REFUGEE WATCH

A South Asian Journal on Forced Migration

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A Lost Population? East India Company and Arakanese 'Refugees' in Chittagong

By

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Introduction

The article will look at a few settlement projects designed by the East India Company in Chittagong in the late eighteenth century. The population to be settled was described in contemporary revenue records as Arakanese 'refugees'. By focusing on these settlement plans the article will bring to light certain practices of governances at the margins of the Bengal agrarian world in the Company era. It will argue that the logic of these settlements and consequently the population was a peculiar mix of military and economic combinations of viewing space predicated on ideas of usefulness and peculiarities of 'refugee' labour and a form of personal governance specially tailored from them. Taking Gunnel Cederlöf's call to write agrarian histories beyond cultivated fields, the article probes these muted conversations that seldom find place in conventional agrarian histories. At the same time this is a particular historical rendition of the meanings associated with term 'refugee'. In short the article tries to bring the notion of displaced, dispossessed and the productive within the same analytic field.

Post 1784, with the Ava (Kon-Baung dynasty) Kingdom[1] expanding into Arakan, a flood of 'refugees'[2] moved into Chittagong. This immigration continued through the last years of the eighteenth century with varying intensities reaching its zenith between the years of 1797 to 1800. An estimated thirty to forty thousand people streamed into Chittagong in these three years.[3] This essay recounts a story of this population.

It is also a poignant reminder of the displacement and violence that constitute the contemporary reality of the region. The recently highlighted perils and devastations of the Rohingya Muslim refugees, fleeing from Buddhist attacks, are remarkably similar to this story from a time more than a

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hundred years ago.[4] Histories double it would appear, keep repeating themselves as tragedy.

The problem for the East India Company was the management of this debris of a population.[5] Much of this movement was framed by the expansion of the Ava kingdom (Myanmar) and the diplomatic relationship the Company shared with Ava.[6] With Ava's military campaign into Siam, the need for military labour had ratcheted up. In fear, much more than anything, a distressed Arakanese population poured into southern lands of Chittagong. How did the Company deal with these people? How was this population to be organized? These are the questions that animate this essay.

Before we proceed with the story of the population it is important to understand the context within which the term Arakanese made sense in this place and at this point in time. Chittagong had been under the Mrauk-U kingdom of Arakan since the sixteenth century.[7] In 1666 Mughal empire moved into Chittagong, pursuing Shah Suja, son of Shah Jahan, rival to Aurangzeb for the throne, who being defeated fled to the Arakanese kingdom where he was allegedly murdered.[8] Chittagong as a frontier unit within Bengal province was consolidated in the early eighteenth century under Murshid Quli Khan. It is important to note that when Chittagong came under Company rule in 1761 there was an older history of Arakanese and Portuguese settlement.[9]

Through the late eighteenth century different waves of people categorized as Arakanese crop up in the East India Company records. The eastern parts of Chittagong, what would be later designed as a Non-Regulation district in 1860—the Chittagong Hill Tracts(CHT)—in revenue documents of the late eighteenth century finds relief as sites producing cotton via *jooming* or swidden cultivation and striated by different populations moving to and fro between Chittagong Hills and Arakan.[10] With the consolidation of Company power and later British Empire these people would be parsed into distinct groups. Three major nodes would emerge: the Chakmas, the Bohomongs and the Mongs. It was through these three figureheads the Non-Regulation district of CHT would be administered. The time of our story belies such consolidation. Thus if the reader at any point wonders who these people are, this population of refugees, and what happened to them, I should warn her that the article is not about the particularities of these provenances. On the contrary it takes up a mass of people labeled as 'refugees' who don't necessarily fit in with the later kinship lines designed through colonial governance.[11] It is in this sense the analytic ambiguity of a 'population' is maintained in the essay.

The flow of people from Arakan, especially after the Burmese conquest in 1784, took up entirely different dimensions in the Company agrarian governance of Chittagong. Around this time the records mention land being provided to certain 'Arakan' chiefs by the company; they were encouraged to settle down in Chittagong lands. The earlier presence of Arakans in Chittagong revealed a certain predatory violence. Pre-1784 records show a number of instances where the Chittagong military establishment of the East India Company were quite disturbed by incursions led by 'Mughs or

Maghs' where they carried off people from Chittagong. 'Mugh' was a pejorative term used by Bengalis of Chittagong. The 'Mughs' in this period were seen as Arakanese 'pirates' who made frequent inroads both by sea and land into Chittagong.   Harry Vereslt after taking charge as the Chief of Chittagong had made friendly overtures to the King of Arakan and was reciprocated in kind.[12] Vereslt wanted the Arakanese king to stop the 'Mugh' inroads. The Arakanese court welcomed the overture in principle but the 'Mugh' raids continued. In 1769, James Reed Collector of Chittagong wrote to Thomas Kellsall, chief of the Dacca factory, 'some light boats fit for pursuing the Arrakanners who have lately appeared in great numbers on the coast and carry away inhabitants daily from different ports.'[13] James Alexander, the Collector General, wrote to Reed saying 'Maghs had done so much mischief that a party should be sent sufficiently early to prevent their depredations in the ensuing season.'[14] There is a longer history of the term of 'Mughs'. In the 16th and 17th century, the Kingdom of Arakan had moved into parts of Chittagong. Arakanese 'pirates' captured a number of Bengalis and sold them to slave markets controlled by the VOC or the Dutch East India Company in Batavia.[15]

Things changed with the Burmese occupation of Arakan in 1785. This change in geo-politics pushed in hordes of Arakanese fighters and 'refugees'[16] into Chittagong. The *Mugh sardars*[17] brought close on their heels the Burmese military establishment. The Company reacted by strengthening outposts at Ramu.[18] Lawha Murang, a brother of the defeated Arakanese king sought asylum in Chittagong near the Naaf river. The British were more than happy to provide land and encouraged him to settle.

> Your Petitioner prays that a pottah and perwannah for the wastes and churs situate in Teknuf nuddy, in the province of Islamabad, as per the following boundaries-to the north of the river Naaf; west of nullla Oochea and the aforesaid river; east of the sea; and south of nullah Razoo, be granted to him by the government to the end that he might encourage ryots who have not other interests to resort thither from Arracan.[19]

This set a pattern. Renegade Arakanese groups harried by Burmese forces would slither into Chittagong, wait for their opportune moment and carry out raids into Burmese territories. There was suspicion that these raids were actively encouraged by the British.[20] A good twenty years of political history is just this loop: evasion- settlement- raids. The volume of discussion notched up by degrees around the last few years of the eighteenth century. Thousands of Arakanese 'refugees' during this time pushed into southern Chittagong. The question of settlement found a new voice in the EIC governance in these turbulent times. How was one to settle these people? How were one to make these 'refugees' productive subjects? How was their relationship to the 'native' inhabitants to be ordered? Were these 'refugees' agricultural people? What kind of lands should they be given?

Through the decade of 1790s and the first few years of the nineteenth century different projects of 'settling' these refugees were discussed. These suggestions circulated at different levels; from *darogahs* posted at the far flung limits of the Company like Ramoo[21]— the densely forested lands and strips of

islands girded by the sea—to British officers directly stationed at these places with the responsibility of managing 'refugee' population (like Herman Cox and John McCrae, after him, Superintendents of this refugee population), to Collectors of Chittagong settled in Islamabad receiving information in spurts from these edges of the British limits, right up to the Governor-General in Calcutta. The essay builds on some of these discussions. In a sense this was a 'waste' (in the way the East India Company viewed them) population, dislocated by war and demands of labour extraction built around wars.[22] When discussions of settling this population did assume a shape one central question was where? Here the 'wastelands' as an ideal refuge for such a population took root.

I read this as an instance where a 'waste' of people, and after all how are 'refugees' perceived but as a refuse of the citizen population,[23] the 'wasteland' come together at a moment in the early career of the Company state.

There are a few themes around which this project of population management can be understood. First is the idea of wasteland, something we have already alluded to. In a conceptual sense this can be read as a problem of territory. Where was one to locate the population? What considerations went into determining the sites of settlement? What would be the relationship of these settlement sites to existing regimes of property? Second: Discussions around the quality of the population. What kind of people were they? Were they worthy of the aid the Company government would provide? What would be their relationship be to the existing holders of land? Could they become 'useful' people of the frontier? Third: the logistics of settlement. How would the refugee population be organized? What would be the measure of lands provided? How much should be provided? What tools and implements were to be provided? What kind of support would they be given? And finally there is a thematic of the quality of governance and law in such settlements. What would be the larger nature of governance in these lands? I will briefly try and address these four themes.

Territory

Herman Cox, the officer whose name persists in the modern geography of Bangladesh (Cox's Bazar) was the first Superintendent of the refugee population. He died on the job. As William Wilson Hunter, author of the *Statistical accounts of Bengal Districts*, lamented, the unhealthiness of the climate killed him.[24] Cox's influence was substantial in determining the contours of the settlement projects. When he first arrived in southern Chittagong he was overwhelmed by the sight of 'multitude (sic) flying through the forests and deserts'.[25] There was a particular function the 'wretched helplessness' played in the governance of these refugee populations. We will pick this theme up in the next section where we discuss the 'quality' of the populations. But the quality of the population also determined and was determined by the sites where they could settle. And here Cox's decision to settle the population around the twelve valleys at the limits of the Company holding was crucial.

What were these places? And why were these places selected by Cox. Let us begin with the first question. For Cox the twelve valleys or *palongs*, south of Ramoo river, were ideal for the project. Describing the valleys Cox wrote

> in the interior part of the district on and near the Ram/zoor river are twelve small valleys called generally Barrah pallung heretofore cultivated and inhabited but long since abandoned in consequence of the former incursions of the Burmah forces these are claimed by a zemindar named Sheeb Churrund who is said to pay 300 ruppees(sic) per annum revenue to the Company and as I further learn claims the whole of the uncultivated lands between the Bawcalli and the Naaf, I understand a small settlement has been commenced at the banks of the Naaf by a refugee chief of a former emigration named Laieng Murung and for which W. Pierard the collector granted a pottah some time ago but the present irruption of the Burmah forces has prevented this clearing more than a few beghas and compelled him to fly with his people to the northward for protection.[26]
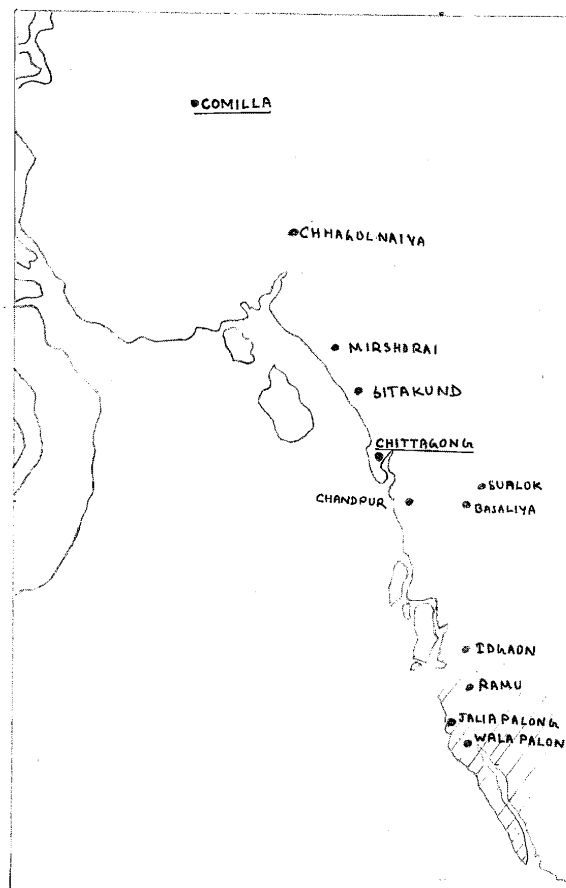

Figure 1 The *Palongs* (Based on *Francis Buchanan in South East Bengal* pg.xxxix)

There was already a thin traffic and presence of land holding skirting the valleys. Settlement projects had to deal with already existing property regimes in the region, marked as they were by earlier Arakan settlements and Chittagong *zemindari* claims. Figures like Shib Churun *zemindar* had a claim on these lands and represented these existing striations. Moreover there had been precedents of settlement. Lahwa Morung, a character we got introduced in the introduction, had been initially settled on these lands. But harried by the Burmese he had moved northwards into Chittagong underlining the difficulties and desolation of these frontier valleys. For Cox and the Company this was another opportunity to make a population settle on such difficult lands. What made the argument stronger was the vision that these jungle forested lands could be rendered cultivated while at the same time a buffer population against any Burmese incursions could be created. It is at this interface of being a military terrain and potential productive agrarian property the twelve valleys made governmental sense.

If we are to summarize the empirical advantages the *palongs* had in terms of a terrain (in a military sense) it was quite clear: There was a good 140 miles south of (Islamabad) Chittagong town that was vulnerable to sudden attacks by the sea from the Burmese side. The 'natives' of Chittagong were, according to the Company officials, utterly unsuited to carry out projects of transforming the jungle areas productive. They found the climate too harsh. The refugee population, by dint of their particularity, on the other hand could be used to cultivate this area, render it fecund, and provide a first line of defense against any marauding attacks from the sea. Cox clarified,

> If therefore the refugee settlers can clear away so much of the jungle in the polongs and along the Naaf as to enable our troops to occupy those points it will unquestionably be a great object gained to govt. independent of any pecuniary advantage of (illegible) at present, that jungly country which opposed to a regular army would constitute a strong frontier and contribute to our defence, in our warfare with the Burmahs of the greatest disadvantage to us- a fact proved by the experience on the account of them it would be of such importance to have that country cultivated and every encouragement should be given to the Mugs to settle there for that purpose; as being the only description of these people who at present can live in the polongs during the rains.[27]

In his long report on the refugees, Cox elaborated on the advantages of this choice of land: It was a mixture of emptiness, remoteness, the proximity to already settled Arakanese populations in the region, and the peculiarity of the terrain only suited to Arakanese labour.

> The situation which I would recommend for their settlement between the Bawalli or Ramoo river and the Naaf my reasons for this choice are as follows: 1st the emigrants themselves prefer it, 2nd the lands are almost entirely unoccupied and nearly free of all legal claims so that their settlement on them will be less difficult or expensive to the Co. than in any other situation, 3rd they are for the most part under forest and being so remote a frontier hitherto subject to the incursions of an active an audacious enemy, no other description of the persons would chose to undertake the arduous task of clearing them, especially the timid Bengallies who have o amok a field for their exertions in the waste valleys in the northern and eastern part of the

province, 4th the former refugees being already settled on the borders of this district will render material assistance to the infant colony, 5th the vicinity of the sea will prove an abundant resource in the article of provisions as the natives of arakan are very expert fishermen.[28]

As an aside it will perhaps be not out of place to remind the reader of the idea of an 'empty' frontier.' In both the worlds of state policy and historiography, connected as they are, the trope of emptiness has defined frontier pace Frederick Jackson Turner.[29] Empty spaces were crucial to fantasies of imperial expansions settlements.[30] Thus Cox's vision had much to do with the fact that he saw the valleys of south Chittagong as 'free of all legal claims'. This was, but to state the obvious, untrue. We have already referred to figures Shib Churun who was paying amount of revenue with claims to these lands. Moreover barely a decade back Gokul Ghoshal, erstwhile *dewan* of Harry Verelst, claimed an almost undisputed monopoly on the 'wastelands' of Chittagong. They insisted, at the height of their influence, on any projects of settlement to be vetoed by them. But by the late nineteenth century the Ghoshal family's claims had been discovered to be based on 'forged' document.[31] And their 'monopoly' over the wastelands, an aberration in the larger Company policy regarding wastelands, was squashed and brought in tune with more conventional 'wasteland' management.[32] What pushed the idea of settlement here was a specific possibility these valleys represented. The idea of territory helps us make sense of it. Territory among other things can be considered as a peculiar combination of a military terrain and agrarian property: a combination of military and economic forms of organizing space.[33] The early East India Company settlement projects on these 'wastelands' provides as instance of such spatial imaginations. The southern valleys or *palongs* and the forests of the hill tracts were decisively a military terrain. The presence of the Ava kingdom and the skirmishes lining these edges made it one. At the same time there was a possibility, through the refugee Arakanese population streaming into the southern hill tracts, of turning this terrain into a productive property. The two were braided together. A refugee population could transform the wastelands of southern hill tracts into cultivatable property at the same time providing a buffer population against any Burmese movement into the region.

The problem and the solution were nested in the same place. What made *palongs* an attractive site for settlement also made them vulnerable. The proximity of a settlement of Araknese people, having fled from Burmese conscriptions, under the protection of the British Company, was a thorn in the diplomatic relationships. Through the decade this issue cropped up. How was one to manage a settlement without sabotaging diplomatic and trade relations with the Ava kingdom? Projects of settlements had to balance this reality.[34] Nevertheless there was within Cox's vision of settling 'wastelands' with Arakanese refugees a particular idea of territory. Next section delves into the ideas of population that undergirded this vision of territory.[35]

The Quality of the Population

When Cox first surveyed the southern Chittagong lands, the wretched and helpless character of the refugees struck him. The sea of hungry women, men and children fleeing from a marauding force – this was the visceral picture that undergirds Cox's program. Death and desolation lined the descriptions. Cox's description is evocative:

> Such a multitude flying through the forests and deserts without a pre contracted plan, numbers must have perished from want, sickness and fatigue, I have been informed that the road to the Naaf is strewn with bodies of the decrepit, the aged mothers with their infants at the breasts.[36]

This was a strange situation considering in the same report Cox lamented the fact that there weren't enough refugees he could find in southern Chittagong. Some of them had tried to move in with their 'brethren', some of them were wary of the Company government. Thus Cox's effort to register the number of fleeing people was difficult to say the least. From scattered information gathered, he thought there were a substantial number of refugees involved but their mobility made them difficult to locate. What mediated and helped consolidate policy in the face of such confusion was the abstraction of humanity. The wretchedness of the situation demanded that the Company help these people. As Cox described it, 'policy and humanity coming together was a good thing:'

> happily both policy and humanity unite in recommending these unfortunates to their protection. When policy and humanity come together indeed it is a good time. The good of the state demands the encouragement of cultivation in this fair, fertile and hitherto neglected district and it would be equally vain as repugnant to our principles to endeavour to support the odious and tottering Burmah government.[37]

The government gave a go ahead to the refugee settlement thus bringing 'humanity and policy' together. The Revenue Board wrote:

> When their number was but small and the cause of their emigration not sufficiently understood, it was certainly prudent on your part to discourage the settling themselves in the Company's territories to avoid any just cause of offence to the Burmah government. But when impelled by the acts of oppression and the cruelty in their own country from twenty to thirty thousand of these unfortunate people claimed the protection of the Company both policy and humanity required that they should not be compelled to return to Arracan; we therefore entirely approve of their having been formed into a colony with certain portions of waste or forest lands appropriated to them for the purpose of being brought into a state of cultivation previously supplying them with rice for their subsistence and with implements of husbandry to enable them to procure subsistence for themselves, with an exemption from the payment of any rent for the space of three years.[38]

This had not always been so equivocal. There were serious question often asked regarding the quality of this refugee population. For instance Lieutenant James Brougham in 1794 had floated a plan to the government regarding the settlement of refugee Arakanese population. The arguments put forth by Brougham were pretty much similar to what Cox would be

suggesting in a few years. Cultivation of jungle lands, make useful subjects out of this shattered population and provide a general stability to these frontiers. But the Revenue Board had shot his plan down. The Board was extremely suspicious of the repercussions of settlement projects. First, the proximity to the Burmese population rendered them vulnerable to attack and gave the Ava kingdom an excuse to carry their incursions into Company territory. The Board was clear about this.

> …continuous emigration of any considerable population from Arracan and the establishment of them in southern part of Chittagong could not fail to lead to continual jealousies and misunderstandings and supposing it certain the Burmah government should be so peaceably inclined as to abstain from such occasions from any acts of hostility themselves it is still to be apprehended judging from the disposition and the conduct of such natives of that country as have hitherto settled in the district of Chittagong that they would themselves but too frequently give cause of offence to their neighbours on the Arracan(sic) frontier by robberies and predatory incursions which being retaliated by the Araccane(sic) that could only lead to bloodshed and affrays that would be but ill compensated by any advantage that could arise from the population or cultivation of the country from the introduction of the new settlers.[39]

Second the insertion of the population in Chittagong would disrupt the existing property regimes. The fact, the Board, conjectured, these people had not assimilated with the exiting population, had not made themselves 'useful' as agrarian labour was reason enough to doubt the 'quality' of this population. The Board had made their suspicions clear.

> With regards to the first point-the proposal will infringe with the rights of the zemindars, compensation that has to be given to them outweighs the advantage of new settlers, the second point –that their not having established themselves in greater numbers in the different zemindaries can only be ascribed to one of the two causes –a)they are not content with the slow moderate profits arising from a life of industry and husbandmen, b) the zemindars aware of their turbulent and restless disposition do not find it their interest to encourage and settle on their estates… in case they were disposed to settle themselves as quiet industrious subjects whence happens it that have already not done so as ryots of different landholders who possess estates in the southern parts of the Chittagong district.[40]

Doubts regarding their 'violence' and the threat they represented in the Anglo-Burmese relationship did not make them a very enticing prospect. The earlier movement of Arakanese into Chittagong harried the nascent Company governance. On more than one occasion military reprisals were considered against these 'raiders', The Board's circumspection fits with that earlier moment. Yet to complicate the story from 1784, as we have already discussed, certain settlement plans (Lahwa Murung being a case in point) had already been undertaken, though the numbers concerned were much less. Nevertheless, in about five years, it was this very notion of 'usefulness' that was turned around. For Cox the refugee population could be transformed into a useful population. He claimed that if his suggestions were to be followed the population would 'become useful subjects to the Company'[41] One was their ability to provide intelligence of a terrain of which very little

was known, but any military intelligence would be welcome. John McCrae, Superintendent of the refugee population, after Cox's death (Cox died in 1799) emphasized such a function when he wrote, 'their local knowledge would be particularly useful and thro this means our intelligence can at all times now be procured direct from Ava with much greater certainty than by sea from Rangoon.'[42]

Outside the military utility there was the argument for rendering a frontier productive by bringing jungle lands into cultivation. James Brougham in a letter to J.B. Harington, Commissioner of Chittagong, expressed optimism about the population.

> Middle stature but muscular and active of mild inquisitive disposition, ductile manners honest and industrious, they are woodmen from necessity and expert from their habit, the occupation of the women is not confined to domestic concerns, they are also employed in manufacturing cloth. They can be rendered useful members of the society and faithful subjects having as far as I have been able to learn no aversion to agriculture.[43]

Cox continued this strain of conversation when he described how Arakanese women could be rendered useful in such scheme of things.

> Arracan women are all spinners and weavers and that as excellent cotton is produced in the district they might be employed in the manufacture of canvas and in the making of coarse cloths. As these unfortunate people can only become useful subjects or be able to contribute effectually to their own comfort and happiness by the exertion of their industry, either as husbandmen or manufacturers you will see the necessity of affording them every reasonable encouragement in their laudable endeavours to gain provisions for themselves and their families; and you will report to us the quantity of land that may from time to time be cleared and brought into cultivation and whether any progress has been made in establishing among them any useful manufacture.[44]

The quality of the population also had to be measured in terms of how they would interact with the extant Chittagong populace. Already early in these projects there had been complaints regarding the way native police (*darogahs* and *kazis*) had been exploiting the refugee population. The government of Bengal's initial response to Brougham pointed to another way such interactions were imagined: transformation of the refugee population into agrarian labour for existing Chittagong zemindaries. One of the suggestions that had come out of the failed Brougham project was to encourage the population to move northwards away from the volatile frontiers and Burmese proximity and encourage them to become industrious subjects working as agrarian labour for Chittagong *zemindars*. C. Fryer the Collector of Chittagong had remarked:

> If anything these Muggs should be invited to repair into the northern pergunnahs where zemindars would be happy to avail themselves of their services and grant them leases of wastelands to any extent, it would then be out if their power to give any cause of discontent to Burmah government, either by entering arracan themselves or by giving encouragement to future emigration-they have declined the frequent offers held out to them by the late collector to move north and their present solicitations to be put in

possession of the wastelands on the frontier that they are actuated by other motives than merely to become cultivators of the soils.[45]

At the same time the settlement projects were wary of assimilation. Cox insisted that the refugee population had to be kept together as one unit protected from the machinations of the Bengali landholders. Cox wrote:

> In the first place I am decidedly of opinion that the whole of the emigrants should be settled together collected they will mutually assist and comfort each other, may be more easily protected from the injuries their ignorance exposes them to from the natives-governed by their own laws and customs they will soon be naturalized to the soil, rapidly increase in strength and numbers and becomes useful and a flourishing colony. On the contrary if divided individual indeed may derive a temp benefits for a few but majority would probably drag out a wretched vagabond life at no distant period become extinct.[46]

'Hindu' and 'Mussalman' refugees could be encouraged to assimilate with their 'brethrens'[47] but the Arakanese being 'alien' to the customs and laws of the land had to be settled separately. The refugee was imagined in the in-between space of the useful and the insulated. 'Humanity', the lens through which these settlements were articulated, had its own cost. The wretched refugee had to be transformed into a useful Company subject at the limits of its territorial holdings In the next section I will briefly touch upon on the logistics of such arrangements.

Logistics of Land

Providing grain for the 'hapless' refugees was one of the significant cost of this refugee project. W.W. Hunter, in his brief history of Chittagong district in these early years, recounted the 'embarrassment' this settlement project had caused the Company government.

> It was necessary to buy up large quantities of grain for the immediate relief of the starving Maghs…the Collector (of Chittagong) was obliged to continue his gratuitous distribution of food, but the treasury was soon exhausted. In May 1800, he prayed that a remittance of Rs. 20,000 (or 2000 Sterling Pounds) might be immediately sent to him to meet his most pressing demands.[48]

But such 'free lunches' seldom made governmental sense, irrespective of the humanitarian rhetoric. The Collector wanted to use this refugee labour for road building. In lieu of the grain that the Company was provided, the argument went, 'Magh' labour could be used to construct important roads. A number of refugees were, in fact, 'employed' in cutting a road from Ramu to Ukhiaghat (near the Naf river)[49] 3,500 *kodalis* were ordered from Dacca for this purpose. The Collector of Dhaka could not supply the required amount and 'finally they had to be obtained from the Presidency'.[50] Cox had also insisted that these roads would connect Chittagong to these distant lands. A number of these people, Cox, conjectured, could be used for the building of these very crucial roadways.[51]
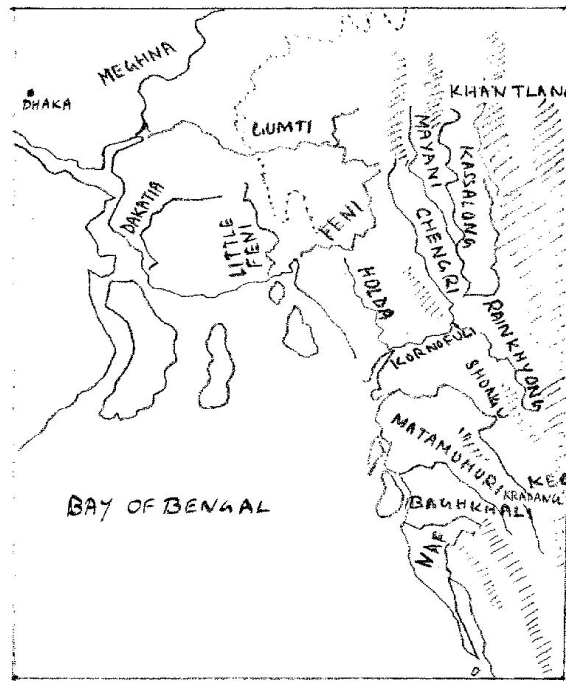
Figure 2 Relief and Rivers of South Chittagong (Based on Francis Buchanan pg.xxxvii)

But 'the logic of aid', 'gratuitous distribution of food' as Wilson described it remained a nettled issue. How much land would be enough for such a refugee? Herman Cox's initial list of suggestions regarding settlement had calculated the refugee requirements.

> According to the best information I have been able to procure two Coonai of land is sufficient for the maintenance of one man and four connai for a family of four or five persons , the connai is the common land measure of the country and contains 17280 square feet or about 1/6 more than half a pucka begah it yields in general two crops of paddy per annum, the first crop 40 harries (each 13 pucka seer) or 13 maunds-the second crop half that quantity or the whole 19 or 20 maunds per annum-besides chillies, tobacco, pulse or other trifling articles in the dry season and the general rent of such land is two rupees per connai and lower in proportion if inferior. In clearing of wood land I understand an abatement of three years is usually granted and an advance for six months subsistence made at the rate of 80m harries of paddy for a family and 30 harries for a single man, the price of paddy at present is said to be a 8 rupees per 100 harees and fluctuated according to the demand between 8 and 11 rupees but the latter is considered very dear-at the first late each family will require an advance of 6 rupees 12 annas and each single man an advance of 2 rupees and 8 annas but these advances for subsistence are to be repaid by installment during the three years the ryot sits

rent free…That the Commissioner be immediately enabled and directed to form or golahs at the principal settlement of rice and paddy for the subsistence of the ryots and to issue six months subsistence to all persons whom land may be granted at the rate of 80 harries or 26 maunds of paddy to each family-and 30 harried or 9 maunds and 30 seer to each single man to be repaid by instalments at such periods as my hereafter be fixed by the Board.[52]

Cox made a list of implements required by the population. He wrote, 'a supply of 200 felling axes, 100 bill hooks 12 crass cut a and 20 frame pitrous 50 pickaxes 200 fawras, 100 spades four mounted grindstones be sent down for the use of the settlement.'[53]

Despite such calculations a few years later when Kerr, Superintendent of the colony, reviewed the amount of land cleared, he was suspicious that the refugees weren't doing enough to be worth their while. His calculation of grain requirement,[54] based on the Cox's earlier estimation, led him to conclude that, 'the present dependence of the emigrants upon Govt. was more to be attributed to the not cultivating a sufficient quantity of land the produce of which being adequate to their support than the partial failure of crops of the lands.'[55] Moreover the 'native' agency he had to depend on for information, Kerr suspected, was involved in 'illegal' grain trade. Exasperated, he wrote, 'I discovered that he(one of Kerr's agents) in the month of poose had actually sold public grain to the emigrants on the register; I therefore dismissed him and inflicted the punishment he deserved.'[56] When asked about the lack of clearing work some the refugees seemed to have responded by saying that they were much more of a manufacturing and trading people rather agriculture.

> With regard to those struck of the registers have only to observe that I called the sirdars and followers before me and demanded their reasons for disobeying my orders and clearing lands as they were desired, 36 sirdars and their followers in number 1985 did not even attempt to justify their conduct and when they were told that they would be allowed no further support from government they seemed to receive with cool indifference and declared they could maintain themselves; the others in number 1152 who had been as remiss in cultivating land as those above mentioned did not hesitate to declare they would accept of no further support at the same *time alleging that their labour was more productive when employed in mercantile pursuits than in cultivating lands*.[57][Emphasis Mine]

The colonial projects were framed by logics of settled sedentary cultivation. The itinerant people dislocated by different forms of state violence often thus failed to measure up to these 'expectations'. The above quote is but an instance of how these projects were not always tuned to the different practices of the population. The logics of settling and the practices of surviving at this frontier hence were often at a variance.

Governance of the Land

> We are concerned to observe that the native's of Chittagong appear to entertain a great aversion to the unhappy strangers on which account they may stand in need a degree of protection from injury or injustice beyond the

ordinary judicial establishment of the district. As they at present form a distinct body differing in many respects from the manners and customs of those by whom they are surrounded, we recommend it to your consideration whether a summary mode of administering justice amongst themselves and for determining all cases of complaint is between them and the native inhabitants might not for the present be adopted by vesting the superintendent of the new settlement, Mr. Kerrs with powers for that purpose. When property shall increase and they shall become better acquainted with the manner and usages of the people that surround them they may at any time hereafter be brought under the ordinary jurisdiction established for the province in general.[58]

The law of the new settlements was another nebulous realm. As one can glean from this quote, a part of a report on the 'state of Arakan colonies in Chittagong', the Revenue Board was wary of the 'strangers' on the land. The fact that they were strangers not versed in the 'laws and customs' of the land, made them vulnerable. They needed extra 'protection' beyond the 'ordinary judicial establishments'. On other occasions this incomprehension of the laws of the land could turn into something else. When a Burmese merchant was killed in the vicinity of the settlement, Kerr suggested that the population perhaps thought they were exempt from any general rules. There were a few bureaucratic panaceas suggested for this confusion. A committee comprising the Superintendent of the colony, the Magistrate and the Collector of District was formed to look into the ways law could be brought to the settlement. The Board of Revenue declared:

We are of the opinion that the imperfect state of regulations and subordination in which the collector represents the colony to be at present is worthy of your Lordship's consideration and we beg leave to recommend that the Magistrate , the collector and the superintendent of the colony be appointed a committee to report on the measures necessary to be taken in consequence and to propose regulations for the future government of the emigrants and we should beg leave to propose that the committee in their enquiry and report be directed to keep in view the most speedy and effectual means of bringing the colony under the general regulations and laws established in the districts where they reside. [59]

But what would the people do until such gaps closed? Here the figure of the Superintendent was crucial. A governance of familiarity was evoked. For instance, from John McCrae's papers, one finds a shard of a conversation that insists on such familiarity as a means of bringing order.

As Mr McCrae has been so much among the Mugs and is consequently so well known to them these poor people from their ignorance of our customs and languages came direct to him upon every occasion of grievance and a long residence in the district having given him some personal influence with the principal landholders in their neighbourhood he has thereby enabled frequently to bring their complaints to an amicable adjustment without troubling the adawlut and thus saved them the delay and expense of a law suit and when fraudulent attempts have been made to impose upon them his interference has stopped the intention . In this manner tho' possessed of no special authority whatever he has been useful to the emigrants and he conceives that they should always have some person to look up to for their support, which their ignorance of our language and laws renders necessary,

> this person should also pay occasional visits to their settlements in the polongs where they are at a so great a distance from the seat of justice at Islamabad.[60]

This is an interesting moment. There is a recent and compelling historiography that views the shift in colonial governance in terms of push towards 'strangeness'. For instance Jon E. Wilson demonstrates how in late eighteenth century Bengal a world of 'familiarity' and governance predicated on such notions of familiar were replaced by logics of abstraction.[61] Thus the Company governance pushed towards codification on one hand and a distancing from 'native' lives. Not being able to take into account the unfamiliar that was the colony, colonial governance destabilized networks of familiarity and moved towards abstract notions and categories of rule. These were the birth pangs of modernity: from a familiar world of politics and mutual recognition to the stranger's world of abstract categories. Useful as I find this line of thought to understand the larger transformations wrought in by the Company, the settlement it appears, demanded familiarity as a mode of governance, in lieu of abstract codes of law. Thus without 'troubling the adawlut' McCrae had been successful in diffusing conflict. And the reason he was able to do this was his long familiarity with an alien population which was ignorant of 'our language and laws'. Thus for some parts and some projects of colonialism, familiarity had a certain purchase. In fact these sites, and the settlement is metonym for such lands, remained unworthy or unprepared for such abstractions. A perpetual deferral marked such lands. If we, pace John Wilson locate in the Bengal agrarian a shift towards abstraction as a mark of colonial modernity, it could be argued that the spread of such modernity was structurally uneven. Some places it would appear were fated to remain outside. There is something else I want to gesture at here, something I haven't quite addressed directly but yet somehow undergirds the entire essay. It has to do with the word refugee. The term has acquired particular resonances in a politics of modernity. Giorgio Agamben argues that

> the refugee is the sole category in which it is possible today to perceive the forms and limits of a political community to come. Indeed, it may be that if we want to be equal to the absolutely novel tasks that face us, we will have to abandon without misgivings the basic concepts in which we have represented political subjects up to now (man and citizen with their rights, but also the sovereign people, the worker, etc.) and to reconstruct our political philosophy beginning with this unique figure.[62]

Interesting as such an argument is one wonders what happens to the figure when it is located in the early etchings of colonial empire. Deracinated from the temporal provenance of the twentieth century, how does one think of this category? What did it mean to be a refugee in Company occupied Chittagong? My larger impulse is to probe other forms of settlement outside the 'conventional' Bengal agrarian, thereby deepen and complicate categories of agrarian frontiers and associated settlements, yet the specific historical meaning of refugee in a late-eighteenth century colonial context remains an interesting question. Perhaps recognizing such questions will contribute to an understanding of how the category has historically been worked out. Considering the growing numbers of Rohingya Muslims shuttling the waters

of Bay of Bengal as refugees, the significance of tracing these older routes of dispossession have only become sharper.

Notes

[1] For a bulleted history of Ava kingdom see Guha, Amalendu. 'The Ahom Political System: an Enquiry into State Formation in Medieval Assam: 1228-1800', in Surajit Sinha edited, *Tribal Polities and State Systems in pre-colonial Eastern and North Eastern India*, Centre for Studies in Social Sciences, Kolkata: K.P. Bagchi, 1987, and Lieberman, Victor. *Strange Parallels: South East Asia in Global Context, c. 800-1830,* Volume I: *Integration on the Mainland*, Cambridge: Cambridge University Press, 2003.

[2] This is the term used in the eighteenth century East India Company records.

[3] Hunter, William Wilson. *A Statistical Account of the District of Chittagong,*. London, Trubner and Company, 1876, http://hdl.handle.net/10689/9602, last accessed 15 December, 2015, 109.
Hunter opines that this refugee flow indirectly led to the deterioration of Anglo-Ava relationship leading to the First Anglo-Burmese War in 1824. Arakan was ceded to the Company following the Yandabo treaty of 1826.

[4] Cherian, John. 'Nowhere People', *Frontline,* 32.12, (June 26), 2015, 51-55. 'The migrants are mostly members of the *Rohingya* Muslim ethnic group from the Rakhine (Arakan) State. Buddhist-majority Myanmar denies citizenship to Rohingyas, who are subjected to forced labour, land confiscation and limited access to public services.' 53.

[5] Francis Buchanan who traveled to these parts in 1798 describes the destitution of the Arakans lodged in Chittagong. Francis Buchanan *An Account of a Journey undertaken by the Orders of the Board of Trade through the Provinces of Chittagong and Tippera in order to look out for the places most proper for the cultivation of spices by Francis Buchanan.* Add. Ms 19286, British Library (BL)

[66] For a comprehensive history of Burma see, Liebermann. *Strange Parallels,* Volume I: 2003.

[7] Charney, Michael. W. 'Crisis and Reformation in a Maritime Kingdom of Southeast Asia: Forces of Instability and Political Disintegration in Western Burma (Arakan), 1603-1701' in *Journal of the Economic and Social History of the Orient,* 41. 2 (1998), 185-219, 'Rise of a Mainland Trading State: Rakhine Under the Early Mrauk-U Kings, c. 1430–1603', *Journal of Burma Studies.* 3 (1998), 1–33.

[8] For an interesting take on the importance of Shuja's flight and the year 1666 as constitutive of an idea of Chittagong as a frontier marking the Mughal Persian Imperium from the South East see, Rishad Choudhury, 'An eventful politics of difference and its afterlife: Chittagong frontier, Bengal, c. 1657–1757.' In *The Indian Economic and Social History Review*, 52, 3 (2015): 271–296.

[9] See Subrahmanyam, Sanjay. 'And a River Runs through it'; Eaton. 'Locating Arakan in Time, Space, and Historical Scholarship'.

[10] Elsewhere I have discussed the particular ways swidden, cotton, violence and wastelands came together to organize the Hills in the early Company era. Anandaroop Sen, 'Tales of Territoriality, Practices of Region Making: North Eastern Frontier of Colonial India, c. 1761-1895.' Unpublished Dissertation submitted at Centre for Historical Studies, Jawaharlal Nehru University.

[11] In my dissertation I have discussed the constitution of these genealogies fraught as they are. Sen, 'Tales of Territoriality' Unpublished Dissertation submitted at Centre for Historical Studies, Jawaharlal Nehru University.

[12]He (Vereslt) expressed hope that a friendly Arakan would help to put a stop to the inroads of the Maghs, 'the annual invaders of this country and the oppressors of our tenants', Arakanese goodwill would also guarantee the safety of the Company's ships in the Bay of Bengal. King accepted and with this end in view he requested Vereslt to clear and cultivate the large tract of land that divided Arakan from Chittagong. Vereslt agreed.

[13] Muhammad, Serajuddin Alamgir. *The Revenue Administration of East India Company in Chittagong 1761-1785,* University of Chittagong, 1971, 18.

[14] Ibid, 19.

[15]See Vink, Marcus. 'The World's Oldest Trade': Dutch Slavery and Slave Trade in the Indian Ocean in the Seventeenth Century' *Journal of World History.* 14. 2 (Jun., 2003), 131-177. Also Charney, Michael. 'Crisis and Reformation in a Maritime Kingdom of Southeast Asia: Forces of Instability and Political Disintegration in Western Burma (Arakan), 1603-1701' in *Journal of the Economic and Social History of the Orient.* 41. 2 (1998), 185-219.

[16]This is a word that is used repeatedly in the British contemporary sources.

[17]There is a longer history of the term of Mughs. In the 16th and 17th century the Kingdom of Arakan had moved into parts of Chittagong. Arakanese 'pirates' captured number of Bengalis and sold them to slave markets controlled by the VOC or the Dutch East India Company in Batavia. These 'pirates' were called Mughs or Maghs by the Bengalis of Chittagong. Portuguese racketeers played an important role in this traffic. In fact it is difficult to discern Mughs from possible Portuguese Lineages. The Arakan settled a number of these Portuguese 'pirates' on their land and used them as an advance guard against Mughal incursions.

[18]In 1786 Major Erskine Ellerker a senior officer was sent to the frontier but no hostilities took place, See Qanungo, S.B. *History of Chittagong.* Standard Publishers, 1964, 12.

[19] Qanungo, *History of Chittagong*, 13.

[20] Ibid.

[21]' Arzee from Pran Darogah of Ramooh, Extract Bengal Criminal and Judicial Consultations 20th October 1797, Board's Collection F/4/71/1583, IOR/OIOC, British Library.

[22] The Burmese empire prepared an attack on Siam at this point and had set in place an extractive labour regime oriented towards this war, among other things. 13872 Papers Respecting Ava 1796-1805. OIOC, British Library.

[23] Giorgio Agamben, 'We Refugees' Symposium. 1995, No. 49(2), Summer, Pages: 114-119, English, Translation by Michael Rocke. http://www.egs.edu/faculty/giorgio-agamben/articles/we-refugees/. last accessed 15 December, 2015. For a historical treatment of problem of refugee in a different context see, Joya Chatterjee, *Spoils of Partition: Bengal and India 1947-1967,* Cambridge, New York: Cambridge University Press, 2007. Ranabir Samaddar, *Refugees and Asylum Seekers: Practices of Care and Protection,* London: Sage, 2003.

[24] William Wilson Hunter, *A Statistical Account*, 119.

[25] Captain Cox, to G. H. Barlow Secretary. to the Government, Board's Collection F/4/71 / 1583, IOR/ OIOC.

[26] Ibid.

[27] Captain Cox, to G. H. Barlow Secretary. to the Government, Board's Collection F/4/71 / 1583, IOR/ OIOC.

[28] Captain Cox, to G. H. Barlow Secretary. to the Government, Board's Collection F/4/71 / 1583, IOR/ OIOC

[29] See Noble, David. *Historians against History: The Frontier Thesis and the National Covenant in Historical Writing since 1830*, Minneapolis, University of Minnesota Press,1965.

[30] See Massey, Doreen B. *For Space*, London and Thousand Oaks, California: Sage, 2005.

[31] For a specific history of the Ghoshal family and their relationship to the East India Company see Bhattacharya, Ujjayan 'The Worthies and the Worth of their Land: Revenue Farmers and the Company' State in Early Colonial Bengal' in Rajat Dutta edited, *Rethinking a Millennium: Perspectives on Indian History from the Eighth to the Eighteenth Century, Essays in Honour of Harbans Mukhiya*, Delhi: Aakar Books, 2008. For a central constitutive role forgery and scandals had in the early governance of East India Company see, Dirks, Nicholas. *The Scandal of Empire: India and the Creation of Imperial Britain,* Cambridge Massachusetts: Harvard University Press, 2006; Derret, Duncan M. 'Nandkumar's Forgery', *English Historical Review,* LXXV (295), 1960, 223-238; Raman, Bhavani. 'The Duplicity of Paper: Counterfeit, Discretion, and Bureaucratic Authority in Early Colonial Madras' *Comparative Studies in Society and History,* 54. 2 (April 2012), 229-250 , *Document Raj: Writing and Scribes in Early Colonial India*, Chicago: University of Chicago Press, 2012. For the importance of paper documents in the early Company era see Cederlöf, Gunnel. *Founding an Empire on India's North Eastern Frontiers, 1790-1840: Climate Commerce Polity,* New Delhi: Oxford University Press, 2014.

[32] For wasteland management practices see Muhammad, Serajuddin Alamgir. *The Revenue Administration of East India Company in Chittagong 1761-1785,* University of Chittagong. Elsewhere I have discussed the particular ways wastelands figured in settlement of these Arakanese and other 'tribal' population of Chittagong. For a general overview of wastelands and the legal status of such lands outside the writ of permanent settlement see Iqbal, Iftekhar. *The Bengal Delta: Ecology, State and Social Change 1840-1943,* London: Palgrave, 2010, 45. On the larger discourse of waste see Gidwani, Vinay Krishin. 'Waste and Permanent Settlement' *Economic and Political Review*, 27. 4 (Jan. 25, 1992), 39-46. Also, Gidwani, Vinay Krishin. 'Six theses on waste, value, and commons' in *Social & Cultural Geography*. 14. 7 (2013), 773–783; Vinay Krishin Gidwani, *Capital Interrupted: Agrarian Development and the Politics of Work in India,* Minnesota, University of Minnesota Press, 2008 and Judy Whithead, 'John Locke and the Governance of India's Landscape: The Category of Wasteland in Colonial Revenue and Forest Legislation', *Economic and Political Weekly*, XLV. 50, (December 11, 2010) 83-92.

[33] Let me briefly dwell on Stuart Elden's idea of territory as a complex built of different techniques of governance. If one had to summarize that argument, Territory, according to Elden, is the peculiar configuration of 'modern' spatiality and precedes territoriality or practices of making space. This goes against the grain of conventional literature on territoriality that looks at territoriality as a set of practices that brings a territory into being; in other words comes before territory. Territory contrary to this, according to Elden, is the product of territoriality. Elden's conceptualization helps one to focus on the nature of transformation, the channels of transformation rather than any fixed notion of space. Elden, Stuart. *Birth of Territory*, Chicago, London: University of Chicago Press, 2013.

[34] R. Kerr, Collector of Chittagong rued the decision to select the valleys as the site of settlement. He wrote, 'It is unfortunate that Wanjea and the Polungs were in the first instance selected to establish the colony upon; for besides its being an internal cause of jealousy to their former masters, I am led to believe from several conversations I had with the refugees as also from the other information that if only 100 Burmahs

were to appear on the frontier at the period of sowing or reaping the grain, the fears and apprehensions of the colonists appear to be such that the maunds would be left waste in the first case and the crops left to rot on the ground in the second and hence a recurrence of all those evils already experienced might be expected from the faithless conducts of the emigrants hitherto and from their abandoned principles I strongly suspect that they wish for an opportunity of this kind to enable them with some degree of plausibility to relinquish their lands and thereby claim a renewal of the bounty of government. Their fears appear to be somewhat unformed because the refugees that have re-emigrated have been well treated-, R. Kerr, Collector Zillah Chittagong 15th Jan. 1801 Boards Collection F/4/128, 2381.

[35]Cox's vision went something like this: linked roads that would connect the limits of the Company establishment with the town of Chittagong, with refugee colonies lining this network.

[36]Captain Herman Cox, to G. H. Barlow Secretary to the Government, Board's Collection F/4/71 / 1583, IOR/ OIOC, British Library (BL), London.

[37] Captain Cox, to G. H. Barlow Secretary to the Government, Board's Collection F/4/71 /1583, IOR/ OIOC, BL.

[38] Extract Revenue Letter to Bengal 26th March 1801, Board's Collection F/4/128/2381, IOR/OIOC, BL.

[39] Extract from Bengal Political Consultations 27th February 1795, Board's Collection F/4/71 /1583, IOR/OIOC, BL.

[40] Extract from Bengal Political Consultations 27th February 1795, Board's Collection F/4/71 /1583, IOR/OIOC, BL.

[41] Captain Herman Cox, to G. H. Barlow Secretary to the Government, Board's Collection F/4/71 / 1583, IOR/ OIOC, BL.

[42] John McCrae Papers, Add 13872 Papers Respecting Ava 1796-1805, IOR/OIOC, BL.

[43] Extract from Bengal Political Consultations 27th February 1795, Board's Collection F/4/71 /1583, IOR/OIOC, BL.

[44] F/4/71 /1583, IOR/ OIOC, BL.

[45] Extract from Bengal Political Consultations 27th February 1795, Board's Collection F/4/71 /1583, IOR/OIOC, BL.

[46] Captain Herman Cox, to G. H. Barlow Secretary to the Government, Board's Collection F/4/71 / 1583, IOR/ OIOC, BL.

[47] With respect to the nature of their settlement-that no other plan of settling them occurs to me than that of granting them lands- creditable person should be in my opinion be deputed by the collector without loss of time to ascertain the names and numbers of the unprovided refugees under the several descriptions of mussalmans, hindoos and Muggs and as the more they can be separated without distress to themselves the less likely they would be to suffer from scarcity in case of a too rapid increase of population , the mussalman and hindoos might be transported to any other parts of the province without experiencing the difficulties with which such a measure would embarrass the Muggs. Extract of Bengal Criminal and Judicial Consultations 4th January 1799, Magistrate of the Zillah of Chittagong to H.G. Tucker Secretary to the Judicial Department, F/4/71 / 1583, IOR/ OIOC, BL.

[48] Hunter, *A Statistical Account,* 119.

[49] See Schendel Van edited. *Francis Buchanan in South East Bengal: His Journey to Chittagong, Chittagong Hill Tracts, Noakhali and Comilla* Geographical Index, 193, Dhaka: University Press Limited, 1992.

[50] Hunter, *A Statistical Account of Chittagong District*, 119.

[51] For other kind of occupations, Cox suggested, 'they be authorized to issue subsistence to other classes of persons applying for relief to enable them to pursue their occupations so as in due time they could provide for themselves and become useful members to the state the same to repaid according to such arrangement as circumstances may hereafter admit-or by labour on the public works I am aware that these aids will cause a very heavy present expense to government. but it is to be hoped that the integrity and prudence of the commissioners will be effectually prevent their country form being abused and make it an ultimate? To the state. That the commissioners be particularly directed to form as soon as possible one or more fishing villages on the banks of Bowcalli, the Razoo and the Naaf rivers and be enabled to make some small advances to responsible persons for that purpose should it be found necessary to do so.

That they be empowered to establish gunges or hauts at the most convenient places for the convenience of the settlers and encouragements of commerce.' Captain Herman Cox, to G. H. Barlow Secretary. to the Government, Board's Collection F/4/71 / 1583, IOR/ OIOC, BL.

[52] Captain Herman Cox, to G. H. Barlow Secretary. to the Government, Board's Collection F/4/71 / 1583, IOR/ OIOC, BL.

[53] Ibid.

[54] Signed R. Kerr Collector Zillah Chittagong 15th Jan. 1801, Board's Collection F/4/128/ 2381, IOR/OIOC, BL

[55] Ibid.

[56] Ibid.

[57] Signed R. Kerr Collector Zillah Chittagong 15th Jan. 1801, Board's Collection F/4/128/ 2381, IOR/OIOC, BL

[58] Extract Revenue Letter to Bengal 26th March 1801 F/4/128/ 2381, IOR/OIOC, BL

[59] F/4/128/ 2381, IOR/OIOC, BL.

[60] John McCrae Private Papers. Add 13872 Papers Respecting Ava 1796-1805. IOR/OIOC/British Library.

[61] Wilson, Jon E. *The Domination of Strangers: Modern Governance in Eastern India, 1780-1835*, Basingstoke, Palgrave McMillan, 2010.

[62] Agamben Giorgio, 'We Refugees', http://www.egs.edu/faculty/giorgio-agamben/articles/we-refugees/ last accessed December 15,2015.

Becoming 'Local': Muslims and the Politics of the 'Local' and the 'Non-local' in Darjeeling Hills

By

Anup Shekhar Chakraborty [*]

Muslim consciousness or *Islam* in India unfolds a bewildering diversity of Muslim communities and multiple manifestations of their identity.[1] According to Joya Chatterji [2], there is no one universally true and fundamentally knowable *Islam*, no standardised and essentially unchangeable system of *Islamic* ritual and belief, no authentic soul or spirit of *Islam* or indeed of the Muslim community. Different and often contradictory meanings of *Islam* compete for hegemony[3]. The ostensible styling of the self defined identity among the Muslims in Darjeeling hills as 'Gorkha-Muslim' or 'Gorkhey Muslim' rather than 'Bihari-Muslim', 'Bengali Muslim'[4] and the like substantiates to the already existing scholarship on Muslim consciousness or *Islam* in India[5] and unfolds a bewildering diversity of Muslim communities and multiple manifestations of their identity.

Darjeeling, a much contested geopolitical space in northern Bengal close to Sikkim, Bhutan and Nepal[6] eventually fell into the hands of British East India Company between 1828 and 1835 through a series of negotiations and treaties between and among the contending actors in the region [7]. The British colonial encounter led to the development of the region as a sanatorium and a military depot, an educational centre and a plantations area for tea. Darjeeling as a hill station became a bastion for colonial activity. The British incorporated the natives such as the Lepcha and the Bhutia within the greater colonial framework and the people found themselves in a new set up merged with the flow of migrants from surrounding regions. It was a paradox that although the British had created Darjeeling to relax and distance themselves from the native Indians, the multifarious demand for labour that arose when they arrived led to the opening of the floodgates to the mélange of native workers such as servants, porters shopkeepers traders, water carriers, masons, butchers, washer men, dandy bearers, butlers, ostlers, battiwallas,

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carpenters, blacksmith, construction workers, tea labourers, the middle and upper class Bengali *bhadraloks* [8] and also the Balmiki/Mehter community[9].

The Muslims in Darjeeling enclaved in 'Butcher Busty' (Dr. Zakir Hussain Basti) area in most cases are among the least disadvantaged in terms of access to resource and benefits of the state. The second generation Gorkhaland movement has witnessed the visibility and vocality of the Muslims (men and women) in the public sphere. This is an interesting development in terms of community participation in social movements and strategies projected to overcome vexed exclusions at the levels of the social, the cultural, the economic and the political. And here it is important to note the relevance of the hyphenated identities and the underlying power-play of prefix and suffix. What comes out very strongly through this is that the '*Gorkhey Identity*'[10] is to be retained either as prefixed or as suffixed appendage to any other community identity and cannot be undermined in any situation. All this further reaffirms Horowitz's formulation that 'though ethnicity is commonly tied to territory changes in territorial boundaries can lead to significant changes in ethnic identities'. Individuals may also regard each other as ethnic strangers in one place, but as ethnic kin in another where they may discover both common cultural commitments and common material interests in the face of competitors from radically different cultures. Horowitz argues that ethnic identity can be shifted upwards or downwards to more inclusive or narrower levels to meet situational exigencies. Ethnic and national groups can similarly fuse or split apart. Such processes may combine 'primordial' sentiments and strategic calculations[11]. Silhouetted in the Gorkhaland movement,[12] the discussions in this paper unravels the case of the Muslims in Darjeeling Hills and their attempts to cross the lines of the 'Local-"Non-local" divide' while enduring Muslim-ness within the same. The discussions in the paper in its various subsections glean into old and timeless questions of who is a Local. How does one become a Local? What are the qualifiers to become a Local? And how effective is becoming a 'Local'?

Becoming a Local

'Becoming a Local' becomes evidently necessary in the hills of Darjeeling where the politically and socially vexed issues of who is an insider (*Hamro machey/ 'our people'*)? And who is an outsider? is an experience of the everyday[13]. 'Becoming a Local' through myriad strategies enables and reaffirms the position of the migrant and those excluded from the existing power positions to become political insiders. [14] Those at the margins are threading strategies of rewriting their histories and locating themselves in 'documents' as either agents or prominent actors within the historical frame. Also, in limited tone these strategies have cultural revivalist intonation. The following subsections reaffirm the same.

Locating the Muslims in the '*Pahar ko Rani*' (Queen of the Hills) - Darjeeling

Locating historical records regarding the Muslim population of Darjeeling is a challenging task precisely due to two reasons, *first*, the documents at Darjeeling District Magistrate office are not properly stored; *second*, because the old Darjeeling Municipality building was gutted down by a fire in the year 1996 wherein all the old paper records were consumed by fire. However, limited information regarding the Muslim community in Darjeeling can be found in the writings of O' Malley and also that of Arthur Jules Dash. Likewise the census records of 1961 and 1967 statistically document the Muslim population of the district and the subdivisions therein.

Table: 1 Muslim Population at Darjeeling
Town from 1941-2001 Censuses

1941*		1951	1961		1971		2001	
Male	Female	Male/ Female	Male	Female	Male	Female	Male	Female
1041		Not Available	739	336	717	400	2421	1713

(*Source*: * Dash, A. J., 1947 & Census reports 2001 (religious census CD file))

The advent of Islam in Darjeeling Hills and surrounding foothills can be categorised into the following phases:

Phase I: Though there are no authentic or concrete historical records regarding the spread of Islam and Muslims in Indian Himalayas particularly in the Himalayan region of Darjeeling hills. We can only speculate and reconstruct the history of Islam and Muslims in the Himalayas from some scattered inventions by then Delhi Sultans during the early medieval periods[15]. It is very difficult to say when the Muslims first entered in the eastern Himalayas due to paucity of written documents or sources. Prior to the colonial encounter the whole tract of present Darjeeling Himalaya, excluding Kalimpong, was a creation of nineteenth century by an accidental involvement of British East India Company in the affairs of neighbouring Himalayan states. During that time the town Darjeeling and its adjoining hilly regions were the tract full of forests and jungles and originally a tract of Sikkim Raj which was captured by the aggressive *Gurkha* Kingdom of Nepal. Only a number of Lepcha habitations were noticed by Captain Lloyd and Mr. Grant[16]. The Lepcha nomenclature of names of streams (*jhora*) and some locality authenticate this fact.

The available documents hardly indicate any Muslim inhabitants in Darjeeling Himalayas. But it can be speculated that Kurseong and Kalimpong had Muslim trading personnel as these two stations was very old trading centre for both the plains and hill peoples before the colonial encounter. The small business in these two hill centres revolved around the '*weekly haat*' run by the petty business men for the sake of inhabitants and may be some among

them were small marginal Muslim businessmen from neighbouring *Terai* plains or Bihar, also the colonial writings mention the seasonal wave of 'boxwallas' who in most occasions could have been the emergent Muslim population in the hills[17]. They may have built temporary settlements for their temporary stay there. Various survey reports of early colonial time's exhibits that the Muslim population of Darjeeling town and its adjoining rural and urban areas had a tremendously low female population because of them mostly came without family. The trading communities both Kashmiri and Tibetan Muslims visited these two towns frequently. Their business comprised mainly woolen garments, silk, animal skins and jewels.

Indicative of the urgency to 'become local' there has grown an initiative to rewrite history and every community staking claims to indigenous status or autonomy and the like, is strongly engaged in history writing. Observably there is a popular myth among the Muslims regarding the origin of the Muslim habitation in Darjeeling town.[18] The Muslim inhabitants of the town believed that there were a considerable number of Muslim populations during the sultanate period in the hill town. The Delhi Sultan Mohammad bin Tughlaq and the Bengal invader Ikhtiyaruddin Mohammad bin Bakhtiyar Khalji send their armies to invade Tibet through Kurseong and Darjeeling [19](But due to the severe winter conditions their army collapsed near the present day Darjeeling town as the soldiers had meagre number of garments to protect themselves from the biting winter. So, they made temporary settlements near the present day *Jama Masjid* locality. They also prepared a temporary mosque close to the 'Laldighi' near present day Bramha Samaj building. Some of these soldiers returned back to plains, some succumbed to the cold weather, while others got married to native women and settled in Darjeeling hills. This is the popular historical account of the origin of Muslims in Darjeeling, though lacking in authentic historical evidential sources, they have strong buyers among the Muslims who have been strongly rooting their claims to be 'Local'.

Phase II: The migratory history of the Muslims in Darjeeling town only can traceable from the colonial periods. The most common occupational pursuits of the Muslims are small scale marginal businesses, lather works, craftworks, wage labour, bawarchi/khansama (cook), hajam (barber), kashai (butcher), and various lower grade services at organised and unorganised sectors. Dr. Campbell devoted himself to the task of developing the station, attracting immigrants and other specialised occupational groups for their specialised services.

Some of these had agrarian background but after migration they adopted various urban occupations as these specialised services have always been a great necessity to the city dwellers[20]. During the colonial periods the regular army of the British East India Company was dominated by the native Muslim soldiers[21] . These solders often intermarried with the native women and settled permanently in Darjeeling. This was a marked break from the earlier advent of Islam in the eastern Himalayas where the Kashmiri and Tibetan Muslim business families frequently visited the region but did not settled permanently.

Table: 2 Religious Distribution of Darjeeling Town (1891)

Sex	Hindu	Christian	Muslim	Buddhist	Jain	Others
Male	5535	363	1030	1937	28	Sikh 27
Female	3073	161	268	1720	-	Parsi 3

(*Source*: Census of India1891, Vol. IV, 28)

Table 2 shows the religious distribution of Darjeeling town in 1891. From this table it is clear that the number of Muslims were not meager. Owing to its commercial importance a large number of Muslims from the state of Uttar Pradesh and Bihar came in the town in search of occupational opportunities and later settled permanently with their families or intermarriage with the native women. That is why majority of the Darjeeling Muslims are of U.P. and Bihar origin. Besides, there was a good number of *Afghan* and *Peswari* Muslims in the Darjeeling town before the partition. They had a representation in almost all the sectors of both private and public. But they never settled permanently. All of these *Afghan* and *Peswari* Muslims returned back to their places when India got her independence. Because of its importance as a summer head quarter of India and then Bengal Government, a large number of Princely States installed their summer quarters at the town. And the settlement pattern of the town was divided into three parts during the colonial period. The upper portion of the town i.e. the mall and *chowrasta* locality was strictly reserved for high ranking European officials. The middle portion i.e. the present day *chowkbazar* and its adjoining areas were of mixed settlement of both European and Indian *zamindars* and small states. And the lower portion was for the native common peoples particularly for the serve classes.

After the formation of Darjeeling Municipality trade and commerce was rolling rapidly in this Himalayan town. And the marginal Muslim families migrate to serve the increasing urban necessities of the dwellers. The colonial government of the town installed a slaughter house at the bottom line of the town as the daily menu of the Europeans occupied a large amount of animal protein. But the supply of the animal flesh was continued by the Muslim butchers prior to the very formation of this butcher house. However, the exact date of the establishment of this butcher house remains contested as the old municipality building was burnt along with old records in 20th November, 1996. But it is believed that the butcher house was established just after the formation of Darjeeling Municipality i.e. after the year 1850.

There were no official statistics about the ethnic and cultural backgrounds of the Muslims living in Darjeeling town. But some early writers of gazetteers and memoirs mentioned a few words about the Muslims. Hari Mohan Sanyal, an overseer of the early (1835) Colonial PWD department,

wrote a memoir of Darjeeling where he contributed few words for the Muslims living in Darjeeling town. Dozey (1916) also wrote about the *haat* or weekly bazaar of Darjeeling town where *Peshawari* businessmen would participate.

Darjeeling Municipality was established in the 1st July of 1850 in order to provide basic services to the people. It was one of the oldest formal administrative bodies of India which starts its work just after its very formation. Before 1880, the Municipality of the town was building various public buildings and market places near present day *chowk bazaar* and railway station region. *Judge Bazar* was also build during that time. The market was then made of wooden frames. The Kashmiri Muslims, who were basically the traders of *shawl* and *pashmina*, took lease the shops at *Judge bazaar*. The famous Habib Mallick's curio shop was also started from *Judge bazaar*. Most of the shop owners were from Kashmir and were engaged in selling handicrafts. But the glory of *Judge bazaar* gradually declined as most of the shops were shut down because of partition. The famous Habib Mallick shop later relocated to its present place at *chowrasta*.

Table: 3 Muslims in Towns of District Darjeeling - 1941

Name of the Towns	1941
Darjeeling	1041
Kurseong	246
Kalimpong	332
Siliguri	1961

(*Source*: Dash, 1947)

The rapid urbanisation of the town Darjeeling increased the Muslim population in Darjeeling hills. For instance the colonial census of 1941 counted 1041 Muslim in Darjeeling town alone (excluding Kurseong and Kalimpong) where as it was 1298 in the year 1891.

Anjuman-E-Islamia established (alongside the establishment of the *Jama Masjid*) in 1850 is the supreme institute for Darjeeling Muslims to maintain the mosques and other *Waquaf* properties. It was registered under company act on 5th December 1909. This century old institute has had a great role in consolidating Muslim consciousness and Islam in Darjeeling hills. Popular belief among the Muslims of the town however backtrack the establishment of the *Jama Masjid* or *Bari Masjid* to the year 1785 by the then immigrant Muslims. But this popular belief has no empirical basis. During the British period, all the developmental activities for the Muslims were controlled from the *Anjuman* as there were a good number of Muslim government

officials in the town who were active members of *Anjuman*. They did a lot for the betterment of the Muslims living in the town. Khan Bahadur Abdul Aziz was one of them. He was a government veterinary surgeon and later a Darjeeling municipality commissioner. He did tremendous job for upgrading the *Butcher Busty* in to a well maintained habitation for Muslims. For his great contribution to the overall development of the town the main road of this *basti* was named as Dr. K B Abdul Aziz Road as an honour. Khan bahadur also established two *madrasa* for boys and girls at *Butcher Busty*. The girl's *maktab* was established in 1910 for up to class IV to provide elementary knowledge to the womenfolk.[22] The *madrasa* for the boys was established in 1909 at the yard of *Anjuman E Islamia*. Since then, it was the only institute for the Muslims for elementary education. Still it is running but the drop-out rate is very high and only the poor families send their children there.

Phase III: Post- independence a considerable number of Muslim populations took refugee/ shelter either in the East or West Pakistan. This was also because of the cartographic challenge of the partition which placed Darjeeling in East Pakistan; evidence of the Pakistani Flag fluttering atop the Municipal building on 15th August 1947 can be found in the archives. Needlesstosay the Muslim inflow was tremendously strong.

A large number of Muslims from Islampur sub division of Uttar Dinajpur, who are popularly known as *Islampuris*, fill the vacuum. But most of these peoples are seasonal migrants. These *Islampuris* are specialised in masonry, wage labour, religious priest hood or Imam, shop keepers and house hold servant. But they are not a permanent resident of the town[23].

Today majority of the Muslims in the town are the decedents of early migrant families and a large portion of them intermingled with the *Paharis* by marriages. A large portion of the Muslims of Darjeeling is quite similar to *Paharis* in terms of language, appearance, and food habits. They claim that their culture is very much mixed with Pahari ambience. Over time, they adopted typical *Pahari* norms in clothes, language and cultural patterns, though not leaving their religious customs.

In the year 1960, 124 Muslim families from Tibet took refugee shelter in Kalimpong due to the Chinese occupation in Tibet. These Tibetan Muslims have an Indian origin of Ladakh, Kashmir and settled permanently to Tibet long ago for the purpose of business. Some of these families later migrated to Darjeeling from their refugee settlement at Kalimpong and settled permanently. Because of their Indian origin, these Tibetan Muslims got Indian citizenship immediately after their migration from Tibet. In Darjeeling there are only a few Tibetan Muslim families and concentrated mostly in a place named *Kakjhora* near Darjeeling railway station.

Since the very beginning, Kashmiri Muslim businessmen opened their shops at the town but very few have continued their businesses. Some of them settled permanently in the town but continue to maintain strong connection with Kashmir. Except the famous Habib Mallick's family, all other are of the same lineage. Kashmiris are mostly engaged in the business of curio and traditional handicrafts in Darjeeling. Shopping in Darjeeling is one of the

favourite recreational activities for the tourists. Curios like *thangkas*, fabrics, brass statues, woodcarvings, jewellery, carpets and the famous Darjeeling tea are the prime items for sale. Shopping in Darjeeling is incomplete without a visit to these curio corners. Most curio shops are on Chowrasta lying along Nehru Road. And the tourists find a vast array of handicrafts and curios, ideal gifts to take as souvenirs from Darjeeling. Previously there were 5 curio shops owned by the Kashmiri Muslims including the famous Habib Mallick's. Presently some other communities mostly Tibetan Bhutias have sprung opened into curio business. *Chowrasta* or the roads near to Darjeeling mall is the hub of all antique shops owned by Kashmiri and Tibetan Muslims selling handlooms, handicrafts, Tibetan artifacts, precious and semi-precious stones.

Table: 4 Post-Colonial Darjeeling District Muslim Populations from 1951 –2001 Census

Year	1951	1961	1971	1981	1991	2001
Population	6393	19214	23523	37299	59140	85378

(Source: Dash, 1947 & Census reports)

Table 4 shows the evolution of Muslim population of district Darjeeling from 1951 to 2001. It is clear from the table that the Muslim population of the town increased rapidly after 1951 or better to say after partition of India during 1947. Prior to partition the population was almost stagnant in nature.

Table: 5 Urdu Speaking People of Darjeeling Hills (Census 1971)

Police Station/Town	Persons	Male	Female
A. Sadar Sub-division	4718	2985	1733
Sukhiapokhri	1175	791	384
Pulbazar	35	34	01
Darjeeling (R+U)	1057	689	368
Darjeeling (M)	1019	666	353
Rangli Rangliot	21	18	03
Jore Bunglow	27	21	06
B. Kalimpong Sub-division	397	269	128
Kalimpong (R+U)	362	246	116
Kalimpong (M)	276	183	93
Garubathan	35	23	12
C. Kurseong Sub-division	632	428	204
Kurseong (R+U)	589	398	191
Kurseong (M)	481	313	168
Mirik	43	30	13

(*Source*: Darjeeling District Gazetteer, 1971)

1971 census counted Urdu speaking people of the three hill sub-divisions of the district Darjeeling which shows that only 397 and 632 persons from Kalimpong and Kurseong were speaking Urdu respectively. Whereas, there were 1019 Urdu speaking persons at the town Darjeeling though Muslims in Darjeeling hills are also a multi lingual community. Urdu is not the only a mother tongue of Darjeeling Muslims. On the basis of their mother tongue they can be categorised as Nepali speaking, Urdu speaking, *Bhojpuri* speaks and Hindi speaking.

Becoming 'Local' and Enduring 'Muslim-Ness' in an Ostensibly Multicultural Terrain [24] and the Effectiveness of becoming a Local

The Muslim population of the town is ostensibly united through the façade of Islam and veritably fragmented on ethnic, linguistic and occupational lines. On the basis of this, the Muslims are largely categorised into four broad categories namely– Nepali Muslims[25], Tibetan Muslims[26] and Kashmiri Muslims. Nepali and Bihari Muslims outnumber Tibetan and Kashmiris in Darjeeling town. The status and role of womenfolk is also varied from community to community even though they shared the basic principles of social-cultural life.[27] Socio-economic conditions of the families also make a significant role in defining the status and role of Muslim women. The Nepali speaking ethnic communities in Darjeeling tremendously influences the cosmology of Islam and Muslimness[28] among the followers of Islam in the hills.

Islam calls for conversion as the only path for marriage between the believers and the non-believers[29]. Resultantly a large number of indigenous women (Nepali speaking or otherwise) have converted to Islam to get their marriage solemnised in the eyes of religion when marrying migrant Muslim men. The trend of inter marriages between followers of Islam and nonbelievers can be traced back to colonial times, and have been obviously for establishing settlements and acquiring residency claims in the hills. The issue of inter marriages with local women have been in contemporary times shaping Muslim identity at Darjeeling hills and also the claims to being 'sons of soil'[30] of the *pahar* (Darjeeling hills). The resistance to conversion to Islam has been rather muted this might be due to the secular character of the Hill communities in terms of religious faith and food consumption. For instance, even among the Hindu Nepali ethnic communities and also the Buddhists Bhutias consumption of beef is not a taboo. Also these ethnic categories never took Hindu religion an integral part in their society where beef consumption is strictly tabooed. This might be one of the factors for the limited tensions in everyday life between pre and post conversion to Islam for the non-believers.[31]

On the question of assimilation the opinion among the Muslims is fragmented, while a section among the Muslims in Darjeeling believe that Muslims should adopt the customs and ways of life of the hills, a polarised opinion stakes claims for a distinct identity. The polarisation of voices seems to reaffirm that the Muslim population in Darjeeling hills is ethnically and

linguistically diverse. In short the ostensible homogeneity is marred by variegated heterogeneity. Also, the Muslims are further clubbed as 'old comers' and 'late comers', 'Urdu speaking', 'Bengali speaking'[32] etc. Alongside these internal differences Muslims also have the creole segments among them i.e. the Muslims born out of mixed marriages with other non-Muslim communities who represent the hybridised sections of the Muslims population in Darjeeling. It is interesting to note that the Muslim society and culture of Darjeeling hills has been shaped by the interacting forces of several set of traditions viz. Islamic, Nepali caste and tribe, Tibetan and etc. which led to propagate a meaningful coexistence of Muslims and non Muslims in the town. The Nepalis, the Bhutias though different in religious faith, participate in the socio-religious programmes of the Muslims and so do the Muslims. Muslims are not much different from their ethnic Nepali and Tibetan or Bhutia neighbours in respect to language, food, dress pattern, occupation, material culture, family organisation, habits and customs. Another, area of assimilation can be that of language. Though Muslims are predominantly Urdu speaking, the everyday language is rather a pidgin of Hindi, Urdu, Nepali, Tibetan. The pidgin language is audible in the areas close to Butcher Busty and is a subject of local mockery and humor. The speakers are classed apart as distinctively 'Butcher Busty' and 'non-classy'.

The morphological similarities often make it impossible to distinguish between populations. Due to constant mixing with the ethnic Nepalis, these *paharia* Muslims are almost identical with their non Muslim neighbours. For instance, distinguishing the Tibetan Buddhists and Tibetan Muslims in respect to language, food, traditions, habits and customs remains largely challenging. Also for instance, the difference between a Nepali Muslim and a Kashmiri Muslim is more prominent than a Nepali Hindu and a Nepali Muslim. Also even the Muslims (especially the Nepali and the Bhutia Muslims) often observe the major festivals of popular hill culture. Except some basic principles of Islam, the life cycle rituals have a great similarity with the Nepalis and Bhutias. Many Muslim families respect the local deities and pay devotional respect along with their next door Nepali neighbours. Due to this close association with the dominant hill culture, the Muslims in Darjeeling hills are gradually inclined towards the popular local traditions. Observably communal disharmony has been largely absent[33].

In the attempt to become 'Local' the Muslims in Darjeeling hills have also strongly emulated 'caste consciousness' as operative among the Nepali speaking populations. It was the Muslim caste group or '*jat Kureshi*,' who were traditionally engaged in the profession butchers particularly of beef and mutton, who came to the town during the colonial times. From that time, the settlement of these butchers was termed as Butcher *Busty.* The *basti* is located between *Mantulal jhora* and *Jiten jhora.* After that, majority of the Muslim migrants made their settlements in this *basti.* During the early nineties, a good number of Muslim aristocrat families made their cottages in butcher basti. For instance, *Zumratan* cottage was build by one Muslim *zamindar* from Bihar as his summer cottage.

Majority of the Muslims in Darjeeling town are self-employed

following their hereditary occupation.[34] They are either in their traditional occupation or engaged in small business entrepreneurship such as the *Kureshi* or butcher, *Mansuri* or *dhunia*, *Dorji* or tailor etc. the dependence of the local population on the Muslims enterprise and the Muslim monopoly on the same can be dated back to the colonial times. Say for instance, the supply of meat (beef and goat) to the town is circulated by the *kureshi* brethren since the British time and this tradition is still maintained by this Muslim group. Muslims are expert in skilled or semi skilled works like mechanical works, masonry work, colouring, plumbing, repairing etc. A large number of services are rendered exclusively by the Muslims in the town. Mechanical and semi mechanical works are largely monopolised by the Muslim occupations. Substantial numbers are engaged in food production and supply. Several specialised items of beautification and ornaments are manufactured or sold by some Muslim specialists. Their pioneering knowledge and experience in bakery and confectionary industry by some Muslim families placed the town Darjeeling in a place of excellence. They are considered experts in such jobs. Muslims of the town are thickly integrated into the society in the hills through the crucial role of their services and expertise. Very often their specialised services are required to maintain the everyday life in the hills.

Darjeeling town is a blend of diverse ethnic and cultural elements. Integration between diverse groups would never be possible without the spirit of socio-cultural accommodation between such diverse communities which ultimately helped them to live together in harmoniously under harsh environmental condition of the mountain. Darjeeling represents an amalgamation of animism, Lamaist Buddhism, Hinduism and Islam. As a matter of this social-cultural amalgamation, the Muslims of the town exhibit a unique cultural matrix which reflected at the various levels of their cultural practices.[35] There have been diverse perceptions of social relations in the context of inter-ethnic or inter-religious interaction in Darjeeling town. Some may perceive this situation as the face of tension and conflict, while the others believe it as the process of assimilation or integration. The most important manifestation of intercommunity and inter-religious interaction is the attribute of syncretism which is an old social fact among the Muslims living in Darjeeling town. It refers to the hybridisation of two or more cultural or religious traditions over time. It is a result of acculturation or culture contact as well as assimilation. It is a social mechanism to create protective defense around communities in a place and also incorporate the ideas and behaviours from different societies living around them. Members of different communities like Bhutia, Sherpa, Marwari, Bihari, Lepcha etc. frequently participate the festivals of the Muslims for instance the Mazaar displayed in *Chowkbazaar* (motor stand) where locals of all hues throng to light candles and tie 'Dhaga'/ 'dori' to make wishes.

The second generation Gorkhaland movement (2007 onwards) has witnessed the visibility and vocality of the Muslims (men and women) in the public sphere. This is an interesting development in terms of community participation in social movements and strategies projected to overcome vexed exclusions at the levels of the social, the cultural, the economic and the

political. And here it is important to note the relevance of the hyphenated identities and the underlying power-play of prefix and suffix. What comes out very strongly through this is that the '*Gorkhey Identity*' is to be retained either as prefixed or as suffixed appendage to any other community identity and cannot be undermined in any situation. Further substantiating the argument that, the migrant experience does not end with the first point of settlement. It is handed down through the generations, consciously or unconsciously making its contribution to the ways in which those in diaspora negotiate their existence through societies in which they and their cultures are in minority. Being in the diaspora means living in a cross-cultural context, one in which change, fusion and expansion are inevitable. Those aware of the complexities of this recognise the need to redefine their identity and the necessity to discover a medium through which they articulate their progress. Gleaning the issues raised in this paper we can well understand that 'Assimilation' is never a final project and that it is always in the 'process of becoming'.[36]

Some Concluding Observations

The social and cultural life of the Muslims in this poly-ethnic environment of the eastern Himalayas shows a very distinctive character of enmeshing of the Islamic great tradition as the little traditions. The Muslims are rewriting their histories in the regions and locating themselves in the documents and back-tracking their presence since the early sultanate periods. Undoubtedly the development of Darjeeling as a sanatorium and health resort by the East India Company post 1835 attracted many Muslim marginal communities to migrate here. The uphill pull factor into the Colonial bastion was much due to the demands of the Whites in Darjeeling hills as much as the outsiders from the plains and peripheral areas to catch newer opportunities and sever ties with native princely states, caste regimentations etc., and seek security under new masters. To serve the increasing urban necessities of the dwellers some Muslims settled permanently and in course of time married the native girls and some settled in the *pahar*. Today, the mosques at the town, the *Azaan* echoing through the hills, *madrasas*, Muslim shops and bearded men with *fez topi and 'veiled* women in public spaces' [37] are all much a part of Darjeeling hills. The above discussions highlight the effectively and limitations of 'Becoming Local' for the Muslims in Darjeeling amidst the highly volatile Gorkhaland movement and Gorkhey consciousness operating in ground zero.

Notes

[1] To the contemporary debates concerning relationship between on the one hand normative and textual *Islam*, and on the other changing social and political practices, Muzaffar Alam adds that the original language and traditions of *Islam* could not escape modification in the lands where they spread their faith and established their power. This was manifest both in the accumulative character of the meanings of *shari'at* as well as in the substitution of the sacred Arabic language by a relatively secular Persian. However, he also contends that forces militating against the assimilative tradition

were simultaneously active. Thus, while Persian acted as a potent agent of assimilation, it also encouraged a kind of anti-tolerance worldview at elite levels. See Alam, Muzaffar. *The Language of Political Islam: India 1200 – 1800.* Chicago: University of Chicago Press, 2004, 1-2 and 141-42.

[2]Chatterji, Joya. 'The Bengali Muslim: A Contradiction in Terms? An Overview of the Debate on Bengali Muslim Identity'. *Islam, Communities and the Nation: Muslim Identities in South Asia and Beyond.* Ed. Mushirul Hasan. Delhi: Manohar, 1998, 266-272.

[3] Ibid.

[4] Chakraborty, Anup Shekhar. (co-author Subhas Ranjan Chakraborty) 'Ambiguous Identities: Statelessness of Gorkhas in North-East India' *The State of Being Stateless: An Account of South Asia.* Eds. Paula Banerjee, Anasua Basy Ray Chaudhury & Atig Ghosh. New Delhi: Orient Black Swan Pvt. Ltd, 2015.

[5] Ahmed, Imtiaz, ed. *Caste and Social Stratification among Muslims in India.* New Delhi: Manohar, 1978. Ahmed, Rafiuddin. 'Conflict and Contradictions in Bengali Islam: Problems of Change and Adjustment'. *Shari'a and Ambiguity in South Asian Islam.* Ed. Katherine P. Ewing. Delhi: Oxford University Press, 1973.

[6] Dhamala, Jaya. *Sikkim Ko Itihas.* Darjeeling: Shyam Prakashan, 1983; Dozey, E. C. *A Concise History of the Darjeeling District since 1835 With A Complete Itinerary Of Tours In Sikkim And The District.* Varanasi/Calcutta: Jetsun Publishing House,1989; Gaule, Gopal. *Bartaman Sikkim Lai Nihal-e-ra Herda.* Gangtok: Nirman Prakashan, 2002; O'Malley, L.S.S.(Reprint 1985). *Bengal District Gazatteers: Darjeeling.* New Delhi: Logos Press, 1907; Pinn, Fred. *The Road of Destiny: Darjeeling Letters 1839.* Calcutta: Oxford University Press, 1986.

[7] Farwell, B. *The Gurkhas.* London: Allen Lane, 1984; Farwell, B. *Armies Of The Raj: From Mutiny to Independence (1857-1947):* London: NA, 1989; Smith, E. D. *Britain's Brigade of Gurkhas.* London: Leo Cooper, 1973; Sunwal, B. D. *Nepal and the East India Company.* Bombay: Asia Publishing House, 1965.

[8] I acknowledge Dr. Devika Roy Lama, Associate Professor Department of History, St. Joseph's College, Darjeeling for this insight.

[9] The Balmiki community is an interesting case of migration into the hills of Darjeeling following the growth of Darjeeling Municipality in the 1850s. The Balmiki (Dalits) are the predominant work force of the municipal body, scavenging and managing disposal of waste. The Balmiki over the years have been branded as the '*Jamadar*' category that is the lowest in degrees of the category of the 'Others'.

[10] For this study I use the term *'Gorkha'/Gorkhey'/'Gorkhali'* as a blanket term to denote all ethnic tribes/people who migrated from Nepal to British India and who speak the *'Khas Kura'* the lingua franca of Nepal. The present work does not intend to delve on the debates on the correct nomenclature for the said group as argued by A.C. Sinha. For details see Sinha, A.C., & T.B. Subba, eds. *The Nepalis in Northeast India: A Community in Search of Indian Identity.* New Delhi: Indus Publishing Company/ICSSR, New Delhi/NERC, Shillong/ DRS, NEHU, 2003. Moreover, I consider it more appropriate to refer to the said group as *'Gorkha'/Gorkhey'/ 'Gorkhali'* because of their colonial linkages as migrants either recruited in the British Indian Army or Administration. What is interesting to note is the fact that the term *'Gorkha'* is basically the name of a district in present day Nepal, and later the term acquired a special meaning in British martial discourses. The term *'Gorkha' or 'Gorkhey'* has got a community appellation and transformed its culture-historical underpinnings into an ethno-political one. (For details see Golay, Pravesh Jung. 'Ethnic Identity Crisis, History & Cultural Anthropology: Some Reflections' *Indian Nepalis: Issues &*

Perspectives. Eds. T. B. Subba, A.C. Sinha, G.S. Nepal & D.R. Nepal. New Delhi: Concept Publishing Company. 2009, 49-621. I use *'Gorkha'* and *'Gorkhey'* interchangeably while referring to the community's self-defined identity. The latter though has more poetic connotations associated to it. I acknowledge the insights provided on this by Dr.Radha Sharma, Associate Professor, Department of Nepali, St. Joseph's College, Darjeeling.

[11]Horowitz, Donald. L. *Ethnic Groups in Conflict.* Berkeley: University of California Press, 2000 (1985).

[12] The project of chiseling a separate state of Gorkhaland enters into the narratives of the nationalist discourse of the *Gorkha* and is also interpreted as the triumph of *Gorkha* nationalism over the 'other' namely the *Bengali* and the state of West Bengal. The whole project is also interpreted as a public effort to cut down the 'other' to its size. The territorial space is selected as the final battle ground where the *Gorkha* and the 'other' will contest their spatial domain.

[13] ibid

[14] Chakraborty, Anup Shekhar. (co-author Subhas Ranjan Chakraborty) 'Ambiguous Identities: Statelessness of Gorkhas in North-East India'. *The State of Being Stateless: An Account of South Asia.* Eds. Paula Banerjee, Anasua Basy Ray Chaudhury & Atig Ghosh. New Delhi: Orient Black Swan Pvt. Ltd, 2015; Chakraborty, Anup Shekhar. 'Gleaning the Politics of Cartographic Representation and Gorkha/Gorkhey Identity in Darjeeling' *The Barefoot Transformation: West Bengal and Beyond – Reviewing State Politics in India.* Eds. Tirthankar Chakraborty and Tabesum Begam. Kolkata: Levant Books, 2015. 117 – 141.

[15] For instance, Qutubuddin Aibak attempted an invasion of Tibet but could not advance beyond the foothills. Also Muhammad bin Tughlaq made similar futile attempt. Later on the Mughal Emperor Aurangzeb directed his men in Bengal to invade Assam. All these invasions required huge investment in terms of manpower, presumably the ethnic composition of soldiers involved were diverse. Inter-community community marriages with local native women and, the later permanent settlement of Mughal soldiers in the *Terai* and *Dooars* region cannot be ruled out. Their new affinal kin groups later helped these immigrant Muslims to domicile there and as a result the new faith of Islam became rooted in this soil. For details see Mondal, Sekh.Rahim. *Dynamics of Muslim Society.* New Delhi: Inter-India Publications, 1994.

[16] O'Malley, L.S.S.. *Bengal District Gazatteers: Darjeeling.* New Delhi: Logos Press, 1907 (Reprint 1985).

[17] Ibid.

[18] I acknowledge the Field Report (Political Science (General)) prepared by the 3rd Year General course students Tanveer and group 2015 as a part of the completion of the University Examinations, University of North Bengal

[19] Shakabpa, Tsepon Wangchuk Deden. (Trans. Derek F Maher). *One Hundred Thousand Moons: An Advanced Political History of Tibet.* Vol. I. Leiden: Brill, 2010.

[20] The political intrusion of Mirju-Mullah and Hussain Shah into the *terai* and *dooars* region brought many Muslim *subedars, faujdars* and *laskars.* Their political relationship with the local kings and *jotdars* later facilitated many Muslim officials, intellectuals, artisans and other occupational groups to migrate.

[21]Sharif, Jafar. *Qanun-I-Islam* (The custom of the Mussalmans of India: comprising a full and exact account of their various rites and ceremonies from the moment of birth to the hour of death), translated by G. A. Herklots. London: Curzon Press Ltd, 1921.

[22] Chakraborty, Anup Shekhar. 'Enduring "Muslim-Ness" in an Ostensibly

Multicultural Terrain: Muslim Women in Darjeeling Hills'. *Women's Link*, 22.1 (2016), 38-48.

[23]Chakraborty, Anup Shekhar. 'Domestic Outsourcing and Call Centres: Construing Outmigration in Darjeeling'. *Economy of North Bengal: A District Level Study*. Ed. D.C Roy. Siliguri: National Library, 2013, 452-460.

[24] Ibid.

[25]Dastider, Mollica. *Understanding Nepal: Muslims in a Plural Society*. New Delhi: Har-Anand Publications Pvt. Ltd, 2010; Gupta, R. 'Caste Ranking and Inter-Caste Relations among the Muslims of a Village in North Western Uttar Pradesh', *The Eastern Anthropologist,* 10:1 (1956), 30-52.

[26]Butt, Masood. 'Muslims of Tibet.' *Tibetan Bulletin*, (1994) 8-9, 16; Fang, Jiangchang. 'Research on the Huis and their Mosques in Tibet - and the Spread and Influence of Islam in Tibet,' in *Tibet Studies*, 2 (1989), 202-222; Jest, Corneille. (1995). 'Kha-che and Gya-Kha-che: Muslim Communities in Lhasa (1990),' in *Tibet Journal,*. 20, (1995), 8-20, 3; Sheikh, Abdul Ghani. 'Tibetan Muslims,' *Tibet Journal* 16.4 (1991), 86-89; Siddiqui, Ataullah. 'Muslims of Tibet,' *Tibet Journal*, 16.4 (1991), 71-85.

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[29] Farid, Ibni. *The Social Structure of Indian Muslims*. New Delhi: Institute of Objective Studies, 1992; Robinson, F. (1983). 'Islam and Muslim Society in South Asia', in *Contributions to Indian Sociology*, 18.2 (1983), 301-05; Robinson, F. 'Islam and Muslim Society in South Asia: A Reply to Das and Minault', *Contributions to Indian Sociology*, 20 (1986), 97-104; Sharif, Jafar. (1921). *Qanun-I-Islam* (The custom of the Mussalmans of India: comprising a full and exact account of their various rites and ceremonies from the moment of birth to the hour of death), translated by G. A. Herklots. Curzon Press Ltd. London, 1921.

[30] Weiner, Myron. *Sons of the Soil: Migration & Ethnic Conflict In India*. New Delhi: Oxford University Press, 1978.

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[32] Alam, Muzaffar. *The Languages of Political Islam in India 1200-1800*.

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[34] Ibid.

[35] Ibid.

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[37] Ibid.

Partitions and the Sisyphean Making of Peoples[1]

By

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Introduction

The closer one looks, the more it appears that 'partition' is one of the geopolitical keywords of the last 200 years, indeed perhaps since the three partitions of Poland in 1772, 1793, and 1795 respectively. Too many dimensions of global governance are laid bare by its various modalities, and too many of the world's conflicts today have their roots in one partition or another for it to be derivative of, say, secession and self-determination. Consider the fraught negotiations and/or relations in Ireland, Bosnia, Cyprus, North and South Korea, the continuing effects of the *de facto* partitions of Palestine and Western Sahara, the simmering tension within Pakistan and between it and India, and the partition of Sudan into two states in 2011.[2] Kosovo and Serbia wrangle over their unofficial border as the nationalists on both sides decry a possible partition of Serbia and/or Kosovo. Germany is still dealing with the consequences of its postwar partition, just as one might suggest that Africa is suffering the consequence of its partition by European powers in the 1880s; partition was the term used at the time for the infamous 'scramble.'[3]

These are the obvious cases but many others submerged from view also offer key insights into current affairs. China just avoided partition by the great powers around 1900, and Persia between Britain and Russia a few years later, a fate not averted by Yemeni lands when the British wrested control of the southern part from the Ottoman Empire in 1886. Their experience or close brush with dismemberment needs to be borne in mind when assessing allergic reactions to western criticisms: the fear of renewed partition. The same applies to Turkey, whose nascent military forces successfully resisted—in fact reversed—the partition of the core Ottoman land, smashing the 1920 Sèvres settlement at the expense of Kurdish and Armenian national

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aspirations, with well-known effects: 'Kurdistan' is now divided between Turkey and the neighboring states of Iraq, Syria, and Iran, and efforts to 'liberate' the Kurds have led to violent insurgencies and genocidal counter-insurgencies in two of these countries. For its part, the cradle of Armenia lies in eastern Anatolia—that is, eastern Turkey—with its rump surviving in a small southern Caucasian state; at least that is how nationalists see matters.[4]

Syrian Arab elites were not so lucky, unable to withstand the French occupation of Damascus in 1919; their dream of Greater Syria was also strangled at birth when Palestine, Transjordan and later Lebanon were carved out of their expected territory, an outcome of the notorious British-French (and Russian) Sykes–Picot Agreement of 1916 that planned the partition of the Ottoman Empire. Showing how long the fear of dismemberment by greater powers has haunted so-called non-historical peoples, in 1920 these elites invoked the Partition of Poland as a terrible precedent and called for a US rather than French mandate over the region.[5] That year, Hungarians also decried the partition of their country in the Treaty of Trianon; it likewise continues to vex nationalists there to this day. More recently, in the 1970s, the South Africa Apartheid regime's 'bantustan' policy was referred to as partition, while earlier the French had considered partitioning Algeria to protect the European enclave in Algiers and along the coast.[6] Until 1997, Samoa was called Western Samoa because its eastern part remained in American hands, partitioned with the Germans in 1899.[7] A few years later, at the same moment of European expansion, Imperial Germany was also involved in subdividing Cameroon with the French, and also conceding France's partition of Morocco, to which the British had assented already in 1904.[8]

The urge to partition is not confined to the distant days of pre-WWI colonialism. Not long ago, in 2007, some US commentators and politicians thought that Iraq would be better off if partitioned into three regions, and there is even talk of partitioning Ukraine to appease its Russian population: to effect the equivalent of the Transnistrian secession from Moldova, the creation of South Ossetia and Abkhazia out of Georgia, or the extraction of Nagorno-Karabakh from Azerbaijan after the Cold War. How many have asked why there are two Mongolias: one an independent republic, the other, known as 'Inner Mongolia,'an Autonomous Region in the People's Republic of China?[9] As I write, commentators are openly debating the partition of Syria and the end of the Sykes-Picot order as a solution to or inevitable outcome of its murderous civil war.[10] These are some cases but there are surely more, casting doubt on Charles S. Maier's contention that the age of globalisation replaced the age of territoriality, which commenced roughly around 1860, at the end in the 1970s.[11] Secessions, the striving for self-determination—and the impulse to partition—are as current as ever.

Surprisingly, historians have contributed little to the study of partitions as a geopolitical practice involving great powers and local actors. That has been the preserve of political scientists and political geographers who perforce tend to rely on the monographic work of historians. Although this picture is slowly changing as transnational and comparative historical

perspectives gain traction, we are still talking about a handful of comparative historians at most. Ever cautious, they tend not to posit general theories about historical process or events, including partitions. Often, the differences between various cases are more important than the similarities, even with temporally adjacent events like the India and Palestine partitions. On the whole, historians work idiographically rather than nomothetically. The Rankean preoccupation with the particular over the general, however, can amount to intellectual defeatism when broader patterns, recurring themes, and the influences of historical and current learning processes are rendered invisible, if only because it abandons the field to the political scientists, geographers and their search for law-like regularities and decisive independent variables. What is more, the academic study of partitions is now dominated by political scientists who are often close to government and policy development: they are part of the 'official mind,' like historians in the first half of the twentieth century. For that reason alone, it is necessary to address these official assumptions. Laying bare their limitations is a necessary precursor to a reflexive historical treatment of the subject. Those assumptions posit the nation-state as the end point of human political history—but is it?

Paradigms and Imaginaries

Summed up most briefly, the contemporary political science literature, which emerged in the late 1990s after the Yugoslav war of succession, presupposes the existence of ethnic or national groups with hardened identities that live in compacted zones of comingled settlement, vulnerable to internecine conflicts due to the fatal logic of what are called 'security dilemmas,' the cycle of violence unleashed when the maintenance of security for one group is interpreted as aggression by the other. 'Realists' like Jack Mearsheimer and Chaim Kaufman call for new borders and compulsory population transfers in seemingly intractable ethnic conflicts as the 'least worst' option for global governors, much like British policy makers when they entreated partition and transfer in the Peel Commission report about Palestine in 1937.[12] Opposing them are other political scientists like Radha Kumar and Don Horowitz who doubt whether partitions and compulsory population transfers achieve the claimed social and inter-state peace; in fact, Kumar argues, creating new borders can provoke the very violence that partition is designed to prevent. Moreover, they then lead to the paranoid political cultures witnessed in the Middle East and South Asia. Showing the policy proximity of this literature, she even has a website sponsored by the Council of Foreign Relations, the UN, and the Carnegie Corporation of New York, the Ford and Rockefeller Foundations, and *National Geographic*, setting out the arguments for and against ethnic partitions and presenting information for those who need a quick briefing on the subject.[13]

To the historian's ear, this literature, whether for or against partitions, takes too much for granted. Ethnic and national groups are invested with ontological status as the primary, even sole, significant political actors, and as the primary and even sole source of individual identification in parts of the

world where political subjectivities were far more layered and certainly not determined by religion alone. Like Lord Curzon, they presume that peoples are 'mixed' and that they need to be 'unmixed' or, if not, then properly supervised. Yet we know that Greek nationality as such in Turkey was a chimera, and those people expelled from the latter to the former in 1922 and 1923 were Christians who spoke many local languages and possessed many identities; they were turned into Greeks by their experiences during and after the population exchange.[14] All too often, these authors proceed as if thirty years of constructivist sociology and historiography about nations and nationalism was never written. What is more, the policy discourse is indentured to a managerial gaze of 'solving' the problems of non-Western peoples, a subject position that smacks of neo-imperialism that in many cases led to the problems in the first place.

A striking feature of the literature is that it presumes the ethnic conflicts it seeks to solve rather than explaining how they came about, a question that would entail some reflexivity about the observational and interventionist subject position. For the creation of the seemingly irreconcilable tensions were often products of imperial strategies of imperial governance to begin with; how did those Indians end up in Fiji, Tamils in Sri Lanka, Zionists in Palestine and, much earlier, the Protestants in Ireland, to name a few cases? Finally, the 'for or against' discussion—whether to separate groups or enjoin con-social arrangements of cantonisation, federalism, and so forth—presupposes a right answer, a conclusive solution to a nationality problem, above all when a given nation is safely housed in a state. Switzerland, sometimes Belgium, is noted as the exception that prove the rule that is set by the so-called artificial states of Africa or, say, Sri Lanka, a fertile example for partitionists who argue that it would have been better off partitioned than suffer the brutal civil war with its outrageous civilian deaths.[15]

Two levels of analysis, then, must be simultaneously distinguished and related. On the one hand, we have the language of partition invoked by nationalists who cry out when they fear their country will dismembered by neighbors and/or great powers. Take Yemenis who in 2009 and 2010 were alarmed by rumors of a supposed new 'Sykes-Picot Agreement and partition of Yemen.' by the British and Americans.[16] On the other hand, we have the language of academic analysis that buys into the assumptions on which this fear is based. The term 'partition' presumes a natural whole that is dismembered by an outside power: as in the partition of Poland or of Africa or of Turkey, to name some of the book titles published over the past 140 years. The sophisticated version is Brendan O'Leary's influential theory whereby partition is distinguished from other phenomena by its violation of a supposedly natural unit: 'A fresh border, cut through at least one community's national homeland, creating at least two separate political units under different sovereigns or authorities,' by which he means the breaking up of sovereign (rather than multinational) entities with new borders rather than along traditional, internal boundaries. The latter applies to secession and self-determination.[17] The conventional literature in indentured to the national political imaginary thereby limiting its analysis of these issues.

As noted at the outset of this chapter, the term is part and parcel of a modern geopolitical vocabulary, like self-determination and secession that, again, presume the existence of peoples and nations as given entities and as the chief actors in history. Likewise, the notion of a stable and identifiable 'national homeland' is for granted—like 'a people' and its imagined community. But what is natural about it? Why were the German borders of 1937 taken as the 'natural' unit that was in part annexed (by Russia and Poland) and then divided into four zones of occupation? Likewise with Palestine. Revisionist Zionists considered it partitioned already in 1922-23 when the British lopped off its large eastern wing across the Jordan River and called it Transjordan, while Arabs regarded Sykes-Picot as the first partition; they had expected to be incorporated into a great Syrian-Arab homeland. It was the struggle with Zionist colonisation that fixated their cartographic gaze onto the British-drawn borders as the 'natural' homeland. The so-called two-state solution discussion today—the attempt to effect the territory's partition—reshuffles the deck yet again as Palestinians are invited, or rather induced, to accept the West Bank and Gaza as Palestine. At the same time, for many Israelis this would represent yet another partition of the 'historic' Jewish homeland, *Eretz Israel*, and is therefore unacceptable. Some entreat still more 'transfers' of Palestinians to Jordan.[18]

Not for nothing are secession and partition often linked and even used for the same event depending on perspective. For many Moldavians, the secession of Transnistria is in fact a partition orchestrated by the wicked Russians while the Russian Transnistrians regard their statelet as the legitimate manifestation of their right to self-determination. In Yemen, talk of secession and partition are used synonymously.[19] For this reason, it is impossible for someone affectively committed to 'nation-ness,' still less for nationalists, to write sensibly about partition—or for partition to be neatly distinguished from secession and self-determination.[20] If it is a geopolitical keyword, then only in an age of nationalism that conceals as much as it reveals.

What this vocabulary occludes is the fact that, far from solving identity dilemmas, partitions represent another episode in the endless process of their reconfiguration and adaption; rather than engaging in the separation of homogenous peoples, partitions are a modality of their making, however fraught and incomplete, indeed impossible; hence the title of this chapter. For while nationalists imagine that partition led to the territorialisation of their people and its return to 'history'—collective agency in time—the last sixty years has revealed the Sisyphean nature of realizing this national fantasy in practice. The partitions of the 1940s, for example, were not only temporally limited events but founded enduring structures that inserted a 'repetition compulsion' in the architecture of these state's foundations. By presuming fantasised homelands for declared nations, the terms of the discussion—whether for or against partition—loaded the state dice in favor of cultural homogeneity, with or without 'minorities,' rather than as spaces of plural political subjectivities typical of imperial and local spaces. Partition entails violence, not only at the foundation moment but in the process of nation-building and the formation of the national subject. As we will see, this

violence produces its own negation.

In partitions, then, the identity dilemmas brushed over by the conventional approaches are deferred with founding violence and then metastasise during nation-building. The conflagration of India's partition cannot be contained by the narrative of communal violence; instead, it is ascribable to the logics of the nation and its quest for a state, a quest that constructs majority and minorities from pluralism, and a permanent sense of insecurity for the former and the notion of authoritarian modernisation for the latter's leaders. Not only is the resulting state populated by the 'paranoid suspicion of other group and/or communitarian unity,' it makes promises it cannot fulfil: as an imaginary homeland for violence's refugees in the face of indigenous subjects who resist the transformation of their own homeland. The 'nationalist search for clarity, uniformity, and 'purity' in the midst of manifest uncertainty, fluidity and inequality,' notes Gyanendra Pandey,' contains an 'unrealisable quality' that leads to constant disappointment.[21] Other subjectivities, whether of indigenous people, peasants, women, or minorities religions, are silenced in the name of the new homeland and its geopolitical self. Because the fears and insecurities mobilised by partition's leaders have not been assuaged by the Pakistani and Indian senses of home, political entrepreneurs can appeal to them for electoral gain—and for which there are no non-violent solutions. These states are thus based on a horizon of nationalist political expectation that, as one scholar put it, 'in a path-determinant manner, produces and reproduces, ethnicised behaviour patterns.'[22] That is why partition states come up with schemes to dilute alien population concentrations—such as the 'Judaization of the Galilee'—and why the architectural legacies of Jewish culture are being erased in Ukraine, just as Hindu civilisation is effaced in Pakistan, and parts of India are doing their best to forget their Muslim past.[23] At the same time, these residual subjectivities resist partition with their own 'molecular' logic, as Ranabir Samaddar puts it: the tendency to break identity down into molar units, whether neighborhoods, villages, cities, communities, families, gender, and parties.[24] Partition unleashes contrapuntal and dialectal processes of state homogenization in the name of the national partition ideal on the one hand, and resistance and fragmentation on the other. What we find 'is the non-fixity, instability, and general contingency of the national categories concerned.'[25] I elaborate briefly on these processes in South Asia below.

Inventing Peoples in South Asia

India

As might seem obvious in retrospect, realizing the national dream was complicated by the messy reality of imposing order on the region's demographic complexity. Take the case of one of the princely states that covered about a third of the India landmass at the time of partition. Hyderabad was ruled a Muslim Nizam who decided against accession to India in 1947 despite his territory's majority Hindu population. The Congress Party

predictably campaigned for union, though not the main Dalit parties, which did not relish domination by higher caste Hindus. A Muslim party, supported by Razakar paramilitaries, advocated Pakistan's cause, suppressing dissent. On the pretext of imposing order, India invaded in September 1948, and then had to decide upon the citizenship of the polyglot population, which included thousands of Muslims of Arab and Afghan descent who had lived there for generations. Seventeen thousand civilians were promptly interned for supposedly supporting the Razakars, which in practice meant Muslims in general. Because they were in legal limbo—no longer British Protected Persons, nor Indian citizens—Indian military authorities applied culturally determined criteria. The Afghan and Arab communities *as a whole* were decided to be non-Indian and culturally dangerous; they were to be deported, like Germans in Eastern Europe.

This seemingly straightforward operation was complicated by the presence of Indians in other countries. The implicit hostage theory applied to them as well, it seemed. The Hindus and Sikhs who had sought refuge in Afghanistan during Partition would be imperilled if the locals there learned of the Indian's shabby treatment of Afghans in Hyderabad. More well known in the West was the situation of Indians in South Africa; the last thing the Indian government wanted was their repatriation to India, because the country has sufficient trouble coping with the Partition refugees. Then there was the problem that the deported Afghans may fight on Pakistan's side in the unfolding Kashmir conflict. In the end, only a handful was compelled to leave. Making a people was not a straightforward proposition when nationality questions could not be contained in the bounded space of the state.[26]

As might be expected, the immediate aftermath of partition and the assumptions of the two nations theory imperilled the status of the millions of Muslims who remained as 10% of India's population. Hindu politicians and journalists constantly challenged their loyalty, despite the country's ostensible commitment to secular democracy, because the dominant assumption was that the natural or core Indian subject was a Hindu. Yet, despite the fact that Muslims were 'communities on trial', the official secularism was and is experienced by Hindu nationalists as an intolerable concession to Muslims, indeed as an obstacle to the realisation of an authentic Hindu civilisation, thereby mirroring the Muslim League's 'two nations' rhetoric that postulated fundamental civilisational differences between the two religious formations.[27] Time and again, middle class Hindus complain that the secular state goes too far to appease minorities: Sikhs and Muslims. Sundered by partition, it cannot be lose any more territory to separatists in Kashmir.[28]

Attempts to homogenise the country, like the imposition of Hindi as a national language in the early 1950s, foundered on the opposition of the regions, especially in Tamil Nadu whose language is unrelated to Hindi. Ultimately, the state had to reorganise the country's federal system along linguistic lines in 1956.[29]That Nehru's vision of a centralised and modernizing state was unrealisable has been shown by repeated regional independence insurgencies, like in Kashmir, Sikhs in Punjab, and in Assam and Nagaland in the far east, which have resulted in over 80,000 casualties and the *de facto*

partitions in the formed of new boundaries for borderland states and establishment of tribal zones and special territories.[30] In the Sikh case, accommodation with local autonomy had to be conceded, but not after considerable violence in the 1980s, which included revenge attacks on Sikhs for the assassination of Prime Minister Indira Gandhi by two Sikh bodyguards in 1984 after she had ordered the storming of Golden Temple. Of course, this protracted conflict made a nonsense of the Non-Muslim category that determined population divisions in 1947.The yearning for national realisation or revenge also informs the communal violence that erupts periodically, like the demolition of Ayodhya Mosque by Hindu nationalists 1992 because it supposedly concealed a Hindu temple, an act that triggered the demolition of Hindu shrines in Pakistan. The Gujrat massacres of Muslims in 2002 is a notorious case in point.[31] Not that conflicts are always organised along ethnic lines; Maoist resistance—known as Naxalites—to modernisation's encroachment on peasant villages and economies continues to tie down state military forces across large parts of eastern India.[32] The issue of class is also a forgotten dimension during 1947 and 1948 when, at the local level, Hindu villagers discriminated between Muslim landowners who they were happy to see go, on the one hand, and Muslim artisans vital to their economy, on the other.[33] The modernist project of making an Indian people is consistently frustrated by the country's demographic heterogeneity and the non-conformist agency of local actors, just as Hindu nationalism provokes the minorities it would like to wish away.

Pakistan

Similar dynamics were discernible on the Pakistan side of the border, though here the articulation of national identity confronted the challenge of defining the relationship between Islam and the new state. The Muslim League's 'two-nations'theory of South Asian Muslim nation-ness was, as Vazira Fazila-Yacoobali Zamindar put it, a 'constructed category of community and political mobilisation.'[34] Such was the diversity of Muslim cultures, religious practices, locations of residence and spoken languages that a unity was impossible to imagine except in purely political, indeed non-territorial terms, divorced from historical continuities.[35] Consequently, the question of the country's national belonging became the question: who is a true Muslim?—which entails an intrinsic tension between its secular constitution and religious foundation, and instability of national symbols, like Urdu, which led to the loss of its majority province, East Pakistan, in 1971 (see below).[36] Such fictions shape reality in the form of the notorious 'hostage theory' of minority protection, whereby the security of the Muslim remnant in India—and Hindu and Sikh minority in Pakistan—would be guaranteed by a pact of mutual deterrence: any violence or persecution visited upon their minority here would be reciprocated on ours there. The idiocy of this strategy was soon recognised by prominent Indian Muslims who wrote to the United Nations in 1951, saying 'Our misguided brothers in Pakistan do not realise that if Muslims in Pakistan can wage a war against Hindus in Pakistan, why should not Hindus, sooner or later, retaliate

against Muslims in India.' And there would be nothing Pakistan could do to protect them.[37] Their justified fears could be generalised. As noted above, Hindu temples in Pakistan were destroyed in retaliation for the demolition of the Ayodhya mosque in 1992.[38]

Problems of national belonging confronted the authorities from the outset. During partition, Muslim elites of Sindh urged the Hindu middle class, also vital to the local economy, to stay, and Karachi was relatively peaceful until early 1948 when the Muslim refugees from the Punjab arrived. Likewise, the Dalit classes were also urged to remain, as the menial work they performed was deemed an essential service. The Muslim/non-Muslim categorisation also forced itself on groups with syncretic devotional practices, like the Meos of Mewat who were known as 'half-Muslims' because of their affiliation with neighbouring Hindus. Although now officially Muslim, they did sometimes did not know where to go because they verged on the heretical for orthodox Muslims. In other areas, the decision was easy to make after attacks by Hindus.[39] More complex still were the Punjabi Jat tribal group which comprised Sikh, Hindu, and Muslim members.

It has not been lost on commentators that the two-nations theory was most popular in those states where Muslims were a minority (Uttar Pradesh, Bihar, and Bombay) and not in northwest and eastern India, the putative Muslim homeland(s).[40]There the imposition of Urdu as the national language by the refugees from India—known as *Muhajirs*—has always provoked resistance from the intensively regional cultures of Baloch (or Baluch) and Sindh. In the latter, the flooding of the capital, Karachi, by *Muhajirs* has triggered a nativist Sindh reaction and then *Muhajir* counter-mobilisation, resulting in various forms of violence in the 1990s and 2000s. An insurgency in Baluchistan has been ongoing for decades, and secessionist or at least autonomy movements endure in the North West Province as well. No sooner had they become Pakistanis than the indigenous peoples of Pakistan asserted their regional identity against the *Muhajir* Pakistan ideal. The artificiality of the national imagining endures in the struggle between the *Muhajirs'* sense of representing the pan-Muslim Pakistan ideal and the regional nationalisms that regard it as a virtually alien imposition from Indian Muslims who do not really belong. As in India, the national ideal has had to accommodate indigenous resistance. Its incoherence is further evidenced by the tendentious myths of origin in Pakistani school books, as Ayesha Jalal has shown; the disjuncture between a national projects struggle for an unattainable ideal in the face of a obstreperous historical record.[41]

East Pakistan

The issue of origin and language bedevilled the West Pakistan's relationship with the Eastern wing, today's Bangladesh, whose population has always exceeded that of the west. To be sure, the Bengali Muslim League had campaigned successfully for East Bengal's inclusion in Pakistan, but the subsequent history of their relations with the west revealed markedly divergent understandings of the country's nature. For East Bengalis, Pakistan

meant self-rule by Muslims and freedom from Hindu economic domination; not for nothing did Hindus leave the province in increasing numbers over the years, although it was spared the extensive violence of the Punjab. Bengali Muslims did not share Jinnah's redemptive view of Pakistan by which Urdu, which he insisted be imposed as the state language in all provinces, represented the essence of Muslim culture because of its proximity to Arabic and Persian. Bengali, on this view, was a Hindu language and thereby represented oppression and psychological dependence. West Pakistanis therefore considered Bengalis' resistance to Urdu as obtuse, smacking of the dangerous regionalism that would prefer a united but religiously mixed Bengal over Pakistan.[42]

As a consequence, East Pakistan was not imagined as part of the core Pakistani identity; much in the way that Muslims were not regarded as real Indians. Similarly, the West Pakistan elites could not tolerate a loose federation with the west wing—that is, East Bengali regional autonomy—in the same way as the Indian Congress could not accept the Muslim League's demand for such arrangements. So when the Bengalis strove for such autonomy in 1971, the army attempted to suppress it with genocidal violence, eventually losing the province after Indian invasion. With the establishment of Bangladesh, most South Asian Muslims now live outside Pakistan, making the 'two-nations' theory even more tenuous; a problem that many in Pakistan have faced by seeking to Islamicise the state. Since 1971, Indian Muslims have barely looked to Pakistan as a desirable place to migrate.[43] Partition's molecular logic was unfolding.

Perhaps the most telling case of this impossible logic is that of the Muslims from Bihar in India. Fleeing Hindu violence, they migrated to East Pakistan in 1947 and 1948 where they expected membership in the new Muslim homeland. Being Urdu speakers, however, the local Muslim Bengalis often regarded them as representative of the West Pakistani project they increasingly rejected. Indeed, Biharis, as they were called, did support the pan-Muslim ideal—they had little choice—and to their cost. Thousands were killed by Bengali nationalists during the autonomy movement in early 1971; some of their number then aided the Pakistani military forces and were subsequently murdered as collaborators. Those who survived and can be identified are being legally prosecuted in Bangladesh as I write. Tens of thousands still languish in camps awaiting 'repatriation' to West Pakistan, their putative homeland, where they have never been and where they are not particularly welcome—Pakistan ceased accepting them in 1981—to avoid tipping the demographic balance further in favour of the *Muhajirs* and against the Sindhis.[44] All the while, the emigration of Hindus into West Bengal in India continues, as it is made clear to them that they are not so welcome in the east either.

Conclusion

While irreducibly particular in scale and violence, the patterns and logics discernable in South Asia can be detected in the other partitions of the 1940s:

of Germany and Palestine. I conclude by briefly highlighting them.

First, the issue of lost women and children during wartime and partition violence bears in important ways on the 'making of peoples.' A religious-nationalist logic was work at in the Indian partition during which up to 50,000 women were thought to have been abducted or gone missing, often euphemisms for terrible sexual violence. Both governments co-operated for a decade to locate and repatriate the women, who were often adopted into the families of their abductor, having borne children by the time the investigation teams came knocking at the door. Many resisted the state's claim on their body, which was so symbolically freighted with notions of national honor and purity; for they knew that despite their claiming and appropriation by the new postcolonial nation they would be banished by their original families because they were now dishonored and contaminated by intimate contact with the other.[45] Likewise, in Europe, as Tara Zahra has shown, non-German children abducted by the Nazis became the object of intense policy and welfare activism by children's advocacy groups. Almost without fail, they decided to repatriate the children even if they were happily living with a German family. Their putative nationality trumped their new familial contexts.[46]

Second, the ethnic cleansing in each of the 1940s partitions and the 1971 East Pakistan secession struggle requires comparative treatment. On first blush, the semi-militarised pre-emptive 'cleansings' of East Punjabi Muslims by Sikhs in 1947 bear comparison with the Zionist forces' Plan Dalet in March 1948. The creation of the Palestinian refugees also needs to be brought into a relationship with the subsequent expunging of a similar number of Jews from Arab countries. For the evidence suggests a 'hostage theory' reaction by Arab governments to the Palestinian's plight, even though Israel was happy to welcome them. The national fantasies of these Arab societies now excluded the Jews who had been part of those societies's fabric for millennia.[47]

Third, partition's molecular logic needs to be tracked systemically in the citizenship laws of these countries and in their treatment of refugees, especially their right of return and property rights. Zamindar's work on the Pakistan-India border provides material for comparison with German and Israeli cases.[48]

Fourth, the role of refugee elites of the first generation in driving the secular national project in Pakistan and Israel against the religious nationalism of the indigenous Muslims and Jews respectively can be systematically considered. Such an investigation might ask why in these countries and India religious nationalism has begun to erode founding secular ideal. Partition's molecular logic leads by inexorably to peeling of the national onion to its religious core.

Fifth, just as important are the 'stranded' non-elite refugees created by partition's molecular logic, namely the Palestinians in refugee camps in Lebanon, for instance, who are definitely not considered assimilable to the Lebanese body politic for the same reasons Biharis remain stranded in Bangladeshi camps until recently; they will upset an ethnic balance in a country by which nationalist ideology—whether Pan-Arabism or Pan-Islam—they should be welcome.

These kinds of questions are as topical as ever in view of the partitions that press upon the international community's attention today, as in Syria. Not that our answers will provide the United Nations with tidy solutions to the civil wars that rage in such places. Historians need not be policy makers or government advisors; we are interested in the deep structure of these conflicts: how the presumption of a national self that experiences and drives self-determination and striving for homogeneous and sovereign nation-states *produces* them in the first place. The geopolitical imaginary continues to posit nation-states as empire's natural successor, indeed as history's telos. Given the inability of this imaginary to produce stable and enduring forms of sovereignty and compatible sense of home, we are entitled to pose Jane Burbank and Fred Cooper's question: 'Can we imagine forms of sovereignty that are better able than either empires or nation-states to address both the inequality and diversity of the world's people?'[49]

Notes

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The Precarious Migrant:
Issues of Ecology, Politics, and Survival

By

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The Colonial Background

Mike Davis in his, *Late Victorian Holocausts: El Nino Famines and the Making of the Third World* showed how in the late nineteenth century climate change, social factors, abrupt economic transitions, and particular political command structures combined with devastating effect to cause millions of deaths across large parts of the world, so much so that the famines could be linked to the making of the third world. Davis drew his arguments from several studies; his great merit was in synthesising the huge data he collected from various sources.[1] Several others in Indian context are now taking up the lead provided by Davis.

For instance, David Arnold has shown how the colonial organisation of power was crucial in accentuating environmental impact on Indian peasantry and the ruinous effect it had on the customary ways of providing relief to the distressed and the victims.[2] He demonstrated how in the wake of the nineteenth–century famines in India survival strategies like the use of what he called famine foods and migration facilitated the spread of epidemic diseases like cholera, dysentery, malaria, and smallpox. Jean Dreze's writings on the origin of the Famine Code in India in the late nineteenth century are of enormous help to us in having a historical understanding of the relation between ecology, politics, and survival that was structured by colonialism.[3] There is again a fascinating work by James Vernon on hunger in Great Britain which draws on several sources including Davis' to show the intimate link between hunger, migration, and the combined effects of environmental changes and a catastrophic political economy.[4] The interesting point about Vernon's work is not the fact of the persistence of hunger in modern Britain

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leading up to the fifties of the last century, whose history he of course presents in great details, but that the British governmental attitude to hunger and the forced marches (including hunger marches) was shaped in the last one hundred years by the colonial modes of governing hunger and famines. In particular the policies of thrift, herding the victims of hunger in camps, villages, and small towns, restricting their movements to rationalise the work of relief as well as to stop the spread of anarchy, modes of inspection and reporting, gearing part of the governmental machinery towards conducting relief work, and then gradually modeling the work of relief along military lines of a centralised command structure, finally tackling the eternal dilemma of a budget exercise, as to whether coping with calamities should be an exceptional event of drawing on available resources or whether this should be part of a normal budgeting exercise – all these had their origin in the colonial age.

In my earlier work on the frontier areas of colonial Bengal in the second half of the nineteenth century, its South Western frontier known as the *Jungalmahals*, I was dealing with the politics of community formation. What I found striking in the material that I was unearthing and dealing with was the way in which what is called now environmental history was integral to the history of formation and survival of peasant communities, in which the history of migration was an extremely critical component.[5] Environmental happenings would become calamities as these would cause hunger and displacements, leading in turn to unrest and revolts. I showed how pests, forest fires, droughts, and remarkably storms, marked peasant memories of why they chose to move to other places why they migrated as semi-bonded labourers to certain lands particularly as plantation labour, all in all a story of environment, history, economics, and power operating as if in a grid on the margins of a rationally governed empire. Indeed, if we follow Davis' main argument, much of the late nineteenth century migration in large parts of the peasant world (Brazil, Egypt, India, and China) had to do with environmental disasters and the vagaries of the global food market.

In India, colonial rule had intervened in the critical situations of drought, flood, famine, and hunger with several legislations - the best instance of which was the Famine Act. Famine Act, Mike Davis argued, did not pose any obstacle to what Marx and Engels had called 'money relation', but a tool to further it. Peasant communities crashed out of the market and became victims of hunger. Blood ties were destroyed as children and wives were sold in numbers. The enactments on personal law, alimony, property management, and measures allowing encroachments on common property resource, showed how the colonial rule reinvented a money-led society. In all these less noticed remained the role of religions, faith based institutions, new brotherhoods symbolising new ties based in these institutions, and the way private property was managed through these critical times. Colonial Bengal presented an acute picture of famine, continuing migration of all kinds, and unusual mobility of persons belonging to particular caste groups to various towns and outside the state – all of which weakened kinship. We have accounts of famines – starting from the Famine of 1770 and ending with that of 1943 and in between the account of the famine of 1873 – which tell us of

scenes of animal existence of humankind and massive migrations in search of security of life. As Hunter described in *Annals of Rural Bengal*, quoting John Shore,

> Still fresh in memory's eye the scene I view,
> The shrivelled limbs, sunk eyes, and lifeless hue;
> Still hear the mother's shrieks and infant's moans,
> Cries of despair and agonizing groans
> In wild confusion dead and dying lie; —
> Hark to the jackal's yell and vulture's cry,
> The dog's fell howl, as midst the glare of day
> They riot unmolested on their prey!
> Dire scenes of horror, which no pen can trace,
> Nor rolling years from memory's page efface.[6]

Is the situation any different today? How do various factors combine today to produce hunger marches of our time, new resource crises, new migrants, and the new refugees? If hunger, famines, and floods played a crucial part in the making of the colonial economy, what are the post-colonial realities of political economy, particularly in terms of primitive accumulation that globalization requires as its fuel? How are the structures of inequalities re-produced through these environmental catastrophes? How are fringe economies produced today and in what way do they link up with what can be called for lack of better terms mainstream economy?

An inquiry into these questions will help us to understand how environmental change, resource crisis, and migration even today act as the locomotive of accumulation and development. Colonial history is crucial, because an understanding of the colonial time can help us to see how the post-colonial destiny awaits the entire world. To demystify the phrase, 'sustainability of resources', and to get a sense of the new type of bio-power and bio-politics that is emerging, a critical post-colonial sense is important. It will help (a) bring back the issue of the colonial dynamics, which continues of course with changes; (b) point out in this context how a new science of governance tries to make sense of the phenomenon, (c) and, understand how the migrant, through the act of crossing borders and boundaries (borders of hunger, starvation, death, and life; of places and countries; of stations in life and occupations; finally borders of positions in the discrete map of division of labour) copes with a system that teams up with nature's calamities to turn millions into perishable lives.

Two recent important papers have explored the long duration colonial history of migration, and both have brought to light the environmental factors underpinning the migration process. Subhas Ranjan Chakraborty's study[7] on the figures on emigration drawing on various sources concluded in this way,

> Overall, the available data do not indicate the socioeconomic groups from which the emigrants were drawn, but the observations of a number of district collectors suggest that many 'disbanded sepoys', weavers, agricultural labourers and others engaged in low-caste service occupations were among

them. A majority of emigrants were from rural areas and from 'overcrowded agricultural districts', where 'crop failure could plunge sections of the village community into near-starvation'. In fact, there was a strong correlation between emigration and harvest conditions. Acute scarcity during 1873-75 in Bihar, Oudh and NW Provinces provoked large-scale emigration through the port of Calcutta. The famine in south India during 1874-8 also resulted in heavy emigration. Conversely, in good agricultural years recruits were not easily available. It has been reported that road blocks were hastily established to stem the flood of 'stick-thin country people' into Bombay and Pune, while in Madras the police forcibly expelled some 25,000 famine escapees. There is little doubt about the correlation between scarcity and forced migration. Most of the emigrants probably left their villages for the first time in their lives, and they were not fully aware of the hardships involved in long voyages and in living abroad. Diseases— cholera, typhoid, dysentery— were often rampant in the depots. Mortality among the emigrants was consequently high. Mortality at sea was alarmingly high. Before 1870, about 17 to twenty per cent of the labourers deported from the port of Calcutta died before they reached their destination. The data for the years 1871-90 of voyages to British Guyana suggest that the death rate on board was about 15 per 1000. The overall impact of colonialism was indeed negative. There was no increase in per capita income between 1757 and 1947; income probably declined in the second half of the nineteenth century. It is an abiding irony that the cash crop boom accompanied a decline in agrarian productivity and food security. The great export boom of cash crops benefited the money lenders, absentee landlords, urban merchants and a handful of Indian industrialists. During what constituted, in the imagination of the likes of Kipling and Curzon, the 'the glorious imperial half century' (1872-1921) life expectancy of ordinary Indians fell by a staggering twenty per cent. Pax Britannica, it would appear, had more victims than long centuries of war.[8]

The other study by Nirmal Kumar Mahato, focused on one century of migration from one single district, dry and repeatedly drought prone, Purulia. Mahato commented, Due to ecological degradation the *adivasi* (indigenous) society plunged into repeated crises. With the dislocation of their ecological economy it was difficult to survive. There was nutritional crisis which affected their health also. In the post colonial period the same trend continued. Sometime the Government took developmental initiatives but it did not try to recover the lost ecosystem so that the people could survive on their own. Traditional water management and mentality to conserve water was also lost. In the district, scarcity and nutritional crisis came not as a phenomenon but as a process. Thus, people were forced to migrate for their survival. The migration had a significant gender dimension. Large number of women emigrated in the colonial period not only for economic reasons but also due to their crumbling position in their own families. Women felt insecure in their own lands. They had to migrate. This also occasioned sexual exploitation which continues till date.[9]

The research on Purulia is important in the perspective of earlier studies on labour migration in colonial India, which mostly laid emphasis on different push factors to explain labour migration[10]. Some of them had searched for the background of labour migration in agrarian context. P.P.

Mohapatra in his well-known work had observed that the phenomenon of migration in Chotanagpur was both spatially and temporarily variegated. From some areas laborers went to Assam permanently while from some other areas they migrated seasonally to the coalfields. A large number of agricultural laborers or landless and small peasants migrated to the coalfields. The migration to Assam was associated with the peasant household migration. Mohapatra suggested that emigration from Hazaribagh or Palamau was possibly due to lack of expansion of cultivable land because of prevailing institutional arrangements. Emigration from Ranchi, Manbhum and Singhbhum took place because in those regions further expansion of arable land was not any longer possible. Under these circumstances, a number of peasants on marginal lands with limited or no irrigation facilities came under the mercy of an erratic monsoon and thus their food supply was under severe strain[11]. Nirmal Mahato's research brought out the interrelations between arid climate, decline in household economy, land question, commercial crisis, institutional deadlocks, and labour migration. Environmental crises in indigenous belts of habitation acted as the *deux ex machina* of history. *Memory, Identity, Power* also while describing labour migration from Jangalmahal to Assam and the Bengal Dooars put in place of a push and pull framework a relational framework – indeed a matrix.

In short, colonial history is crucial to understand how post-colonial India aims to tackle increasing food insecurity yet ensure labour supply.

Hunger, Disasters, and New Governing Mechanisms

My central argument here is that migration control policies and mechanisms have appeared in India in the wake of policies and administrative practices of controlling hunger and mitigating the effects of environmental disasters. Both have exacerbated the notion of food insecurity. Indeed the two discourses of food insecurity and disaster feed into each other and help to de-codify the other. Therefore, each calamity is followed by debates on soaring food grain prices, withdrawal by the State of food subsidies, role of government and market forces in food grain market as well as global food politics. The Indian government almost a decade back (the UPA I) had offered 100-day job guarantee scheme as an improved measure in place of earlier food-for-work schemes. The UPA II regime then followed up the earlier measure by taking up the task of guaranteeing food security. In a vast country like India, the conceptualization and implementation of such a massive food scheme created debates: Could such scheme be implemented properly? Would it not give rise to greater corruption? Would this be sustainable? And, was this the best way to ensure food security, for the main task was to guarantee a greater and easier supply of grain to poor homes. While these were general concerns, the free market advocates further argued, would this not dampen prices and thus harm the farmers and grain trade, and this block asset formation in the villages?

Calamities exacerbated these debates, as agricultural and rural wages remained depressed in the wake of calamities. The government replied by saying that if the beneficiaries did not get supplies, as pledged in the Food

Security Act, there were provisions to ensure financial assistance to them for buying the staple grains from the open market. It remained debatable if the prescribed amount of financial assistance would be enough to buy rice and wheat at open market rates. Markets run by their own rules, priorities and pressures. Agricultural economists have been often asked by common people as to what is this notion of food security, when India is supposedly surplus in rice, wheat and other food items of daily consumption, and yet food insecurity hovers over large tracts of the country accompanied by about 200,000 farmers' suicides in nearly last two decades?[12] Each calamity brings in its wake price rise, and while production over the long run has gone up manifold, prices including the cost of production have soared correspondingly. Instances are quite frequent where a village may produce at least three times the rice needed to feed its population and yet half the village population may get to eat only one meal a day half the year, because they not have the money to buy rice. Moreover, each year a large chunk of farmland is being diverted to non-farm use. Thus, a study of a comparison between the years of implementation of the WTO agreements (1990-91 to 1995-96) and the next five years (1996-97 to 2001-02) shows that barring rice and onions the production of other farm produces has come down.[13] In short, green revolution, reckless commercialization of land and farm produce, risk based trade of agricultural commodities, and diversion of land from farm production to non-farm use have combined to defeat the goal of food security. Natural calamity has acted as a catalyst to the entire process.

Natural calamities function as a periodic rude reminder that hunger is not over, life is not assured. Therefore calamities take us back to the basic question of life, and ask what hunger is, how large parts of the country remain hungry year after year, and what it means for politics when it concerns with two basic issue of living, namely food and shelter. Even though we are living under democracy, which concerns with freedom and promises us improved life conditions, natural calamities nonetheless force us to ask: does democracy do away with basic challenges of living? Is the savage condition of biological existence met satisfactorily, so that political life can now engage with higher requirements of civic life and participation? At least one answer clearly comes out of studies of disasters – the answer is in form of the fact that in a democracy under conditions of political equality there is durable inequality, differential access of groups to food and food market.

It was not sheer coincidence that in the late eighteenth century and nineteenth century when the idea of democracy was overwhelming the European continent that reports of famines started rocking the political establishments across the continent – famines in the colonies and reports of hunger in the metropolitan countries themselves. The reports on Irish Famine (1845-1852) tell us of deaths of approximately one million people and emigration of another million. Ireland's population in that time fell between 20 and 25 per cent. Considering the food riots and near famine conditions in colonies and several European countries in the nineteenth century, we should not be surprised that in that period democracy was not the only idea available to people, socialism emerged as a competing idea, and today's belief in an all

curing capacity of democracy was not so overwhelming then. People, it seems, were wiser and more literate then. Soon breadlines appeared in the United States - the new *el dorado* of prosperity. Those breadlines continue still today. They are as journalist Sasha Abramsky puts the 'hidden scandal of American hunger'.[14] Charles Tilly's accounts of collective actions in seventeenth and eighteenth century Britain and France show how food riots were occasions for the development of various tools of collective protest – night vigil, torchlight processions, burning, looting grain stores, sit-ins, slogan-shouting, barricading, formation of committees and vigilante groups, drawing up and submissions of memoranda, charters, manifestos, and setting up popular councils. In short democracy never did away with differential access to resources. Inequality proved durable. Hunger accompanied the onward march of democracy. Hunger provoked collective protests and violence. All these features have come to mark our critical understanding of democracy thanks to disasters and the following relief, rehabilitation, and resettlement programmes.

Interesting to note is the role of the fledgling public media in the time of disasters. Before the social anthropologists, reporters and correspondents arrive at the places of disaster and start covering incidents of disaster and chronic hunger conditions. Reporters are sent from metropolitan countries to cover such incidents in India, China, Egypt, and other 'backward countries' and their reports make the audience at 'home', aware of the phenomenon of hunger at home itself.

Exactly as the colonial time, we can now find in India different categories of hungry people – categories created by government policies, such as BPL (below poverty line) and APL (above poverty line). Thus with the governing principle of creating a hierarchy of eligibility for food provision and assistance, the situation is like what it was after the New Poor Law of 1834, enacted in Great Britain. Like then, journalists have now brought to attention here news of hunger and hunger deaths. Exactly as then new social policies are now being discussed and implemented in order to tackle hunger in the wake of the humanitarian discovery of hunger. The discovery of hunger, as these essays testify, has led to a discovery of the 'social', on the basis of which new social legislations such as the NREGA have been founded. The government can now address the social only by addressing hunger. The social discovery of hunger possible due to investigative journalism led also to the use of hunger in order to oppose government policies. Thus began the tradition of hunger strike (in India and Ireland for instance), the message being, *it is better to die in starvation than to accept a wrong government.* As in Britain, in India too in the wake of protests over scarcity of food, a new form of social government emerged with the welfare of the hungry as its aim.

This has required expertise in form of science and calculation of hunger so that government can devise policies and measures to assuage hunger. James Vernon tells us how nutritionists became important in this form of social governance.[15] In India in the eighties and nineties of the last century nutritionists debated the quantum of calories required to assuage hunger, and specialists argued as to who could be called full hungry and who partially. On this depended quantum of assistance, the kind and form of

assistance, the mode of supply, the budgetary requirements, and identification of most needy areas, and along with all these emerged entire panoply of graded vulnerabilities. Science also facilitated administration of food provisions. The discovery of vitamins and a bio-chemical explanation of nutrition meant that social governance of hunger has become possible and a reality. Yet precisely because of this social governance, hunger has become politically relevant, forcing all sections of the political class in the country to join the 'hungry India' debate. The public interest litigation on universal access to food, the debate on the role of panchayats in mitigating hunger, legislation of NREGA and its efficacy, administrative inefficiency in the state, judicial activism on this, quarrel over the exact cause of a hunger-death – starvation, or illness, or suicide — all these are dimensions of this social governance. This is what Vernon calls the government of hunger. Indians will remember, soon after Patu Mura, an old hungry woman died in Purulia, debate arose: did she die of hunger, or of physical weakness, of unavailability of food, or availability of food but absence of access to food, or of disease? If some said that her death signified lack of development in the district, the secretary of the ruling party in the state famously said that this death was not an indication of lack of development. Patu Mura had died, but Purulia was developing.[16] When farmers or tea garden workers or members of urban poor have died, the government has to decide the exact cause of death, because policies have been prepared to quell hunger. Science must tell us precisely, what is hunger and what is hungry death? Studies of famines are like nutrition studies. They form the scientific background in which we can locate the government of hunger.

The accounts of hunger in the wake of famines, floods, and droughts tell us few other lessons as well. The social governance of food access cannot but be disciplinarian, and be at best welfarist. Market mechanisms dictate the nature of institutional efficacy in this matter, and welfare will be dictated by market considerations. The rights bearing institutions, such as judiciary, trade unions, farmers' organisations, civil rights groups, state bodies such as the National Human Rights Commission or the State Commissions, meant to guarantee the right to food, become adjuncts to this disciplinarian welfare regime, which cannot allow any illegal claim making process.

Politics in such time of calamity becomes irrevocably biological - exactly the opposite of civil politics. How to survive, how to escape, get food, how to distribute food, how to demand food, how to tackle hunger-protests, how to die, and how to explain away deaths – all these suddenly take the centre stage of politics. Migration has emerged as a policy pre-occupation in this context of food insecurity, environmental calamities, and developmental disasters.

If natural calamities and disasters heighten the notion of *politics of life*, the other side of this phenomenon is the notion of *resilience*, equally brought to prominence in times of disasters. Migration is now taken as a measure of resilience. It is not only a nice exit from a situation of aporia, it is considered as a rational route to market access, even though resilience would also imply that that post-colonial life would remain one of precariousness, continuing

uncertainties, dangers, and fortitude. In this milieu of resilience migration would form the core of economic common sense.

This life is the one that millions in the South of the world live and one that the managers of global governance want to incorporate in the discourse of safety and sustainability of life. Natural and social calamities have occasioned various development strategies, disaster management courses, millennium goals, climate, environment, and resource related policies, and policies of protection of the vulnerable population groups. Neo-liberalism is nothing if not an ideology and a range of policies to make capitalism capable of dealing with a permanent post-colonial existence, which would mean long duration crisis, domination of finance and other forms of virtual capital, dispossession of peasantry, return of the primitive mode of accumulation, continuous wars of subjugation, loot, and plunder, and securitisation of entire life.

The lineage of the complementary discourses of precarity and resilience is thus long. Likewise many of the terror techniques introduced and practiced in Ireland, India, and Kenya by the British colonial state were later incorporated in the broad strategy of rule 'at home'. Thus in India, the extreme right wing imperial administration of Lord Lytton (1876-1880) was the time of the Second Anglo-Afghan War and the Great Famine of 1876-78, and significantly his reign became the reason for the passage of the Indian Famine Code in 1883. Lytton arrived as the Viceroy in 1876, the year when a famine broke out in South India claiming between 6.1 million and 10.3 million people. Famine continued, and his implementation of Britain's trading policy was blamed for increasing severity of the famine. Lytton was a fanatic believer in Social Darwinism in regarding the plight of the starving and dying Indians as inevitable. About 60,000 friends of the Raj banqueted whilst tons of rice and grain awaited export to Britain and America. Meanwhile famine continued. It was this context in which the British government wrote the first modern codification of responses to famine during its occupation of India. The highly detailed Indian Famine Code of 1883 classified situations of food scarcity according to a scale of intensity, and laid out a series of steps that governments were obligated to take in the event of a famine. The Code continues to influence contemporary policies as well those in several succeeding debates. In this context the paramount post-colonial question is: *How to survive in a world without securing oneself from the world?* Clearly economic reason is not enough to govern society, which needs ecological reason to be governed – because if dangers are to remain with us and if marginal existence is going to be the characteristic of our life then we need a new ecological understanding of our precarious existence.

How could the element of uncertainty become the core of the new theology of resilience? Is it then the fact that the post-colonial life now works as the spectre haunting the developed capitalist world? At least we can say this much that there is a strange displacement of sorts in the global hall of infamous imageries: Tsunami becomes Hurricane Katrina, the twentieth century's worst cyclone claiming uncounted lives in Bangladesh (then East Pakistan) in 1970 becomes the advancing polar chilly weather into North

America, My Lai massacre becomes the ghost haunting Boston, Madrid, New York, and numerous school shoot outs claiming hundreds of boys and girls, and finally the bankruptcy of Argentina (1998-2002) becomes the insolvency of Greece. In this series of displacements, policies are also displaced – those exclusively meant for neo-colonies are now to be applied 'at home' with of course suitable modifications.

Thus, the lineage of the complementary discourses of precarity, migration, and resilience is long. At this moment we can note at least these two features: (a) The inter-linked themes of environment, precarious life, resilience, and migration have strong post-colonial resonance; and (b) Neo-liberal capitalism aims at strengthening particular governmental mechanisms to deal with life on the margin – mostly life of the migrant who stands on the margin of society, economy, climate, security, market, and reproduction.

In this background this paper will now present some of the findings of the researches on the emergence of the precarious migrant as the key figure in the Brahmaputra and Barak Basins in North East India and Deltaic West Bengal and Bihar.

Ecology, Politics, and Survival Migration in the East and Northeast

On the recurrent flood of the Kosi River in the four districts in North Bihar, researches have demonstrated the intrinsic relation between ecology, politics, and survival migration in the last decade. These researches have pointed out the social, economic, and governmental dynamics in the wake of floods in the Kosi delta. They have shown the new governmental modes of encouraging the exit option for the flood trapped hamlets and villages, the regular train journeys of the (predominantly male) migrant labour from North Bihar to the northern part of India including Delhi, the entire political economy of flood, public works on flood control, and the developed modes of relief and rehabilitation that make a government successful.[17] They have also brought out features of popular politics, resistance, and the role of caste in the making of the migrant labour in today's India.[18] In a focused study on three districts in West Bengal delta region of river Ganga-Bhagirathi, the gendered aspects of such migration have been brought out in clearer light.[19] In Malda, it is the erosion of the Ganga riverbanks, in Murshidabad, it is the erosion of the banks of Padma's tributary Jalangi and in Cooch Behar, it is erosion along the sides of Saltia, a remnant of the old course of Torsha. There are differences in the impact. 'In Malda and Murshidabad, when a displaced person points to a direction and says, 'That was my home,' or, 'That was my land' one can see just plain water. In Cooch Behar, it is a barren stretch of sand. In both cases though, the loss has been the same – below the watery or sandy grave lie people's homes, lands, hopes and dreams. In Malda, after a piece of land goes under water, a silt-bank or *char* often rises on the other side. There, the displaced people settle amidst great difficulties and somehow make the land yield to their hard toil. In case of erosion such as in Cooch Behar, however, the land just becomes a sandbank, where hardly any crop except mustard can

be grown. The once-well-off peasants are now paupers. One can see almost no paddy fields, only scattered mustard patches. In Murshidabad, too, the *char,* where the displaced people are being rehabilitated is very sandy, they complain. 'My relative died a few days ago. When we dug the earth to bury him, we found no soil but only sand,' said one of them.

In this, the impact on women has been loud. When the men go to war, the women have to maintain the families. The same is true in this case, too. Losing their livelihood, most of the men are forced to migrate in search of work, while the women are left with the responsibility to feed their children. The men who just sit at home without any work, too, pressure the women in various ways. Women have less earning opportunities. Some of them are rolling *bidis*, some fry puffed rice (*muri*), make *badis* with gram or dal paste, or do pottery or other work. In Malda there are more skilled *bidi* workers among them than in Murshidabad and Cooch Behar. Many are trying to pick up the skill now under economic compulsions. Most of these women get less than the rates negotiated between the *bidi* workers' unions and the owners/contractors and are unorganised. Some of them go to work in the fields during the sowing season to dig and carry the soil. In these two jobs, too, they are less paid than the male workers. Women from the Bagdi community in Murshidabad go for fishing, but face complaints of harassment by security men. The report says (Eroded lives), that many of the women say candidly that they are engaged in an 'illegal profession'. In Jalangi, one can see scores of women crossing the Bangladesh borders with sugar, electronic items, cloth, etc. Besides their daily toil, some of them admit, they have to 'please' the security men for carrying out their unlawful livelihood. Making daily visits to the newly emerged *chars* to fetch as big a load of wild grass as they can carry and selling them for a meagre Rs 5 to Rs 10 has also become a major occupation for women in Malda. They, too, have to keep people at the *ghats* 'pleased'. Yet amidst all these, the women show great interest in matters of education. Even the poorest of families send their girls to schools. However, though many of these women stress the need to educate their girl children – a chance they themselves did not have even if they wished to – other reasons have been heard, too. These are: 'a girl's value in today's marriage market falls if she is not educated to some extent', 'the boys get jobs such as handling the boulders (for embankments), girls better go to school and get mid-day meals than sit idle at home', etc. Studies are also being affected as many schools have to shut down or shift in the wake of erosion.

The displaced women face various sexual risks. Their compulsion to 'please' security men and others at the instance of those who run the smuggling rackets has been mentioned earlier. There is also a racket operating which arranges the 'marriage' of girls from displaced families in 'Bihar' or other distant places. During our investigation, we found that this phenomenon is particularly prevalent in Murshidabad. Many of the families in Jalangi say one or two of their daughters had been married off in Bihar. In a prolonged conversation, their mothers admit that the marriage might have been only in name and that they often do not hear of their girls after that. But, they express their helplessness and defend the 'marriage' saying that they

might not have lived a better life here. Horror stories of someone's husband returning from work-sites in Mumbai or Delhi are heard, too. The panic is spreading considerably below the surface, even as there is no system of health-checks, even irregular ones.

The people devastated and displaced by erosion have formed their own organisations in each of the three districts, such as the Ganga Bahngan Pratirodh Nagarik Action Committee, Malda, Bhangan Bidhwasta Udbastu Colony O Punarbasan Samiti, Murshidabad, Saltia Bhangan Pratirodh Nagarik Committee in Cooch Behar. These organisations have brought together people from diverse political affiliations and various communities and age groups. Women, though fewer in number, participate actively in all of these forums. The study also found that the displaced women show remarkable forwardness in narrating their conditions and voicing their needs and demands, even to the male member of the research team. Their self-help groups exist in wide parts of the erosion-affected areas and there is no dearth of the women's enthusiasm to join them.[20]

Thus, while in North Bihar labour migrates in large number to Delhi and elsewhere in North and Western parts of India to escape flood, in West Bengal labour migrates to nearby areas. However in both cases immigrant labour creates what I termed long back in *The Marginal Nation* as immigrant niche.[21] By this, I of course do not intend to suggest that the immigrant niche is always a fringe existence and the immigrant economy is a fringe economy. The labour may be integrated in several ways with mainstream economy.[22] Yet there is no doubt that the labour emanating from flood ravaged zones occupies a niche in the map of segmented labour.. That niche can be best expressed by what another CRG researcher has termed as 'living with the river'.[23]

Indeed, flood and riverbank erosion are two of the major global environmental disasters that the world has experienced recurrently, displacing millions of people every year, destroying homesteads, wiping out cultivable lands, reducing employment opportunities, in short, making the life, livelihood and culture at tremendous stake. South Asian countries, especially, India, Bangladesh, Pakistan, and Nepal are open to such calamities. According to a report of the National Space Research Organisation, India is not only one of the worst flood-affected countries in the world, but it also accounts for one fifth of global death count due to floods. The same report states, 'The most flood-prone areas in India are the Brahmaputra, Ganga and Meghna River basins in the Indo-Gangetic-Brahmaputra plains in North and Northeast India, which carry 60 per cent of the nation's total river flow.'[24] A recent study by the Calcutta Research Group, titled, *Ecosystems for Life- A Bangladesh-India Initiative: Ecology, Politics and Survival in India's Northeast and Deltaic Bengal* focused in West Bengal on the deltaic forests of the Sunderbans, and the districts of Nadia, Murshidabad and Malda. The study found the Sunderbans as a contested space caught in the quagmire of fragility, resource crisis, out migration, but also new patterns of resource sharing. The study brought to the fore various coping mechanisms of people in the post Aila situation. It was marked by the migration of the able bodied males of the region to other parts

of the state and the country, and a decrease in agricultural activities as a result of an increase of salinity of the soil. Men migrated to South India also, especially to Chennai, Bengaluru, Hyderabad and Thiruvananthapuram to work as construction labourers, as workers in hosiery factories and in other unskilled jobs. Strangely this newer phenomenon of outward migration has been able to help the declining economy of the region to rejuvenate and solve the problem of seasonal unemployment. Similar trend was observed in the study conducted on the district of Murshidabad. Loss of agricultural lands as a result of encroaching Padma, Bhagirati and Jalangi rivers had also forced many men to migrate to big cities. People living on char lands or sand islands, in the border areas, live a life of liminality. At times, the precariat labour faces identity crisis adding to their woes. Vulnerabilities have led to a high rate of trafficking of young girls from the district of Murshidabad. In Nadia district, extreme pollution and continuous siltation in the river Churni have forced the local fishermen to search for an alternative source of living. A study on the district as part of the same programme revealed that more than two hundred thousand people, residing besides the river, are searching for alternative sources of life and living. In Matiari, the people residing in the village now complain that the natural process of erosion in Ganga has been enhanced by the regular journey of the heavy coal laden barges on the Ganga. The erosion in this region threatens the thriving household industry of bell metal and brass utensils. Thus, change in livelihood, for the people associated with the household metal industry migrating to other places for work. Deltaic Bengal is also characterised by mushrooming of brick kilns along the banks of the rivers like Ganga, Bhagirati, Padma. The brick industry attracts seasonal labourers from Bihar and Uttar Pradesh. So, while a considerable section migrates out of Bengal, a considerable section migrates into the state. Another study revealed that in Malda district, along with other problems, there was the issue of loss of identity for people residing in charlands. While they have access to certain amenities like drinking water or electricity, courtesy the state of Jharkhand, they are not accepted as residents by the state of West Bengal. In this light, the report *Non-existing Population in the Char lands of Malda*, highlights the point that with the amendment of The West Bengal Land Reform Act (1955) in 2000, the people of char lands got stripped off of their rights, and became 'illegal residents'. Yet, in another place called Bhutni, about one hundred thousand people living there, are now facing displacement because of river-bank erosion and the inhabitants of at least four villages were forced to leave their homes who were in turn, turned into daily wage labourers.

Another study – this time on the Brahmaputra basin – brought out among many other things the issue of identity of char dwellers. In chars in the Goalpara district of Assam, the villagers spoke at length about the insecurity of the people about their land status and their desperation for land *patta*. Flood and erosion are once again the major environmental problems in these *chars*. When the displaced person is a peasant, he loses his most precious possession – the land that he tills – his main resource of subsistence, existence and identity. Studies brought to the fore the issue of arbitrary categorization of the *char* dwellers into Doubtful Voters or D voters, raising the larger

question of political justice along with the emerging question of social justice. Once again caste and gender are found to be two major fault lines in the map of vulnerability.

The study also looked into the impact of construction of several dams also in the Northeast. It collected several local writings on how the construction of NHPC's Lower Subansiri project has repeatedly disrupted the wildlife habitation of the area. NHPC started construction activities in and near a protected forest area without necessary clearance. During the construction phase, NHPC's activities led to the disruption and destruction of habitats of endangered species, including that of the elephants, near the dam side. The project has not only affected the migratory route of the elephants but also threatens to affect the livelihoods of many people as Subansiri river, with her mineral resources alone, has supported the lives of about twenty thousand people. Local people earn their livelihood either as salary or as daily wages by working under the *maholder*.[25] The quarrying business of sand and gravels is totally regulated by the free flowing Subansiri without having any physical barrier in its course. The timbers that come floating on the river facilitate timber business. The demand for housing material is met with the woods carried by the river, and parallel to it, a business network sprang up. But the construction of the dam signals a probable change in livelihood pattern, which might force people to other parts to look for jobs.

The state of Arunachal Pradesh has been identified as a potential area of hydel power generation with 173 dams being sanctioned. The areas inhabited by the Monpa community fall within these areas. Although dams account for a major cause of affecting these people, other projects like that of national highways undertaken by the Ministry of Road Transport and Highways are also responsible for displacing people. The land acquisition which is necessary, like any other physical development project invariably affects people by either displacing them (DP) or affecting their movable and immovable assets. The people belonging to tribal and ethnic minorities impacted with dam projects are filled with a sense of alienation, as a result of dispossession both from their land and other resources, lack of compensation or inadequate compensation, human rights abuse and lowering of living standards.[26] There is a gradual shift in the occupational pattern from agriculture and forestry to jobs offering daily wage. With contractual jobs emerging as an alternative for the locals, short-term job opportunity is only what they can look for.

The research on the Northeast is additionally significant because it brings out the strong relation between development induced displacement and environmental displacement. This makes the task of estimating the number of IDPs caused by environmental degradation, i.e. flood, riverbank erosion, and landslide etc., more difficult. However, some reasonable conclusions can be drawn about the enormity of the problem. As a result of continuous environmental degradation, such as flood and riverbank erosion in the plains, and landslide in the hills, exacerbated by developmental works, population displacements have become endemic. This has also caused innumerable deaths and destruction of settlements. The intensity of flood, riverbank

erosion and landslide has increased substantially over the years in terms of area and victims.

One expert on displacement in the Northeast, Monirul Hussain, has observed, It would be pertinent to point out that the plight of the riverbank erosion induced IDPs are much more severe than that of the victims of flood. The victims of flood at least can go back to their original land once the flood water recedes. However, the riverbank erosion induced ID peasants cannot go back to their land. Because, their land has become a part of river's new/extended bed. It is not only the mighty river Brahmaputra but also the innumerable small and medium sized rivers are also causing havoc in the plains of Assam, i.e. the Brahmaputra Valley and the Barak Valley... According an official report, the river Brahmaputra eroded 429,657 hectares of prime agricultural land. Roughly, 7% of the land in the plains has been eroded between the years of 1951-2000. This has definitely displaced at least 3 million peasants. Today they constitute the most pauperised community in Assam's plains. In the absence of proper resettlement and rehabilitation policy, most of them have experienced multiple displacements.[27]

He also observed that the flood of 2004 alone affected more than ten million people in Assam valley. Excepting two hill districts, all the districts of the plains of Assam experienced devastating flood and riverbank erosion. In an unprecedented flash flood in October of 2004, nearly one thousand people died in one single district in Assam - Goalpara.

In an equally significant study on population groups living in the river islands of Assam, known as *chars*, Monirul Hussain conducted an investigation into environment, life, migration patterns, governmental politics, and occupational patterns in these river islands. It extended the earlier mentioned study on river erosion in Murshidabad and Malda in West Bengal. Hussain showed in this study how what was earlier small peasant migration from the north eastern parts of East Bengal in the early decades of the last century to these *chars* or river islands, has now transformed in the wake of floods and river erosion into what can be called a second wave of migration – this time to petty urban jobs like rickshaw pulling, construction labour, janitors, service employees in the dusty small and big towns of Assam. He also confirms what Mithilesh Kumar showed in his study of North Bihar, the crucial role of governmental politics in regulating flood, relief, rehabilitation, and other aspects of life, particularly education and heath in the emergence of a specific migration regime and the mobility pattern that we see in India today.[28] In the background of erosion of land, livelihood opportunities, identity, voting rights, etc., Hussain concluded his study significantly with these words:

> Where does the state situate itself in a situation where in its own citizens lose their citizenship? The way the nation-state is inseparably anchored with the territory and land, citizenship too is also anchored with the hidden notion of land. The question of land is important as it determines the citizen's access to the state. Land becomes the basis of his/her claims for rights. However, the question of land is based on the notion of ownership of land and his/her capacity to hold on to the land permanently. Loss of land impinges on his/her citizenship. One needs to understand the inseparable linkage between the displaced people on one hand and citizenship and the state on

the other. This linkage is obviously unavoidable in any political study of displacement.[29]

Land, identity, claims, and citizenship remain till today one of the crucial aspects in India. Studying the struggles of the urban refugees and other displaced rural people for shelter in Kolkata, another researcher wrote on the lesson of her study,

> 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.[30]

River, land, and forests still remain central to the accounts of mobility in large parts of the post-colonial world.

Return to the Debate on Primitive Accumulation

We can make a greater sense of this incessant production of precarious labour that capitalism can neither digest nor do away with, by placing the interrelations between ecology, migration, and politics at the heart of our understanding of early twenty first century capitalism. In this context let me conclude with few remarks on what seem to me the basic lessons of the emergence of migrant or transit labour in our time in the form of few observations drawn from various studies mentioned in this paper.

My first observation concerns the neo-liberal relief, rehabilitation, and resettlement agenda. Already a decade back when the new century was taking off and in India we were studying the dynamics of post-Tsunami relief, rehabilitation, and of resettlement patterns, we found that not only earlier patterns of inequality were being reproduced through the governmental dynamics, but that the public-private partnership (PPP) policy on relief, rehabilitation, and resettlement facilitated by the state in India and Sri Lanka was crucial in this reproduction on an extended scale.[31] Markets were becoming crucial in the neo-liberal agenda of disaster management. Humanitarianism was strengthened if not being replaced by this neo-liberal developmental agenda. Policies assumed that markets could make population groups vulnerable to environmental disasters resilient. Thus various forms of

insurance policies and programmes in the framework of PPP have emerged in the last two decades of policy explosion in India with the emergence on a substantial scale policies and businesses of agricultural insurance, disaster insurance, flood insurance, communal violence insurance, earthquake loss insurance, etc. Rest of South Asia is quickly copying the Indian style. The point is will this enable capitalism to deal with fringe economies operating in the wake of the massive transit labour? The answer seems to be that while migrant economies will remain mostly fringe, capitalism is also trying to link them with global and national economies. However like the precarious labour this solution also is precarious. Marx wrote long back on the process of how labour had been alienated from the means of production to inaugurate what he termed as the primitive mode of accumulation. We can now see its return aided by the new modes of governemntality fashioned as responses to disasters. The question is, will the strategy of market enablement of the denizens of fringe economies like the refugee economies and economies practised by urban migrants escape the political turmoil of revolts and anarchy, and facilitate market expansion?

Second, what occasions the return to the primitive mode of accumulation in this age of late capitalism marked by virtual modes of accumulation such as futures, commodity pricing forecasting, hedge funds, etc.? How do disasters combine with making money and creating capital out of disasters? In other words, how do we explain the paradoxical combination of virtual and the primitive modes of accumulation? This return to the primitive mode cannot be explained without reference to the extractive methods by which capitalism operates today. The fact is that recent debates on primitive accumulation have been too mechanistic, for they have bypassed these crucial questions. Environment and ecology are double edged concepts, for if they make us wise and conservationist, they also make us aware of the economic worth of what we call resources, that is to say worthy of producing surplus value. Thus land has come back for unprecedented attention. Rent now occupies the core of profit; land, air, water, waste, forest – everything is for extraction. Cities are now the major extractive sites. Thus while in Arunachal Pradesh in India's Northeast river water is sought to be harnessed for power generation, downstream management of the same water ensures the destruction of the lives of thousands turning people into precarious labour. Likewise the expansion of mobile telephone and construction of towers on a stupendous scale tells the story of extraction of air. So is the story of mining expansion with the rise in demand of iron ore, etc. All in all, it is the extractive nature of modern capitalism combined with the speculative nature of finance that encourages the dissociation of labour from means of labour. Primitive modes of accumulation have returned under this condition.

Third, this means a complex method of producing mobile labour in twenty first century capitalism. Two well-known theorists have suggested that in the overwhelming milieu of migration we must look into the institution of border as a method in the multiplication of labour.[32] They have argued that contemporary globalization has proliferated borders, and have been investigating the implications of this proliferation for migratory movements,

capitalist transformations, and political life. They have also explored the violence surrounding borderlands and border struggles across various geographical scales. In their work, the border is not only a research object but also as an epistemic framework. Their use of the border as method enables new perspectives on the relation between migration and capitalism. Yet, while their insight helps us to have a better grasp of the phenomenon of mobility, we have to think more in terms of grids and circuits to make sense of how labour moves, causalities are connected, inter-linkages are structured, and how all these become parts of circuits of capital. This means going back to the question of mediation. The circuit of mobility is a complex grid. Flood occurs annually. We may find mobile labour from the northern districts of Bihar or the Gangetic districts of West Bengal in Kerala or the Gulf region – not through a direct, well-ordered route, but through several mediations in form of government, labour recruitment and contracting agency, wage structure, electoral politics, and equally important, caste, gender, age, and community structure. Disasters like all these factors work as mediating mechanisms in the transition from the moment of production of labour to the moment of its circulation. I am not speaking here of natural disasters only. Wars – the greatest of disasters – have traditionally cleared the ground of labour force expansion and a consequent capitalist boom; likewise, floods and famines have been catalytic agents in the contraction and expansion of labour market. A great instance will be the construction of the new town near Kolkata called the Rajarhat new town. By all accounts it has been an environmental disaster. Yet this disaster, as we demonstrated in our work on new towns,[33] was the pre-condition of entry of off-shore funds, construction of special economic zones (SEZ), massive construction works by developmental agencies, entry of transit labour, and the emergence of what Brett Neilson and Ned Rossiter have called the logistical city.[34]

Fourth, migration has reworked the issue of identity. The various identity claims in the last three decades in India at least, and I believe this is true of many other parts of the world, were based, or linked to, or led to various homeland claims. Now with transit labour becoming a ubiquitous phenomenon, the identity of the migrant as labour has become increasingly important, though the identity of labour is perched on the fault lines of gender, caste, tribe, race, and foreign nationality. Yet there is no doubt that the history of immigrant labour and the making of specific class structures, so graphically chronicled by Stephen Castles,[35] is once again becoming significant in this age of footloose capital. Yesterday's labour, for instance in the plantation industry, mines, and railway construction (in Canada, United States, Australia, large parts of Africa and the two oceans, Atlantic and the Pacific), has reappeared today in the form of construction labour, nursing, and in general labour in care and entertainment industry. The similarity with the history of immigration in late nineteenth and early twentieth century is too striking to be dismissed.[36] Like then we are now witnessing a re-emergence of races and racism. Migration has brought to the fore the question of *labour as identity*. Therefore we now find proliferation of techniques of identifying the migrant. In India this has reached almost a frenzied state.[37]

Finally, disasters are a major piece in this complex web of migration, mobility, and generation of profit, because they represent in a congealed form what Paulo Tavares calls 'the contest over government of nature'[38]. In 1970 a devastating tropical cyclone struck East Pakistan (now Bangladesh) and India's West Bengal. It remains till date the deadliest tropical cyclone ever recorded and one of the deadliest natural disasters in modern times. Half a million people lost their lives in the storm. This cyclone reached its peak with winds of 185 km/h on November 11, and made landfall on the coast of East Pakistan (now Bangladesh) the following afternoon. The storm surge devastated many of the offshore islands, wiping out villages and destroying crops throughout the region. In the most severely affected upazila, Tazumuddin, over 45% of the population of 167,000 was killed by the storm. We have no proper estimate till now of the extent of dispossession and migration from coastal East Pakistan (now Bangladesh) and the scores of islands there. All we know is that the handling of the disaster by the Pakistan government was severely criticized. The anger of the East Pakistan people contributed to the subsequent war of independence in 1971. There is still no written proper history of that disaster. All we can say is that given the experiences of Tsunami and the Kashmir earthquake of 2005, the aftermath of the disaster of 1970 under neo-liberal governmentality would have been perhaps not a war of independence but emergence of fringe economies, aid, and circuits of migration in the wake of massive developmental construction projects.

All in all this is the post-colonial story, also the story of the return of primitive and extractive modes of accumulation to the centre of the global capitalist dynamics today. The emergence of migrant labour is a major feature of this.

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Call for Paper –*Refugee Watch* Special Issue on Syrian Refugee Crises (December, 2016)

Syria's civil war is one of the worst humanitarian crisis of our times. Since 2011, half the country's pre-war population of 23 million people have been displaced and forced to flee their homes. At present, horrific human rights violations and mass-scale destruction of cities continue to be widespread. According to the United Nations figures, more than 6.5 million people who have been internally displaced and another 6 million have become asylum seekers and refugees. It is estimated that well over 250,000 people have already died in the conflict, with hundreds of thousands more wounded. Almost 4.6 million Syrians have sought refuge in the neighbouring countries of Egypt, Iraq, Jordan, Lebanon, and Turkey. Thousands more continue to make the harrowing journey to Europe in search of a better life. In response to this ongoing state of crisis, *Refugee Watch* will host a special issue on the plight of the Syrian people, including those living as stateless people in neighboring countries across the Middle East. As millions of Syrians continue to be displaced due to the conflict in their home country, it is essential that a critical account of the global perception and reaction to the *en masse* refugee crisis is created by engaged scholarship. We are seeking scholarly articles on various aspects of the Syrian refugee crisis which contextualize it in historical and global terms. Local and international human rights researchers, advocates, and organizations pertaining to the handling of Syrian crisis, local and international jurisprudence on the subject pertaining to the tinkering with the refugee law to keep Syrians out or to make them into cheap labor/second class citizens, deaths and disappearances in the Mediterranean and their banal perception, and, local, regional and international advocacy efforts and sources for support are among the subject headings we are interested in. The issue will provide a timely analytical intervention on the changed nature of the global refugee and immigration regime in response to the Syrian crisis, which represents one of the largest movements of population in recent times. Submissions are expected to be 7000 words in length or less, and follow the standard style of the journal. Final article should reach *Refugee Watch* by the end of August 2016. Please email your articles to anitasengupta@hotmail.com, paula@mcrg.ac.in and nergiscanefe@gmail.com

Pluralisms of Law: India's Place in the International Refugee Protection Regime

By

Jessica De Shanti[*]

Introduction

Globalisation has brought different sources of law into conversation with one another, forming relationships and hierarchies between laws. At the same time, resistance exists to this interconnection of laws, demonstrated by India's continued resistance to participation in the international refugee legal regime. Even so, India has in practice applied many of the same rights upheld by this regime. In exploring theories of legal and constitutional pluralism, this articleaims to explain the existence of a plurality of laws originating at the domestic and international level. This contributes to a universalising of basic standards of human rights, and that the possibility of engaging multiple legal 'voices' can enrich a rights regime.

This article is divided into two parts. The first part reviews international and domestic law as it relates to refugees as it presently stands. The second part involves a substantive engagement with different theories of legal pluralism in an attempt to explain the current legal situation of refugees in India.The aim is to account for the use of international law in the domestic legal order, and whether this can indicate possible avenues for reform.

Review of Current Existing Laws

Existing International Law

Modern usage of the term 'refugee' arose following World War I and referred mainly to Russians leaving the newly created USSR,[1] but an international refugee protection agreement was not reached until after World War II in the

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1951 Convention Relating to the Status of Refugees and the *1967 Protocol Relating to the Status of Refugees.* The *1951 Convention* defines a refugee thusly:

> …(2) As a result of events occurring before 1 January 1951 and 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[2]

The *1967 Protocol* removes the time limitations and broadens geographic coverage.[3] However, several limitations remain, for example excluding persons who voluntarily repatriate or gain a new nationality.[4] This regime of refugee protection establishes the minimum obligations for refugee rights protection, setting the protection standard equal to the rights of aliens;[5] frequently, the protection owed equals that which nationals of the contracting state receive for their rights.[6] This definition responds to Europe's situation post-WWII[7]and the parties drafting the agreement.The USSR refused to partake in discussions, leaving Western European states a great deal of control over the treaty's language. In response, some regional agreements attempt more robust definitions of refugees encompass their respective regional situations.

Central to refugee protection is the prohibition against refoulement (article 33 of the *1951 Convention*), which prohibits a contracting party from returning a person to a place where their life or freedom would be threatened based on any of the same grounds listed above in the refugee definition. A similar standard has been incorporated into the *1984 Convention Against Torture*, and scholars increasingly characterise non-refoulement as part of customary international law,[8]or as a peremptory norm of international law.[9]

There are also a few regional treaties which aim to foster cooperation on particular refugee situations. In 1969 the Organisation for African Unity signed the *Convention Governing the Specific Aspects of Refugee Problems in Africa.* The *OAU Convention* also covers refugees resulting from 'external aggression, occupation, foreign domination or events seriously disturbing public order.'[10] Recognising the politically contentious nature of granting refugees asylum, it notes the peaceful and humanitarian nature of the act while prohibiting refugees from engaging in subversive activities.[11] The *OAU Convention* also encourages members assist refugee-hosting countries which are struggling with the burden.[12]

Similarly, the *Cartagena Declaration on Refugees*, adopted in 1984, emphasised the regional nature of refugee problems and the importance of harmonising national legal measures to properly confrontthem.[13] Chief among its conclusions are a commitment by participating states in the colloquium to implement the *1951 Convention* and *1967 Protocol*, explicit recognition that granting asylum is a peaceful act, and heavily emphasising the importance of the principle of non-refoulement in protecting refugees.[14] While non-binding, the *Cartagena Declaration* suggests the potential usefulness of regional

approaches within an international legal framework to respond to refugee problems.[15] The region has since passed other declarations on refugees in the region, which upheld and updated these objectives.

A third regional instrument, the *Bangkok Principles on the Status and Treatment of Refugees*, was passed in 2001 by the Asian-African Legal Consultative Organization, of which India is a member. It too includes an expanded definition of refugees, and includes articles on burden sharing, international cooperation, and comprehensive solutions.[16] The *Bangkok Principles* are non-binding and declaratory in character; the goal is to inspire member states to develop their own national laws to deal with refugees.[17] The instrument also supports a broad definition of the principle of non-refoulement, including measures countries should take should an asylum seeker not be permitted to remain in the receiving country.[18]

Beyond protections granted by international refugee law, there exists a multiplicity of international human rights treaties, which aim to protect the rights of all persons regardless of status. Notably the *Universal Declaration of Human Rights*, which protects the right to leave one's country (Article 13(2)), the right to seek asylum from persecution (Article 14(1)), and the right to a nationality (Article 15(1)), among many other rights afforded to all persons.[19] Other examples include the *ICCPR*, the *ICESCR*, and *CEDAW*. Overall, international law provides a range of measures designed to protect the rights and particular needs of refugee populations.

It is also important to mention *the Office of the United Nations High Commissioner for Refugees* in this context. The UNHCR slightly predates the *1951 Convention*, having been formed in 1950.[20] While originally envisioned to fulfill a temporary need in Europe, as mass population movements became recognised as a norm of international relations, the UNHCR continues to provide assistance to refugees at a global level.[21] The UNHCR operates on a looser understanding of 'refugee,' and also works with internally displaced populations.[22] Since the 1980s, the UNHCR's work has gravitated towards working with 'bad' governments to encourage return to the home country.[23] The UNHCR has a central role in refugee status determination.[24]

India's Domestic Refugee Policies

India's independence came with massive populations fluxes across colonially-created boundaries.[25] In this vein, India has continually hosted large groups of refugees since gaining independence, a situation not uncommon in the global South in which the majority of the world's refugees reside.[26] This history has shaped India's response, at the international and local level, to refugee crises in the country.

1. Adoption of International Legal Norms

India has not acceded to either the *1951 Convention* or the *1967 Protocol*. There are several possible reasons: the Eurocentric definition of refugee used by these documents; concern that the rights regime creates too heavy a burden

for developing states; the intrusion of UNHCR observation; national security interests are adversely affected; and that India's record in practice assisting refugees is good enough, obviating any reason to accede.[27] India has been more active in acceding to international human rights treaties, including *CEDAW*.[28]At the same time, article 51 of the *Constitution of India* binds the government to respect India's international legal obligations.

The Indian judiciary has accepted customary international law as a valid source of law, but is unclear about its application domestically. Per the Supreme Court case *Gramophone Company of India Ltd v Birendra Bahadur Pandey*, the approach appears to be direct incorporation into domestic law so long as custom does not interfere with statute law; in situations where this may occur, the statute ought to be interpreted in such a way that it conforms with custom, if possible.[29] In *Jolly George Verghese and Another v Bank of Cochin*, the Supreme Court took note of article 11 of the *ICCPR*, which prohibits arrest for the inability to fulfill a contractual obligation.[30] Although India has not ratified and therefore is not bound by the *ICCPR*, the court suggested that 'when in doubt,' laws, including the *Constitution*, should be interpreted in line with international obligations.[31] In *Vishaka and Others v State of Rajasthan and Others*, the Supreme Court held that international conventions and norms are to be read into the constitutional scheme, in the absence of domestic laws.[32] Most recently, in the case *Ktaer Abbas Habib Al Qutaifi and Another v Union of India and Others*, the Gujarat High Court recognised the importance of both treaty lawand of general principles of humanitarian law, as valid sources of law from which to derive legal obligations.[33]

Overall, India's acceptance and implementation of international law and legal norms exhibits a tension between executive and legislative isolationism from the international community, and judicial incorporation its norms in the context of dispute resolution. This tension appears to be an ongoing theme in India's relationship with refugee and refugee rights.

2. Domestic Legislation

India also has no national law governing issues of refugees, although in practice it generally assists refugees within its borders.[34] As such, asylum-seekers are subject to the same legal regime as all other foreigners in India. These laws, products of England's colonisation of the Indian subcontinent,[35] broadly define 'foreigner' as any person within India who is not a citizen of India.[36] The *Citizenship Act* also recognises 'illegal migrants' within its framework, meaning foreigners who have entered India either without the proper documents or who have stayed past the expiration date on their documents.[37] The laws, particularly the *Foreigners Act* and the *Registration of Foreigners Act,* provide a legislative framework of obligations, offences, and punishments.[38]

Foreigner status also seriously limits the right available to such persons within India. Part III of the *Constitution* sets out the protection of fundamental rights. Within these, only the right to equality before the law (article 14) and rights regarding punishment and arrest for offences (articles 20

through 22) are guaranteed for all persons; other rights are reserved only for citizens according to the language of the *Constitution*.[39]

Briefly, the *Illegal Migrants (Determination by Tribunals) Act* was applied in Assam, aimed at countering the influx of migrants in the state. The law set up a system of tribunals, insulated from the remainder of the judiciary, to determine people's legal status; their decisions could not be appealed to the Supreme Court of India. Though the law set out a clear definition of 'illegal migrant' and procedures for application to the tribunals, the *IMDT Act* was invalidated in 2005 by the Supreme Court in the case *Sarbananda Sinowal v Union of India and Another* for being ultra vires to the power of the Central Government.[40] The reasoning of the Supreme Court rested largely on the ineffectiveness of the law, particularly as compared to how the ordinary judiciary was able to handle such cases. It has been formally repealed.

Even though no South Asian states have become parties to the *1951 Convention* or the *1967 Protocol* except Afghanistan,[41] the subcontinent has made some attempts at developing regional cooperation to its persistent refugee problems. In 1997, the Informal Consultation on Refugee and Migratory Movements in South Asia (or Eminent Persons Group) began debating a draft of a *Model National Law* on refugees.[42] The Eminent Persons Group was first assembled in 1994 by the UN High Commissioner for Refugees in an attempt to find grounds for cooperation amidst the politicised nature of refugee problems in South Asia.[43] They passed the *Model Law* in 1997 and countries were encouraged to pass a national refugee law based on the model.[44]

The *Model Law* includes ethnic identity and sex as grounds of persecution, and serious human rights violations as a cause of refugees.[45] The *Law* also establishes a procedure for determining an asylum-seeker's status.[46] It also broadens the principle of non-refoulement, prohibiting the return of any persons to any 'place' where they may be persecuted on the enumerated grounds.[47] To date, the *Model Law* has not been translated into a national law for refugees in India.

3. Approach of the Judiciary

Despite the strict legal regime governing foreigners in India, the judiciary has been active in expanding rights protection under the *Constitution*, especially under article 21.[48] The standard of review courts apply to government action is whether it is 'fair, just and reasonable.'[49] Despite the judiciary's general ambivalence towards international law, judgments occasionally reference the contents of international human rights conventions and norms when deciding matters regarding refugees. The resulting approach amounts to creating a 'shadow of refugee law,' in which rights concerns are often protected while acknowledging the government's broad powers to detain and deport.[50]

A persistent problem in examining jurisprudence is the high number of unreported cases. While records of proceedings of cases are occasionally available, the information of unreported cases is restricted to secondary source

explanations of their outcomes. This article focuses specifically on decisions considered to be leading precedent.

Three landmark refugee cases decided in the 1990s, two from the Supreme Court and one from the Gujarat High Court, outline the current judicial approach to rights protection. The two Supreme Court cases, *State of Arunachal Pradesh v Khudiram Chakma*[51] (*Chakma I*) and *National Human Rights Commission v State of Arunachal Pradesh and Another*[52](*Chakma II*) regard the situation and citizenship status of the Chakma population living in Arunachal Pradesh. Under British rule, the Chakmas identified as part of the Indian community but during Partition the British colonisers included their homeland, the Chittagong Hill Tracts, with East Pakistan.[53]After years of tension with their co-citizens,[54] the Chakmas were evicted from their homes in 1964 for the construction of a hydroelectric dam[55]and resettled in what is now Arunachal Pradesh, where they are frequently the target of hostility.[56] Although Indian citizenship was promised to the Chakmas it was never granted, rendering them stateless.[57]

Citizenship status was central in *Chakma I*, whether the Chakmas could be considered citizens by virtue of section 6A of the *Citizenship Act*, as was judicial review of an order for the Chakmas to move.[58] The Supreme Court appeared to decide against granting citizenship but affirmed that overall the order had complied with principles of natural justice.[59] The court withheld a final judgment on the matter as the Chief Minister of State claimed to be ready to hear the petitioners, and instead directed the Chief Minister to do so.[60]

However, the Chakmas continued to be subjected to serious rights abuses by the All Arunachal Pradesh Students Union. This led to a second petition, raised by the National Human Rights Commission, against the State of Arunachal Pradesh, contending that the abuses amounted to a violation of the Chakmas' right to life and personal liberty under article 21 of the *Constitution*.[61] The Supreme Court agreed with the Commission's contention,[62] and issued a particularly strong statement about the obligations of the state regarding the protection of rights:

> Our Constitution confers certain rights on every human being and certain other rights on citizens…. *Thus the state is bound to protect the life and liberty of every human-being, behea citizen or otherwise*….No State Government worth the name can tolerate such threats…it is duty bound to protect the   threatened group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations.[63] (emphasis added)

The Supreme Court confirmed the obligations of governments to uphold the rights constitutionally granted to all persons in India, citizenship status aside. This pronouncement also calls attention to the difference in the *Constitution*'s language between rights conferred on citizens and rights conferred on persons. This language difference proves crucial in determining the rights of all foreigners, refugee or otherwise.[64]

The final landmark case, from the Gujarat High Court, is *Ktaer Abbas.* The petitioners fled to India from Iraq, and requested a transfer from the detention centre where they were held to the Office of the UNHCR for

refugee status determination. The court confirmed that article 21 of the *Constitution* applied to all persons in India, expanded its scope to include the right to determination of refugee status and the principle of non-refoulement.[65] Notably, the High Court relied significantly on the *UDHR* and treated non-refoulement as a general principle of international law captured by both the *1951 Convention* and the *Constitution* at article 21.[66] While the court acknowledged the non-enforceability of principles of international law, it was held that per article 51 of the Constitution, governments must endeavour to respect international law domestically. This decision follows the unreported decision of *Dr. Malavika Karlekar v Union of India*, in which the Supreme Court confirmed that refugees had a right to the determination of their status prior to deportation.[67]

These cases demonstrate the liberal approach to rights protections the courts tend to adopt when dealing with these sensitive situations. These trends have also been present in other foreigners cases. For example, in *Maneka Gandhi v Union of India*, the majority of the Supreme Court ruled that article 21 protected both the substantive and procedural aspects of the right to life and personal liberty.[68] This decision opened the door to later rulings, including those described above, in which article 21 rights are given expansive and positive meanings. Similarly, in *Jolly George*, the Supreme Court reasoned that article 21 enshrines human dignity and the worth of the human person within its protection.[69] Thus, the judiciary grants a broad scope of protection to article 21 of the *Constitution*, critical to refugee rights protection in India.

The judiciary also grants substantial deference to the government over decisions to deport. The earliest relevant case in this context is *Hans Muller of Nuremburg v Superintendent, Presidency Jail, Calcutta and Others*, decided in 1955 by the Supreme Court of India.[70] The petitioner, Muller, was preventatively detained pending a formal extradition request from the Federal Republic of Germany.[71] In upholding the detention, the Court noted that the *Foreigners Act* gave the central government broad discretion to expel foreigners, including the right to make arrangements for preventing evasions or breaches of orders.[72] The law under which Muller was held, the *Preventive Detention Act*, was made pursuant to the *Foreigners Act* and extended the power to State governments.[73]

Similar deference to the government exists in subsequent cases, such as *Additional District Magistrate, Jabalpur v Shivakant Shukla and Others*, an Emergency-era decision in which the Supreme Court of India upheld the validity of Presidential Orders that suspended the ability of persons detained to enforce their rights.[74] This decision was only overturned in 2009.[75] In *Mr. Louis De Raedt and Others v Union of India and Others*, the Supreme Court recognised the importance of intent in characterising India as a 'domicile of choice,' in the context of citizenship rules.[76] Finally, there is *Premavathy v State of Tamil Nadu and Others*, a Madras High Court decision which confirmed the validity of the *Foreigners Act*.[77] The court further held that since rights infringements were incurred in following due process, article 21 was not breached.[78]

The judiciary's decisions regarding detention seem at first glance incongruous with the broad rights protection afforded to foreigners under the Constitution. However, the legal landscape for detention and deportation is different from that of the rights landscape in at least one important way: legislation exists to govern the former. The judiciary's rulings can therefore be understood as deference to legislation passed by an elected body. In contrast, the rulings on the rights protection of foreigners and refugees are rendered in the absence of robust legislation on particular actions governments must and must not take in protecting these rights.

Pluralisms in Indian Law

Problems with the Existing International Refugee Regime

Although India has been relatively successful in protecting the refugees on its territory, given the inherently international nature of refugee problems, its continued isolation from the international regime is particularly notable. However, India is not alone in criticising the *1951 Convention* and *1967 Protocol*. In the past few decades, several scholars have highlighted a multiplicity of problems with the system as it currently operates, which can be broadly separated into three streams.

One line of criticism regards the international refugee law regime itself, suggesting that a humanitarian approach may actually be ineffective because it lends itself too easily to moral condemnation instead of proactive response.[79] Some of these criticisms go so far as to suggest that the international conventions are used to legitimate refusal of protection.[80] James C. Hathaway links this to the language of the *1951 Convention*, contending that the language of the law only offers limited protection to refugees, leaving significant discretion to state parties to determine the level of protection they will offer.[81] Hathaway rejects understanding international refugee law under humanitarian principles characterising it as a compromise between national sovereignty and the state's control over immigration, and the reality of coerced population movements of people at risk.[82]

The second critical stream contends the *1951 Convention* and *1967 Protocol* suffer from a Western bias in the language of the law and in the framing of the rights enshrined within the treaties.[83] The language is likely a product of the era in which the laws were drafted: Hathaway notes that tensions between the USSR and Western Europe led to the former abandoning the drafting entirely, granting the latter much greater influence over the language used and the rights protected.[84] As a result, the language places emphasis on the persecution of the individual, which does not respond to the present-day reality of refugee movements.[85]Many refugee problems are caused by situations related to decolonisation, revolutions, and liberation wars,[86] themselves the products of largely Western colonialism.[87] International refugee law does not acknowledge or account for these tensions.

The final series of problems arise in the implementation of the international protection of refugees. The UNHCR has documented many

difficulties in implementing refugee protection.[88] In particular, the legal definition is sometimes a hindrance for UNHCR when attempting to secure state cooperation.[89] Operationally, the most obvious challenges arise out of the costs of providing for refugees, especially protracted refugee situations since donations to those initiatives tend to decrease over time.[90] Long-term refugee situations strain host countries economically and socially.[91] Furthermore, 'accidents of geography' frequently result in significant proportions of the world's refugees seeking shelter in countries with weak capacity to respond to massive population influxes.[92]

Given these ongoing challenges, some scholars advocate for a reformulation of international refugee law. Hathaway and Neve suggest that regional approaches emphasising temporary residence may be a more effective and legitimate method of responding to refugee crises.[93] In essence, they suggest that refugee protection with a 'common but differentiated responsibility' approach, based on a collective security model of cooperation, would result in stronger and more consistent refugee protection measures.[94] This response sharply contrasts with current state-based approaches, particularly in Western states in which refugee status tends to result in permanent residency, which further increases the unwillingness of these countries to host refugees.[95]

Defining and Evaluating Legal Pluralism

Refugee crises are inherently international, and will necessarily involve a multiplicity of actors. As human populations continue to cross borders to escape violence and abuse, states will continually be required to respond to influxes of asylum-seekers; inevitably, a multiplicity of legal systems will be involved. It is therefore possible that pluralistic sets of values and laws become involved in confronting refugee challenges. M.P. Singh suggests that a diversity of legal sources could even be a 'natural' state of affairs and its recognition by the state can go back several centuries.[96] With this in mind, the following part of the article will examine two major streams of pluralist legal theories: legal pluralism and constitutional pluralism.

1. Legal Pluralism and the Challenge of 'Law'

While there is no set definition of legal pluralism in scholarship, several similar features have been described. Sally Falk Moore notes that it can be understood in a number of different ways, such as the roles and status of non-state actors and social fields in the making and implementing of rules, the internal diversity of state administration, and the competition between states.[97] An early definition was put forward in 1986 by John Griffiths who contends that legal pluralism describes the existence of more than one legal order in a given social field.[98] William Twining contends that legal pluralism broadens the notion of law beyond the division between international and domestic law, linking it to a broader notion of normative pluralism.[99] According to Twining, legal pluralism is a lived everyday reality.[100] Brian Tamanaha similarly suggests

that legal pluralism, defined as the existence of a multiplicity of legal orders, is everywhere.[101]

Considerably less agreement exists regarding what constitutes law. Tamanaha's definition of legal pluralism as occurring 'whenever social actors identify more than one source of "law" within a social arena,' similarly avoids giving a substantive definition of its subject.[102] Twining broadens legal pluralism to normative pluralism, recognising the existence of multiple normative orders as a more useful theoretical basis. Though this avoids the difficulty of the 'definitional stop' between law and non-law, similar challenges regarding the definition of norms are still present.[103] These problems inhere to legal pluralism as well since they seek to answer the question: pluralism of what?[104] Being able to differentiate between law and non-law is of key importance to legal pluralism, to be able to acknowledge the different legal orders exercising, or being conferred, authority in a given social setting.

The discourse of legal pluralism has also expanded into the realm of international law, though its definitional challenges remain. Beyond the conventional sources of international law, international legal pluralism suggests the possibilities of non-state transnational communities creating binding laws. Gunther Teubner proposes the concept of 'Global Bukinowa,' a form of global law created beyond the state.[105] He cites the example of lex mercatoria, the law governing international economic transactions which was developed almost entirely by non-state actors, as a prime example of the power of non-state actors of the international system to make and enforce rules.[106]

An important focus of international legal pluralism increasingly appears to be determining both the process and tools for managing the conflicts that arise from such pluralism. Paul Schiff Berman, highlighting the work done by scholars in the New Haven School of legal theory and similar scholars, present law as processual, authoritative decision-making.[107] Similarly, William Burke-White views the 'pluralism' of international legal pluralism as an ongoing process, visible in several trends in the international legal system.[108] They and other scholars note the important role that domestic courts play in this process because matters of international law appear in disputes with increasing frequency.[109]

Among this multiplicity of definitions, a few common trends emerge. First, that more than one legitimate source of 'law' exists within a given society, whether domestic and international. Second, and closely related to the first, is that these sources of law are not necessarily tied to the state. Third, legal pluralism, however defined, is usually considered descriptive of law's reality as it exists and operates in a given society or social field.

2. Constitutional Pluralism Defined

Constitutional pluralism is positioned either as legal pluralism's diametric opposite,[110] or at the least a more restricted form thereof.[111] Theories of constitutional pluralism first arose in European scholarship in the 1990s as an attempt to explain the increasing legal integration of the European Union.[112]

Early theories of constitutional pluralism tended to focus on the particular nature of the European Union, and the ways in which European law interacted with domestic laws.[113] Miguel Poiares Maduro suggests that it refers to a pluralism of constitutional jurisdictions.[114] Maduro lists several criteria such as a plurality of constitutional sources, conditional acceptance of EU rules over national law, new forms of power, and the political pluralism of the EU,[115] which indicate constitutional pluralism's appropriateness to the legal study of the EU. For Maduro, constitutional pluralism is a social fact: it describes the state of being of the European legal community.

Neil Walker provides a more substantive definition, although he too confines his analysis to the EU situation.[116]According to Walker, pluralism is both descriptive and normative: beyond acknowledging the reality of a multiplicity of legal orders, to include acceptance and mutual recognition of these orders.[117] Claims of constitutional pluralism are also epistemic: in acknowledging separate legal orders, our understanding of each will be through a different way of 'knowing and ordering' distinct to that order.[118] Thus, Walker's constitutional pluralism embraces both its structural implications and substantive engagement with what is considered 'constitutional.' For Walker, constitutional pluralism entails a multiplicity of polities engaging in constitutional discourse that exist in heterarchical relations with each other.[119]

Recently, some scholars have attempted broaden the theory beyond the European community. Alec Stone Sweet frames international treaties as supra-national constitutions, or of having a 'constitutionalising' effect on state practice.[120] In doing so, Stone Sweet considers how best to conceive of the nature and function of a constitution. He suggests that characterising a constitution as a higher law, a set of meta-norms, was most appropriate and similar to the status of international treaties vis-à-vis domestic jurisdictions.[121] From this, Stone Sweet examines the international system and suggests two ways in which it is characterised by constitutional pluralism: how multiple constitutional orders organised within an anarchic system, and the existence of overarching frameworks of meta-norms under which discrete hierarchies of norms exist.[122] Notably, the latter conception builds the judiciary into the framework as a 'third-party assessor' of the legality of norms, because meta-norm constitutions tend to create constitutional jurisdictions in which the constitution becomes the benchmark against which other legal norms are referenced.[123] In particular, Stone Sweet refers to constitutional courts at the national level who maintain broad zones of discretion for interpreting law.[124] He outlines some features which would indicate an effective constitutional court, the most central of which being that decisions regarding constitutional interpretation are seen as binding on other actors and having precedential value.[125]

Thus, some core features of constitutional pluralism can be outlined. The first step is the presence of a set of supra-national meta-norms to which states adhere. Second, constitutional pluralism recognises the multiplicity of constitutional orders which organise beneath these meta-norms, which may incorporate and interpret these meta-norms in their own ways. Finally, these

orders are organised in a horizontal fashion relative to each other, while also being subordinate to the supra-national meta-norms.

Since this analysis is focused on a single case, the appropriate criteria for evaluating constitutional pluralism's applicability ought to focus on the theory's domestic indicators. First, within these discrete constitutional orders, the acknowledgement of a series of meta-norms ought to influence a given order's conception of rights. Second, given the importance of the judiciary's role in enforcing constitutions, whether and to what extent the courts invoke international legal norms can indicate whether there is reference to a supra-national 'constitution.'

Given the Eurocentric nature of constitutional pluralism's origins, some scholars have rightly raised concerns of the application of such a theory for former colonial societies for whom international law has tended to serve imperial goals.[126] For such a theory to be acceptable in non-Western contexts, their definitions must also be taken into account when defining the particular norms and values espoused by any given supra-national 'constitution.'[127] International constitutionalism, by these accounts, should also incorporate humanitarian goals and ways of realising them.[128] These concerns are particularly important in the context of refugee protection. In evaluating constitutional pluralism's applicability to India's refugee policy, these concerns will be taken into account.

Pluralism in India's Laws

India's position within the international refugee protection regime certainly suggests a multiplicity of sources of authoritative decision-making, thus fulfilling the first criteria of legal pluralism. The constitution and the judiciary have boundthe country to respect its international obligations. These obligations have been interpreted broadly. Domestically, both legislation and jurisprudence operate concurrently and occasionally in conflict, to provide a patchwork regime of laws governing the status of refugees and their relationship to the state.

The second criteria, that sources of law are not necessarily tied to the state, is only weakly met. Although rights jurisprudence the cases analysed above occasionally contain references to notions of 'natural justice,' most of the law originates from state sources, whether legislative, executive, or judicial. International law also plays a substantive and even binding role in India. Furthermore, the UNHCR operates in India under the auspices of the United Nations Development Programme, although their work is mostly confined to caring for refugees from outside South Asia.

Given the above, it appears that India operates in a pluralistic legal environment, thus fulfilling the third criteria of pluralism as a social fact, although this pluralism is limited. Central to legal pluralism is acknowledging the law-making power of non-state actors, but most sources of laws are state-based; non-state sources of law are only accepted on the prerogative of an organ of the state, usually the judiciary. Legal pluralism cannot account for the

nuances in the relationship between international and domestic law in India, and how they are interpreted domestically.

Turning to constitutional pluralism requires a return to jurisprudence. In examining the leading cases on refugee and foreigner protection, there appears to be a set of meta-norms to which Indian refugee policies adhere. The international law applied is overwhelmingly international human rights treaties, especially using the *UDHR* as a benchmark-setting standard. Notably, neither *Chakma I* nor *Chakma II* referenced international law in their judgments, instead relying on constitutional law and principles of natural justice to protect the rights of the Chakmas. Unlike other cases, there was a serious consideration of whether the group in question were eligible to be considered citizens of India.[129] Interestingly, these cases were challenges to state government inaction in protecting the refugees from persecution from civil society groups. The lack of reference to international law is somewhat surprising given the context; on the other, international law may matter less because the cases were about the government failing to perform its basic functions.

In contrast, the *Ktaer Abbas* case demonstrates significant reliance on international law. The Gujarati High Court primarily refers to the *UDHR*. The court notes that such ratification is demonstrative of the acceptance of substantive international law in the domestic legal system.[130] While the court notes that international documents are not enforceable against the state, it also suggests that international law as related to fundamental rights protected by the *Constitution*, can be considered 'facets of those rights.'[131]

This higher law or constitutional conception of international human rights documents is also evident some of the other, non-refugee foreigners cases. In *Maneka Gandhi*, for example, three of the judges at the Supreme Court referred to the *UDHR* and its protection of a freedom to travel.[132] In their respective decisions in this case, Justices Bhagwati, Iyer, and Kailasam all note the text of the right as protected by the *UDHR* before inquiring into whether such a right is also protected by the *Constitution*. Beyond this more technical aspect of the decision, the justices in their respective judgments affirm the existence of a separate, norms-propounding role of the *UDHR*. Justice Bhagwati states that the rights contained in the *UDHR* should inform the Passport Authority in performing their functions.[133] Justices Iyer and Kailasam go further, noting the influence of the *UDHR* on the drafters of India's constitution and the its role as an aspirational document.[134]

Similarly, in *Premavathy*, the petitioner's claims were founded on alleged violations of their rights under the *ICCPR* and the *UDHR*.[135] Despite ultimately ruling the detention of the petitioner to be validly done, the Madras High Court noted that humanitarian concerns should be incorporated in the terms of detention.[136] Elsewhere, the Supreme Court echoed the judgments of the Gujarat and Madras High Courts in claiming that there is no reason not to use international norms and rules to interpret and enforce the *Constitution*.[137] The position taken by the Supreme Court in this case is quite a powerful one, as it confirms the higher normative value of international human rights instruments and opens up the use of those instruments to both courts and

parties in future rights claims as legitimate interpretive tools for rights protection.

The exception to the non-use of international refugee law is the enforcement of non-refoulement. However, non-refoulement is usually framed by the courts as a peremptory norm or as part of customary law, both of which are binding on all states.[138] For example, in *Ktaer Abbas*, the judge refers to article 33 of the *1951 Convention* which succinctly states the principle of non-refoulement.[139] The Gujarat High Court, reading this article in light of article 51 of the *Constitution*, held that all states are bound to respect international humanitarian law, which encompasses refugee protection.[140] The decision granted formal protection of the principle under article 21 of the Constitution, making it available to all persons in India, including refugees.[141]

Since all refugees fall under the legal regime for foreigners, Indian government practice could suggest a rejection of the rights enshrined by international refugee protection treaties. However, despite the paucity of legislated protections, the government has still been active in practice of protecting refugees in most cases.[142] For example, India still observes, in most cases, the principle of non-refoulement for refugees. Most refugees in India have arrived from Tibet, Bangladesh (including the Chakmas), and Sri Lanka (particularly Tamils).[143] While Tibetan refugees have been permitted to reside without disruption, both Chakma and Tamil refugees have been subject to resettlement and repatriation schemes which raised questions regarding the safety of the refugees being returned.[144] The government has also been active in providing the basic necessities to refugees, although they have been somewhat hesitant in permitting non-government organisations to participate in refugee protection.[145] Overall, government practice suggests at least an acknowledgment of the importance of the rights protected by the *1951 Convention* and more broadly in international human rights treaties such as the *UDHR*.

The foregoing analysis also strongly suggests that the second component of constitutional pluralism is present in India's case. The Supreme Court of India has safeguarded its powers of judicial review, and is constitutionally empowered to invalidate laws which violate enumerated rights contained in the *Constitution*.[146] In the context of refugee rights in particular, the Supreme Court has interpreted article 21 of the *Constitution* (right to life and personal liberty) particularly broadly and substantively, to encompass a host of other rights contained by international human rights law. The inclusion of article 51 in the Constitution also strongly supports including international law within domestic practices. Notably, this article is applied to all levels and branches of government, arguably binding government practices in all areas where international obligations arise.

A common trend running through these cases is the reference to international human rights instruments as providing guidance in interpreting and enforcing fundamental rights as found in the *Constitution*. However, no references are made, even in the leading refugee cases, to the *1951 Convention* or the *1967 Protocol*. Since India is not a party to either treaty, it may threaten the legitimacy of the judicial decision to refer to a law to which the

government of India has chosen not to bind the state. In contrast, since no national law on refugees exists in India, reference to international laws relating to refugees would find a weaker basis to ground these treaties domestically. In using broader human rights documents, and conventions ratified by India, the judiciary uses laws to which India has agreed to be bound; their inclusion is thus more clearly legitimate.

The above analysis presents a complicated picture for using constitutional pluralism in international refugee protection. Clearly, international human rights law is used in rights protection, and are treated by courts as meta-norms informing the interpretation of constitutionally-protected rights. However, the reliance in most cases on the *UDHR* as the site of meta-norms seriously weakens claims that the *1951 Convention* is the higher law to which refugee protection norms are officially tied in India. Instead, it is more accurate to suggest that the *UDHR* has taken on the international constitutional role as regards rights protection in India, which is of particular import for foreigners of all types who are faced with bluntly-worded laws with limited rights protection on paper. The evidence thus suggests a degree of constitutional pluralism, but in terms of rights protection writ large.

Conclusion

As this article has sought to demonstrate, the lenses of constitutional and legal pluralism can be helpful in the study of the international regime of refugee protection, both in broadening our understanding of the way in which it can operate domestically, and in situating these domestic practices internationally. India, as a host state for refugees, has not joined and shows no intention of acceding to the major international refugee protection treaties. Despite this, in practice India's government and judiciary have responded to multiple refugee situations and in most cases, the basic needs are being met and basic rights are being protected. Although India tends to be somewhat isolationist with respect to international law, the judiciary has been active in incorporating the aspirations of international human rights law write large into the domestic constitutional framework, particularly in the context of refugees and foreigners rights. These actions demonstrate a limited degree of constitutional pluralism, with the *UDHR* functioning as the supra-national constitution. The aim of this article has been to encourage different conceptualisations of the domestic-international legal relationship, particularly as it relates to cross-border issues with so human a dimension, like refugee crises. The particular advantage in acknowledging a plurality of laws originating at the domestic and international level, is that it contributes to a universalising of basic standards of human rights, and that the possibility of engaging multiple legal 'voices' can enrich a rights regime. For refugee protection, this advantage can be realised through active and consistent commitment by domestic-level actors within the legal order implementing international legal norms of protection and of human rights, and with greater domestic-international legal interaction in interpreting these laws.

Notes

[1]Mendel, Toby D.J. 'Problems with the International Definition of a Refugee and a Possible Solution,' *Dalhousie Journal of Legal Studies,* 1 (1992), 8-9.

[2]*Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 art 1A(2) (entered into force 22 April 1954).

[3]*Protocol Relating to the Status of Refugees*, 31 January 1967, 606 UNTS 267 arts 1.2, 1.3 (entered into force 4 October 1967).

[4]*1951 Convention*, arts 1C(4), 1C(3), 1D, and 1F(a) respectively.

[5]See for example *1951 Convention*, arts 13, 18, 19, 21, 22, 26.

[6]See for example *1951 Convention,* arts 14, 20, 23, 24(1), 29(1).

[7]Mendel, 'International Definition of a Refugee', 10.

[8]Chimni, B.S. 'The Legal Condition of Refugees in India,' *Journal of Refugee Studies.*7.4 (1994), 380.

[9]Chimni, B.S. 'Globalization, Humanitarianism and the Erosion of Refugee Protection,' *Journal of Refugee Studies* 13.3, (2000) 243.

[10]*Convention Governing Specific Aspects of Refugee Problems in Africa*, 19 September 1969, 1001 UNTS 45 arts 1.1, 1.2 (entry into force 20 June 1974). Incidentally, the OAU Convention also includes at articles 1.4 and 1.5 the same exclusions as found in the 1951 Convention.

[11]*OAU Convention,* arts 2.2 and 3 respectively.

[12]*OAU Convention,* art 2.4.

[13]*Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, Part III Conclusions 1, 10, 15, 16, 17.

[14]*Cartagena Declaration,* Part III Conclusions 1, 2, 4, 5 respectively.

[15]For a discussion on the advantages of these regional instruments, see for example, Arboleda, Eduardo. 'Refugee Definition in Africa and Latin America: The Lessons of Pragmatism,' *International Journal of Refugee Law,* 3 (1991).

[16]*Bangkok Principles on the Status or Treatment of Refugees*, Asian-African Legal Consultative Organization, 31 December 1966, arts X, VIII, and IX respectively (adopted 24 June 2001).

[17]*Bangkok Principles,* Introductory Remarks 2.

[18]*Bangkok Principles,* article III.

[19]*Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

[20]Guest, Iain. 'The United Nations, the UNHCR, and Refugee Protection: A Non-Specialist Analysis,' *International Journal of Refugee Law,* 3 (1991), 589.

[21]*Ibid*, 590-591.

[22]*Ibid*, 590.

[23]*Ibid*, 592.

[24]Alexander, Michael. 'Refugee Status Determination Conducted by UNHCR,' *International Journal of Refugee Law,* 11 (1999).

[25]Bose, Tapan. 'The Legal Scenario of Refugee Protection in South Asia.'*Forced Migration in North East India: A Media Reader.*Ed. Nilanjan Dutta. Kolkata: Frontpage Publications, 2012, 128.

[26]Bose, *Forced Migration Media Reader*, 127, 129.

[27]Chimni, B.S. 'Status of Refugees in India: Strategic Ambiguity.' *Refugees and the State: Practices of Asylum and Care in India 1947-2000*. Ed. RanabirSamaddar. New Delhi: Sage Publications, 2003, 444-445.

[28]'State Parties,' Convention on the Elimination of All Forms of Discrimination Against Women, accessed July 13, 2015,

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

[29]SK Verma, *Fifty Years of the Supreme Court of India: Its Grasp and Reach*. Eds S.K. Verma, Kusum. New Delhi: Oxford University Press, 2003, 627-629. See also *Gramophone Co of India Ltd v Birendra Bahadur Pandey*, AIR 1984 SC 667, para 12 (SC).

[30]*Jolly George Verghese and Another v Bank of Cochin*, 1980 Indlaw SC 140, (1980) 2 SCC 360, AIR 1980 SC 470 at para 3 (SC).

[31]*Jolly George,* para 16, 18, 38.

[32]*Vishaka and Others v State of Rajasthan and Others*, 1997 Indlaw SC 2304, (1997) 6 SCC 241, para 11 (SC).

[33]*Ktaer Abbas Habib Al Qutaifi and Another v Union of India and Others*, 1998 Indlaw GUJ 69, 1999 CRLJ 919, paras 3, 18 (GUJ HC).

[34]Chandrahasan, Nirmala. 'Access to Justice and Aliens: Some Insights into Refugee Groups in India,' *Windsor Yearbook of Access to Justice,* 16 (1998), 146.

[35]Dhavan, Rajeev. *Refugee Law and Policy in India.* New Delhi: PILSARC, 2004, 20.

[36]*Foreigners Act*, *Statutes of India* 1946, art 2, *Registration of Foreigners Act*, *Statutes of India* 1939, art 2.

[37]*Citizenship Act*, *Statutes of India* 1955, art 2(b).

[38]See *Foreigners Act*, art 3; *Registration of Foreigners Act,* art 3. Other relevant pieces of legislation also employ this tactic: *Citizenship Act,* art 3; *Passport (Entry into India) Act, Statutes of India* 1920, art 3.

[39]*Constitution of India*, 1950, arts 14, 20, 21, 22.

[40]*Sarabananda Sinowal v Union of India and Another*, Supreme Court of India, Writ Petition 117 of 2006.

[41]'State Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol,' United Nations High Commissioner for Refugees at 2.

[42]Operoi, Pia. 'Regional Initiatives on Refugee Protection in South Asia,' *International Journal of Refugee Law,* 11.1 (1999), 198.

[43]Operoi, 'Regional Initiatives,' 197.

[44]PrabodhSaxena, 'Creating Legal Space for Refugees in India: the Milestones Crossed and the Roadmap for the Future,' *International Journal of Refugee Law,* 19 (2007), 256.

[45]Saxena, 'Creating Legal Space,' 258-259. *Model National Law*, Informal Consultation on Refugee and Migratory Movements in South Asia, 1997, art 3.

[46]*Model Law,* arts 9-11.

[47]*Model Law,* art 5.

[48]Bose, 'Legal Scenario,' 132.

[49]*Mithu etc., etc., v State of Punjab etc., etc*, (1983) 2 SCR 690, 1983 AIR 473, page 713; see also *Maneka Gandhi v Union of India*, 1978 Indlaw SC 212, para 37 (Y.V. Chandrachud J).

[50]Saxema, 'Creating Legal Space,' 251.

[51]*State of Arunachal Pradesh v Khudiram Chakma,* 1993 Indlaw SC 1101, AIR 1994 SC 1461.

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[56]Chaudhury, Biswas, 'A Diaspora is Made,' 141.

[57]Chaudhury, Biswas, 'A Diaspora is Made,' 142-143; Bhaumik, 'Strategic Pawn,' 130-131.

[58]*Chakma I,* para 22.

[59]*Ibid,* para 57.

[60]*Ibid,* para 66.

[61]*Chakma II.*

[62]*Ibid,* paras 16-17.

[63]*Ibid,* para 25.

[64]It was recently confirmed in a Madras High Court case that citizens and foreigners are not equal in the rights they possess. The judgment confirmed the distinction between "citizen" and "person" in the language of the *Constitution,* and that the intent behind this language choice was such that the *Constitution* could not be manipulated to grant equal rights to citizens and others (*Gnanapragasam v Government of Tamil Nadu, 2014 Indlaw MAD 1951, AIR 2015 MAD 65*).

[65]*Ktaer Abbas,* paras 11, 18, and 19.

[66]*Ibid,* paras 7, 18-19.

[67]*DrMalavikaKarlekar v Union of India and Another*, Cr. WP 583 of 1992; Rajeev Dhavan at 84-86.

[68]*Maneka Gandhi,* para 37.

[69]*Jolly George.*

[70]*Hans Muller of Nuremburg v Superintendent, Presidency Jail, Calcutta and Others*, AIR 1955 SC 367, 1955 Indlaw SC 8.

[71]*Ibid,* para 23.

[72]*Ibid,* para 14.

[73]*Ibid,* para 18.

[74]*Additional District Magistrate, Jabalpur v Shivakant Shukla and Others*, 1976 Indlaw SC 655, (1976) 2 SCC 521.

[75]*Remdeo Chauhan alias Rajnath v Bani Kant Das and Others*, 2010 Indlaw SC 973, 2011 CRLJ 985.

[76]*Mr. Louis De Raedt and Others v. Union of India and Others*, 1991 Indlaw SC 204, (1991) 3 SCC 554, AIR 1991 SC 1886.

[77]*Premavathy v State of Tamil Nadu and Others*, 2003 Indlaw MAD 341, 2004 CRLJ 1475, para 6.

[78]*Ibid,* para 11.

[79]Garvey, Jack I. 'Toward a Reformulation of International Refugee Law,' *Harvard International Law Journal,* 26 (1985), 487.

[80]Hathaway, James C. 'A Reconsideration of the Underlying Premise of Refugee Law,' *Harvard International Law Journal*, 31.1 (1990), 130.

[81]Hathaway, 'Underlying Premise of Refugee Law,' 132.

[82]Hathaway, 'Underlying Premise of Refugee Law,' 131. See also Hathaway, James C. and R. Alexander Neve. 'Making International Refugee Law Relevant Again: A Proposal for Collectivised and Solution-Oriented Protection,' *Harvard Human Rights Journal,* 10 (1997), 116.

[83]Hathaway, 'Underlying Premise of Refugee Law,' 143.

[84]Hathaway, 'Underlying Premise of Refugee Law,' 145-146. It is worth mentioning that some variation existed within the Western countries; the United Kingdom and Belgium, for example, advocated extending universal protection, to include stateless persons as well (*Ibid*).

[85]Guest, 'A Non-Specialist Analysis,' 587.

[86]Bose, 'Legal Scenario,' 129.

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[116]Walker, 'Constitutional Pluralism,' 337.

[117]*Ibid*, 337.

[118]*Ibid*, 338.

[119]*Ibid*, 337, 341-343.

[120]Stone Sweet, Alec.'Constitutionalism, Legal Pluralism, and International Regimes,' *Indiana Journal of Global Legal Studies,* 16 (2009), 640.

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[127]*Ibid*, 54.

[128]*Ibid*, 54.

[129]*Chakma II.*

[130]*Ktaer Abbas,* para 9.

[131]*Ibid,* para 19.

[132]*Maneka Gandhi,* paras 115, 125, 161, 174, 179, 258, 259, 262 by justices Bhagwati, Krishna Iyer, and Kailasam.

[133]*Ibid,* para 161.

[134]*Ibid,* para 179 (Krishna Iyer, J) and paras 258-259 (Kailasam, J).

[135]*Premavathy,* page 3.

[136]*Ibid,* page 13.

[137]*Vishaka and Others,* para 12.

[138]An exception to this rule exists: 'persistent objectors,' countries who demonstrate their consistent intent to not be bound, may be able to avoid compliance.

[139]*Ktaer Abbas,* para 18.

[140]*Ktaer Abbas,* para 18.

[141]*Ktaer Abbas,* para 19.

[142]Chimni, B.S. 'The Legal Condition of Refugees in India,' *Journal of Refugee Studies,* 7 (1994).

[143]*Ibid*, 381-388.

[144]*Ibid*, 383, 386-388. This may be due to the fact that the situation in Tibet has not changed such that it would be safe for the refugees to return, and as a result they have continued to reside in India for several decades, increasingly becoming a part of the local landscape.

[145]*Ibid*, 389-391.

[146]Neuborne, Burt. 'The Supreme Court of India,' *International Journal of Constitutional Law,* 1.3 (2003), 485, 479.

Call for Paper

Mahanirban Calcutta Research Group in collaboration with Global Migration Centre, The Graduate Institute of International and Development Studies (Geneva, Switzerland) is organizing an international conference on

Borders, Violence and Identities (21 December – 23 December, 2016)

Concept Note: - Borders in various parts of the world are major sources of disputes between states. For India, some of the major border conflicts can be traced back to India's partition in 1947 and Radcliffe's arbitrary lines separating India and Pakistan. Border, here, is porous, artificial and even shifting in some places. Till recently, the existence of *Chhitmahal* (border enclaves) further complicated the Indo-Bangladesh borderland situation. India also shares a deeply contested border with China. Border disputes between India and Pakistan/Bangladesh and China have repercussions for not onl the borderland residents and for religious and ethnic minorities of the subcontinent. Beyond South Asia intensely violent borders exist between U.S. and Mexico, Thailand and Cambodia, Congo and Angola – to name a few. Graves of Rohingya refugees have been discovered recently in Thailand borders. Border crossings within Europe can also be equally dangerous for different groups of people as the recent Syrian crisis has shown.

Borders, however, connect as much as they separate. Therefore, borderlands open up spaces for various types of movements – of people, commodities, animals. If violence is part of everyday lives of borderland people, staying close to an international border can also create opportunities, economic and otherwise. Often, different worlds co-habit borderlands: one is that of police, security, metropolitan politicians and city people eager to ensure a neat and sealed border where the flows of goods and people are completely regulated; the other is the 'world of subalternity' where people have cross border personal and economic relations and is least concerned about the 'cartographic anxiety' of the state. Therefore, to study the world of the border, one has to focus on these varied worlds - the high intensity border conflicts and everyday violence, 'legal' and 'illegal' movements of people and things, policing and subversion techniques etc.

The international conference on *Borders, Violence and Identities* invites abstracts (500 words) from scholars working on issues like making of international borders and border enclaves, violence in borders and borderlands, movements (of people, animal and commodities) across the borders, questions of gender, ethnicity, religion in borderland studies and policies of border 'control' and their implications. Please note that papers focusing on areas beyond South Asia are particularly welcome. Within South Asia, the focus will be on India's North East and West Bengal-Bangladesh border issues. Abstracts along with short bio-note (250 words) should be emailed to anwesha@mcrg.ac.in and mcrg@mcrg.ac.in, by **June 30, 2016.**

Book Review

By

Snehashish Mitra[*]

Unraveling Partitions

Partitions: Reshaping States and Minds by Stefano Bianchini,
Sanjay Chaturvedi, Rada Ivekovic and Ranabir Samaddar, *Oxon:Frank
Cass, 2005;pp xi+176.*
The Partition Motif in Contemporary Conflicts edited by Smita
Tewari Jassal and Eyal Ben-Ari, *Sage Publication:New Delhi, 2007;pp38.*

Understanding Partition: Theories and Debates

Multiple aspects of partitions, such as history, claims, counter claims and its
implications continue to be a major determinant of our action and reaction in
our daily discourse of politics and realpolitik. For instance if one closely
follows the rivalry of supporters of the fabled Mohunbagan-East Bengal
soccer derby in Kolkata, one would find incipient opinions with regards to
partition, especially among the supporters of Mohunbagan against the East
Bengal supporters, molded in 'otherness' coming out in full throttle which is
otherwise absent in the daily parlance of post-colonial West Bengal.
Accusation of the Mohunbagan supporters is based on the fact that the East
Bengal supporters or their forefathers have crossed the borders after
partitions and hence would be bearing 'a border fence mark' under their shirt.
While mostly interchanged in jocular terms among the supporters in different
public and virtual spaces, it shows how partition is yet to cease from the
mental landscapes of partitioned communities, in this case the Bengalis.
Authors of the book 'Partition: Reshaping States and Minds' hold the opinion
that partition history ought to be revisited. We need to recall our partition
memories not only to unfold the layers of the partitions but also to
understand the constant prospect of partitions around the world, in terms of

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territory, communities and society. The theme of the book poses the urgent question of why it is necessary to re read partition and what more to investigate apart from the territorial partitions. As Ranabir Samaddar points out partition also creates numerous micro partitions – of neigbourhoods, village, gender, community and family; he locates the tendency of disowning responsibilities of partition (example – Israel) and creation of smaller states in name of better governance.

Samaddar points out in the introduction to the closure of partition scholarship as a result of nationalistic reasoning and states that the book has enquired into the contentious national space and specifics of the dialogic situation. Samaddar lays emphasis on dialogue as it involves the dual issue of renunciation of force and triumph of reason. Partition is viewed as an inevitable incident and in the context of the Indian subcontinent is deemed as a necessary act of division by the larger section of the population, keeping in mind the animosity among different religious groups during that time period. Samaddar rightly points out to the needs of investigating the dynamics of division and the role of institution behind it, the outcome being known to citizen so as none are ignorant about how the genealogy of their state. The book offers four chapters, Rada Ivekovic discusses in details about the difficulty of viewing partition as a form of transition, while partition remains as a form of transition; Ivekovic terms transition as transgression. She deals with the Balkan experience of partition in details and how it has shaped and reshaped Europe's politics of integration. Sanjay Chaturvedi deals with the excess geopolitics along with significant details of the interplay between partition and transgression. Chaturvedi looks into India's partition through the lens of different ethno political imaginaries and geopolitical reasoning. Stefano Bianchini and Ranabir Samaddar discuss about the status of sovereignty and quality of democracy in post partition states. Allegiance to the state and displays of nationalistic behavior (say playing of national anthem in Indian cinema halls being a recent phenomenon) has been reinvented today. Any inclination to disobey the diktats is inviting trouble, both intellectually and physically. In an uncanny pattern across the political society, while the presidential candidate Donald Trump fanatically rants about his anti-Muslim agendas in the U.S.A, the otherwise proactive Indian Prime Minister Narendra Modi remains silent in India over the series of incidents pregnant with religious and ethnic intolerance. The broad shell of nationalism, perhaps akin to society and state is being explored, it is shaking the branch on which custodians of 'nationalism' are established; questioning not only their credibility but also to what they are holding and attempting to hide from critical enquiry.

Rada Ivekovic predicates her analysis on the concept of transition and argues that protracted partitions are themselves meant to be transitions to a would-be non-partitionable state. Ivekovic observes that ethnocracies (dominance of one community with agenda to homogenize the ethno-cultural sphere) have lately been established to end socialist partitocracies and often the new state institutionalizes pre existing inequality. Ivekovic draws our attention to how the nation, statehood and citizenship applies to women and

criticizes the lack of same in works of B.Gardener, E.Gellner and others. Ivekovic rightly opines that the modernity has used pre modern devices of exclusionist policy which has created divisions in line of class, ethnicity, religious, linguistic and gender. If the divides are not expressed politically, it turns into violence. Perhaps incidents like Nellie Massacre, Gujarat Pogrom can be understood in such theoretical context. She brings out the unique paradox of understanding the Taliban, in backdrop of excluding women, as both reactions against the Western modernity as well as a form of modernity itself. Bringing in Hegelian premise of constitution of the state, Ivekovic goes into details of how the 'women' is constructed in the social world and how it remains their prerogative to ensure the continuity of the community. Ivekovic comments that such subordination of women and divisions of mankind is necessary for the unity of the state. Questioning the partitions of the past, Ivekovic writes:

> The dislocation of Yugoslavia was not really more of inevitability than the violence in Rwanda, yet both took place. Neither India in 1947 nor Yugoslavia in 1991 was doomed to be partitioned…Once the new names are given and the new states established, the logic of identity, self determination, and sovereignty takes over...This works inasmuch as in times of homogenization and violence no one interrogates the relationship between the state (in the making) and the population. Even though things are done in the name of people, they are neither asked nor heard. (p 19)

Taking the case of the princely states of Hyderabad and Kashmir in India, independence came with partition before any choice can be made. Later in the book, Sanjay Chaturvedi shows how excessive geopolitics can overturn the popular will of people to be with a certain state during partition, by portraying the case of Hindu majority district of Khulna and Muslim majority district of Murshidabad falling in Bangladesh and India respectively. The moot point being that, people are just used as pawn in the game of partitions, when new states emerge by keeping ethnicity in the front view and logistics in the rear. Looking at the subconscious, at times open animosity among the Muslims and Hindus in post partitioned India, one can infer that reshaping of territories has followed the reshaping of minds, as Ivekovic observes- 'they have constructed communities rather than societies'. Anasua Chatterjee in her article 'Narratives of Exclusion: Space, Insecurity and Identity in a Muslim neighborhood', (*Economic and Political Weekly*, Vol 50, No 52, 2010) shows how the Muslims in today's Calcutta have been forced to form ghettos in specific parts of the city and how the imaginaries of Calcutta's majority Bengali Hindu population has maintained a physical and psychological distance from their 'should be neighbours'. Maintenance of such constant and increasing distance has only led to assertion of religious symbols in certain sections of the Muslim society in an urban space. Ivekovic concludes by stating that women have been the site of discrimination, based on which states have built other form of inequality and operates as a model per analogy.

Stefano Bianchini locates sovereignty as the most relevant legacy of the Treaty of Westphalia (1648) which in turn encouraged radical changes.

Dismantling of divine legitimization of power was replaced by universal suffrage and compulsory educational system. He categorizes sovereignty, people consensus and ethnicity as the three main characteristics of the modern state. Bianchini makes a difference between separation and partition, stating that separation emancipates from ideological conflicts (examples – China/Taiwan, E.Germany & W.Germany). Territorial claims are deemed as important when partition involves connection between collective security and ethno cultural homogeneity. Formation of states like Meghalaya and demands of Bodoland in Northeastern India can be understood in this background where indigenous communities of the region demand a different, exclusive territorial unit to prevent outsiders and alien culture & customs. Such claims of state formations with varying level of autonomy on basis of ethnic majority often leads to ethnic cleansing through violence and alters the position of other ethnic groups in the process of violence or partition. Bianchini rightly states that partitions often work in favour of the elites of local ethnicities, especially against the loosing relevance of communism. The terminologies associated with partition such as dismemberment, separation, secession etc may have different semantic differentiation offered by scholars; however it is difficult to create a clear distinction and classification due to a variety of local perceptions that deeply influences the terminology and rationality (pp 52-53). The inception of power politics over possession of territories can be linked with introduction of private property where uniqueness of owner became the rule. The project of bulldozing diversity and promoting homogeneity began by rapidly strengthening the sense of belonging between state and nation. Such school of thoughts can be traced back to mid nineteenth century which began with Herder's description of people's bias as a value and goes on with emergence of social Darwinism and implementation of imperialist policies. Ethno nationalist policy makers arrogate exclusiveness of representing nationhood where not only minorities are victimized, but also free thinkers and member from mixed community who do not fall under the specified 'nationalistic' parameters. Sudhindra Kulkarni, earned the wrath of pseudo Indian nationalists when he got ink-faced during a book release of a book written by Pakistani high commissioner in Mumbai. The victimization card is vital in mobilizing people's support for independence in the quest for achieving equality. Attempts at homogenization through violence and forced migrations are however unfulfilled, Germany being an example where Berlin is the second Turkish city of Europe. Persecution faced by the Rohingya Muslims in Myanmar can be understood in the light of homogenizing agenda of a certain section Myanmar's political class.

Bianchini makes the observation of a paradox inherent in Great Britain's policy of partioning along ethnic lines as the concept of Magna Carta (1215) emancipated within Great Britain itself. The limitations of democracy to face claims of partition have surfaced in Ireland, Cyprus, India and Yugoslavia. Ethnic claims of independence proliferated after the collapse of Yugoslavia and Soviet Union and gave rise to a 'matrioshka' process after which the enthusiasms for self determinism froze in the Western world which was earlier propagated to counter the communist Soviet's influence. Ironically

several incidents indicate that secessionists don't recognize the right of their own minorities. Bianchini enriches the readers with details of the role of democracy, self determination and referendum in the discourse of partitions with examples from Canada, Spain and Norway (pp 68-69). The emotive issue of losing identities of mixed ethnicities in erstwhile Yugoslavia had led to 'inner' partition, as these people had to flee and struggle to maintain stability, human rights and democracy were of no use to them. Democracy however can be able to play a positive role if it's able to accept plurality and manage differences within a shared set of rules, values and code. Bianchini probes into the role of technology behind increased mobility of population especially in the post cold war period; mobility has been a target of violence through attacks on New York's World Trade Centre, with New York being representative of the 'developed first world', hence a destination location for both migrants and refugees. Bianchini emphasizes the readjusting institution and statehood to counter homnogeneity and expresses his hope that the European Union would offer a new direction in state formation and sustainable peace building.

Ranabir Samaddar brings out an important observation in Gyanendra Pandey's book *Remembering Partition* in which the latter poses the question whether it's possible to recall a different national past, not of conflict and violence' but labour, creativity and other platforms of cooperation. Samaddar deals in details with the Irish nationalism and how their Indian counterparts, who embraced partitions, enamoured the Irish nationalists. Religious animosity between the Catholic and Protestant Christians of Ireland and Great Britain, eventually created Northern Ireland with Ulster division in Northeastern Ireland being the bone of contention with mixed population of Catholics and Protestants. As the Irish independence was postponed due to Ulster opposition to Home Rule Bill, Irish nationalists turned into radical nationalism. The British promise of referendum to determine reunification of North and South Ireland never saw daylight which was followed by violence in the North for a considerable time with battles among the Irish Republicans, Ulstermen, Orangemen and British Army. While acknowledging the similarity of both the Irish and Indian nationalist trajectory, Samaddar leads us to a nuanced analysis of the definition of 'otherness' construed and practiced in Great Britain which has later trickled down in the thought narratives of Indians as well. The vivisection of India in 1947 brought out the practice of three nationalisms about how to define permanent otherness and how dialogue is constructed with those who incidentally fell within the national boundaries, however remaining external in the mental landscapes of the dominant nation(s). Manners of dealing with the frontier regions (treatment of northeast India by Indian state) can be understood in the context of such school of definitions. Minority rights are a crucial aspect to deal with in the frontier, violation of which might lead to further revision of the frontiers. The Treaty of Sevres (1919) and Treaty of Trianon (1920) reshaped the destiny of peoples and especially minorities in the Ottoman and Austro Hungarian Empire through new political-territorial configuration.

Samaddar goes into the details of the partition narratives of the Balkans and Asia Minors through a critical lens.

Prior to the climax of India's partition, one needs to understand the political –administrative restructuring of British India, especially Bengal. Samaddar claims that the restructuring not only had impacts in contemporary times through communal riots in Bengal, but also found its way to violence against minorities in Nellie and Mongoldoi in late 80s in Assam. It might well be added that violence against the minority communities (Bengali Muslims, Adivasis) continues unhindered in the wake of ethnic claims of superiority and homeland. Samaddar shares that while dialogue can potentially prevent a partition, it may as well serve as prelude to partition. The Cabinet Mission to India (1946) is testament to such commentary which uncovers the parley between partition and dialogue. Partition often crops up with Janus-faced impacts, while 1947's partition was a blessing for Pakistan, it brought a sense of loss for Indians; again in 1971 creation of Bangladesh was an unwelcomed dismemberment for Pakistan. The reconfiguration of borders and states emerge from geopolitical imaginations and hence makes the geopolitical finality, including the Indian partition null and void (pp113). Hence in the concluding sections Samaddar calls to desist from the final reading of the partition as he refuses to accept partition as a nationalist fate. It is vital to formulate an alternate politics to permanent partition to prevent the worst case scenarios among partitioned states and nations, as well within a state.

Sanjay Chaturvedi dwells with the role of 'excess' geopolitics behind the partition of India, critically examining the various geopolitical imaginations along with the forces which eventually led to partition, in its excess over other lines and arguments. Chaturvedi rightly points out to the coterie of elitist representations behind the line of India's partition, according to him 'elitist representation(s) might be eventually be widely disseminated, and critically or uncritically adopted by the vast majority of people, yet they are still primarily the brainchild of the politicians …who besides posing as the sole spokesperson of the state or the religious-cultural group, express their personal ways of seeing things'. (p 128)

Chaturvedi analyzes how the British managed to create a divide among the Hindus and Muslims, infiltrating the desire of homogeneity and intolerance towards each other. The census was instrumental in creating the sense of identity and 'otherness', about which the communities were ignorant in the past. The separate electorate in the election of local government further put the stamp of communal divide across the Indian society. Chaturvedi has dedicated a section on multiple geopolitical imaginations and assertions of territorial sovereignty, where different versions of not only Pakistan, but alternative state forms imagined by the likes of Chaudhry Rahmat Ali, V.D Savarkar and V.S Bhatti. The backward sections also had a voice during partition which seldom appears on the historiography of partition, Chaturvedi has given a detailed description of the All India Acchustistan Movement and how it interplayed with the geopolitics. The bargaining under the Bengal Boundary Commission and the eventual creation of the border brings out excess of geopolitics which not only brings out the contradictions of terms,

but also the elite hierarchy involved in the bargaining process, wherein Hindu majority district of Khulna was ceded to Pakistan for the sake of ensuring the viability of Calcutta's port! The lack of consistency behind the logic of partitions, with ethnopolitcs and geopolitics trumping each other at different sites, announcement of partition without finalization of the borders eventually lead to the bloody trail of unimaginable destruction. Irrespective of religion, men feasted on the vulnerable women and reinforced the already prevailing inter-religion animosity with strengthened stereotypes. In line with the fellow authors, Chaturvedi calls for more discussions and debates about partition and reminds us that we have to decide between the geopolitics of differences and politics of accommodation.

Narratives and Experiences of Partitions

In the book 'The Partition Motif in Contemporary Conflicts' edited by Smita Tewari Jassal and Eyal Ben-Ari dedicates the chapters to explore the fruitfulness of a comparative analysis of partition in post-World War 2 period. The volume covers the partition of the Indian subcontinent, Palestine/Israel, East/West Germany and North/South Korea through the themes of space imaginations, social structures and construction, narratives of experiences and displacement, concluding with the healing and reconciliation processes. In several partition experiences, it has been considered as a price to be paid to achieve independence, a heavy one however when one considers the dawning of violence, conflict and forced migration on populations involved across partitioned states and nations. The volume attempts to make a cross cultural resonance that joins the communities in different location undergoing similar sets of trajectories by refuting the uniqueness of India's partition and exploring how partition still influences social opinion and behavior. The book claims that concerns about India's partition have been motivated by the cause of India's unity, but not of suffering, nationalism and nation building.

While partition is an event itself, it also causes and triggers other events, as Honaida Ghalim shows in the volume that *al-Naqba-* the so called disaster of 1948 created a Palestinian diaspora, as it did a whole set of border and contact areas between Israel and its neighbours. Differentiating the violence from partition has been propagated by several scholars of India's partition, which as Pandey puts it, was in the light of battle against communalism (Pandey 2001:52-53). In the chapter by Alok Bhalla, he contends that partition was such a traumatic event that it produced a set of troubles and questions that much of the literature, arts, and film of the subcontinent have been trying to grapple with; Srijit Mukherjee's 'Rajkahini' released in the Tollywood (Bengali film industry in India) serves as a recent testimony to Bhalla's observation. Along these lines, the chapter by Michael Nijhawan focuses on a community of singers/storytellers that adapt traditional genres about Punjabi folk heroes as a mean to come to terms with partition and its implication. In Ghanim's part personal and part scholarly testimony about the meaning of life in her native Arab village near the border,

partition gives rise to a different experiential reality, which in this case was a constant state of emergency.

Partition has created different sense of gain and losses in different contexts. Curiously with regards to the India's partition, there is lack of attempts to make the connection between the partition imbroglio and the 'divide' which is continuously reenacted through numerous communal conflicts and simmering tensions; the family dynamics being a partial explanation for such trend, along with Mahatma Gandhi's emphasis on nonviolence and the euphoria of independence. The link between partition as forgetting and as cause is complicated. While Halbwachs contended that past 'serves' the needs and interests of the present, while Barry Schwarz argues that in many cases past has its own power to define or delimit the kinds of issues dealt with in the present. Vasanthi Raman in this volume shows that while Muslims of north India reacted to partition by denying it, their aim was get on with daily life. But the periodic violence like Babri masjid demolition, Mujjafarnagar riots, that shake their life does not allow them to deny or forget because every such act reverberates back to partition. Ursula Rao's finding about the redrawing of social and territorial boundaries in a conscious effort to efface the Islamic past of Bhopal, a city formerly characterized as predominantly Muslim, offers an illustration of such processes.

Disparity of narratives is a recurring theme in the game of partitions. In the case of Israel-Palestine, Peteet observes that in Israeli narrative, a small besieged and brave group of Jews faced and overcame a massive coordinated Arab assault, in the Palestenian one a leaderless, unorganized group of Palestenians faced a well-armed and organized Israeli force (pp- 155-56). Elsewhere, partition literature was not written by immigrants from West to East Bengal, Hindus moving to West Bengal did create such texts. Alok Bhalla explores representation of partition in the subcontinent within which partition provides an overarching story, often organized according to tragedies and traumas within which different authors place their particular account. The politics of partition has emerged through the folk understandings at fairs and rural settings, folk 'conscious collective' portray the politicians as the chief culprit in the partition of 1947. As seen in the review of the first book, this one also dwells on the majoritarian orientation of partition and post partition construction of nationalistic discourse. Kathinka Sinha-Kerkhoff and Ellen Bal deals with the nature of nationalistic orientation created and contested in India and Bangladesh; the attempts of the Hindu revivalist efforts to replace pluralistic vision of curriculum policy of India is an ongoing agenda under the present Indian government. Sinha Kekhoff also brings out the difference in elitist perceptions and common experiences of portioning event. What partition meant to communities and fabric of social life remains the unexplored terrain of social anthropology. Korean states have also gone to considerable lengths to promote historical narratives in school texts that legitimize their own regime while discrediting that of their rivals. Popular culture also plays a major part is preserving and passing the partition narratives, Bollywood (Hindi film industry in India) is yet to however challenge the partition as an event while it accepts the

inevitability and limits in amplifying the heroics of national heroes. Partition, after dividing territories divides the collective imaginations of communities and creates varied level of 'otherness' with a normative consciousness; Vasanthi Raman and Ursula Rao trace out the social boundaries in Banaras and Bhopal, on assumptions about Muslims and Hindus as homogenous groups inherently in conflict. The ghettoisation is a common occurrence in several Indian cities, as referred in the earlier review section with regards to the Park Circus area of Kolkata.

Ina Dietzch discusses the contrasting philosophies in post World War 2 Germany between the Eastern and Western region. The difference predicates on the varying versions of status, civility and democracy, which pre dates the Cold War as well. John Borneman explains that unification of Germany involved a claim about civilizing East Germans who were expected to adopt the ways of life suited to the West. Tatjana Thelen deals with the paradox of German kinship ties in this volume in which she underscores the material advantage advantages that East Germans achieved despite their forced separation from the West through receiving parcels from their Western German relatives. Conversely, after unification when the Easterners thought they received cheap goods, the relations devalued. Dietzsch explains that because of what East Germany underwent under Communist rule, special resources are being allocated by the government. Material gains and interests in post partition period have been focused by Thelen and Zureik in this volume centering on land rights and ownership. A new economy revolves around the 'business' of partition as seen in Israel and Palestine with the players being NGOs, donors, research and study circles and dialogue groups. Sites like Berlin Wall, Hadrian's Wall separating England from Scotland have turned into tourist spots. Thelen's chapter reiterates the review of the earlier book, where partition remains as an unfinished business and it erupts out in open with stimulus from certain situation. Cross border migration, both legal and illegal, keeps the flame of partition igniting in public memory, as Honaida Ghanim's chapter shows that partition is constantly produced and negotiated through migration and infiltration. In similar line Nina Gren sees partition as process rather than onetime event; Palestinians have an ambiguous attitude towards borders due to multiple forced migrations. As Zureik puts, the border between Israeli and Palestinian acts more of a frontier due to constant interpenetration between two distinct societies. The logic also holds for border created which has divided similar communities, such as in northeast India, where the borders are under loose surveillance and frequently crossed. John Borneman suggests that East and West Germany created the effect of being outside of each other but were actually involved in a mimetic relationship of devouring each other. Comparing Germany's unification with prospect of Koreas's unification, Borneman speculates on the challenges of unification and the events following the unification; the behavior of the capitalists in unified Korea likely to be same as their German brethrens bypassing the Korean value of loyalty in pursuit of more profits. The implication of a united Korea with nuclear power would be farfetched with the potential to discomfort the Asian neighbours.

Events and narratives of post partitioned society manifests partition into different spheres of life through education, memorials, media etc. as Thelen and Dietz have shown how partition continues to provide a set of organizing principles in today's Germany. Efrat Ben-Ze'ev's chapter in the volume brings out the systematic, standardized recording and charting of data in visual form that represents space, resources and populations. This standardization of maps is part of the power of states in their administrative guise to control populations, construct classifications, and allocate desired resources. The population transfer over the map with borders in Europe and India went well with the idea of nation-state, taking the cases of India, Turkey and Pakistan. The volume deals with partition as a product of modernity and extends inquiries into notions of space and contested nature of spatial identities. Naturalness of nation state is made problematic by partition, which in otherwise parlance is associated with the culture of the territory within the nation state (notion of the existence of Indian culture in India for instance). The contributions in the volume essentially questions the taken for granted assumptions, as Bhalla shows by depicting the viable, integrated, and meaning-making communities in which many people lived in pre partitioned times, fictional texts expose and question the assumptions at the base of the grand narratives of communal politicians. Forced migration of the Rohingya Muslims in contemporary times, asks for critically interrogating the nation state ideology. The volume has presented us with a rich ethnographic accounts of post partitioned societies and provokes us to think in new direction with regards to partition associated with cultural specificities and particular contexts.

Conclusion

Both the books emphasize the necessity of reopening the partition histories and dialogues, in order to rectify the pillars on which states are situated since they are potentially poised to face further partition and violence. Another kind of partition which requires further research is the partition which takes place within a state, for example the formation of Telengana by partitioning Andhra Pradesh, a state in Southern India in 2014, or the numerous demands of new states within India such as Gorkhaland, Bundelkhand, Bodoland etc. It may also be worthwhile to look into the forcible inclusion of nations into states which occurred in tandem with partition. If one examines how the present states of Nagaland, Manipur and Mizoram have been inculcated within the Indian state, there is barely any trace of dialogue but rather blatant use of force and repression. The quest for a 'unified' India in post partition times, led to demands for partition among the nations of northeast India, such as Nagas and Kuki-Chin groups as they found themselves in multiple territorial units. The rise of Naga nationalism through organizations like NSCN (currently multiple factions) predicated on the demand of creating a greater Nagalim constituted by the Naga inhabited areas of India and Myanmar. Formation of such anti-India sentiments can be attributed to the lack of belief and practice of dialogues in the state formation of India. It is

this lack of dialogue among the different communities of a heterogeneous landscape that keeps the prospect of further partition alive. Human rights activist from Assam, Parag Kumar Das in his writings had repeatedly emphasized the need of interaction between the different communities of northeast India as the political spectrum of the region is marred with division along the lines of religion, ethnicity and alternate ideas of citizenships. Das located the need of unity among the indigenous and early migrant communities in northeast India, not only to eliminate the need of acrimonious partition and separation, but also to maintain the demographic balance of the region, considering the alleged influx of population from neighbouring nations.

The reviewed books serve the purpose of uncovering the multilayered aspects of partition and show the path of thinking and rethinking the 'inevitable' partitions. It is the need of the hour that such seminal works are conveyed to the larger audience beyond academia to usher in a new sense of companionship among the nations, so that the people consciously rebut any attempt to be treated as stakes in the game of geopolitics and the violent legacy of partition is restricted only to the pages of history.

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. Please refer to www.mcrg.ac.in for a details style sheet. 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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