the meeting which defines a *de facto* stateless person on the basis of one the principal functions of nationality in international law, the provision of protection by a State to its nationals abroad.
>
> 2. The definition is as follows: *de facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality". Available at http://www.unhcr.org/refworld/pdfid/4ca1ae002.pdf.

[3] International Covenant on Civil and Political Rights, 1966. India acceded to the convention on 10 April, 1979.

[4] International Covenant on Economic, Social and Cultural Rights, 1966. India acceded to the convention on 10 April, 1979.

[5]Convention on the Rights of the Child, 1989. India acceded the convention on 11 December 1992.

[6] International Convention on the Elimination of All Forms of Racial Discrimination, 1965. India ratifies the convention on 03 December, 1968 with reservations.

[7] Convention on the Elimination of All Forms of Discrimination against Women, 1979. India signed the convention on 3o July 1980 and ratified it on 9 July 1993 with reservations.

[8]*National Human Rights Commission vs. State of Arunachal Pradesh*, 1996 AIR 1234.

[9] W.P.(C)No.243/2012, pending before the Supreme Court of India

[10]*Chairman, Railway Board &Ors. vs. Chandrima Das & Ors.*, 2000 AIR 988

[11] Goldston, James A. 2006. "Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens"*, Ethics & International Affair*, 20, pp.321- 322.

[12] UNHCR estimates there to be at least 12 million people around the world. *See* http://www.unhcr.org/pages/49c3646c155.html.

[13]The International Court of Justice held in the Nottebohm Case that ". . . it is for every sovereign state to settle by its own legislation the rules relating to the acquisition of its nationality." Nottebohm (Liechtenstein v. Guatemala), Judgment, 1955 I.C.J. 4, at 20 (Apr. *6, 1955)*.

[14] Article 1(1) of the 1954 Convention sets out the definition of a stateless person as: *For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.*

[15]Weissbrodt, David and Collins, Clay. 2006. "The Human Rights of Stateless Persons", *Human Rights Quaterly*, 28(1), p. 245, 251 . ."While there may be complex legal issues involved in determining whether or not an event has occurred by operation of law, national courts have means of resolving such questions", *see* Batchelor, Carol A.1995. "Stateless Persons: Some Gaps in International Protection", *International Journal for Refugee Law*, 7, p. 232.

[16]Convention relating to the Status of Stateless Persons, *adopted 28* July 1951, G.A. Res. 429 (V), 360 U.N.T.S. 117 *(entered into force* 6 June 1960)

[17]Massey, Hugh.2010. " UNHCR and De Facto Statelessness", Legal and Protection Policy Research Series, http://www.refworld.org/pdfid/4bbf387d2.pdf, last accessed March 2, 2014. Also see, UNHCR.2010. " UNHCR Action to Address Statelessness - A Strategy Note", UNHCR Division of International Protection, http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4b9e0c3d2, last accessed February 2, 2014. Also note that UNHCR's responsibilities for stateless persons began with refugees who are stateless under paragraph 6(A) (11) of its Statute and article 1(A) (2) of the 1951 Convention relating to the Status of Refugees, both of which refer to stateless persons who meet the criteria of the refugee definition. UNHCR's mandate responsibilities concerning statelessness were expanded following the adoption of the 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness. General Assembly resolutions 3274 (XXIV) and 31136 designated UNHCR as the body mandated to examine the cases of persons who claim the benefit of the 1961 Convention and to assist such persons in presenting their claims to the appropriate national authorities.

[18]David and Clay, 2006.

[19]Carol, 1995.

[20]Carol, 1995. Despite the reluctance of the drafters of the 1954 Convention to acknowledge *de facto* statelessness, the Final Act of the 1961 Convention recommends that" persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality." *United Nations Conference on the Elimination or Reduction of Future Statelessness, 30Aug. 1961,* Final Act, 91 23, U.N. Doc. A/Conf./9/14 (1961).

[21]David and Clay, 2006.

[22]Ibid.

[23] However, UNHCR's mandate on *de facto* stateless persons is:

"The extent to which *de facto* stateless persons who do not fall within its refugee mandate qualify for the Office's protection and assistance is largely determined by UNHCR's mandate to prevent statelessness. It was noted that unresolved situations of *de facto* statelessness, in particular over two or more generations, may lead to *de jure* statelessness." Op Cit 2, at p. 8.

[24]Massey, *supra note* 14, at iii.

[25] As quoted by Massey, *supra note* 14, at 30

[26] Judgment of 8 September, 2005, available at http://www.refworld.org/docid/44e497d94.html.

[27]UN General Assembly Resolution No 61/137, adopted on 19 December, 2006, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/61/137&Lang=E

[28]General Comment No. 15, The position of aliens under the Covenant, 04 November 1986, available at http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/bc561aa81bc5d86ec12563ed 004aaa1b?Opendocument.

[29]Article 2:

> 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
>
> 3. Each State Party to the present Covenant undertakes:
>
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted.

[30]General Comment, *supra note* 24, Para 2

[31]Article 9:

> 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
>
> 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

[32] Lee, Tang Lay. 1998. "Refugees from Bhutan: Nationality, Statelessness, and the Right to Return," *International Journal of Refugee Law*, 10 (1-2), pp118-155.

[33] Article 7:

> 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.
>
> 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

[34]Article 8:

> 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
>
> 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

[35] Question No. 169, Proceeding 2821, Rajya Sabha, 22 December 1993.

[36] Question No. 197, Proceeding 2127, Rajya Sabha, 11 December 2002.

[37] Question No. 198, Proceeding 617, Rajya Sabha, 26 February 2003.

[38] Question No. 204, Proceeding 3634, Rajya Sabha, 27 April 2005.

[39]Resolution of 17 August 2012, Discussion on 13 May 2013.

[4040] However, the International Law Commission observed that Article 1(1), definition of stateless, of the 1954 Convention relating to the Status of Stateless Persons can "no doubt be considered as having acquired a customary nature". Op Cit 2, at p. 2.

[41] Article 14(1) of the Universal Declaration of Human Rights states "Everyone has the right to seek and to enjoy in other countries asylum from persecution." Article 13 of the International Covenant of Civil and Political Rights states: 'An alien lawfully in the territory of a State party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority'. The Supreme Court used these international mechanisms to hold that it is the duty of the state to protect refugees.

[42] (1994) Supp (1) SCC 615

[43] Ibid

[44] (1996) 1 SCC 742

[45] Article 21: *"No person shall be deprived of his life and personal liberty except according to the procedure established by law".*

[46]*National Human Rights Commission, supra note* 35

[47](2005) 5 S.C.C.665

[48]The Foreigners Act confers wide-ranging powers to deal with all foreigners, prohibiting, regulating, or restricting their entry into India or continued presence in the country including through arrest, detention, and confinement. The Foreigners Act, No. 31 of 1946.

[49]Section 9 reads as follows:

Burden of proof - If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given there under, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.

[50] Article 355: "It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution."

On the broad meaning of aggression, the Court referred to the U.S. Supreme Court decision in *Chae Chan Ping:*

"To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character or from vast hordes of its people crowding in upon us." *See Sonawal,* (2005) 5 S.C.C. 665, para. 57 (citing Chae Chan Ping v. United States, 130 U.S. 581 (1930).

The Court also quoted Lord Denning, former Justice of the U.K. Court of Appeals: In recent times England has been invaded not by enemies nor by friends, but by those who seek England as a haven. In their own countries there is poverty, disease and no homes. In England there is social security, a national health service and guaranteed

housing all to be had for the asking without payment and without working for it. Once here, each seeks to bring his relatives to join him. So they multiply exceedingly. *See Sonawal,* (2005) 5 S.C.C. 665, para. 59.

[51] Goodwin-Gill, Guy S. 1994. "'The Rights of Refugees and Stateless Persons: Problems of Stateless Persons and the Need for International Measures of Protection".In *Human Rights Perspectives and Challenges,* ed K. P.Saksena. New Delhi: Lancer Books

[52]B.S. Chimni's work in the area of third world approaches to international is well regarded.

[53] Article 51: Promotion of international peace and security The State shall endeavour to-

>   (a) promote international peace and security;
>   (b) maintain just and honourable relations between nations;
>   (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration.

[54] See Children of Tibetan Refugees Can Now Vote, 11 February, 2014, *The Indian Express,*http://indianexpress.com/article/india/india-others/children-of-tibetan-refugees-can-now-vote/, last accessed May 27, 2014. Also see, Karnataka High Court Judgment in *Tenzin L. C. Rinpoche vs. Union of India & Anr.,* WP No. 15437/2013 (GM-PASS) and Delhi High Court Judgment *Namgyal Dolkar vs. Govt. of India*, WP (C) 12179/2009.

Women in Post-Conflict Nepal: Engendering the Issues of Women IDPs in National Regimes

By

Gitta Shrestha [*]

Introduction

The issue of forced migration/internal displacement due to economic and natural factors is well documented and acknowledged both by the academia and the state. Alongside, conflict induced displacement has gained widespread attention in recent years with the growing internal conflict within nations.[1] A decade (1996-2006) long conflict displaced millions in Nepal. Caught in between the Maoist and the royal Nepal army, thousands of civilians were forced to migrate from the place of origin. Those who were forced to abandon their properties and belongings back at villages became miserable due to insufficient provision of state protection policies on Internally Displaced Persons (IDPs hereafter). The challenge was bigger for the female IDPs who ended up in extreme vulnerable situations while in their desperate attempts to search for livelihoods.[2] Single and rural women constituted a major proportion of the displaced who flocked to the capital and whose vulnerability got exacerbated on the face of their illiteracy and lack of exposure and mobility. Women, often the responsible care giver, are believed to bear the adverse effects of the conflict more than men. It is estimated that around 200,000 people have been internally displaced in Nepal during conflict years. 80 percent of the displaced were women.[3] Studies show that the rate of violence against women IDPs is extremely high. Without education or vocational skills, there are few ways for women IDPs to improve their lives. It has been reported that in absence of any livelihood alternatives, women were forced to work in massage parlours, cabin room restaurants and other establishments where they were subjected to sexual violence, exploitation and even trafficking.

Since 2005, when the IDPs were first recognized as 'victims of conflict', the government had formulated different plans and policies on repatriation and relief of IDPs, however, critics pointed out government's failure to spell out a coherent set of practices and policies to address the protection and assistance needs of IDPs. Revised version of National IDP Policy of 2007, based on Guiding Principles on Internal Displacement (GPID) on IDPs is yet to be adopted and properly disseminated. [4]Furthermore, despite the evident gendered nature of displacement and the consequences arising out of it, the issue has hardly been engendered in policies in order to provide relief to the women displaced by 10 years of conflict. This study intends to address yet persisting discriminatory gap in policies, and its impact on women IDPs. The paper re-visits the policies using gender lens, and examines the implementation status with a focus on welfare of women IDPs. In doing so, the study reflects the space given to women's issues in the national policies and also, it analyses the space women have gained in practice as subjects of conflict in post-conflict peace process. Using the theoretical underpinnings from conflict and gender studies, which view peace building processes as potential sites for women to advance women's rights and to reconstruct power relations, it would be interesting to see if women are using collective agency to integrate their needs into national IDP regimes.

This article tries to look at the following:

How the national plans and policies have been framed in response to the needs of women IDPs?

What is the implementation status of policies in response to the needs of women IDPs?

How the policies have contributed to the empowerment (improved status) of women IDPs?

How women as an agency are working in order to integrate their needs into national IDP regimes?

What are the unattended needs not integrated in national and international regimes from IDP women's perspective?

Based on primary and secondary sources of information, interviews conducted with internally displaced women in Kathmandu, this article is also an attempt to see if the women IDPs have gained after the signing of the Comprehensive Peace Accord 2006 while highlighting the gaps in the national policies.

Women and Conflict: Theoretical Perspective

Growing literatures on women and conflict over the last 20 years deal with the ways in which war affects women differently from men, the particular vulnerabilities and capacities that women develop in conflict and post-conflict phase, and the different ways in which relief and other forms of assistance can affect men and women.[5] Traditionally, women in conflict situations have been perceived as supporters. Men are the soldiers or aggressors and women are wives, mothers, nurses, social workers and sex-workers. Women are argued to

be peace-loving and humanist by nature and men are seen as the sole protagonists of war and conflicts;[6] this leads to the formation of an image which treats women as victims of war.

Based on men's and women's experience of conflicts, literatures on women and conflict in late 90's challenged the traditional notion. Scholars advocated the fact that armed conflict involved struggles for power in which women and men are caught-up in different. Research by feminists in the North and the South has challenged the so-called peaceful nature of women by examining their involvement in national liberation struggles, their direct and/or indirect support of armed conflicts and their contributions to war and militarism in general.[7]Experience from around the world shows the possible active roles women have played in the events of fighting and instability, and even in combat.[8] Some authors have also pointed that women have encouraged or incited their men folk to violence or at times have acted as an active participant in war as soldiers; thus they conclude that both men and women could equally fall prey to different forms of violence.[9]

Despite the above claim, a growing body of evidence argues that while conflict inflicts suffering on everyone, women are particularly affected by its short and long term effects; women make up the majority of civilian casualties and suffer most as wives, mothers and daughters of those killed. War exacerbates women's sufferings and it results in increased marginalisation, and perhaps to greater abuse of their rights.[10] However, irrespective of persistent contradictory views among scholars, the widely accepted fact is that whether in traditional roles as wives and mothers, or in roles as aggressors and supporters of conflict, women continue to experience discrimination, due to the unequal power structures that govern their relationship with men. It can be argued that conflict affects both women and men negatively and results in gender-specific disadvantages, particularly for women that are not always recognized or addressed by the mainstream, gender-blind understanding of conflict and reconstruction. Since the start of the Twenty first century, a new perspective was born in relation to women and conflict which argues that social upheavals may lead to either equitable relationship between men and women or it could exacerbate existing gender inequities[11]. It has been argued by scholars that conflicts/social upheavals pave way for social transformations. Women as well as men, in order to survive, are obliged to adopt survival mechanisms. The most widely acknowledged is migration or displacement as a push factor forcing women to take socially unacceptable role and the second view is that, survival mechanism is adopted by women when they are forced by death or desertion to take over tasks previously carried out by men.[12] Scholars like El-Bushra, argues that possible changes in the gender division of labour takes place due to war and women fill the absesnce of male labour force by learning new skills and adapting new economic and reproductive roles.[13] As Judy El Bushra & Eugenia Piz, opines,

> Conflict also changes the options available to individuals and communities caught up in these conflicts, either restricting them or sometimes broadening them. It can deepen the poverty and vulnerability from which it grew, or, in

other instances, can challenge the past and open up new avenues to allow people the chance of positive reconstruction.[14]

While the negative consequences of conflict are widely accepted, it is argued that conflicts disturb established norms which have unintended positive effects on the status and role of women in their societies, and therefore on their role in development. However, El Bushra cautions about the transitory nature of changes brought about by war and emphasises greater possibility of new negotiations between men and women and wider changes in political relations include women taking greater public roles and or developing more and stronger forms of women's organizations including organizations that take on dynamic roles in reconciliation peace building and development.[15]

The argument that conflict might lead to positive changes for women, however, is strongly contested by some scholars who point to the huge price women pay in pain, suffering, and loss for the newfound gains. The new role as primary provider exposes several women to further abuse. Conflict shatters the comfort of predictable daily routines and expectations. Women and girls are equally affected in a fragile environment where social services they once depended on degrade or disappear. Although conflict may, in some cases, improve gender relations as a result of shifts in gender roles - some changes even improve women's rights - by and large its impact on women is devastatingly negative. [16]

Against this backdrop, this paper tries to examine the post conflict status of women IDPs in the light of existing policies on women IDP and try to explore the transformations in gender roles. To analyse gender roles, the concepts of 'identity' (the social process whereby individuals come to identfy themselves with a particular configuration of social roles and relationships) and 'agency' (the strategies used by individuals to create a viable and satisfying life for themselves in the context of or in spite of these identities), as devised by El-Bushra, have been relied on.

Nepal has adopted several affirmative provisions including 33% representation of women in the legislature and all state structures. Rather than focussing on high level political change, the intention here is to examine the change in the status of women at the grassroots level who are the real and/direct victims of conflict. In line with Pettigrew's findings,[17] that argue that women's greater confidence in participating in public life is largely due to unintended consequences of the conflict rather than Maoist gender equality rhetoric or post conflict state-sponsored equality policies, the paper examines the changed status of women from a mere subject (victim) to women as an agency (actor) due to the circumstances created by conflict.

Building Space between Uncertainties

This section, based on empirical research, shows how women IDPs were able to build space for themselves amid uncertainties. It is common knowledge that once displaced, women become target of sexual abuse, exploitation and even trafficking. Displacement from their homes makes IDPs particularly women, vulnerable to human rights abuses and neglect. In a

society where most women already suffer from discrimination, displaced women, and in particular those who have lost their husbands, are highly vulnerable to further impoverishment and as a consequence they are often exposed to significant protection risks. The following case study illustrates this point.

Though forty years old Malwika and forty three years old Subita were introduced as widows, they were wearing red tika, red Vermillion and Mangalsutra.[18] The symbol of 'red' for a widow is not normal, especially in Brahmin community in Nepal. At one point of the conversation Malwika stated, 'I denied putting white tika on my forehead, and my in-laws later didn't object'. Later she added that these symbols were important for single women in order to live with dignity in our society. When one abandons these symbols one becomes target of sexual harassment and other forms of abuse.

The above statement reflects an important issue with regard to protection of human rights, which though is spaced in national and international regimes, is meaningless on practical terms. Reflecting on principle 11 of UN Guidelines on Internal Displacement, the National Policy (NAP) 2007 (section 7.10 and 9.12) does call for target programmes for the protection of rights of women, nonetheless, it does not contain any comprehensive strategies and plans to protect women from any kinds of sexual assault.[19] But women are not passive actors. They are visibly devising coping strategies to deal with the situation at their best. Carrying red attire despite being a widow is a symbol of courage and defiance towards established Hindu norms. This change was certainly not intended by the protagonist of the wars in Nepal. However, what also needs to be noted is that the courage in women to defy a particular norm, does not give them the confidence of making state mechanisms accountable for their protection. There are mainly two reasons underlying this lack of confidence among women in Nepal – a) A majority of women still carries no idea how the problem, of which they become daily victims in public and private spaces could be solved; b) A majority of women even though educated do not prefer to bring such cases of sexual harassment to the authorities and live with psychological trauma for years. This is because of the fear that the blame ultimately will fall on women. Moreover, some do not go because they lack confidence in the state mechanisms, as evident from the statement of Shanti (aged 38), who clearly stated that she did not go anywhere because she knew that even if she had gone and complained, everyone would have blamed her instead of punishing the offenders. This renders longstanding efforts made by several organizations, both national and international as well as state agencies to ensure safety for IDP women, ineffective.

Social Capital: A Counterpart in Women's Struggle

Shanti's husband (a teacher by profession) was hanged by the Maoist in 1997 in Chaurpani VDC, in Gorkha District. She hailed from a well off family with connections. She had raised her voice and sought clarification; consequently she was kicked out of village with her two very young kids (one

was two years old and the other was four). She moved to headquarter, faced sexual harassment, and was forced to come to the Capital in 1998. She lived with her relatives for a year, and in 1999 she rented a room at Banasthali, near Kathmandu She had taken loans from relatives, worked on the agricultural lands owned by them and also worked as a broker, buying and selling lands and houses. She shared, 'I faced dire hardships; we'd nothing- no stove, no utensils, no clothes. When I remember those days, I even can't figure out how I was able to overcome those dark …due to my contacts with political leaders, I worked for two years in drinking water organization as getting job was not that easy and I kept on pressurizing them'. [20]

The case of Shanti shows how a simple village woman after long struggle has succeeded to become a part of a campaign and is actively fighting for justice. With the help and inspiration from her political networks, she is not just affiliated to Nepali Congress, but she actively participates in delegations to different ministries and top level leaders.

Women are not a homogenous category and neither does displacement affect all women in the same way. Not all the displaced women are strong and fortunate like Shanti. Apparently, she is able to make space for herself despite various hardships and wish to take women's voice at higher level. As evident from her narration, this would not have been possible without her extended political and social networks. Usually in the absence of human and physical capital, an individual relies on social capital (relatives, friends, networks). After being displaced, most of the respondents have reported to have received some help from friends and relatives, some lived in rented accommodations and some sought shelter in dilapidated unhygienic places.[21] In the peak years of conflict, a large section of displaced persons migrated to the capital, Kathmandu. Though the National Policy guarantees the displaced the choice to settle at any place within national territory, it has ignored and failed to address a stable livelihood base especially for single women. The package of rehabilitation failed to take into account the IDPs preference of staying back at urban areas. Skill oriented trainings (Section 8.2.7), [22] has been one of the strategy of the government to widen the livelihood opportunity of the displaced however, studies on IDPs indicate that trainings were limited to immediate IDP camps and never reached to those who lived not in camps but in other parts of the city.

The Unintended Creation of Space for Women

Studies on forced migration have showed how displacement has increased vulnerability for women. Within patriarchal social structure and prevalent gender inequities, displacement disproportionately disadvantages women, because it results in reduced access to resources to cope with household responsibility and increased physical and emotional violence. Out of compulsion and uncertainties, women end up in an unfamiliar environment and changed safety structures. It should be kept in mind that changes in the roles and rules in a new social structures offer extra challenges. They become economically vulnerable in the absence of stable livelihood in the new

environment. Nevertheless, they have no choice other than to keep struggling with the situation to their best and learn new strategies to deal with it.

Roka's (Roka was 32 in 2002) husband was first abducted and then killed by the Maoist in 2001. As soon as she along with her two kids (6 months old son and 2 years old daughter) and mother-in-law landed in a small rented room of Koteshwor, she was caught in the web of never ending hardships. In the absence of her husband, she became overburdened with extra responsibilities. She worked as a maid and though the leaders helped her with small donations of Rs 1000, that was not enough to offer stability to the family. She had added, 'You see! If I fall sick, I don't get money and it becomes hard to make ends meet. I am the only bread earner in my family, both the kids are school goers and my mother is law is old, my salary is hardly enough to meet our requirements'.

With 4500 monthly income she pays rent, school fee, buy books, clothes, food and what not. In the initial years, with no skills and education it was difficult for her to move from one office to another. The day the Maoist abducted her husband, she not only lost all the documents but also his last picture. She even did not have death certificate of her husband and never saw her husband's dead body. The Maoist confirmed about his murder at CDO office following which she got the documents back and she received her 'citizenship card', for the first time. She experienced widowhood when she was just 22. 13 years went by and she is still making efforts to make a new life but thirteen years of hardship has changed her into an independent and strong woman, fighting her problems on her own. 'If we all would have died together, all the problems would have been solved…I was afraid to talk before, now I can express myself', she added.

Women in National IDP Provisions

When we examine the policies, we find that much emphasis has been given on 'return', of IDPs however, there is no arrangement of community-level reconciliation program. It has failed to address other aspect of a victim's life. Government assistance has mainly focused on return with little or no provision for reintegration.

A majority of the respondents expressed dissatisfaction with regard to the provisions for IDPs. The government told people to return and gave IDPs only the bus fare (1000 Nepali Rupees) and nothing else. However, the respondents noted that it was difficult to resettle after coming back as the villages were not secure. Police posts were far way and the houses were scattered and there were many who took the money and did not go and then there were many who even after their return, went back to the capital due to absence of conductive environment to resettle at the places of origin. As per the provision, conflict victims were supposed to receive a grant of NRs. 5000. The respondents informed that the grant differed according to the distance from the capital to the district. Moreover, it was so meagre that even those who claimed it either did not go back or again returned to Kathmandu in the

absence of promising environment. The amount for those displaced from Gorkha was only NRs.300.

Despite the pressure from international communities and other communities and agencies at the national level, research shows that despite the Comprehensive Peace Agreement, 2006, the commitments by the major political parties, the state has failed to implement National Action Plan (NAP) 2007 on practical grounds.[23] The weak implementation side of the national polity has been pointed by many. The problem with the identification of genuine IDP was a big challenge and coupled with the absence of the government in the villages, the prolonged and shaky peace talks and the stale status of promulgation of constituent Assembly, the IDPs formed a highly vulnerable group, who were skeptic about returning home.[24] Not to forget, those who chose not to return did not benefit from the government assistance despite the existing provision of resettlement on choice in the national plan. After peace talks, though many decided to return home, an estimated 50,000 IDPs chose local integration. Many are still perceived as 'enemies of the people', and therefore, do not prefer to go back to their places of origin due to security reasons. It is to be noted here that after several years of struggle and exposure to greater economic opportunity and better access to basic services (such as schools for children) return is often not considered an attractive option. Besides, it has been criticised for reaching only the most-connected among the displaced persons.

The program of rehabilitation lacks insights on several important aspects of re-construction of things which got destroyed during conflict years: house, land, basic facilities and infrastructure, livelihood and also relations. Mere provision of bus fare was unjustified on part of the government. The policy failed to see other important aspect of rehabilitation process. And as evident by the interviews, with no skills, education, money and men, the 'return process' pushed women back to the edge of marginalization in more remoteness. As detailed by a woman IDP from Gorkha district, women at remote corners of the villages have been living pathetic lives and are not able to voice their problems. She had informed that post-conflict, they have not received any relief, even though they have retuned back to their native place. There are no facilities, no services, and no livelihood opportunities. A decade long conflict plus years of failed peace negotiation has turned the agricultural land unproductive, there is no place to live as houses were destroyed or are in dilapidated conditions. As stated above, the package failed to take into account the IDP's preference of staying back at urban areas. Besides, their minds were still ridden with the fear of death, material loss and other forms of insecurity in the place of origin. An agriculture loan of NRs. 10,000 was promised by the government but was too unrealistic in view of unavailability of extra-economic support for reconstruction.

An estimated 200,000 people were internally displaced in Nepal due to a prolonged ten years of war. Eighty percent of the total displaced was women.[25] Women had to play important prominent roles in sustaining livelihood of families in all stages of development – from pre-conflict stage to conflict and now in post-conflict period. Women even were bound to

negotiate with the Maoist in the absence of male members in the family. They looked after the entire household and took the burden of men when the family migrated to relatively safe areas either for economic or political reasons. However, they were not spared from becoming victims at the hands of Maoist and security forces. Women dealt diligently with the state and the insurgent forces beyond their traditionally defined gender roles. They acquired a new role and space and forced to play the rules of what Ghimire terms 'broader macro force'[26]. The circumstances compelled them to take decisions for family. In a newly acquired role of household head, even those who were never mobile before were forced to take decisions on their own. A widow at Okhaldhunga said, 'After my husband's death, we started receiving death threats. I'd no other options than to move silently in dark with my children. I took that decision for the well being of my family'.

Though on rare occasions, women protested, at other times they simply joined the Maoists. Women also moved silently to safer areas and accepted the challenges at new places. Some women moved along with men, some moved out of the villages after the death of their husbands and some moved after the death of their father/guardians. Psychological trauma which women and children have to bear before and after displacement is immense. Respondents opined that following the pauperization of families, post-displacement, children's performance in schools got affected, to the extent that girls had to sacrifice studies in order to work so that the economic burden can be shared with the parents.

Sushila was a 12th grader in a very remote VDC of Gorkha District, when the Maoist abducted her father (teacher) and killed him in 2058BS. The emotional stress was immense, she couldn't continue her studies. Soon after the incident her mother decided to send all of her four kids to the capital (Kathmandu). She stayed back looking after the house and the fields. Sushila at an age of 18 became guardian of 3 siblings. She scarified her studies, and started looking for a job. A majority of respondents' main concern was found to provide better education to their children. They want their children's future to be bright and secure. The national plans have provision of free education for conflict affected children, however in most of the cases, mothers were found distrustful of the quality of education at government school. Therefore, most of them preferred boarding schools for their children. However, school fee with additional expenses for books, dress, and food was difficult to afford for many. Therefore, they had to rely on government schools. A few of them, nevertheless, were able to search scholarships either through individual direct foreign donations or through merit base scholarships in school.

Principal 23 of UN Guidelines and Section 9.5 and 9.6 of NAP, 2007 declares provision for the right to free education for IDPs. It ensures special efforts should be made to ensure the full and equal participation of women and girls in educational programs; education and training facilities shall be made available to IDPs, in particular adolescents and women, whether or not living in camps, as soon as conditions permit. In the case of Sushila, her family was the only victim in the village however, they were denied any

concession from the school authorities, neither had they received any educational relief from government's side in the capital. Respondents expressed provision of free education and also, job placement for the children of the victims would have brought some relief at least.

Conflict has conferred women greater responsibilities, as a result, women have enjoyed greater influence in decision making or in other words, they are compelled to make decisions in the absence of male head of the family. After intense struggle, in a new place they've been able to acquire a new space for themselves. Women took new economic non-traditional roles. They performed jobs previously held by men and thus, lead to long-term changes in the gendered division of labour[27]. And this is true, especially in the case of single women, who, now and then are obliged to take over the responsibility of supporting their households. However, a change at household and community level does not necessarily bring changes at macro level. A majority of women though member of Maoist victim association are unaware of the programs and policies for IDPs and in most of the cases, women turned head of the household relied on male relatives and kin to access whatever services they have been able to access so far. Ghimire confirms that, at times, women are not able to access services due to lack of knowledge and experience and due to their internalization of gender roles as inculcated by the previous rural environment[28].

Women have experienced profound changes in spaces because of changed circumstances. Along with managing household responsibilities, they were obliged to interact with various government/ non-government offices in order to prepare necessary documents and to receive services from the state. For those who were illiterate with no networks, it is important to note that, problems were insurmountable but this did not stop them from moving forward and doing their best to have possible access to the services.

The high demands from IDP women were: Proper prosecution and deliverance of justice; Provision of facilities similar to civil service holders (for families whose men were in teaching professions)[29]; Guarantee of free and quality education; Guarantee of employment opportunities (*one house, one employment*), Guaranteed peace and security, and; also, reservation of seats (beyond 33%) for women IDPs from martyr's family at central, district and local level. Several women IDPs were not aware of the existing provisions. Each woman had a story of struggle. They were devoid of provisions to which they were entitled to. Nevertheless, what was interesting is women though uneducated and single, somehow were able to apply different strategies to cope with the situations and survived in the absence of fair and adequate mechanisms.

Conclusion

As studies on IDPs suggest, NAP, 2007 is found to be incomprehensive, incompatible, and insufficient and insensitive in addressing the needs of women. Rather than addressing the needs of IDPs in a holistic way, NAP, 2007 has been criticized for selectively serving to the favoured

groups of IDPs, especially those with political connections. There are loopholes about how to achieve the targets. Neither has it fully responded to the UN Guidelines 1998. There remains ambiguity in the procedure of information dissemination. A majority is unaware of the plans and policies and have not yet benefited by any of them (except some monetary allowance after declaration of the deceased as a Martyr). Women either do not know about plans and policies or those few, who know are not satisfied with what is in the policies. Lack of information on plans and policies has restricted women from being on the list of beneficiaries. The relief package by international, national, government and nongovernment agencies did not reach women scattered in the cities. There was no specific plan to bring those women within access of services such as health, education, trainings and loans. The government had neglected the social and psychological impact of the conflict. Although national policies had provisions for counselling sessions, none of the women IDPs in this study, have received such support.

Nevertheless, women have succeeded to get a place beyond all extremities; despite being an alien in an unfamiliar place. The base which women have been able to build so far is the result of increased coping strategies amid negativities. Women have built themselves- learning unexpectedly to master pain and ignorance. Social roles and relationships are intrinsic to the agency. Women, in different roles (mother, sister, daughter, and wife) employ strategies to dig ways towards life. Women in my story evidently have created a space for themselves - with and without identities. Women have taken all the negativity in their stride and continued their struggle for betterment of the livelihoods of the family. They have used the gained space in an effort to support their family. Some have gained greater empowerment than others, however, in each case their loss is much greater than what they have achieved. The empowerment/space they have gained as an actor/agency is because of the unintended positive change –the increased coping strategies – the best possible use of potentialities and in-determinedly discovering skills to stand back again after each fall- rather than positive impact of government policies. Therefore, change in gendered spaces and women's comparative confidence in decision making and their participation in public life is largely due to the unintended consequences of the conflict rather than post-conflict state sponsored equality policies. As Ghimire recommends without addressing the 'problems and/or potentialities' at the new 'base' and space' gained by women IDPs, policies are insignificant even if it is formed in close guidance of the UN Guiding Principles or any other international instruments/mechanisms[30].

Notes

[1] IDMC (Internal Displacement Monitoring Centre). 2012. "NEPAL: Unresolved property issues and IDP policy hiatus undermine search for durable solutions", http://www.internal-displacement.org/south-and-south-east-asia/nepal/2012/unresolved-property-issues-and-idp-policy-hiatus-undermine-search-for-durable-solutions/, last accessed November 5, 2013.

[2] See Singh, Sonal et al. 2007. "Conflict induced internal displacement in Nepal". *Medicine conflict and Survival*. 23 (2) pp. 103-110.

[3] For details see, The Asia Foundation." Women's empowerment program in Nepal". June 2009. http://asiafoundation.org/publications/pdf/542, last accessed December 17, 2013.

[4] IDMC, 2012.

[5] Thompson, M. 2006. "Women, Gender, and Conflict: Making the Connections". *Development in Practice*. 16(3/4) , pp. 342-353.

[6] Nayak, R., 2009. "Armed Conflict and Its impact on Women: Field Experience from Assam". *Women's Link*. 15(4), pp.17-53.

[7] El-Bushra, Judy. 2003. "Fused in combat: Gender relations and armed conflict". *Development in Practice*. 13(2-3), pp. 256-265. Also see Thompson 2006.

[8] See Mazurana, D. 2010. "Understanding the Gendered Legacies of Armed Conflict: Women's Rights and Lives during Armed Conflict and Transition Periods and Governance".   2010.   https://idl-bnc.idrc.ca/dspace/bitstream/10625/43897/1/130394.pdf, last accessed December 1, 2014.

[9] El-Bushra, 2003.

[10] El Bushra, Judy and Piza, Eugenia. 1994. " Development in Conflict: The Gender Dimension". *Oxfam Discussion Paper*. UK and Ireland: Oxfam.

[11] Which may be further compounded by divisions on the basis of race, class, caste, sexuality, religion or age

[12] The Cambodia case study illustrates clearly some of the new roles women have had to adopt in the absence of men

[13] El-Bushra, Judy. 2000. "Transforming Conflict: Some Thoughts on Gendered Understanding of Conflict Processes. In States of Conflict: Gender, Violence and Resistance ed. Susie Jacobs, Ruth Jacobson, and Jennifer Marchbank. London: Palgrave Macmillian, pp. 66-86.

[14] El Bushra and Piza, 1994.

[15] El-Bushra, 2000.

[16] Wood, E. J. 2008. "The Social Processes of Civil War: The Wartime Transformation of Social Networks". The Annual Reveiw of Political Science. 11, pp. 539-561.

[17] Pettigrew, Judith. 2012. " Unexpected Consequences of Everyday Life During the Maoist Insurgency in Nepal". Journal of International Women's Studies. 13(4), pp. 100-112.

[18] Based on field work conducted by the author in 2012.

[19] National Policies on Internally Displaced Persons, 2063 (2007). http://www.brookings.edu/~/media/Projects/idp/Nepal_Policy_2007.PDF, last accessed March 14, 2014.

[20] Ibid.

[21] A survey was conducted in 12 Municipalities in Nepal that found that 73 percent of new arrivals in urban areas lived in rented accommodations, rest of the migrants had sought shelter in unhygienic places like riversides and squatter settlement. See, Dhungana, Shiva K. 2007. " The Policy of the Government of Nepal towards the Internally Displaced Persons". Policies and Practices 17. Kolkata: Mahanirban Calcutta Research Group (CRG).

[22] For details see, National Policies on Internally Displaced Persons, 2063 (2007).

[23] Dhungana, 2007.

[24] Ibid.

[25] Women's empowerment program in Nepal, The Asia Foundation. http://asiafoundation.org/publications/pdf/542

[26] Ghimire, Anita. 2011. "Rethinking 'Women' in forced Development". *Refugee Watch* 37. Kolkata: Mahanirban Calcutta Research Group (MCRG).

[27] El-Bushra, 2003.

[28] Ghimire, 2011.

[29] 17 teachers who were killed in Terai revolt in 2007 were declared martyrs and also compensated as that of civil servants however, family of the teachers who got killed during conflict received no similar compensation.

[30] Ghimire, 2011.

In an Enclave Existence:
Israel's Palestinians

By

Priya Singh [*]

Introduction

On one hand, there are three predominant schools of analysis of the Arabs in Israel. The first is the internal colonial paradigm/control model represented by the likes of Elia Zureik, Ian Lustick, Oren Yiftachel and Dan Rabinowitz, which emphasises on how the state institutions controlled and extracted resources and shaped the Arab minority to the detriment of their collective welfare.

The second perspective is that of the developmental /modernizing /democratisation literature focussed on how Israeli Jewish society impacted on its Arab counterparts within the framework of (limited) integration. Studies written from this perspective look at patterns of convergence and divergence between the two societies and are reflected in the writings of Sammy Smooha, Jacob Landau, Eli Rekhess and Aziz Haidar.

The third school or the control and distress schools, in one form or another consider Israel to be an ethnic state that accords preferential treatment to the majority and discriminates against the minority. The foremost representatives of this perspective are Asa'd Ghanem and Nadim Rouhana. If the first school concentrates on the state or the dominant political community as the independent variable, the second focuses on society and the third primarily focuses on the psychological distress shaped by the collective identity of the state and its institutions.

On the other hand, principally, the intellectual discourse of Israeli Palestinians has been divided into three schools. The first sees their liminal status as a privilege with which they can connect the modern Western Jewish society and an underdeveloped Arab society. This was the dominant discourse from 1948 to 1967. The second school prefers to identify with the land of Palestine and disregards the state of Israel. Intellectuals who belong to this

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school look back to the golden ages in Arab history in order to escape the painful present. From 2000, the third school developed, which calls for ending the liminal status of the Palestinians who live in Israel by turning Israel into a bi national state or a state of all its citizens, regardless of its ethnic origins. To them, when Israel becomes a liberal democracy, its Palestinian citizens will resolve the conflict between their homeland and their state. [1]

The Israeli Arab Perspective

I'm caught in the perfect paradox—I have to be a loyal citizen of a country that declares itself not to be my country but rather the country of the Jewish people.
                                                                        Azmi Bishara[2]

The Palestinians who became Israeli citizens following the Nakba in 1948 choose to continue living in Israel as Israeli citizens, despite being on the margins of their own group, the Palestinian people, and on the margins of mainstream Israeli development. For the acclaimed Israeli Arab scholar Nur Masalha,[3] historically, a combination of military-strategic, demographic-land settlement and Zionist ideological considerations governed Israel's land policies during the post Nakba period towards the Palestinian citizens of Israel, including the "internally displaced."   The internal refugees, who constitute some 25 per cent of the total of one million Palestinian citizens of Israel, are described by Israeli Law as "present absentees."   Land and settlement expansion, in particular, have always been at the heart of the conflict between the Zionist immigrants/settlers and the native Palestinians. Prior to the 1948 Nakba, the Palestinian community had been overwhelmingly rural; the Palestinians had been the overwhelming majority in the country and had owned much of the Land, while the Jewish community in Palestine (*Yishuv*) had been about one-third of the total population and had owned about 6 per cent of the land. Hence the quest for land had underpinned the Zionist project in the pre-1948 period, in a sense; in the post Nakba period the Israeli state's long lasting battle against the Palestinian community inside Israel was a battle for "more –land." This battle was dictated by the Jewish state's premises and fundamentals:
The ingathering of the world's Jews in Israel. (*Kibbutz galoyut*)
The acquisition, takeover and conquest of land (*Kibbush baadama*)
The consolidation of Jewish demography in a state created exclusively for the Jews, who mostly had yet to arrive in Israel, at the expense of the displaced, transferred and internally relocated Palestinians.
Jewish population dispersion throughout the country (*Pezur ochlosiya*)
Judaisation of the Galilee (*Yehud hagalil*)[4]
For the indigenous inhabitants of Palestine, the land was a means of livelihood, a symbol of identity, survival and security in the face of the 1948 expulsions, dispossessions and displacement of their compatriots. The issue of land use and development has always been crucially important for the survival of the Palestinian community inside Israel. Predicated on the Zionist premise of more land for the Jewish would be newcomers and settlers, Israel's policy

of land confiscation destroyed the livelihood of many Israeli Arabs, severely curtailed the development of the Arab localities and threatened to undermine the very survival of a territorially based Palestinian community in Israel. The Nakba brought enormous disruption to the economy of the remaining Palestinian population in Israel, including the internally displaced. The outcome of the 1948-49 war and the cease-fire agreements between Israel and the Arab countries of 1949 left Israel in control of over 5 million acres of Palestinian land, mostly belonging to the external refugees; the property of the internally displaced consisted of about 300, 000 dunums of land, which the Israeli state declared to be "absentee property". First the Israeli state took over the land of the external refugees, who were barred from returning, whilst the remaining Palestinian community was subjected to laws and regulations that effectively deprived it of most of its land. The history of the appropriation began immediately after 1948.

The massive drive to take over the Arab land, belonging to Palestinian (external and internal) refugees has been conducted according to strict legality. The land was expropriated by the authority of laws passed by the Israeli parliament and transferred to Jewish control and ownership. The Palestinian citizens inside Israel, including the internal refugees, were subjected to military administration for some 18 years (1948-1966). Raising awareness of their plight at both local and international levels has remained central to the struggle of the internal refugees to bring about the implementation of international resolutions and fulfilment of their right to return to their destroyed villages. Until the internally displaced are allowed to return to their homes and original lands, it would be difficult to see how the state of Israel can begin to address fundamental issues such as democracy and equality for all citizens irrespective of religious, ethnic or racial affiliation. The emergence of local Palestinian organisations, at both village and nationwide levels, has proved to be vitally important; since the early 1990s, the internally displaced have become better organised and more effective, politically, mainly through the formation of civil society organisations and NGOs including the Nazareth based Association for the Defence of the Rights of the Internally Displaced (ADRID).

The emergence of these organisations since the 1990s, their mass protests and activities inside the destroyed villages, together with the direct action of the older, well established Arab organisations in Israel have had some impact, attracting attention in the Hebrew press in Israel and more importantly support from international human rights organisations. Both the UN Human Rights Committee and the UN Committee on Economic Social and Cultural Rights severely criticised Israel in its 1998 report for its land policies and for its treatment of the Arab citizens and the present absentees. Conscious of the Palestinian Authority's propensity for making concessions without consulting, the refugees, ADRID and other Palestinian civil rights groups in Israel refused to have the Palestinian leadership assume responsibility for the internal refugees.

The internally displaced persons felt that they had a better chance of realising the dream of return than the 1948 external refugees, because being

Israeli citizens, they were better placed to utilise the Israeli legal tools available. Since the early 1990s the struggle against the denial of the Nakba in Israel has become a major struggle for the Palestinian community in general and the present absentees in particular. The Palestinian community in Israel has associated, in a way that it did not previously, its collective and individual memories of the 1948 catastrophe with the general Palestinian plight and with its own predicament. This association has been manifested in an array of symbolic events such as memorial services during the Nakba commemoration day, organizing tours and marches to abandoned and destroyed Palestinian villages in Israel, regular seminars on the past and extensive interviews with Nakba survivors in the Arabic press in Israel. Several organisations set up by Palestinian citizens of Israel and internally displaced refugees have waged effective and partially successful grassroots and legal campaigns for the preservation of the Nakba memory and the material and cultural heritage of the refugees. However, for Masalha,[5] only the winning of this battle for the signposts of memory will help bring peace and reconciliation to Palestine Israel.

For Israeli Arabs like legal activist Yousef Jabareen[6] of the *Dirasat*[7] (The Arab Center for Law and Policy), the Arab-Palestinian community in Israel constitute a native community that constitutes the remaining part of the native Palestinian community after the 1948 War. It is considered as a distinct indigenous, national, ethnic, religious, cultural and linguistic minority. It numbers over 1.25 million, comprising close to 20% of the country's population; residing in three main areas: Galilee, the Triangle, and Negev. It has doubled 8 times since 1948 but its percentage has not changed and 90% of the community live in entirely Arab towns and villages; the rest in six mixed Arab-Jewish cities (Haifa, Acre, Led, Ramleh, Tel Aviv-Yaffa, Natzerat Illit). It is a young community with 50% of its population under the age of 18. It is a poor and vulnerable community, with the lowest socio-economic status in the country. The number of families under the poverty line is 3.2 times that of Jewish families. The average earnings are two-thirds of those among Jews.

Further, the unemployment rate in many Arab communities is 4 times that of the Jewish population. 25% are displaced persons—"internal refugees," mainly in the Negev in the south, and are denied basic services such as electricity, water, infrastructure, and the phone. From 1948 to1966, the entire community was subjected to Military Rule, coupled with a "de-landing" process in which half of its privately owned land was confiscated. Events such as the Kufur Kassem Massacre in 1956, the Land Day Protests in 1976, the October Protests in 2000 and the Palestinian rejoinder indicate an organized response by the Arabs in Israel to Israeli policies as a Palestinian national collective. There is a lack of formal legal protection for the Palestinians in Israel as the state of Israel does not have a formal constitution. There is thus an absence of a formal constitutional principle of equality, no comprehensive civil rights statutes (employment, housing, education). Furthermore, they do not enjoy a recognized national minority status. The Palestinians in Israel, states Jabareen constitute a disadvantaged and an excluded community faced with several forms of exclusion such as:

I. Formal Exclusion by Law (*de jure*) including-
Symbolic Exclusion: The State's symbols—the Flag, Emblem, and the Anthem Law (exclusively for Jews);
Immigration and Citizenship: The Law of Return, The Entry into Israel Law, The Citizenship Law;
Land and Housing: The Special Official Status of the International Zionist Union and the Jewish Agency. The Law of the Jewish National Fund.
Education and Cultural: The State Education law, The Broadcasting Law, the Hebrew Higher Institution Law.
Religion: Jewish Religious Services Law, Protection of Holy Places Law, Central Rabbinate Law.
Political Participation: Basic Law: The Knesset (Article 7A of 1985: "Jewish and Democratic"), Political Parties Law.
II. Discriminatory Effects of "Facially Neutral" Laws and policies (de facto) including laws with Adverse Effects on Arab Minority. Examples being The Absentees' Property Law, The land Law (Confiscation), National Planning and Building Law etc.
III. Material Discrimination; Socio-Economic; Material Discrimination via Institutional Decision–Making;
Political (Under-) Representation
Lack of political power: permanent opposition in parliament. Representation in civic services and decision-making public bodies: only 7%
Allocation of Public Resources
Disproportionate allocation of public budgets to Arab localities: only 5-10%.
Allocation of Land
Discrimination in allocation of Land: only 3.5% remained in Arab-Palestinian ownership in Israel. Arab citizens are effectively blocked from acquiring or leasing land in some 80% of Israel's land mass.

Comparative Socio-Economic Discrimination

Arab Community	Jewish Community
Infant Mortality Rate: 9:1000	Infant Mortality Rate: 4:1000
Dropout rate by age 17=31.7%	Dropout rate by age 17=31.7%
39% of the community in the labour market	57% of the community in the labour market
50% of families under the poverty line	15% of families under the poverty line

Source: *Dirasat*

IV Societal Discrimination: Hate Speech and Racism
Civil Rights: Ethnic-based discrimination in housing, employment, and public accommodation

State sanctioned violence continues in the region. 13 Arab citizens were killed by Israeli security forces in October 2000—no steps have been taken so far. Since then, 20 more Arab citizens have been killed by Israeli security forces in questionable circumstances. Hate speeches or public statements issued by officials include, "Arabs in Israel are demographic threat," "Arab citizens are a cancer to the state." It makes things worse.

Racism

Majority of Jews in Israel claim they are against full equality for Arabs;

Two-thirds think Arabs should be encouraged to emigrate.

Recent Report of Haifa University: 75% of Jewish pupils think that Arabs are ignorant, uncivilized and dirty.

On December 2010, dozens of leading Rabbi signed on to a religious ruling to forbid renting homes to Arabs.

Anti-democratic and Racist Trends

Democracy Descending: Recent Years have seen a disturbing erosion of anti-democratic principles in Israel.

The site of much of this anti-democratic activity is within the Knesset itself, with a slew of legislation being proposed or passed that openly infringes on the rights of the Arab minority and violates basic civil liberties such as freedom of speech and the right to protest.

Israel's political majority is exploiting its advantage in numbers to undermine the rights of the minority.

Examples of Recent Legislation

"The Admissions Committee Law," which authorises rural, Jewish-majority communities to reject Palestinian Arab citizens of Israel and other "unsuitable" applicants for residency.

"The Nakba Law," which authorises the heavy fining of any government-funded institution, including municipalities, for commemorating the "Nakba"—the Arabic term to describe the destruction of Palestinian villages and expulsion of their residents after Israel's declaration of independence—and for expression deemed to "negate the existence of Israel as a Jewish and democratic state."

Prevalent Circumstances

In Jabareen's opinion, this state-sanctioned discrimination further marginalizes the Arab minority. By endorsing ethnic segregation and quashing freedom of expression, the Knesset is sending a dangerous message to the public—undermining democratic values as well as the status of Arab citizens in Israel. In such an atmosphere, it is not surprising that campaigns of hatred and incitement waged by rabbis and public figures against the Arab minority are becoming increasingly common.

Demands by Arab Political Leadership in Israel

Public Domain (Distributive Justice):

Political Resources: Fair and Effective Participation

Symbolic resources: Shared State Symbols

Material Resources: Public Budgets and Land

Cultural Resources: Language and Culture

Resources of Immigration and Citizenship

Internal Domain (Group-Based Autonomy):
Group-Based Self-Steering in Distinct Areas: Education, Religion, Culture, Media
Historical Domain (Corrective Justice):
Historical Rights: Reparation, Reconciliation
Full Equal Citizenship—A "Ten Points" Future Vision
In 2006-2007, "The Future Vision of the Palestinian Arabs in Israel" published by the National Committee of the Heads of the Arab Local Authorities in Israel laid down a ten point agenda:
Recognizing and protecting the Arab minority as a national minority and native community in the country, with a distinct collective identity (ethnic, linguistic, religious and cultural).
Guaranteeing full equality of rights on a civil and national basis.
Guaranteeing equal status for Arabic in all areas of the public sector, along with Hebrew.
Granting the right to self-steering of Arabic educational, culture and religious institutions, similar to the current status of the Orthodox Jewish education system.
Guaranteeing full democratic participation and effective representation in governmental, administration and decision-making bodies.
Guaranteeing special allocation of material public resources to address socio-economic gaps.
Granting appropriate expression of the Arab community in the State's system of symbols.
Guaranteeing equality and fairness in immigration and citizenship for all citizens.
Recognizing historic rights of the Arab minority to its homeland: internal refugees, unrecognized communities, land ownership.
Recognizing and protecting the Arab minority's special relationship to other Palestinians and other Arabs in the region.

The Jewish Perspective
In our state there will be non-Jews as well—and all of them will be equal citizens; equal in everything without exception; that is: the state will be their state as well.
David Ben Gurion, December 1947[8]
The status of Israel's Arabs has become an increasingly contentious issue in Israel. Hillel Frisch[9] in his recent book *Israel's Security and its Arab Citizens* provides a glimpse into how Israel's security situation shapes policies and public attitudes towards this important minority community. He argues that Israel's relationship with its Arab minority is largely informed by a sense of threat and security fears. These emanate from the strategic environment in which the dominant community is a majority within its own state yet a threatened precarious minority in the region. He therefore seeks to establish the importance of external insecurity in accounting for authoritarianism and intolerance toward minorities in Israel, in particular its Arab minorities.

According to Efraim Karsh,[10] the end of the 1948 war found the Palestinian-Arab community profoundly shattered. Of the 750,000 Arab

residents of the territory that came to be Israel, only 158,000 had stayed put through the hostilities; at the state's founding, they formed 13.6% of the total population.[11] However, due to high fertility rates, despite successive waves of Jewish immigration into Israel, the proportion of Arabs grew steadily over the decades. By the end of 2009, Israel's Arab minority had leapt eightfold in number to over 1.6 million, or 20.6% of the state's total population.[12] From the Jewish point of view, Israeli Arabs have enjoyed full equality before law, and are endowed with the full spectrum of democratic rights-including the right to vote for and serve in all state institutions. (Since the inception of the state of Israel, Arabs have been members of the Knesset.) From the designation of Arabic as an official language, to the recognition of non-Jewish religious holiday as legal resting days for their respective communities, to the granting of educational, cultural, judicial and religious autonomy, Arabs in Israel may well enjoy more formal prerogatives than ethnic minorities in the democratic world, not to mention the Middle East and the Muslim world. However, this barely indicates that the state's treatment of its Arab minority has been unblemished. Civic equality, like any other principle, does not exist in a vacuum, or in isolation from other fundamental political values like stability and public security. In every modern nation-state, majority-minority relations have been a problem, and all the more so when an ethnic minority forms part of a larger nation or group that is hostile to the state in which it resides. At the beginning, the attempt of the Arab states and the Palestinian Arab leadership to destroy Israel at birth, the repeated talk of a 'second round', and the fact that many Israeli Arab enclaves were located in sensitive border areas fuelled fears within the Jewish state of a possible transformation of its Arab communities into hot beds of subversive activity. For security reasons, then, the main Arab populations were placed under military administration, a policy that ended only in December 1966. Similar considerations precluded the conscription of most Arabs into military service. The exemption was also designed to ease the Arabs' 'dual loyalty' dilemma, sparing them the need to confront their cousins on the battlefield; it corresponded, as well, with the wishes of the Arab population itself. The policy of exempting Israeli Arabs from military service had real-life effects. In the short term, it conferred a certain practical benefit, giving young Arabs a three-year head start over most of their Jewish counterparts in entering the labour force or acquiring a higher education. Over the longer term, however, it worked to constrain Arab economic and social mobility, for the simple reason that until the 1990s, military service was the main entry point into corridors of adult Israeli life. Nevertheless these constraints, for the mainstream Jewish scholarship were not the result of 'insufficient sensitivity', let alone of discrimination on the basis of religion or nationality; the same disadvantages beset and continue to beset Jewish individuals and communities that have likewise been exempted from military service, notably the ultraorthodox Jews.

The issue of discrimination aside, Karsh[13] reiterates it cannot be sufficiently stressed that the Arabs living in the Jewish state made astounding social and economic progress. Far from lagging behind, their rate of

development has often surpassed that of the Jewish sector, with the result that the gap between the two communities has steadily narrowed. In the health sector, for example, mortality rates among Israeli Arabs have fallen by over two-thirds since the establishment of the Jewish state, while life expectancy has increased by 30 years, reaching 78.5 (women 80.7, men 76.3) in 2009. As a result of Israel's medical and health-education programmes, infant mortality rates have similarly been slashed: from 56 per 1000 live births in 1950 to 6.5 in 2008. Another indication of the improving socioeconomic position of the Israeli Arabs has been the steady decline in fertility rates since the 1970s: from 8.4 children per women in 1965 to 3.6 in 2008.[14] The Jewish perspective is that significant advances have been made in the educational sphere as well. Since Israel's founding, while the Arab population has grown tenfold, the number of Arab schoolchildren has multiplied by a factor of 40.[15] If, in 1961, the average Israeli Arab spent one year in school, today the figure is over 11 years. The rise was particularly dramatic among Arab women who in 1961 received virtually no school education and today are equally, indeed better educated than their male counterparts (in 1970–2000, for example, the proportion of women with more than eight years of schooling rose nearly sevenfold – from 9% to 59%).[16]In 1961, less than half of Arab children attended school, with only 9% acquiring secondary or higher education. By 1999, 97% of Arab children attended school, with 46% completing high school studies and 19% obtaining university/college degrees. In 2011, over a half of Arab twelfth-grade students (two-thirds of Christian students) won the matriculation certificate, with dropout rates of Arab students similar to those in the Jewish sector: 1.8% and 1.5% respectively. Actually, the dropout rate in the weaker parts of Jewish society were higher than their Arab equivalent: 3.1% among ultraorthodox Jews and 3.6% among foreign native Jews, compared to 2.6% in the Bedouin sector – the weakest part of Arab society.[17] Nor do Jewish schools enjoy better individual services than their Arab counterparts. More important, during the past 12 years, relative investment in Arab education has far exceeded that in the Jewish sector, resulting in a significantly greater expansion across the board: teaching posts in pre-primary Arab education trebled, compared to a twofold increase in the Jewish sector; Arab primary education posts grew three times faster than their Jewish counterparts while the relative increase in Arab secondary education posts was six times higher than in the Jewish sector. Still more dramatic has been the story in higher education where the numbers of Arab graduates multiplied 15 times between 1961 and 2001. Last but not least, during Israel's first 50 years of existence, adult illiteracy rates among Israeli Arabs dropped from 57.2% (79% among women) to 7.7% (11.7% among women). [18]

Regarding the Standard of living, in the late 1940s, following the flight of its more affluent classes and the breakdown of economic relations with neighbouring Arab states, the Arab minority in Israel was left largely impoverished. As they became increasingly incorporated into local economic life, Arabs experienced a steep rise in earnings and a visible improvement in their material circumstances. Contrary to the standard image of cramped neighbourhoods and acute land shortages, population density in Arab

localities is substantially lower on an average than in equivalent Jewish locales. As for income statistics, it is undeniable that, on average, Israeli Arabs still earn less than Jews. However this is attributable to other influences. For one thing, Karsh argues the average Muslim in Israel is 10 years younger than his Jewish counterpart; all over the world, younger people earn less. Then, too, far fewer Arab women enter the labour market than do Jewish women: in 2008, for example, only 21% of Arab women, compared to 57% of Jewish women, worked outside their homes.[19]

The significance of these and other factors – family size, level of schooling, cultural tradition, and so forth – may be judged by looking at segments of Israeli Jewish society like the ultraorthodox or residents of development towns (localities established during the 1950s and 1960s to absorb the fresh waves of Jewish immigration, especially from Arab countries), whose income levels more closely resemble those in the Arab sector. Thus, for example, while the 2008 average monthly salary in Arab Nazareth was lower than in the mostly Jewish Upper Nazareth (4749 vs. 5437 shekels), the average self-employed monthly earning there was higher than in Upper Nazareth: (7498 vs. 7351 shekels). No less important, income inequality was lower in Arab Nazareth than in Jewish Upper Nazareth.[20] Since the late 1990s, the unemployment rate in Israel's Arab sector was consistently lower than in Jewish development towns. Meanwhile allocations to Arab municipalities have grown steadily over the past decades and are now on a par with, if not higher than, subsidies to the Jewish sector. By the mid-1990s, Arab municipalities were receiving about a quarter of all such allocations, well above the 'share' of Arabs in Israel's overall population, and their relative growth has continued till date.

Thus, in Efraim Karsh's[21] view, the attribution of violent responses of Israel's Palestinian community such as the October 2000 riots (second *intifada*) to social and economic deprivation is totally misconceived. If indeed the culprits were poverty and second-class status, why had there never been any disturbances remotely like the October 2000 riots among similarly situated segments of Jewish society in Israel, or, for that matter, among Israeli Arabs in the much worse off 1950s and 1960s? Why, indeed, did Arab dissidence increase dramatically with improvements in the standard of living, and why did it escalate into an open uprising after a decade that saw government allocations to Arab municipalities grow by 550%, and the number of Arab civil servants nearly treble? The truth lay in that the growing defiance of the state, its policies, and its values was not rooted in socioeconomic deprivation but rather in the steady radicalization of the Israeli Arab community by its ever more militant leadership, not unlike their mandatory predecessors. The process began with the Six Day War of June 1967. In the relatively relaxed aftermath of that conflict, Israeli Arabs came into renewed direct contact with their counterparts in the West Bank and Gaza as well as with the wider Arab world. Family and social contacts broken in 1948 were restored, and a diverse network of social, economic, cultural, and political relations was formed. For the first time since 1948, Israeli Muslims were allowed by Arab states to participate in the sacred pilgrimage to Mecca and Medina, thus breaking an

unofficial ostracism and restoring a sense of self-esteem and pan-Arab belonging – and encouraging a correlative degree of estrangement from Israel. Six years later came the Yom Kippur war, shattering Israel's image as an invincible military power and tarnishing its international reputation. One result was quickly felt on the local political scene. During the 1950s and 1960s, most Arab voters had given their support to Israel's ruling Labour party and/or a string of associated Arab lists. This had already begun to change by 1969, when Raqah, a predominantly Arab communist party and a champion of radical anti-Israelism, made its successful electoral debut. By 1973, in elections held three months after the Yom Kippur war, Raqah (or Hadash, as it was later renamed) had become the dominant party in the Arab sector, winning 37% of the vote; four years later, it totally eclipsed its rivals with 51% of Arab ballots cast. By the late 1990s, things had moved so far in an anti-Israel direction that many Arabs, apparently finding Raqah/Hadash rather moderate, were shifting their allegiance to newer and still more militant parties.[22]   Nor did the Palestine Liberation Organization (PLO) fail to capitalize on these internal developments. Founded in 1964, it had at first ignored the Israeli Arabs but soon embarked on a sustained effort to incorporate them into its struggle for Israel's destruction and, by the late 1960s, had recruited scores of young Israeli Arabs.[23] In January 1973, the Palestine National Council, the PLO's quasi-parliament, decided 'to strengthen the links of national unity and unity in struggle between the masses of our countrymen in the territory occupied in 1948' – i.e. Israel – 'and those in the West Bank, the Gaza Strip, and outside the occupied territory'. Things came to a head on 30 March 1976 in the form of mass riots. The occasion was the government's announced intention to appropriate some 5000 acres of the Galilee for development. Though most of the land from the Jewish point of view was owned either by the state or by private Jewish individuals, the announcement triggered a wave of violence that ended in the deaths of six Arab rioters and the wounding of dozens more. 'Land Day', as the disturbances came to be known, was thereafter commemorated annually in renewed and increasingly violent demonstrations, often in collaboration with the PLO and its political affiliates in the West Bank.[24] In the meantime the 'Palestinization' of Israeli Arabs continued apace. In February 1978, scores of Palestinian intellectuals signed a public statement urging the establishment of a Palestinian state and, a year later, Israeli Arab students openly endorsed the PLO as 'the sole representative of the Palestinian people, including the Israeli Arabs', voicing support for the organization's pursuit of the 'armed struggle' (for the Jews, the standard euphemism for terrorist attacks), indeed for its commitment to Israel's destruction.[25] By 1976, less than half of Israeli Arabs defined themselves as Palestinians; by 1985 more than two-thirds did. By then, too, extremist politics and violence had become institutionalized, with the PLO funnelling funds to Arab bodies and institutions in Israel, and Israeli Arabs increasingly implicated in the sale of weapons and explosives to terrorist organizations in the territories. December 1987 saw the outbreak of the first widespread Palestinian uprising (*intifada*) in the West Bank and Gaza.[26]

If the intifada strained Arab–Jewish relations within Israel to their limits (till then), other factors contributed to the worsening of the situation as well. One was the rising power and influence of the Islamist movement in Israel and the disputed territories, which injected into the conflict a religious element that had largely lain dormant ever since 1948. Another was the growing 'post-Zionist' trend among educated Israelis, which, by creating the impression of a fatigued society ready to pay any price for respite, emboldened the most radical elements on the Arab side to dream of delivering a final blow. Yet, in Karsh's opinion it was the embrace of the Oslo accords, signed in 1993 between Israel and the PLO, which did the greatest damage. In recognizing the PLO as 'the representative of the Palestinian people', the Rabin government effectively endorsed that organization's claim of authority over a substantial number of Israeli citizens and gave it carte blanche to interfere in Israel's domestic affairs, which proved nothing short of catastrophic. As the 1990s wore on, open identification with Israel's sworn enemies and even euphemistic calls for its destruction became regular themes of Israeli Arab leaders. In this respect, at least, the riots of October 2000 were an event foretold although one could not have predicted their scope and duration. In the Jewish perspective, the October 2000 riots were not an act of social protest, and they did not mark a stage in 'a legitimate struggle for civil rights'. They were a violent internal uprising in support of an external attack.[27]

In Lieu of Conclusions

The dual narratives do not seem to indicate much commonality and consequently much common space between the two communities but the real issue is as Asa'd Ghanem [28] aptly puts it—the primary difficulty for Palestinian citizens of the Israeli state relates to the fact that they are partially Palestinian and partially Israeli at the same time, entailing that they have part Israeli and part Palestinian identities. At present, neither the Israeli nor the Palestinian identity of the Arabs in Israel can be a complete one, which is the core essence of the collective identity crisis for Palestinian citizens in Israel. Palestinians in Israel are Israeli citizens according to their official status. However, their Israeli identity is non-existent when their collective identity is defined in terms of their sense of belonging and empathy. This lack of empathy is because Israel was established as a state for the Jewish people, and it carries a Zionist Jewish character. Its goals, emblems and policies are carried on the basis that it is a state for the Jewish people, and consequently this leads to the denial of the equal rights of the Palestinian minority in the state. The Israeli identity includes basic components inspired by Judaism and the Jewish culture, selected in such a way that Jews alone can fully absorb these components in order to become Israelis. It is clear that the Palestinian Arabs in Israel cannot become fully Israeli, a matter that not only marginalizes them in terms of the Israeli identity, but also turns them into partial Israelis. Additionally, before 1947, the Palestinians in Israel developed as part of the Arab and national Palestinian movement. The forced segregation resulting from the 1948 war has since compelled the Palestinians in Israel to develop

alone without the possibility of directly interacting with the Arab world and the national Palestinian movement. The identity of Palestinian citizens in Israel cannot be complete when the national Palestinian movement is establishing the Palestinian homeland in another place, that is, the West Bank and Gaza. The difficult situation for Palestinians in Israel has not been caused by the conflict between two complete identities, but rather because of incompleteness of these identities. The identity issue is considered as the most serious indication of the crisis that the Palestinians face in Israel, a community which has been labelled a "Fifth Column" by numerous Israelis and "Zionist traitors" by many Palestinians around the world. They comprise a society often caught between Israel and Palestine, Israelis and Palestinians, Judaism and Islam.

Notes

[1]For a brief outline of the various schools of analysis of the Arabs in Israel see Hillel Frisch, *Israel's Security and its Arab Citizens*, (London and New York: Cambridge University Press, 2011), 4-9.

[2] Quoted in Sherry Lowrance, "Being Palestinian in Israel: Identity, Protest, and Political Exclusion," *Comparative Studies of South Asia, Africa and the Middle East,* 25 (1) (2005): 487-499

[3]See Nur Masalha, *Catastrophe Remembered: Palestine, Israel and the Internal Refugees,* ed. Nur Masalha, (London: Zed Books, 2005), 23-55.

[4] Nur Masalha, *Catastrophe Remembered: Palestine, Israel and the Internal Refugees,* 24.

[5] For an elaborate discussion on the preservation of the Naqba memory, see Nur Masalha, *Catastrophe Remembered: Palestine, Israel and the Internal Refugees,* Introduction, 1-22.

[6] The opinion and details provided by Yousef Jabareen is part of a lecture at a Tel Aviv University (TAU) Workshop in 2011, organised by the Moshe Dayan Centre for Middle Eastern and African Studies, which was attended by the author.

[7] For the statistical data on the Israeli-Arabs, see Dirasat: http://www.dirasat-aclp.org/index.asp .

[8] Quoted in Dan Urian and Efraim Karsh ed. *In Search of Identity: Jewish Aspects in Israeli Culture* (Portland, OR: Frank Cass, 1999).

[9] Hillel Frisch, *Israel's Security and its Arab Citizens*, 3.

[10] Efraim Karsh, "Israel's Arabs: Deprived or Radicalized?" *Israel Affairs,* 19(1*)* January (2013):2-20

[11] Efraim Karsh, "How Many Palestinian Arab Refugees Were There?" *Israel Affairs*, April (2011): 224-46.

[12] Israel's Central Bureau of Statistics (CBS), 'Press Release', 25 April. 2012.
http://www.1.cbs.gov.il/reader/shnaton/templ_shnaton_e.html

[13] Efraim Karsh, "Israel's Arabs: Deprived or Radicalized?"

[14] CBS, 'The Arab Population in Israel 2008', Statisti-Lite 102
http://www.1.cbs.gov.il/reader/shnaton/templ_shnaton_e.html

[15] CBS, 'Statistical Abstract of Israel 2010. Tables 8.7/8.17: Schools, Classes and Students in Primary/Secondary Education'.
http://www.1.cbs.gov.il/reader/shnaton/templ_shnaton_e.html

[16] CBS, 'Jubilee Publications: Education' (Jerusalem, May 1999): 12, 15; 'The Arab Population in Israel': 8.
http://www.1.cbs.gov.il/reader/shnaton/templ_shnaton_e.html

[17] 'Statistical Abstract of Israel 2012. Table 8.25: Matriculations Examinees, by Entitlement to a Certificate and Selected Characteristics; 'Society in Israel': 145, 167-68. http://www.1.cbs.gov.il/reader/shnaton/templ_shnaton_e.html
[18] 'Jubilee Publications: Education': 12.
[19] 'Jubilee Publications: Education': 12.
[20] CBS, 'Local Authorities in Israel 2009', Publication 1451, 22 June 2011.
[21] Efraim Karsh, "Israel's Arabs: Deprived or Radicalized?"
[22] Sabri Jiryis, "The Arabs in Israel, 1973-79," *Journal of Palestine Studies*, Summer (1979): 31-33, 35-40.
[23] *Maariv*, 27 Nov. 1969.
[24] *Maariv*, 22 Jan. 1979.
[25] *Maariv* 22 February, 1979; Jiryis, "The Arabs in Israel."
[26] Efraim Karsh, "Israel's Arabs: Deprived or Radicalized?"
[27] Efraim Karsh, "Israel's Arabs: Deprived or Radicalized?"
[28] As'ad Ghanem, *The Palestinian-Arab Minority in Israel, 1948-2000: A Political Study*, (Albany: State University of New York Press, 2001), Introduction; 1-10.

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India-Bangladesh Cross Border Migration: A Human Rights Discourse

By

Vikash Kumar [*]

Introduction

There are several factors which do not allow enforcement of a non-permeable border line between India and Bangladesh. Apart from changing courses of rivers, ethnic connections and illegal trade, the bourgeoning population of Bangladesh combined with local politics makes the region amenable for movement of people towards relatively prosperous locations in India. In the absence of any formal mechanism for free movement, most of these migrants adopt illegal means to cross over. In the process, violence against women during and post migration situation becomes a critical issue as women are vulnerable to sexual harassment and abuse, especially in the hands of agents, contractors, law enforcement personnel, touts etc. Therefore, along with strategic and political factors, the agent-victim continuum of migrant women needs to be understood from the human rights perspective.

In recent times, there has been a considerable growth of feminist perspectives in migration studies in South Asia. Such studies have highlighted structural as well as procedural implications on women at various stages of migration. The human rights approach in studying the women in cross border migration is still a grey area. The objective here is to identify inalienable rights for migrants in general and women in particular during international migration from a human rights perspective. Existing domestic mechanisms of the destination country, that is India, would be analysed to ascertain compliance with international mechanisms. It would also be worth exploring the relevance of specific provisions of UN committee reports on migration, recommendations of the UN Charter and Treaty Bodies; and other relevant mechanisms for safeguarding the fundamental rights of both legal and illegal cross border migrant women in South Asian/present context.

Background

The process of migration has been widespread and a continuous one having a long history,[1] and due to this magnitude, the phenomenon of migration has always attracted the attention of every section of the society including policy makers and academicians. Many studies have identified agents of migration namely, traders, preachers, adventurers, warriors and scientific progress that contributed to the process[2] and later economic compulsion was also added to the list[3]. The issue of better survival opportunities has always catapulted the process of migration. Humans have been moving from one place to another in search of greener pastures and conducive environment for their survival. It was the degree and nature of their movement that mattered. The term migration is associated with ethnic, political and geographical identities of a person in movement. A notion of the existing socio-political identity framework of a group is necessary to consider an alien person or a group of persons (they) as migrants. That is, the intensity of the 'us' perception determines others as 'they' or outsiders/migrants.

Migration could be both at the domestic level and the international level. In modern times any understanding of the process of international migration involves border dynamics which tends to incorporate a set of broadly identifiable and applicable common ideas, such as, domestic politics, globalisation, economic interest, sovereignty, human rights, violence, mobility and security etc. and researches concerning border issues deal with such issues in one way or the other[4]. Globalisation, which has multifaceted socio-political and economic implications, has stimulated the process of migration for economic gains which often questions the notion of sovereignty and security of the host country. Therefore, migration policies across the world are driven by three core concerns: law and border enforcement, economic interest, and protection. In attempts of enforcing the sanctity of the border and safeguarding existing economic interest, concerns for protection of the migrants (people in movement) get marginalised. Intensified efforts to suppress migration do not deter people from moving towards prosperous economic centres, instead search of socio-political and physical security and economic opportunities ultimately lead many into widespread exploitation[5]. In fact, such practices start a process of a chain reaction and their journeys become more dangerous, more secretive and prone to be targeted by border security agencies and criminalisation which often end up in the loss of human rights, extortions, and falling in trap of touts[6]. Here, plurality of competing principles, which claim to be relevant to access justice (for the category of 'us') and an arrangement of just social institutions (laws and rules) to deter the category 'they', fail to take into account the element of fairness or equality of opportunity that is quintessential for any just administrative system.[7]

Central to our understanding of the subject here is the border and border crossing. It is interesting to know   what kind of border India has with Bangladesh following the partition and how the nature of that border has changed following the war of 1971. It would become important to probe into the claims by a section, who believe that the Indo-Bangladesh border has

become more 'unmanageable' than the erstwhile India-East Pakistan border. Though the border remained same, physically, however psychologically speaking or in policy terms they became two different lines. While the image of Pakistan as an enemy state allowed India to enforce the border more stringently, in the post 1971 phase, it has often become difficult for India to enforce its border more rigorously. In that sense, even the border fencing project that has been undertaken by the Indian state seems like a response to the political criticism at domestic level rather than a real solution to the illegal movement of Bangladeshis to India. This ambivalence on the part of India is an important element that needs to be conceptually understood as an important segment of any cross border migration research.

Stringent border controls between these South Asian countries, have not reduced the flow of migrants but have adversely impacted the access to human rights protection and triggered formation of increasingly sophisticated smuggling and trafficking networks. Such precarious situation poses questions of border governance of the host country, in this case India, as well as public policy and its humanitarian obligations[8]. As discussed above it is when the survival is threatened, that people are forced to move across borders and associated repercussions mean little in such desperate situations. Especially, when it becomes a question of life and death, people do not hesitate to even opt for illegal ways to tackle any obstacle that stands in their path of moving[9]. Such control mechanisms not only put irregular ones at greater risk during transit and after arrival but also affect documented entrants. In this context an example of the US-Mexico experience will be helpful. At the US-Mexico border, that is, between one more and the other less developed country, America is constantly under the demographic pressure from Mexico. At the moment, there are about 11,000,000 unauthorized people in the United States and majority of them are Mexicans. This scenario could be experienced in South Asian region also. The Barack Obama administration, like its predecessors, is seized with the problem and is thinking of ways and means of tackling it. In comparison to the US-Mexico border, the India-Bangladesh one is even more problematic because of geographical, anthropological and historical reasons.

Various studies have shown that the category of documented migrants from Bangladesh is virtually negligible when it is compared to the estimated number of undocumented migrants that ranges from 2 to 20 million. Apart from this, India receives migrants and refugees from all its neighbours as well as from countries outside South Asia. The UNHCR Global Report 2010, reports that India hosts refugees from other regional and inter regional countries like China (Tibet – 1,00,000), Sri Lanka (70,000), Afghanistan (9100), Myanmar (4600), Somalia (700) and others (350); and asylum seekers from Myanmar (3300), Afghanistan (220) and others (350).[10] The most important factor, however, that drives migration however remains search of work and fear against persecution at home. The migration Report 2013 shows that the flow of international migrants is not simply from developing to developed countries, rather only about 37 % of international migration is from developing to developed countries. The fact is most of the

world's migrants' movement is from one developing country to another and the choice of destination country is guided by multiple factors but mostly driven by economic considerations. In such migrations, especially when distance is less, women also accompany their male counterparts. A migrant's human rights are largely defined by the category to which a migrant belongs and the reason of migration, on the one hand there are voluntary migrants, including migrant workers and other economic migrants. On the other end, more than 10 million refugees are forced to leave their countries to escape persecution.[11]

Here we will refrain from delving into the Refugee convention and its non-ratification by India. However, what needs to be noted is that if India signs the refugee convention and its optional protocol there would be a huge possibility of India getting Hindu refugees from Bangladesh. The refugee convention would have made India prone to huge official influx of not only Hindus but also Buddhist Chakmas, Christians and other ethnic minorities. It will also not be right here to probe whether India should sign the Refugee Conventions and not and what would be the possible implication as this issue has been dealt by scholars at various platforms. This article tries to locate the existing human rights mechanisms which could be explored for the protection of the migrants especially women from Bangladesh to India.

Changing Trend of Female Emigration form Bangladesh

According to World Migration Report, Bangladeshis have migrated to different parts of the world, over the last six decades. It is difficult to establish absolute figures, since a large number of undocumented workers go overseas through irregular channels and may not be recorded as workers[12]. Bangladesh which has been predominantly a male labour exporting state has witnessed an upward trend in female legal migration to the Middle East, Western Europe and North America, in large numbers, as skilled and unskilled persons[13]. Bangladesh has witnessed a rapid rise in manpower export during the periods of 1991-1995 and 2006-2011. The number of annual legal emigrants has increased from 30,073 to 568,062 between 1980 and 2011. From 1991 to 2000, female migration represented less than 1% of all migration. Since changes have been initiated with regard to the policy on female migration in 2003, this number has steadily increased reaching 5% in 2009[14] and achieved the figure of 6.42% of the total migration in 2010. From 1991 to 2010 a total number of 1,48,460 women migrated for overseas employment in various countries of the world.[15] In addition to legal emigration, people from Bangladesh also move through illegal routes. Therefore the actual number of annual emigrants would be much higher than the official figures[16].

As per a study by the Ain O Salish Kendra, … culmination of structural and individual situational actors combined with the strong role of organizations that ultimately led women to migration. The desire for economic advancement was the most important push factor. Diversification of family income was also cited as an important reason for migration. There were some social factors for migration, including women's empowerment and

involvement with NGOs, oppressive social institutions and practices, exploitation of patriarchy, temporary escape from unhappy family and social situations, and escape from harassment and violence.[17]

Bangladeshi Migration to India: 'Her' Side of the Story

Interviews with women who work as maids in Delhi revealed the way these women ensured a safe passage to their destination. A middle aged woman Ruby (name changed) claimed herself to have come from Malda district, West Bengal. But later, she divulged that she was a Bangladeshi from Khulna district and shared her heart wrenching story of crossing the Indo-Bangladesh border. She recalling the day her husband decided to cross over, narrated how her family had to reach to a compromise with the authorities for a safe passage and this was mediated by a group of Bangladeshi men. The compromise or deal meant economic or sexual favours or both. She thanked her stars for getting through it easily as they got away with paying the economic costs, but the accompanying family had to pay heavily for getting help in order to cross the border. Other respondents reported that torture, beating or degrading treatment is common for men. But stories are different in case of women. In Ruby's words, 'women or girls who are caught passing the border without help of the mediators are detained and have to face harassments'. The worst part according to her is absence of justice as their complaint would mean embarrassment and deportation.

Migration is not a standalone process especially from the gender perspective. In most of the cases women also accompany men while moving from one place/country to another and many times there are no legal avenues available for them. Yet this absence does not quell their desire or compulsion to move out from one's country. The attempt to target the cheap labour by the relatively wealthier nations against migrants from the poorer nations of the world has created a zone of illegality which is brought into reality by illegal border crossing. Like many other forms of illegality and the attempts to police them, extra-legal border crossing has significant gendered dimensions.[18] The problem of Bangladeshi migrants to India is like an elephant in the room, everybody knows that they are there but nobody knows how many of them are in India and how the Indian state can deal with them.

Migration from one region to another has increased manifold. India serves as a country of origin, transit and destination. Migrants and their family members are subjected to wide range of human rights abuses during the entire cycle of migration which get manifested in the forms of inadequate conditions of work, sexual abuse of female migrant workers, expulsion and arbitrary detention of irregular migrants including accompanied children, difficulties with accessing social and economic rights, illegal recruitment practices, ill-treatment, inadequate housing, poor access to health care provisions and education, and the criminalisation of undocumented migrants. In all of the above, female family members have to bear the brunt more severely[19] and are often pushed into informal sectors as well as

immoral/illegal economic activities like sex trade, organ trading, drug peddling smuggling etc[20].

If we talk of emigration from Bangladesh, one would find that a certain number of people are driven out by political and economic problems.[21] Following the partition of British India in 1947, more than 3 million people may have migrated from what was then East Pakistan; during the same period some 864,000 Muslim refugees immigrated to East Pakistan from India. Further the operation by the Pakistani military in East Pakistan in 1971 caused an estimated 8 to 10 million refugees to cross the border into India in one of the great mass movements of modern times. After the independence of Bangladesh, an undetermined number remained in India.

It has been reported that, in 1974, thousands of Bangladeshis moved to the Indian states of Assam, West Bengal and other parts of India. The construction of Karnafuli (Kaptai) hydroelectric project in 1962 in Chittagong Hill Tracts that submerged thousands of acres of arable land and later state-sponsored schemes meant to settle people from the plains in the traditional 'homelands' of the Chakmas (around 90 percent)did not attain much success. All this led to dissatisfaction, civil strife, militancy, and eventually, state repression resulted in the flight of the tribals to neighbouringthe neigbouring state of India for safety.[22] Women in this region suffered an unprecedented violence and cruelty due the ethnic conflicts. The actual number of emigrants would be much higher than the estimated figures.[23] These figures do not reflect those who just crossed over the Indian or Myanmar border either alone, individually, in a group or as member of migrating family. There is no authentic data available about such migrants, instead cases and stories are reported in media and by scholars about the human rights violations of migrants, especially about women in transit recurrently surface with the horrific stories of torture and exploitation by both state and non-state actors.[24] Nature of the violence might be different in different situations but women remain at the receiving end in the whole process.

The plight of the Chakma and other non-Bangla speaking tribal women did not stop even after they flew from Chittagong. The primacy of the local political interest superseded constitutional obligations of the state when people of Arunachal Pradesh, particularly its students associations, did not allow the Government of India to provide Chakmas the voting rights and citizenship rights. Even the positive interventions made by National Human Rights Commission (NHRC) and verdict of the Supreme Court seemed to have of little help. This denial and discrimination along with sporadic incidents of violence raises serious human rights concerns especially for women.[25]

International Human Rights Mechanism and Women Migrants

Since cross border migration involves two or more countries, migration per se impacts various levels at both the national and international stages. Thus, it becomes imperative to explore International rights based mechanism and their reflections in domestic laws and policies for

safeguarding the rights of different categories of migrants. International human rights standards serve as a level playing field for safeguarding the fundamental rights of migrants though these standards differ in nature of protection they offer to migrants.

The existing international human rights mechanisms that include organizations, recommendations and conventions accord several rights to migrants, such as, right to equal pay for equal work, right to be free from discrimination, right to organize and join associations and unions, right to collective bargaining etc. Thus international human rights mechanisms could play a vital role in ensuring equal opportunity and fundamental rights to migrants that are central to the existence of any human being.

The Human Rights Council - an inter-governmental body within the United Nations system- was established in 2006 by replacing its predecessor the 'Commission of Human Rights'. The Council is responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them, including the rights of migrants. Among the Charter based bodied the Human Rights Council holds an important position because most of these bodies receive secretariat support from the Human Rights Council and Treaties Division of the Office of the High Commissioner for Human Rights (OHCHR). The Human Rights Council also works with the UN Special Procedures established by the former Commission on Human Rights and now assumed by the Council. One such procedure is the mandate of Special Rapporteur on the Human Rights of Migrants which was established in 1999 for an independent assessment of situations of migrants across the globe. Prior to this, the Commission established the working group of intergovernmental experts on human rights of migrants

As part of the UN secretariat the OHCHR also provides best expertise and support to the different human rights monitoring mechanisms in the United Nations system. There are many independent experts mandated to monitor State parties' compliance with their treaty obligations.[26] The Council seeks to promote, along with other thematic issues, the human rights of migrants by through a migrant centric approach. Through its various committees (or treaty bodies), the Council keeps track of the implementation of all core conventions[27] that provide certain inalienable human rights to every individual including International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, of 18 December 1990 (popularly known as Convention on Migrant Workers or CMW). The Committee on Migrant Workers and the Special Rapporteur on the Human Rights of Migrants have been clear in stating that although countries have a sovereign right to determine conditions of entry and stay in their territories, they also have an obligation to respect, protect and fulfill the human rights of all individuals under their jurisdiction, regardless of their nationality or origin and regardless of their immigration status.[28] The CMW stands as the most comprehensive instrument in safeguarding the rights of migrants because it takes note of all major ILO conventions and the UN core treaties existing at the time of the enforcement. Specific treaty based human

rights mechanisms however, also reflect on the issue of migrants within their mandate directly or indirectly.

In addition to the above legally binding conventions or covenants, there are a few conventions or that are not legally binding, but very important nonetheless. It has to be noted that 'declarations' and 'resolutions' can be regarded as significant steps in the development of the emergence of the notion of migrants' rights. Some of them are the World Conference Against Racism, Durban, South Africa, 2001 and the Follow-up and Declaration of the Conference (including the Programme of Action); Bangkok Declaration on Irregular Migration - International Symposium on Irregular / Undocumented Migration, Bangkok, Thailand, 1999; Declaración de Buenos Aires; South American Migration Dialogue Meeting, Buenos Aires, Argentina, 2000; Lima Declaration on Migration, Integration and Development, Meeting in Lima, Peru, 1999 ; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; Best Practices Concerning Migrant Workers and their Families, In compliance with the Plan of Action of the Summit of the Americas. Santiago Workshop on Best Practices Related to Migrant Workers, Santiago de Chile, Chile, 2000; South American Migration Dialogue; Brussels Declaration, Third UN Conference on the Least Developed Countries - Brussels, Belgium, 2001; Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live; Vienna Declaration and Programme of Action (1993); Declaration on Race and Racial Prejudice (1978); and UN General Assembly Resolution 56/145 on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Various allied agencies of the UN within the ambit of the mandate and objectives continue to engage with varied aspects of the human migration and their implications. They also involve in standard setting and recommend best practices to deal with the migrants and to protect them from any kind of exploitation. The International Labour Organization through its conventions and recommendations sets guidelines for the concerned states to treat migrant laborers and their families at par with national migrants, and to provide them with equal opportunity and protection of law.[29]

The International Organization for Migration acts with its partners in the international community -states, international agencies, government and non-governmental organizations, to assist in meeting the growing operational challenges of migration management, lobbying for an advanced understanding of migration issues, encouraging social and economic development through migration and upholding the human dignity and well-being of migrants.[30] It is interesting that rights protection is not a part of the International Organization of Migration's (IOM) general mandate. Other organizations like the United Nations High Commission for Refugees, World Trade Organization and World Bank try to accord many rights to migrants and refugees.

Migrant's Rights in India

While international human rights law recognizes the right to leave one's country, in this case Bangladesh, there is no corresponding right to enter in India like any other country, even for a refugee, without the state's permission. Nevertheless, the fact that a migrant entered or remained illegally does not nullify India's responsibility under international law to protect his or her basic rights without discrimination, for example against torture, degrading treatment, or forced labor.

Though, India serves as a country of origin, transit and destination for Bangladeshi migrants, they do migrate to other regions as well and this phenomenon often accompanies an increase in the violation of the human rights of the people concerned. They and their family members are subjected to wide range of human rights abuses during the entire cycle of migration which get manifested in the forms of inadequate conditions of work, sexual abuse of female migrant workers, expulsion and arbitrary detention of irregular migrants, including unaccompanied children, difficulties in accessing social and economic rights, illegal recruitment practices, ill-treatment, inadequate housing, poor access to health care provisions and education, and the criminalization of undocumented migrants.[31] Female family members have to bear the brunt more severely and of various nature.

The Constitution of India provides certain entitlements for employment, non-discrimination, right to work etc. (for example, Article 14, 15, 21, 23 (1), 39, 42, and 43 etc., which are applicable for all individuals including migrant workers from outside the country. Besides, there are other legislative frameworks under which migrants' rights are protected. These laws include the Minimum Wages Act, 1948; the Contract Labour (Regulation and Abolition) Act, 1970; the Equal Remuneration Act, 1976; the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; the Workmen's Compensation Act 1923; the Payment of Wages Act 1936; the Child Labour (Prohibition & Regulation) Act, 1986; the Bonded Labour Act, 1976; the Employees State Insurance Act, 1952; and Maternity Benefit Act, 1961.[32]

India is party to many international human rights treaties, charters, declarations, resolutions and other international obligations both at bilateral and multilateral levels for the promotion and protection of human rights, including migrants' rights. Despite the presence of constitutional provisions and other legislations for safeguarding the rights of migrant labourers, a significant gap could be noticed between the international mechanisms and their realisation at the domestic level. The convention against Torture could not be ratified by the Indian Parliament and similar thing happened with regard to the Refugee Convention 1951 and its protocol 1967. India could not become party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 (CMW).[33] Not signing the CMW by the Indian state raises significant concerns because the covenant has specific provisions for promotion and protection of rights which are equally applicable to irregular migrants. Since many of the migrants

from Bangladesh are irregular/undocumented, therefore, signing of CMW will hold the Government of India accountable for their human rights protection.

Concluding Observations

Saro Pickering argued, …the official picture of women crossing borders extra legally is complicated and partial. The collection, analysis and distribution of sex-disaggregated data on migration flows, including extra legal flows, is not systematically undertaken by any international or regional institution or agency. Domestic data on women who cross borders extra legally are equally problematic, albeit for additional reasons. Therefore, by global counts or cumulative estimations based on domestic recording, there is a dearth of quantifiable knowledge about women who cross borders extra legally.[34]

The Bangladeshi migrants also face the wrath of vested domestic politics in the name of protecting socio-cultural, religious, economic and regional interest. Many migrants, particularly those in an irregular situation, often live and work in the shadows, afraid to complain, denied rights and freedoms that we take for granted and disproportionately vulnerable to discrimination and marginalization. Further, Michelle Leighton, Chief of Labour Migration at the International Labour Organization (ILO) argued,… ILO receives daily reports on the abuse of migrant workers ranging from young migrant women unable to escape from their abusive employees, migrants who are forced to take a job in dangerous conditions and unable to leave because their employer has confiscated their passports, to men and women working in debt bondage. The areas where migrants are particularly vulnerable include domestic work, agriculture, construction, manufacturing and entertainment.[35]

International safeguards that have been instituted by the various international organizations that are functional in the field of migration, are not without complexities of their own. International Organizations like IOM are at best persuasive through advocacy and lobbying but does not have legally binding jurisdiction to protect the rights of migrants. Many of the provisions of international law are silent on women. These international mechanisms are west centric and consider migrant issues from a prism of migrants in employment. Generally migrants are assumed to be workers hailing from either formal or informal sectors. However, there could be a situation where a large section of migrants remain unemployed. In the same vein it may be suggested that many of the women who migrate with their family members get temporary employment or they find it difficult in getting any employment at all. This could be evidenced in many Indian metropolises and towns where women migrants have to rely on begging for their survival. Surprisingly CEDAW too concentrates all it focuses on woman migrant workers and could not account the rights of unemployed women migrants. ILO conventions presume all migrants as labourers which might not be applicable in South Asian context and could mislead in ascertaining the real

status of women migrant. For instance, many of the Bhutanese and Rohingya women migrants remain jobless. Since these irregular migrants are not registered they could not be covered under any existing domestic laws and policies because many of the international commitments are directed towards documented migrant workers only.[36]

When it comes to ensuring rights of migrants in the host country, the debate revolves around the civil and political rights which are aimed at certain set of rights that could be granted to documented migrants. Despite India does not adhering to the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Refugee convention, as a party to many other human rights treaty bodies, the committees which monitor implementation of the core human rights laws, India should begin to apply the treaties to the specific case of migrants, going beyond classic civil rights concerns and including social and economic rights, such as essential health care, education, and adequate housing. [37]

While there is no comprehensive framework for regulation of the people in movement, a mechanism should be developed to encourage migrants to be counted and reduce the flow of undocumented migrants. Both the concerned countries need to realise that migration in this region is a historical fact; and considering the recent socio-cultural, political, economic context and frequent natural disasters in Bangladesh, people will inevitably continue migrating to India at first place. Due to the United Nations Convention on Transnational Organized Crime[38], there is awareness and increasing cooperation among states on the issues of illegal migration, human smuggling and trafficking.

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Report-I

Report on 'Gender, Empowerment and Conflict: A Conference on South Asia'

By

Debarati Bagchi [*]

The International Conference on "Gender, Empowerment and Conflict in South Asia" was organized by the Calcutta Research Group (CRG), in collaboration with the Peace Research Institute Oslo (PRIO) from November 6-8, 2014 in Kolkata. This was the final conference for a collaborative project entitled *Making Women Count for Peace: Gender, Empowerment and Conflict in South Asia*. Funded by the Research Council of Norway's INDNOR and NORGLOBAL programmes, the project aims to generate new knowledge and debate on women's empowerment and the challenges facing implementation of UNSCR 1325 in India and Nepal. With a focus on Northeast Indian experiences and a comparative look at Nepal, the project addresses the role of women in local governance and politics, particularly within the context of peace and security processes.

The conference started with a panel discussion on *Women in Peace: Men's Voices*. Eminent academics and activists were invited to participate as panelists. Bhupen Sarmah, Professor and Director, OKD Institute of Social Change and Development, Hari Sharma, Adjunct Professor, Nepā School of Social Sciences and Humanities, Neingulo Krome, Secretary General, Naga People's Movement for Human Rights, Roberto Carlos Vidal Lopez, Director, Law School, Pontificia Universidad Javeriana and Atig Ghosh, Assistant Professor at Viswabharati University participated in the discussion.

At the very outset, Prasanta Ray, Professor Emeritus, Department of Sociology, Presidency University, welcomed all the participants of the conference and the audience to the inaugural session. Paula Banerjee, President, Calcutta Research Group, and Åshild Kolås, Research Professor, Peace Research Institute Oslo shared with the audience how the project

Making Women Count for Peace came into being. The session was chaired by Ranabir Samaddar, Director, Calcutta Research Group. He introduced the speakers and initiated the session.

The first speaker, Atig Ghosh, spoke on *Feminizing Survival, Countering Globalization* and tried to map some of the key features of the counter-geographies of globalization. In establishing systemic links between, on the one hand, the growth of these alternative circuits for survival, for profit-making, and for hard currency-earning, and, on the other, major conditions such as growth of unemployment, dispossession, conflict, etc., in developing countries that are associated with so-called 'development', particularly through economic globalization, the paper attempted to study the contours of what may be called the emergent feminization of survival. Bhupen Sarmah, addressed the theme of the session in the larger context of gender inequality and violence against women with special mention to Indian Northeast. He described how the counterinsurgency measures of the state often take a violent turn and put the women in these areas in a most volatile situation. He expressed his concern and stated that raising men's voices would be quite important in this context. One also needs to be cautious if state sponsored empowerment of women gets translated into substantive empowerment.

Taking a clue from Sarmah's discussion, Hari Sharma spoke about the experiences of insurgency and women's empowerment in Nepal in the last few decades of conflict. But, he pointed to another scenario which is often neglected in the discussions about Nepal – the case of huge exodus of migrant workers from the country. The violence in the conflict with the state is often held to be the reason of this exodus. What is important here is to remember that men also suffered a lot in these conflicts and could be viewed not only as perpetrators but also as victims of state violence. He also called attention to the romanticisation of the participation of female combatants in the conflicts against the state. But, in a post conflict situation, the condition of these women is frequently overlooked. Neingulo Krome, the next speaker started with narrating some of the stories from his own personal account. He narrated how he was saved from the atrocities of the Indian Army by a group of women protesting on the highway on the eve of the Independence Day. He mentioned a couple of more incidents which clearly show that women emerged as active participants in resolution of conflicts and peacemaking exercises in the Northeast. He expressed his gratitude to these women and commented that the men in this region would benefit a lot if they worked hand in hand with the women's groups who are actively involved in the peace processes.

Roberto Carlos Vidal Lopez, shared some of his own experiences. Rather than being analytical in his presentation, he chose to excavate his childhood memories in Colombia and spoke about his grandmother and her friends with whom he spent his formative years. All these women were widows whose husbands were killed in political conflicts. He heard from them the stories of their husbands' bravery and honesty. These women also participated in many rituals for remembering the dead. He also recounted fantastic tales about the wars which he had heard from them. Roberto said

that now he could understand the solitude and the sense of loss these women had to suffer from in the absence of their partners. The men existed in their lives as ghosts and Roberto's own subjectivity was shaped amid the ghostly presence of these dead husbands and the lively rituals of remembering the past. These stories and rituals opened the possibility of the emergence of a new generation of Colombians enjoying life with their families and friends. They also taught them to celebrate living which, according to Roberto, is the purest form of peace.

The presentations were followed by a lively discussion of some of the issues that came up during the session. It was pointed out that the neoliberal agenda in general is gendered and its morality is shaped by the overarching structures of patriarchy. This structure also incorporates the hegemony of human rights leading to several paradoxes associated with the notion of empowerment. It was also mentioned that the division between globalization and its counter forces could be problematised by questioning the legal illegal binary that often precludes any possibility of overlaps. Some of the narratives presented in the session also came under scrutiny as the active role played by women in social transition seemed quite marginal in these narratives. Hence there could be a danger of essentialisation of the figure of woman as well as that of men's voices in representing it. Also, it was felt that there existed a major fault line between theories of peacemaking and practices of conflict resolution. One could only hope that this gap would come down eventually.

The second day of the conference was divided in two halves. The morning and afternoon was dedicated to the partners-only session that included presentations and discussions of the chapters for the upcoming edited volume that would be published at the end of the project on *Making Women Count for Peace* (9.30 am – 3 pm). In the evening a panel discussion was organized at the Presidency University (4 pm – 6 pm).

After a brief welcome address by Ranabir Samaddar, Åshild Kolås initiated the morning session saying it would be conducted in the form of a workshop. The partners were asked to present their chapter drafts and deliver comments on each other's papers.

Bishnu Raj Upreti, Executive Director, Nepal Centre for Contemporary Research (NCCR), presented his paper, titled *Women in Post-conflict Constitution Making in Nepal: Reflection from the first Constituent Assembly* which dealt with women's participation in Nepal looking at its impact along with certain questions about its reasons and dynamics in discussing Maoists' effect on women's empowerment. The paper also asked the question as to why the dynamism of women's participation had shifted since the peace agreement. Anjoo Sharan Upadhyay was assigned the task to comment on Bishnu's paper and she remarked that it would be beneficial to look at the various histories of democratization in Nepal and how women have played a part in that process during the 1960s and `70s and again in the 1990s. She also opined that more space needs to be given to the analysis of women's participation in the Conjunct Assembly which could be accomplished through the narratives of the women – those who have shared their views on what can be done – because it is important to get their voices heard.

While Rita Manchanda commented that the author needed to be cautious and not essentialize and homogenizing the women and recognize their intersectionality, Hari Sharma found the analysis to be very important in helping the Nepalese to understand their process so the methodology should be carefully examined. He also argued that the questions being raised about the difference between the 1st Conjunct Assembly and the 2nd Conjunct Assembly could help understand what led to the decline in the quality of women's participation. Why has there been this change? People learned or unlearned something and what could that be? The social conservative aligned with the radical left in the name of nationalism and women were left behind as it was a union with a group that is very anti-women. How has the "threshold" option decided representation? The paper could examine how in the past federalism left out women's contributions and address the questions of how the different forms of government affected women's leadership roles.

The second speaker was Anjoo Sharan Upadhyaya and her paper, titled, *Does International Aid Help Women in Nepal? Perspectives from Nepali Women's Organizations*, focused on activism that involved NGOs or any other grassroots level organization. Nepal was extremely dependent on aid and as a result had become crippled. The paper looked at questions of autonomy and empowerment in the grassroots activism versus international aid, thinking about development and long term projects and how that could cripple the process of becoming independent. Nepali women were being considered and constructed as a single unit and this was detrimental. The paper suggested that Nepal should let international funders move away from being so bureaucratic and more focused on long term solutions for women's empowerment. She concluded with a cautious note on the relationship between autonomy and dependency as it is related to international aid.

Bishnu Raj Upreti remarked that the role of donors can be deduced from the fact that international community played an instrumental role in the 1st Conjunct Assembly. He also shared with other participants that there should be more transparency on this issue. He pointed out that NGOs are so connected to political leaders it is hard to tease out what is happening and why. Åshild Kolås pointed out that the so-called international aid is packaged as building wells or schools which constructs an ideology or knowledge building that keeps the focus on helping the poor meanwhile the consultancy is focused not on how to aid but how to stamp an approval on agenda that shows results to the donors. What is the learning curve for international NGOs as it effects what is being seen as a crisis on the aid community?

Bhupen Sharma reminded that this was a common issue with NGOs as they are never apolitical and they come to a country with certain ideas and agendas. Hari Sharma took over the discussion once again and said that most of the international agendas revolve around development with many players who take into consideration the strategic placement of Nepal as it sits on the world stage. The perpetual present crisis is always at the forefront whatever that may be at the time. Paula Banerjee spoke from her experience that she had conducted a five-year study on international aid. There is always someone

in the community who will accept this aid, she said. The point should rather be how to change the trend on aid and the development assistance process. The political formation of what is needed and how to use this funding needs to be analyzed further.

The final comment came from Ranabir Samaddar, who posed the question whether it would be important to keep in mind how to look at the question of representation after the conflict is over. The issues that were of much more urgency whether they are democracy or women's issues require immediate representation and that is often given by the international community. This was not always fair and causes regression or setbacks. What happens between the two constituencies is that stability silences other voices for the purpose of moving forward. The critics want immediate democratization without taking time to analyze the issues from the various perspectives.

Bishnu Raj Upreti then presented his second paper titled *Women's Struggle and Political Participation in Nepal.* This paper looked at the history and why/how women have come into the various stages of change, gendered politics and the struggle for women's rights, ensuring women's participation is still a big challenge, resisting patriarchal society, since 1980 examining the political process what has happened and why, the effects and women's struggle, phases of the movement, the patronization by the panchyat, parallel women's movement, democratic vs. radical, intellectuals vs. rural exploited women etc. There were also attempts to showcase that equal opportunities were given to women. Shiva Kumar Dhungana commented that the paper should define what women's participation in Nepal has been, especially the protests and the women's rights movement, spanning almost 50 years and what real participation is in promoting and influencing political decisions. What is needed to be done, according to him, is to encourage women's participation in other areas of government, not just in number but in quality also. NGOs should "help" women in Nepal and not "empower" them as the latter encourages a macro framework, not supporting women in the rural areas. They must help encourage female leaders in grassroots movement.

Ranabir Samaddar, presented his work, which was jointly done with Anjuman Ara Begum. The title of his paper was *A New Fault line in Conflict? An Exploratory Analysis of Women's Emergence as the Subject of Peace in the Northeast* and it focused on women's emergence as public actors (subjects) in peace building efforts in the North East. It had many historical statistics on women and how they had been doing with different indices. Women were not doing badly during this time despite what some other studies pointed out and this is what created controversy on the generalization of the status of women. If women had not being doing too bad in the North East than the Indian state perhaps could evolve a type of government that stabilizes the situation and then of course the women's issue would a big part of that process. All of these social issues and development issues existed ensuring that women are doing well but there are all of these new extracting policies of natural resources in that region that are serving to transform women's labor and change the economic situation drastically. The government's policies and the stabilization

of the conflict areas have become contradictory to the extraction economy agenda. There is this word "threshold" being used but this is the cusp of a situation where the segmentation of women happens and only temporary alliances happen over issues of representation. What does it mean for peace politics and moving forward? The alliances are done to prevent Hindu upper caste domination in the political arena but the alliances between literate women and the government affects peace process. How so? This opens up further discussion on women as subjects of conflict with discontinuities as compared to women as subject of peace.

Amarjit Sharma asked for some clarifications from the presenter. He commented that the paper covered many aspects and was very deep but it might not actually answer the question being asked: what are the structures that frame women's participation in the political scene and the struggle to end conflict? How is the government planting a myth of peace building and how are women's activities and roles seen or depicted? Åshild Kolås expressed concern that asking the question "how are women doing" might place this paper strictly in the rhetoric and framework of development. A more pertinent question would be to ask what women are doing: their participation in the workforce and women's health issues.

Ranabir Samaddar responded saying that it was difficult to decide the quantitative dimension for assessing subjectivity and political agency. Numbers reflect some of it but mostly one must focus on material condition of a particular subject or even a collective subject. The other important aspect is the desires of the subject: one needs to find out what the subject wants and how institutional resources affect this or can be of help by correlating the war/peace situation with certain material conditions that determine the state of women. How the North-East is changing materially is something that has to be addressed. First, social governments are important with recovery and reform.

Paula Banerjee then discussed her chapter on women as political subjects in Tripura? Based on empirical and archival research, she talked of Tripura as an exception in the North East because of this supposedly peaceful life. However, she cautioned, it was important to realize that the area was very complex with many different races and ethnicities living with many other subaltern groups and various agendas and politics often come into play. The question of "what are women doing" is a complicated one because it could be subsumed by other issues. Women have only 8% representation in government. The women's movement had never really happened according to the women's groups. There had been constant conflict for many years and this had left a deep impression. The massacres and extreme violence in the last decade have stopped but there are other instances of conflict with fissures along the lines of tribe, religion, and caste causing considerable tension. The violence against women is huge despite what the state government said. There was much impunity and denial from the parties and they continue to erase memory so that they can rebuild it along their political lines. She expressed her concern that Tripura women leaders with best intentions were being stymied by the government.

Shiva Kumar Dhungana observed that the paper successfully highlighted the contradictions and paradoxes as they went against the statistics and numbers. It is true that more women voted in the last election and with the 50% reservation in place yet violence against women is very high. The ethnic conflict was full of kidnappings and rapes of women. The changing economic situation and the end of ethnic violence have led to more violence against women. He commented that it was a very critical and open ended paper. however, Shiva Dhungana suggested that the paper should address issues such as amendment 243D (the 50% reservation of women in panchayats) that had been ignored by tribal councils.

Bhupen Sarma raised some questions like, what are the material conditions of life in Tripura, how and why are the villages polarized.

The Session started with presentations on Northeast India. The first speaker was Rita Manchanda. She spoke of Nagaland being paradigmatic of India's conflict and peacemaking processes. In Nagaland, one could track the journey of a woman from being a victim to that of an agent. Such a journey had made the women's movement a symbol of social churning in Nagaland. The paper attempted to translate agency as demonstrated by women in peace work. The questions on which the research focused are 1) the limits and scope of peace politics in empowering and disempowering women 2) to see how ethno nationalistic politics has marginalized the role of women in society and in peace making by exploring the various sites of contestation, taking the nature of political economy in Nagaland into consideration and 3) the representation challenge among women who demand to be adequately represented in the political arena. The challenge in Nagaland had always been to find something new. Some of the areas that were picked for field research are Dimapur and Kohima. What came to light in the course of the research was the changing nature of the people in the field of play. The new middle class in Nagaland is characterized by plenty of conflict unlike the traditional tribal Naga household. The focus of the NMA now was reworking power relations instead of witch hunting and beating up drug peddlers. The Forum for Naga Reconciliation that had been formed to enhance the peace process in Nagaland was a complete failure. In 2008 an attempt was made to revive this. Women in Nagaland are now active participants of this forum.

L. Basanti Devi raised three points in connection to this presentation. First, the conflict prevailing in Nagaland revolved largely around the ceasefire. Second, the researcher had chosen to use the word "post conflict" in her paper whereas this was a misnomer as the conflict was still on. Thirdly, she asked if there was any generation gap in the process of transformation among the women. The presenter was also asked to take into consideration the role of the Meira Paibes for her study.

The next presenter was G. Amarajit Sharma. His study focused on the women in Manipur. The paper strongly argued in favor of the idea of women's agency and elaborated on how women took part in the current political situation in Manipur and focused on some key areas, namely what happens to the marginalized women. The researcher argued that since Manipur did not have any history of woman's movement as such, the role of

women in the peace process was one that became all the more complex. He intended to problematize the notion of space in his paper. He raised the question – how did the idea of space evolve in the study of women in conflict situations? For the marginalized community, the process of reconstitution involved women to re-define themselves within the circle of marginality.

Ranabir Samaddar commented on Amarjit's paper. He pointed out that in what sense the marginalized society in Manipur is a marginal one needs to be clarified. The main argument in the paper is that the Manipuri women have decided not to join politics and it could be a political decision, a way of creating one's own space. The social activism displayed by the Manipuri women raises the question as to the possibility of radicalization of women's movement. He also remarked that the researcher should enquire as to whether the activism demonstrated so far shows an indication of a radical movement taking place among women in Manipur. One of the crucial points that need to be taken into consideration is that the border areas are always marginal in both the physical and metaphysical sense.

Laimayum Basanti Devi then presented her research on *Meira Paibis: Forms of Activism and Representation of Women in Manipur*. She said that the nature of conflict in Manipur had always been of a dual nature and more often than not, women have always been involved in protest movements after the occurrence of any incident of violence. The paper sought to examine the nature of women's involvement in the public sphere with reference to the Meira Paibi movement. Identifying the Meira Paibis therefore, she said, becomes quite crucial. The Meira Paibis were affiliated to voluntary organizations in Manipur irrespective of whether these were registered. Networking played a crucial role in Manipuri women's politics. The Meira Paibi movement was not one that was limited to mothers only. Streamlining is an important feature of the movement.

Rita Manchanda stated that new dimensions have been introduced to the Meira Paibes question in the presentation. The two new areas were: (1) what success does to a movement including the state's attempt to appropriate the Meira Paibes. The role of the state machinery is one that therefore needs to be more clearly highlighted. (2) There is this whole issue of strengthening the woman's movement through memorial activities. Is this a new phenomenon? Finally, the whole issue of the political economy of Manipur and its role in the involvement of women in peace processes is missing.

The final presenter of the day was Arunima Deka. She began her argument by saying that the 37th Amendment of the Indian constitution was an important step towards the empowerment of women in Assam. The paper wished to see the process of grass roots democratization as both an inclusive and exclusive movement. This paper questioned the notion of women as a socially constructed entity. Such a notion was based on the idea of the powerful versus the powerless. The personal spaces of women were dominated by patriarchal norms in spite of the success experienced by women in the domain of political participation. The question that arose in the course of the research is why women need to prove themselves to be as capable as men.

Priyankar Upadhyay reminded the presenter that women's empowerment was a concept that was full of possibilities. Empowered women promise household and community wellbeing. The paradox lies in the fact as to how in spite of sixty years of democracy, India still scores so poorly in women's studies on a global scale. Not much field work is evident in the research conducted.

The second part of day two saw a roundtable discussion on *Experiences of Conflict, Gender and Transnational Justice: South Asia and Beyond* and it was held in Presidency University, Kolkata and the event was planned to bring the scholars, activists, journalists and students of Kolkata in conversation with scholars from other countries and facilitate a comparative discussion on various issues and approaches on the gender question in multiple contexts. Nergis Canefe, Associate Professor, Department of Political Science, York University; Beatriz Eugenia Sanchez Mojica, Assistant Professor, Universidad de Los Andes Bogotá, Colombia; Roberto Vidal, Director, Law School Pontificia Universidad Javeriana, Colombia; Åshild Kolås, Research Professor, Peace Research Institute Oslo; and activist Krishna Bandyopadhyay of Kolkata participated in it. The event was chaired by Anuradha Lohia, the Hon'ble Vice-Chancellor of the University.

Sabyasachi Basu Ray Chaudhury, Vice Chancellor of Rabindra Bharati University welcomed the participants and the audience to the event. The first speaker for the roundtable was Nergis Canefe who talked about the movement of mothers in countries like Argentina and Turkey. These women whose children "disappeared" during different conflicts in these countries came together making claims on justice not only from the state but also from the society at large. These women did not represent any homogeneous group of mourning mothers; there were many layers to their constitution. Most of them experienced vulnerability from the beginning as they were married off quite early in their lives. The demand of justice was not only meant for the lost children, but also for the ones who were responsible for their disappearance. New grounds of passion and unusual claims could be observed in these movements as the real claimants had already disappeared. These unusual claims of justice opened possibility of a new form of society.

Beatriz Eugenia Sanchez Mojica, the next speaker, gave a lecture on women, reparation and transitional justice in Colombia. She said that for over a half century, Colombia had faced complex armed conflict that led to the displacement of 5 million people. Women have been both involved in these conflicts but most of the time this participation was imposed upon them. They were also the victims of displacement and sexual violence due to these conflicts. Feminist organizations started to raise the topic since the 1990s. Various reports by them indicated the vulnerability of women at the face of sexual and other forms of violence. The next speaker, Roberto Carlos Vidal Lopez, spoke about the guerrilla insurgencies in Colombia since the 1960s. His brief sketch described several peace agreements between these outfits and the state. The conflicts started once again when these agreements failed. According to civil society organizations, one of the reasons of the failure of these agreements was the negligence to include women's issues. Åshild Kolås,

the next speaker, talked at length about the United Nations' notion of women's rights. She also highlighted the centrality of gender in peace research. The decade of 1990s saw a change in the outlook of the UN in dealing with women's issues. The year 2000 witnessed the landmark event of recognizing women as actors in peace processes by the United Nations Security Council Resolution 1325. The issues of security of women and their participation in peacemaking exercises were made a part of the UN agenda for the very first time. But still there remains a huge area for improvement. Most countries including India, for example, do not have a National Action Plan for women in peace. It is the reason why the year 2015 is scheduled as the "year of review."

Krishna Bandyopadhyay, the last speaker of the day, shared some of her experiences as an activist involved in the Naxalite movement in West Bengal in the 1970s. She said that she did not join the movement primarily as a woman but as a young student. But she was made to realize time and again by his male comrades that as a girl she should not take part in acts of violence directly. Later she and her friends were designated with nursing responsibilities as if the role of women in politics was only to look after their male comrades and nurse the wounded soldiers to good health. Whenever the female activists protested against these stereotypes they were criticized for having middle class sensibilities. Although she was made to feel unequal by her male comrades, Krishna clarified that she did not have any repentance for her participation in the movement.

The roundtable discussion was followed by feedback from the audience. Questions were asked about the state's reaction to the protests by the grieving mothers in Argentina and the similarity of such movements with the ones in Kashmir, India, where people are also reported to have disappeared. There was also a discussion about expanding the spectrum of the notion of gender by including LGBT communities. In response it was pointed out by one of the speakers that certain categories could not be simply reduced to simplified economistic models.

The third and final day of the conference was divided in two slots. In the morning (9am – 10.30 am), the partners gathered to have an in-house discussion on the publication of the edited volume that was planned to be the final outcome of the project on *Making Women Count for Peace*. The second half saw participants presenting their papers. Fifteen papers had been selected from the plethora of abstracts that were received in response to the call for papers. These were slotted under five overarching themes. The themes were largely designed with a focus on issues related to peacebuilding initiatives in post-conflict societies like Nepal, Northeast India and Kashmir. However, the conference also accommodated a session on the conceptual framing of issues on sexual minorities, to underline how fundamental the subject was for any discussion on gender and dissent. Subhas Ranjan Chakrabarty, eminent historian and a member of CRG, delivered the welcome address and initiated the sessions. There were two successive parallel sessions (sessions 1 & 2 from 11 am – 12.30 pm and sessions 3 & 4 from 1.30 pm – 3 pm) followed by the fifth session (3.30 pm – 5 pm) and the valedictory (5.30 pm – 6 pm).

The first session, *Revolution, Rebellion and Women*, included three papers dealing with the issues of gender in post-conflict Nepal. The panel was chaired by Khesheli Chishi, the former president of Naga Mothers Association. Shiva Kumar Dhungana (design, monitoring and evaluation specialist, Search for Common Ground Nepal) discussed the papers for this session. The three speakers were Amrita Pritam Gogoi, Amy Charlotte Soar and Lorina Sthapit

Amrita Pritam Gogoi, who is an Assistant Professor at Dibrugarh University and a PhD fellow at TISS, Guwahati, in her paper, *Troubled Identities: Women Combatants in Post-Conflict Nepal*, focused on the female fighters of the Maoist movement in Nepal. The paper argued that the women combatants were traversing difficult terrains, struggling to balance between public and private space, yet they could not liberate themselves from patriarchal constructs. The "woman question" had become an essential part of the Maoist movement and many controversial and seemingly liberating decisions such as forbidding arranged marriage and encouraging inter-caste relationships were being foregrounded. But this resulted in an odd juxtaposition of revolutionary ideology and conventional marriage and family. Many hierarchies still existed despite these radical changes and suggestions.

Amy Charlotte Soar, who is associated with the UN Political Team, spoke on *A Postmodern Feminist Intrigue: Maoist Legal Discourse and Practice in Nepal.* Her paper analysed political and legal documents like the 40 point demand, the appeal of the CPN to the people, and the comprehensive peace agreement from 2006 to understand the implicit notions of gender. Amy's research deployed postmodern theory of feminism which says that women have various experiences that cannot be lumped together, that oppression is shaped by language and experience is constructed. She demonstrated how there were multiple references to "women" with no recognition of diversity or pluralism along with other confident uses of language including the terms "patriarchy" "discrimination" "oppression." There was a lack of integration of women into the Maoist design and the official announcement of the war was complex and full of jargon which could not serve to include the uneducated women of rural Nepal. The language of the documents was apparently gender neutral and yet "women" were for the most part interchangeable with "daughters."

Lorina Sthapit, gender, monitoring and evaluation specialist of International Fund for Agricultural Development in Nepal, was the third speaker for this session. Her paper, *Roles and Experiences of Female Maoist Combatants during and after the People's War in Nepal*, cited interviews and shared experiences and memories of women combatants in Nepal. Why did women join the fight, what did they actually gain – Lorina asked her respondents. She gathered that each woman could have a different answer. In many cases the women were swayed by the Maoist promise of equal educational opportunities for boys and girls. Many women wanted to break free from patriarchy and free/liberate Nepali women. She showed the journal of a woman combatant with photos depicting female combatants being trained in the same training space and with the same weapons as the men. Yet, the paper argued, the

People's War was unable to bring about any structural transformation in the patriarchal system and thus the women combatants were unable to reintegrate into the post conflict society without serious consequences. One stark instance was that many women tried to get back to a normal life in their communities but were forced to divorce their "war husbands" because it was an inter-caste marriage.

At the end of the three presentations, the chair of the session Khesheli Chishi presented a comparative perspective. She remarked that in Nagaland there was no discrimination against female combatants, they were respected and treated the same as the men with equal ranking. There was never a particular focus on the "women's question" during the Naga conflict so it was quite a different experience than Nepal. The Naga women continue their struggle to actively participate in political decision making.

Shiva Kumar Dhungana discussed the three papers in detail. For Amrita, he suggested a deeper research including some psychological inquiry while not relying on media sources or public opinion. With regard to Amy's paper, he questioned the very idea of a Maoist document. The peace agreement was written by the Nepal government and was thus, according to him, not necessarily a Maoist idea but rather a mix of many different politics. Also, he cautioned her that certain points require a more nuanced understanding. Like, the use of "daughter" could be a Nepali and not a Maoist usage. For Lorina's paper, Dhungana felt that there was a need to focus a little more on the recruitment of women in the war and how they overcame difficulties. He suggested a deeper analysis of the "success story of the war in Nepal."

The parallel session on *Gender, Sexuality, Dissent,* was chaired by Ruchira Goswami, Assistant Professor at National University of Juridical Sciences, Kolkata. The discussant was Samata Biswas, Assistant Professor at the Haldia Government College. The three speakers in this session were R. Vaishno Bharati, Saayan Chattopadhyay and Sucharita Sengupta.

R Vaishno Bharti, Research Associate at Aneka, Bangalore, in her paper, *Powering Empowerment: A Case of the Aravanis in Chennai,* attempted to locate the instances of empowerment and agency among this group of extremely marginalised and vulnerable people. And interestingly, in contrast to Sucharita Sengupta, the third speaker, she located both the agency and empowerment within spaces that the community created, the support of family or friends and that of employment opportunities. She presented a nuanced analysis of these formative moments. Through a reading of their experiences, Vaishno tried to understand the epistemic advantage that the Aravanis would have in dealing with their own community and hence can empower others.

Saayan Chattopadhyay, Assistant Professor at the Department of Journalism and Mass Communication, presented a paper on *Realigning Agency: New Media and the Urban Women's Movement in India* in which, he explored how urban women can come together, collaborate and take collective action using online media in the Indian context. Saayan referred to the Pink *Chaddi* Campaign [the pink panties campaign], and the SlutWalk India campaign as

two specific cases to examine the interrelationship between modern urban women in India, their use of new media, and the intervention of the paternalistic nation-state to question the emancipatory sphere of social networking in relation to women's movement. He sought to locate the politics of urban Indian women in heterogenous time, in the domain of unbound serialities that made possible imagined alliances that transcend the obligation of direct acquaintance. Looking into the discursive space that the new media provides, he basically revisited the discourse on modernity, nationalism and cultural hegemony and its implications for urban women's activism.

The final paper by Sucharita Sengupta, Research Assistant, Calcutta Research Group, was titled *Freedom from the Closet?: Voices of the Sexual Minorities" in Kolkata.* She attempted to contextualise "sexual minorities" in India, keeping in mind that "minority" was a governmental category. This paper was written in the immediate aftermath of the landmark judgment by the Delhi High Court that albeit for a short time, and she tried to trace, through interviews of community members and NGO/CBO workers, what changes they foresee with the aftermath of a favourable ruling by the court. She argued that even though a decriminalisation of homosexuality would probably make it possible to get married and jointly own property, it was unlikely that legal decriminalisation would change deep rooted cultural and social prejudices, every day forms of discrimination and acts of violence.

In her discussion of the three papers, Samata Biswas noted that Both Sucharita's and Bharti's papers invoked Foucault. This notion of empowerment, she emphasised, was one that brings to a position of power groups that had earlier been in relative positions of power and was also key to Sayan's paper. Sucharita used the model of panopticon to explore how the "implications of criminality, the intimidating silence and the penetrative gaze sufficed to push the sexual minorities to the margins and not so much the enforcement of the law itself". For Bharti, power was productive, as at every instance of its occurrence it also generated resistances to it. Keeping this productive capacity of power, she then located power in empowerment, to enquire how at every instance of the working of power, for example, in interpersonal relationship – how empowerment became possible.

The third session was on questions of militancy and women's empowerment in Kashmir. It was chaired by Meenakshi Gopinath, Honorary Director, Women in Security, Conflict and Peace. The discussant was Sumona Dasgupta, a well-known scholar and researcher on Kashmir. The three speakers were Sarbani Sharma, Bhavneet Kaur and Seema Shekhawat. Sarbani Sharma, a doctoral student at the Department of Sociology, Delhi School of Economics, raised the issues related to post conflict Kashmir in her paper, *Finding Azadi in Kashmir: Locating Gender Politics in a Local and Global Kashmir.* Her paper tried to examine the location of gender politics amidst the wider discourses of nationhood and autonomy in Kashmir. She attempted to grapple the question of everyday micro politics through a detailed ethnography of everyday life in a girls' hostel of Kashmir University. She also dwelt on the fraught terrains of *hijab* politics and reading of Quran to understand the technologies of everyday resistance. The formation of

solidarities around the notion of *azadi*, she observed, was indicative of the performative character of activist subjectivities. She argued that in Kashmir, even the most determined articulation of political goal followed a certain ethics of faith in order to contextualize the performance of protest.

Bhavneet Kaur, MPhil student at Delhi School of Economics, spoke on *Gendered Practices of Resistance in Indian Administered Kashmir.* Quite in tune with Sarbani, Bhavneet also deployed the lens of 'everyday' to understand women's role in the resistance struggle in Kashmir. Through a study of life narratives of women, she teased out elements of resistance in the ambiguities and rhetoric of the everyday, the ordinary, the mundane, the scattered and the unconscious. She posited women's narratives as interpellations, as eruptions in the political discourse that broke the order of authorized historical narratives of victimhood. She highlighted the life story of Parveena Ahangar who initiated the movement against Enforced disappearance in Kashmir. Bhavneet attempted to identify women as active participants and agents of the resistance movement. She delineated practices of resistance in language and memory and highlighted how personal grief was maneuvered in public campaigns against state oppression. The third presenter Seema Shekhawat, independent researcher based in Jaipur, presented her paper, *Condemned to be Invisible: Locating Women in the Peace Process in Kashmir.* She argued that the Kashmir case provided ample evidence of the prejudiced nature of peace making, which glorified women as linchpins of the movement for independence from India but later did not hesitate in pushing them to the fringes of the peace process. She raised the question - where is the locus of women in the peace building process in Kashmir? Although never involved as direct participants in combat operations, Seema's paper depicted that women contributed in various other ways ranging from nursing to assisting in covert operations as spies.

Sumona Dasgupta teased out the important points from the three papers and discussed their significance. She appreciated the presenters for the rich ethnographic narratives of the everyday, dealing with the intersections of history and memory, something that had not earlier been adequately represented in any research done on Kashmir. She further added, when the gaze was shifted from the table of negotiations to the everyday, the true meaning of women in peace keeping could be understood. When different aspects of social relations were critically looked at, one could get some deeper insights into areas such as resistance and agency. To Sumona, it was important for such perspectives on everyday politics not to lose sight. The political economy of the social reality, the violence, the constitutional forms of protest had been crucially addressed in the paper of the session.

The chair Meenakshi Gopinath wrapped up the session reminding the audience that the crucial question that came up from the presentations was that who defined the peace process in Kashmir and how to grasp the issue of agency. More importantly, she cautioned, that it would be extremely necessary to grasp at what point notions of agency and considered choice overlapped.

The fourth session, *Spaces of Citizenship and Creativity,* included three papers on different experiences from northeastern India. Åshild Kolås chaired the session and Sanjay Barbora, Associate Professor, Tata Institute of Social Sciences, Guwahati discussed the papers. The three speakers were Anungla Aier, Jayanta Madhab Tamuly and Atom Sunil Singh.

Anungla Aier, Principal of Zisaji Presidency Government College, Kiphire, Nagaland, in her paper, *Gendered Citizenship, Representation and Peace Negotiations in Naga Society,* tried to inquire into the perceptions of citizenship as experienced and practiced by women as members of a given tribal community in Naga Society. Her aim was to locate gender within the accepted ideas of citizenship to understand the inherent patterns of inclusions and exclusions. She elaborated how the idea of citizenship in Naga society was essentially entangled with the notion of personhood by distinguishing terms which meant 'citizens of the village' and 'people of the village'. These shaped the kinship structure that essentially alienated women from mainstream social and community issues. Anungla forcefully argued that a radical change in the fundamental structure, on which traditional notions of citizenship are based, was needed.

The second speaker was Jayanta Madhab Tamuly, Doctoral Student, Department of Peace and Conflict Studies and Management, Sikkim University. His paper, *The Silent Activists: Women Writing for Peace: A North eastern Experience*, was a literary study on the subject of conflict, peace and women's empowerment. Jayanta emphasized the necessity of an interdisciplinary approach and introduced his paper to be a study of the rhetorical and emotional aspects of conflict and peacebiulding as opposed to academic and policy studies. His work dealt with a new wave of writings in Northeast India that began addressing issues of ethnicity, identity, nationalism, immigration, marginalisation or human rights from the later decades of twentieth century onwards. A group of women writers have been quite active in highlighting these themes in their works. Jayanta takes up the works of six such writers from Nagaland, Manipur and Assam to understand the role of women writers of Northeast as agents and activists of peace. They were Arupa Patangia Kalita and Ratna Bharali Talukdar from Assam, Temsula Ao and Easterine Arlu from Nagaland and Irom Sharmila and Ningombam Sunita from Manipur. Atom Sunil Singh, postdoctoral fellow at Jawaharlal Nehru University, was the concluding speaker of this session. His paper, *Geographical Significance of Khwairamband Bazaar: Rethinking Emergence of Women's Movements in Manipur* highlighted the symbolic value of the space of Khwairamband Bazaar, which is a market run by women, in facilitating women's movements in Manipur. In public memory, the market remains a place where various forms of women's movement originated, including Nisha Bandh (anti–alcoholism) movement, Meira Paibis (Torch Bearers), Nupi lan (women's war) etc. Atom showed how women acted as pressure groups, lobbying for various demands, protesting against everyday occurrences like domestic violence, abuses by the police and the army etc. in course of the various movements. In this process they negotiated with both state and non-state actors. In such a context, the importance of a women's market lay in the

fact that it served both as a space for economic subsistence of women as well as political mobilizations.

Sanjay Barbora, the discussant, reminded Jayanta that it would be necessary for him to talk about the politics inherent in the literary works. One has to remember, he cautioned, that any literary work ultimately tries to make a statement, narrate an event or tell a story which is not politics per se. Again, while talking of the bazaars in Manipur, he observed that the idea of bazaar as occupying a definite space in time was assigned in advance. He further suggested that it would also be crucial to track the changes and transformations of the market area over time instead of taking space to be a frozen entity.

The final session of participants' presentations, Protest, *Participation, Agency* was chaired by Paula Banerjee and Nasreen Chowdhury, Associate Professor, Delhi University, was present as a discussant of the papers.

Roma Dey, Doctoral Student, Centre for the Study of Social Systems, Jawaharlal Nehru University, Delhi, in her paper *Re-imagining the Protesting Mother: Counter Narratives of Women as Citizen*, wished to examine "mother" as an evolving category for protesting women. She depicted that the last few years saw an increasing rise in protest by "mothers", a category in itself on different issues worldwide. The chief concern of her study was to trace how this particular figure of "mother" came to be identified as political entities and scrutinize what forms of negotiations this enabled in the political sphere. Briefly recounting the nationalist framing of the iconic image of a mother, she entered into the discussion on the protest staged by the Meira Paibis, a women's collective in the state of Manipur, against the rape of Manorama, alleged to be a member of the banned People's Liberation Front. She observed that this particular event marked a rupture in the political imagination of the "mother" figure in particular and women in general in Indian democracy. The aim of her paper was to argue in favour of the efficacy and need for re-imagining protesting mothers as citizens, especially in conflict zones.

Dolly Phukon, Assistant Professor, Dibrugarh University presented a paper on *Contested Space of Democracy and Women's Movement in Assam*. Her paper tried to locate and analyze the nature and trends in women's movement in Assam within the larger rubric of emergence of various social movements in India and their efforts in securing democratic spaces for women. She attempted to find out how far women's movement in Assam was able to establish its own space in this functioning democracy. First she delves into the long history of articulation of women's rights and formation of women's organizations at various junctures beginning from the reform movements in colonial Assam right to the recent forms of protests by Meira Paibis. Analyzing the trends of women's movement and its nature, she raised the sceptic question that to what extent women's movement could help bring about broader shifts in women's consciousness and mobilization around issues of gender and 're-democratize our democracy' on gender lines, when most of the activities of women's organizations are fundamentally based on identification with traditional notions of womanhood.

The final paper by Dolly Kikon, Postdoctoral Fellow, Stockholm University, was entitled *Memories of Rape: Cultural Impunity and Politics of Agency in Nagaland.* To understand the culture of impunity that sexual offenders enjoy in Naga society, Dolly first briefly discussed the history of militarization and state violence that has deeply transformed Naga society. Then she moved on to share her ethnographic findings drawn from personal memories, interviews and conversations with survivors of sexual violence, counselors, and women activists on their experiences of sexual misdemeanors by the armed cadres/officials of various Naga insurgent organizations or just ordinary Naga men from the neighborhood. She examined the accounts of rape survivors and witnesses to interrogate the unexamined and uncontested nationalist construction of 'tribal' women. She shared her own experiences of growing up in a Dimapur suburb and how that influenced her perception about the naturalization of violence against women in Naga society. She specifically explored the everyday processes by which certain forms of social impunity to sexual offenders had become entrenched in Naga society. To illustrate her point she documented the legal and social career of a particular case of domestic rape of a 12 year old girl. The aim of Dolly's work is to start a dialogue of an inclusive vision of justice and human rights. She cautioned that as long as violence against women and children were decontextualized from notions of rights and empowerment, the vision of a just future would remain a fractured one.

Nasreen Chowdhory, the discussant of the panel, connected the three papers thematically and discussed their potential. She commented that protests, participation and agency were the three concepts that were discussed in the papers at length. She thought Roma's effort to understand the concept of women as "Mothers" was quite crucial to understand the gender – state problematique in the backdrop of AFSPA. She suggested Dolly Phukon to articulate a little more on how she prefers to envision the idea of Indian democracy and how she identifies the gendered space in social movements. The discussant remarked that Dolly Kikon's paper was important to understand the history of impunity in Nagaland and quite detailed in its ethnographic reach. Paula Banerjee concluded the session by observing that it would be good to arrive at a proper definition of women in politics which could be deployed as a conceptual optic to read the experiences of violence in conjunction with ideas of conflict and peace.

The valedictory panel was designed to accommodate two speakers who could share some insights on the so-called "other" and "marginal" voices. The panel was titled *Women for Peace: Many Voices.* The two speakers were Mandira Sen, Director, Stree-Samya publication house and Khesheli Chishi, former president, Naga Mothers' Association. Samir Kumar Das, Professor, Department of Political Science and Dean of the Faculty of Arts, University of Calcutta, chaired the valedictory session.

Mandira Sen spoke briefly about Dalit women in India. She reflected that Dalit women had never been a part of any dominant discourse on women's movement in any meaningful way. Denial of caste was the root of discontentment. The political class had remained indifferent to Dalit progress.

This malign neglect has been seen as a conspiracy among the Dalits. She talked about the different phases of the Dalit movement in Indian history. She reiterated Urmila Pawar's argument that Dalit movement had always been very hierarchical in nature and that Dalit women have created a revolution in politics. Within the movement of lower caste groups, patriarchy has been quite stark and oppressive.

Khesheli Chishi shared with us the experiences that she gained as a former president of the Naga Mothers' Association. For her, the role played by the NMA had always been one that was characterized by team effort. She was born and brought up in the midst of the conflict situation in Nagaland and continued to be in the same situation even today. Naga women felt that it was imperative to find ways by which they could contribute to the political situation in the state. She said that armed conflict was accompanied by a conflict within communities and that different kinds of strategies had to be deployed to attain peace. Every effort was made on the part of the NMA to ensure that its activities were result orientated. No state machinery in Nagaland used the NMA for its own agenda.

Chair of the valedictory panel Samir Kumar Das observed that the two brief presentations were quite fitting as concluding remarks and they aptly summed up the proceedings of the workshop. He added two brief points: first, it is only very recently that the Bhadralok community had started showing crevices and the Dalit movement itself was not without its schisms. Mandira Sen had not spoken of Dalit women who were lesbians. It would crucial to understand how the articulation of difference would influence and shape the voice of justice, Professor Das iterated. He further said that Khesheli Chishi's presentation underlined a few key concerns that had emerged out of this workshop. She spoke in respect of the inalienability of the human voice. It is respect for human life that transcends the various categories of human existence.

The conference ended with Debarati Bagchi, Research Associate, CRG, delivering the formal vote of thanks.

Report-II

A Report on a One Day Workshop on 'Bengal-Bangladesh Border: Humanitarian Issues'

By

Sucharita Sengupta [*]

The workshop on Bengal Bangladesh Border- Humanitarian Issues was organized by the Mahanirban Calcutta Research Group (CRG) with support of the International Committee of the Red Cross (ICRC) on 17 December 2014 at Swabhumi, Kolkata. The Workshop centered around three paper presentations followed by a round table discussion on the aforesaid theme.

The day commenced with an introductory note from three speakers – Samir Kumar Das, Ms. Mary Werentz and Ms. Indrani Sinha respectively. The inaugural session was chaired by Dr. Ranabir Samaddar. The Chair started the session by commenting on the focus of the workshop which was primarily to discuss three study papers of this collaborative research project between CRG and ICRC. He then invited the speakers to initiate the programme.

Samir Kumar Das, Professor of Department of Political Science and Dean of Arts, University of Calcutta, began by extending a warm welcome to all present. He said that he had been thinking about the way in which CRG had contributed to the body of knowledge in border studies and that he felt that Ranabir Samaddar's *Marginal Nations* was the beginning of border studies in an altogether different way. Borders have emerged as more than just thin lines separating two territories but it is actually a land--borderland. And borderland is conceived as a space between two nation states where there are dynamics unique and intrinsic to borderlands themselves. This was a major departure from traditional border studies. Within CRG work had been done on the Sino-Indian border by Paula Banerjee and on the Pakistan-Indian

border by Sanjay Chaturvedi. He further pointed out that articulation of borderland leads to the formulation of political subjects--who are not necessarily subject of either of the two nation states. Further, the survivors' livelihood depends on the border but also involves constant crossings of border as it doesn't exist. He ended by asking what policy could resolve such dilemmas.

The next speaker was Mary Werntz, Head of Regional Delegation of ICRC. She detailed ICRC's work in the region and then went on to conflicts in the borders and commented how people living in the borders live and lead unique lives. Borders are also sites of conflict and violence. She gave the examples of fishermen caught in foreign waters or people who have strayed into the territories of other countries and hence imprisoned. The fates of such people are decided by political actors and many don't survive. Families often, in her experience, receive the news of their deaths with relief as it is better than endless waiting. Humanitarian concerns are considerable in such cases, particularly the perilous boat journeys by immigrants in Asia Pacific. Lack of documentation often means virtual exile in another country and cutting of links with family back home. Increasingly state apparatuses are strengthening stricter border controls invoking state sovereignty and security. Insecurity faced by such migrants further compels them to take bigger risk and directly to play into hands of traffickers. ICRC tries to re-establish links between detainees and their families. 2014 is the centennial year of ICRC which was established during the World War I. She pointed out that the illusion of global communication collapses when one looks at detainees and forced migrants who often completely lose all connections with their loved ones especially in situations of conflict. She also detailed ICRC's work in helping such people in conflict times and areas.

Indrani Sinha, Executive Director of Sanlaap the last speaker of the session, began by saying that it's a common belief that borders are there for our protection. When there's an aspiration for a better life on the other side of the border, these aspirants become victims. And this needs to be looked into. Humanitarian aspects are of importance as are issues of human rights and the importance of rights cannot be ignored. Knowing their rights which are not guaranteed is important. She said how Sanlaap works with both Nepal and Bangladesh and while the former has an open border the latter has closed borders with India and this causes all sorts of difficulty, She then went on to speak about the crossings across these borders of the Rohingya people. While the adults, when apprehended are taken to correctional homes, segregated according to gender, the children are taken to shelters. In this manner the entire family is split although they came as a family with an aspiration of refuge. And no one has clear directions how to act and what the protocols are. Sanlaap has a done a study with UNICEF in the Jammu and Delhi camps of Rohingya refugees and also given a copy of their report to UNHCR.

Ranabir Samaddar, Director of MCRG concluded the session by adding that CRG looks forward to sharing their study with all the stakeholders and audience present at the workshop.

The Second session of the day began with a paper presentation from Atig Ghosh, Assistant Professor of History, Visva-Bharati University, entitled, "Survival and Resilience in the Indo-Bangladesh Enclaves". His paper was based on intensive field study on enclaves in Cooch Behar like the Dahagram-Angarpota enclave, Berubari enclave and a few others. His paper highlighted that though experiencing socio-sexual violence at an everyday level, the people in the borders aspire to integrate. Thus, border becomes coterminous with aspiration. The political economy of the margins further limits the movement, dreams and goals of the people in the enclaves. His paper brought to the fore the idea of 'normalization of exception'. While concluding, he stated that the idea of resilience could be linked to the violent normalization of exception and the enclaves are also a part of the changing political economy. Enclaves, he pointed out act as a source for cheap labour for the mainland, thus the existence of such vulnerability benefits the mainland and hence sustained. He also pointed out that while discussing enclaves, the failure of negotiations have to be taken into account as violent oscillations between hope and despair takes place.

Samir Kumar Das as Chair of the session, commented that in enclaves there's normalization of exception. Also according to the Oxfam report, the concern should not be so much exchange of people as facilitating movement through creation of corridors. He mentioned a few books of interest in this regard such as Amar Ray Pradhan's *Jibon Nadir Banke Banke*. These books show everyday coping mechanisms of people. A few pertinent questions were also raised by him: would linking enclaves with the corridors mean that the seclusion would be lost? To the officials, enclave is an exception, but Ghosh's paper suggested that enclaves had a normalizing effect. How did this sudden change take place? Is it because of globalization? He further pointed out that the political economy has to be addressed more strongly along with the invisibility factor as the truth is that people had always known how to cross borders.

Rajat Roy, Senior Journalist and the first discussant of the paper, commented how in the early days the newspaper reports covering the issue of these enclaves would have a pro-state stance. The enclaves were represented as contested spaces and the reports only looked at the state's perspective-- whether the state was India or Bangladesh. The people themselves, living in these enclaves remained invisible in the media reports. Currently the state position is that there are about fifty five thousand people living in these enclaves whereas BBEEC claims that it's over one lakh. The ethical question should be brought in to the broader discussions. It's not a question of just legality but also rights from the constitution and rights that derive from morality. In the current discussion of rehabilitation, issues of costs are paramount and questions of ethics are missing. The question of 'ought' should be replaced by 'right' of the asylum seekers. He pointed out that the paper could look into how these people are entitled to protection by the states and that it's their right. The question of ethics and care becomes more important than what the state ought to do.

The second discussant of the session was Soumen Nag, author and eminent expert on North-Bengal, who hails from Siliguri, North Bengal, and he spoke about his first hand experience of visiting such enclaves and the situation of people living in them. He said that these enclaves in North Bengal do not match with enclaves in any other part of the world as these are not just political enclaves but also with historical and geographical dimensions. The boundary created by the Radcliffe commission was done without having a single cartographer on board. Coohbehar was a princely state which did not immediately merge with India upon independence. And this has added to the travails of the people in this borderland. There's a pathetic condition of human rights here and Professor Nag feels human rights is the ability to defend one's identity and cultural identity. The enclave people are at the mercy of the mainland especially for their livelihoods as they have to come and take up jobs like plying rickshaws in the mainland. He also gave many instances of how livelihoods of people depend on crossing the border and how precarious their lives are as a result. Even home ministry does not have correct data on population in the enclaves. He concluded with the necessity to urgently settle the issue on humanitarian grounds.

After this the chair opened the floor to questions. S. Ramaswamy commented on the parasitic and vultures like treatment of enclave dwellers by mainlanders. Ranabir Samaddar elaborated further on the point raised by Rajat Roy in his discussion about the ethical question. He said that the failure of negotiations between the two states should be taken seriously because no solution has been arrived at it even after over 60 years of post partition. There's need to assess the reasons of this failure and maybe start accepting the idea that such enclaves must be treated as the commons. Iman Mitra asked whether there are instances where the people from the enclaves are coming to Calcutta for livelihood. He felt that concealing identity in Calcutta might be more difficult than in any other part of India. Kirity Roy pointed out that in the slums where Bangladeshis/Bengali speaking Muslims live in Delhi there are repeated police raids. He also pointed out that the difference between open and closed border was also based on which was a Hindu neighbouring state and which was a Muslim neighbouring state. Further the terminology used is 'enclaves' whereas really looking at the kinds of exclusionary practices they should instead be called 'exclaves'.

The next paper was presented by Sucharita Sengupta, Research Assistant, CRG. She began her presentation by stating that her paper entitled "Living on the edge: Women, Life and Confinement" aims to unravel the vulnerability of Bangladeshi women languishing in the correctional homes in kolkata and other parts of west Bengal. It also aims to explore the notion of justice and freedom for these women. Her paper highlighted four correctional homes in this regard which have the maximum number of persons from Bangladesh, sometimes almost equal to Indian inmates leading to a crisis in space. She pointed out that correctional homes in Dumdum and Alipore are flooded with inmates from Bangladesh. This throws up questions on the nature of population flow, legality and illegality of migration and questions like what drives these women, mostly from a low economical background, to

cross the border for an unknown territory. These women are compelled to cross the border and enter India due to various reasons such as political disturbances, better employment opportunities, medical treatment and to visit relatives. In the last segment of her presentation she discussed the procedural difficulties of repatriation. Instead of repatriation which is a very long process, the authorities generally adopt the method of push backs. While discussing this, she also mentioned the vulnerability of the Bengal-Bangladesh border pointing out the case of Rohingya muslims, inhabitants from Myanmar who have fled from their homes due to extreme violence in the 1990s. As a result they are coming in huge numbers through the Bengal Border to India and landing up in prisons. They cannot be even repatriated because they are considered as stateless.

At the end of her presentation, Anita Sengupta, Fellow, Maulana Abul Kalam Azad Institute of Asian Studies, Kolkata and also the chair of the Session, pointed out that institutional factors have been brought into Sucharitas narrative as far as cross border migration and Bangladeshi women in correctional homes is concerned.

The first discussant of the session Ruchira Goswami, Assistant Professor of National University of Juridical Sciences describing Sucharita's paper as a draft presentation pointed out that these women live on the edge of life and confinement. Therefore life and confinement are counterpoised. It would be good if the paper also highlights in bit more detail the lives of these women before confinement. Also, the question of class regarding flows could be incorporated in the paper. Fourthly the paper has mention of the fact that borders are constantly negotiated and new identities are evolved, the researcher could detail with this in moiré detail. She also raised an important question on a point made by Sucharita in her paper. She asked the researcher whether it is possible to humanize migration as the process the problem is the absence of substantive law and lack of humanization of legal process, therefore humanization cannot be done from outside. Sixthly age is a difficult determinant because in most cases and it is mostly decided on the spot. Lastly what is the meaning of jail for these women, confinement or a safe custody measure? This is significant as after repatriation what is the nature of freedom they are entering into, should be examined. She wanted the researcher to reflect more on the point she has already touched upon in the paper, i.e, whether these women are really free ever.

The second discussant of the session Maidul Islam, Assistant Professor of the Department of Political Science, Presidency University, pointed out that the issue of infiltration is in the political discourse of the nation today. There has been a communalization of the issues of infiltration and communalization. He too suggested the researcher to reflect upon the question of class in his paper. Also the paper could highlight institutional roles and whether a dialogue is needed between the two states. The paper should also address the larger question of political economy which would contribute to the theoretical base of the paper. In conclusion, he summed up that struggle is in itself a way of life for these women and the political primacy of such struggle is lost in normative notions of freedom and justice.

During the question and answer session, Rimple Mehta pointed out that gender based violence was missing in the paper and economic reasons were not sufficient to explain the migration of such women. The term 'jaankhalash' was explained by some members from the audience. Kirity Roy explained that the term is widely used in the jails of west Bengal, Assam and Bangladesh. It means that after an inmates' term of imprisonment is over, ration is stopped and the inmate lives on the mercy of others. He also laid before us a picture of Ghats in the borderlands controlled by local political leaders, the police and border security forces. Lastly borders were described as zones of conflict where the MLA's, MP'S etc all have a stake. Ranabir Samaddar urged the researcher to think as to why can't we bring into consideration the precarious nature of the border. He mentioned the securitization model of Foucault that could be invoked in the paper. Border is managed by several actors and BSF is only among them, therefore it is imperative to locate the making of a border and the question of prisons has to be placed in that context. Paula Banerjee drew the audience to the fact that it is the notion of eternal hope that keeps these women going even amidst a lot of adversaries. Arup Sen pointed out the way law works at the border. Samir Kumar Das noted that 'Freedom into' and 'Freedom from' are two black and white concepts of the liberal notion of freedom and actually Freedom has to be constantly struggled for.

"Continuum of Violence: The Case of Indo-Bangladesh Border" was the final paper of the day presented by Paula Banerjee, Associate Professor in South and Southeast Asian studies, Calcutta University. She started by stating the border as an amorphous region. The challenge of crisscrossing Bengal was huge. This region is especially baffling and handling it is quite uncertain and the pristine truth can hardly ever be found. She then went on to brief some reports from Masum, Adhikar and Human Rights Watch which have helped her in this research. The question of numbers has always haunted research work on the borders. One has to thus ponder upon the question on whether cross border migration signify an imminent demographic change. She thought of looking at the situation from the point of view of securitization. Three distinct groups of people were spoken to -a) correctional homes b) places beyond the barbed wires c) people living on the other side of the barbed wires. She said that although it would have been best if she narrated what she saw rather than arriving at some pristine truth since the border is so exclusive. Nobody in her view ever talks about the border from a holistic perspective. She cited and shared the story of Mohammad Ali Halsena who comes from a Hat Khola village which lies a few kilometers away from the border. He was going to appear for his higher secondary exams soon and was therefore considered to be the beacon of life for his family. He got shot in the eye by the border security forces. The boy does not blame anyone however as victimization by the security forces in the border is so commonplace. The boy's parents are however in the hope that they will get some justice. The Case of Taslima was another case in point in her presentation. Taslima had come to India to meet her daughter who has married well, into a family in India. She was caught by the traffickers and then reported even after paying

the traffickers a token sum for her release. She has been in jail for the last two and a half years even though her jail sentence was to last for only twenty five days. Victims of trafficking are often booked by people in the borders under the Foreigners Act. Dr. Banerjee concluded by stating that the problem with borders is that it is an ever contested field. It is the limit of hope but it is also the starting point of hopelessness. The whole notion of alien-ness is posited on class, caste and ethnicity. Physically the border is exclusive but the insecurites that it spreads is universal. Life in the border is about violence but it is also about subversion and resistance.

Anirban Chattopadhyay, Editor of Anandabazar Patrika, the first discussant of the paper noted that the problem in border areas lies in the creation of a particular system. The narratives that have been spoken about by the researcher bring forth an important question, that is, how can the language of violence be transferred into a language of care? Could one possibly imagine the idea of organizations working on one side of the border getting connected with similar organizations working on the other side of the border? One should try to get the security establishments of the two different countries to coordinate with each other better. Unless this is done it is difficult to examine how civil society attempts to change the situation in the border. Finally, when talking about the role of the media, it is important to mention that newspapers and television channels only focus on incidents that sell well in the market. Media aggravates problems rather than providing a solution. However, good stories are capable of being created in order to draw the attention of people to border issues thus bringing the mainstream media into a process of dialogue. The borderlands are areas where normal people lead normal lives and the abnormality of the border situation should be made known as quickly as possible in order to take adequate solutions to resolve this abnormality.

As another discussant of the session, Ranabir Samaddar stated that the paper is very detailed. The researcher has well catalogued the roles that are played out by people in the border. The border is a kind of apparatus that affects subject relations. If the present condition is considered, the blast in Burma led to an intensification of security measures around the border area. The border has come to play quite an important role in domestic politics as well. He raised certain questions which could be addressed in the paper like, is the West Bengal – Bangladesh border managed in the same way as other borders in South Asia? What are the crucial differences that come to the fore? How does the situation in the border get duplicated internally? He further pointed out that the question of globalization and informal economy can be witnessed in this particular border region. The relation between boundary making exercises and border making exercises also gets solidified. Finally discourse on the border is guided by a family of concepts. The idea of security and the idea of care emerge very prominently. Thus borders help us to understand many unique truths.

After comments from both the discussants, the chair of the session, Byasdeb Dasgupta, Professor, Department of Economics, University of Kalyani, commented that Informal sector can be construed also as the formal sector and vice versa. One cannot speak in terms of formal or informal in

order to understand the border issue. The purpose of any dialogue on the border is to find a solution to the problem. For this reason the language of the people should be understood. Human angles have to be applied to the process of securitization. A dialogue has to be started with people and organizations at the grassroots level and this should eventually reach the people in power. The political economy of the border is not an abnormal economy, it is a money economy. The geography of space comes into question, something which is absent in the presentation made by the researcher.

The final session of the workshop was a round table discussion on "Experiences of Border Violence: Bengal and Beyond". There were three participants in this session. The main points from their presentation are highlighted briefly below:

Anjuman Ara Begum, Human Rights Activist, reflected on the Golaghat border in Assam. The border is the site of a Naga and Adivasi community conflict which has been going on for a very long time now. Major violence in the border was witnessed in August 2014. She historicized the border problem by talking about how Nagaland came to be a part of India in 1963 and that several areas in Nagaland are reckoned as disturbed areas by the Indian officials. In 1979 a discussion that was started between the Government of Assam and the Government of Nagaland over the border problem was shifted to Delhi. In 1997 a ceasefire agreement was signed by the Nagas. According to one view, the Nagas essentially hired the adivasis to cultivate their land. Another version however is that, shares from this land were collected and given to the Ahom King at one point of time. In August 2014, a member of the Adivasi community attempted to build a house on land that is contested by the Nagas. Violent attacks were carried out on this adivasi community by the Nagas and as many as ten thousand people were displaced over a span of two to three days. She also said that she was accompanied by policemen dressed in civil clothes to the site of the conflict. In September some victims of this conflict were rehabilitated but the clashes continue till date. Violence in fact has been occurring on a yearly basis in this border since 1963. There is a complete lack of political will in the border. The role of the media is quite divisive. Police have not bothered to be accountable for the whole crisis in any way whatsoever.

Choton Das, State Secretary of Bandi Mukti Committee, started by showing a picture of an arrested person: an arrest that completely flouts legal norms. He narrated an incident in Murshidabad where a man was arrested unlawfully on grounds that his daughters received training from terrorists. He along with his children is in jail. The rest of the family is being taken care of by the villagers. He talked about another case whereby two women were unlawfully arrested. These women are under eighteen years of age. Both these cases show that apart from breaking legal norms in general, there is simply no adherence to the Juvenile Justice Act which clearly states that nobody under the age of eighteen can be incarcerated in a prison. Therefore on what grounds are the children in jail? On the 29th October of 2014, the Child Rights Commission was approached and a deputation was submitted. None of the official bodies have taken any action so far over fear of being seen as soft

towards terrorism. Of the two parties accused, one party has acquired legal help through the assistance of human rights organizations while the other has not. The judge has not inquired into any of the legal loopholes that have been mentioned. In North Bengal, former allies of the government have become victims. Media seldom ever reports on injustices over here and they are unapologetic about it too.

The last speaker of the day was Kirity Roy, Secretary of Banglar Manabhadikar Surksha Mancha. He mostly narrated his experiences of Border Violence. Through a power-point presentation and he reflected that the state designates the border as a fixed geographical area. He highlighted the problems that the borderlands are mostly characterized by, which are -

1. The border is highly porous.
2. There are three different geographical forms of the said border – land locked areas, water bodies and the land-water areas.
3. Barbed Wire Fencing – in many cases Indian citizens have agrarian land on the other side of the fence which creates major problems with regard to livelihood, health and education.

He also observed that most inhabitants in the border are Muslims and there is High population density over there. Agriculture is the main source of their occupation with very low literacy rate, in particular, Female literacy rate. The number of school drop outs is high as is child labor. Handicrafts and household industries of artisans form the second largest occupation after agriculture. There is also an absence of large scale industries. The BSF camps are inside the villages of inhabitation, something which is highly improper. Also as a result, businesses cannot be run adequately without seeking permission from the BSF. Borders are also marked by a high occurrence of flesh trade and trafficking and often the BSF forces are involved in this. Extra judicial killings, rape and physical assault in the border are the rule of the day. Judiciary is dependent on the police and the administration. He then suggested some measures that could be adopted like:

1. Border Haats should be started.
2. Victims of river erosion must be compensated and rehabilitated.
3. Border Area Development Program funds and the provision of speed boats can help to improve the situation.
4. Doctors should pronounce the victims of BSF firing as dead, which they never do. This instead is performed by the village quacks. Doctors, lawyers and police are to be sensitized to the issue in the border. A joint network has should be initiated as a result of this presentation.

Book Review

Haimanti Roy, *Partitioned Lives. Migrants, Refugees, Citizens in India and Pakistan, 1947-1965,* **New Delhi: Oxford University Press, 2012, pp. xiii+254, Rs. 695**

Haimanti Roy's monograph 'joins new histories of the Partition' that views 'it as a process rather than a single event' [p.4]. She weaves her narrative around a set of themes that bound the two nascent states of India and Pakistan, focusing mainly on the experience of the Partition in the East, i.e. the vivisected province of colonial Bengal. The book has three sections—Territories, Citizens and Identities—with two chapters in each section. The first section focuses on the creation of the national border in Bengal. The first chapter of the book analyses, on one hand, the official deliberations of the Boundary Commission to establish the border and on the other, the public debates that this proposal generated. In the latter aspect, the chapter charts out a new territory. It shows that the Bengali public were both keen to know as well as circumspect about its political future. Roy opines that 'even though the final decision on the boundary was taken by five men, the Bengali public felt that they had a stake in their future and could possibly influence it.' [p. 40] The second chapter looks at the ways both the states tried to maintain the sovereignty of their territories by curbing the crossing of borders. A 'document regime' was created where one needed various papers authorised by state authorities to cross the border. It shows how both the states failed to understand the lives of the borderlanders and how the hastily drawn boundary disrupted socio-economic lives of the people living in the districts contiguous to the border. Smuggling across the border became a crucial issue for both the states. The line, though defined and demarcated on paper, made little sense to the people. They had their ways to undermine the boundary. The illegal flow of goods and people without proper paper across the international border was 'a constant reminder of the limits of state authority at the periphery.' [p. 81] The second section of the book looks at the processes of nation building in the aftermath of Partition. It analyzes how new forms of citizenship was delineated. Religious minorities in both the countries needed to prove their loyalties to the newly-formed nation states. The issue of belonging to the nation came to the forefront and Hindus in Pakistan and Muslims in India were asked to identify with one particular territorial entity. The third chapter focuses on the Evacuee Property Act of 1948 of East Pakistan. This particular Act framed the question of citizenship in terms of property ownership. The

East Pakistan state could requisition the house of an 'evacuee' for government purpose. The moot question was to identify an 'evacuee', and this in turn would help to understand the loyalty of that person. 'Evacuee' of East Pakistan was rechristened as 'refugee' in West Bengal. But, as Roy writes, '[n]either term guaranteed citizenship rights.' [p.22] In the fourth chapter, she discusses the Citizenship of India Bill and the debates—both official and public—surrounding the Bill. The chapter puts forward the argument that the continuous flow of migrants from East Pakistan shaped the contours of defining a 'citizen' in India and formulated rules which would make an impact on the refugees from East Pakistan and transform them into the citizens of India. The implementation of the Act was fraught with ambiguities, especially in the case of Muslim minorities who went to Pakistan and then came back.

The third section studies in detail the two categories of 'minorities' and 'refugees' generated by the process of Partition. The fifth chapter looks at the everyday, quotidian violence that created a sense of fear among the minorities and compelled them to migrate. This 'routine of violence'—different from the experience of Punjab—continued for a long-time and put a long shadow on the subsequent events of the region. The Indian state believed that migration from East Pakistan was due to 'baseless rumour' and thus was extremely reluctant to carry out any organized programme of rehabilitation in the initial years. Rehabilitation policies were ad hoc in nature, hoping that the tide of refugees would soon cease. The failure of the policies gave birth to a paradoxical figure of the Bengali refugee, 'who was lazy yet pioneering, shorn of agency yet subversive, and who clung on to his 'refugee' identity yet demanded the rights of citizenship.' [p. 23]

Roy argues that the formulation and implementation of official policies regarding minorities, refugees and citizenship were not only a function of state legislations, imposed from above, but rather they were manipulated and negotiated by ordinary citizens to make their claims. The dialogic nature of the process is well documented in the book. It addresses a crucial gap in the historiography by navigating both the both worlds of high politics and everyday negotiations. However, in her analysis of minority politics in East Pakistan, the absence of the figure of Jogendranath Mandal, the Scheduled-Caste leader of East Bengal and later the Law Minister of Pakistan, is quite baffling. Mandal decided to stay back in Pakistan and his Scheduled Caste Federation allied with the Muslim League during Partition. Mandal resigned from the ministry in the aftermath of the riots of 1950 and came to West Bengal. His alliance with the League and the course of minority politics in East Pakistan in the initial years after Partition opens up new ways of looking at the issues discussed in the book. Also, the book does not mention anything about the Language movement in East Pakistan which ultimately culminated into the cessation of East Pakistan from its western wing to give birth to Bangladesh.

Nevertheless, the book is an important contribution to the historiography of Partition of South Asia. Roy has delved into the archives of both postcolonial India and Bangladesh, which added new dimension to the study. Partition historiography is often circumscribed by the national

boundaries etched out during the process, missing out the fact that postcolonial situations were entangled and socio-economic and political issues of one side had huge impact on the situation of the neighbour. In this regard, this book has opened up new areas of research.

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NOTES FOR CONTRIBUTORS

Articles submitted for consideration of publication in REFUGEE WATCH should be around 5000 words. Book reviews can be around 1000 words and review articles can be around 2000 words. Articles will have endnotes and not footnotes. Endnotes should be restricted to the minimum. Round-tables can also be proposed for publication. Enquiries about possible submissions are welcome.

For submission of articles and all other matters, correspondence should be addressed to the Editor, Refugee Watch, Mahanirban Calcutta Research Group, GC-45, First Floor, Sector-III, Salt Lake, Kolkata – 700 106 or paula@mcrg.ac.in. For book review and review-articles correspondence to be addressed to Anita Sengupta, Review Editor, Refugee Watch, at the same address or at anitasengupta@hotmail.com.

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