

Term Paper for Module A 2006

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Write a note on the context of the phrase, "mixed and massive flows" of migration, and show how this situation affects the task of protecting the refugees.

Eeva Puumala

Metaphors and the bodypolitical powers of discourse

The mixed and massive flows of migrants have reached the shores of the European Union. News papers, news broadcasts and official political statements are themselves flooding with statistics of African immigrants who come to the Canary Islands^[1] with tsunami-like force. This year well over 24.000 people^[2] have decided to take the long and dangerous boat trip from Senegal, Morocco and other parts of Western Africa in the hope of better life in Europe. The boats are shaky and small. Hundreds have lost their lives before their feet ever touched the promised continent of Europe. But how are their desperation and deaths used in the EU? They justify the establishment of tighter border control, and they evoke notions of human trafficking, illegal immigration in order to strengthen the 'fortress Europe'^[3].

The politics of citizenship is intertwined with the notion of migration flows. The idea of migrants flooding over national borders defying the powers of the sovereign state is an extremely powerful rhetorical tool. It implies the loss of control, and raises the demand for containment and prevention. The use of "mixed and massive flows" evokes feelings in national communities – fear, xenophobia, racism – and securitizes migration (see Bigo 2002; Ceyhan & Tsoukala 2002). 'Flow' as an uncontrollable natural force produces notions of illegitimate migrants and the evoked feelings, in those national communities to which it is directed, bear effects on the task of protecting the refugee. The burden of proof of legitimate reasons to migrate is on the individual moving; she is a potential drop in the wider flood of migrants, and leaky boundaries threaten national bodies. The will to control and harness these floods make refugee seekers visible in a particular light; the real and legitimate refugees need to be screened from the horde of economic migrants/refugees, international criminals, human traffickers and terrorists. The duty to protect the refugee becomes easily flooded by the securitizing logic now so prevalent in international relations. After all, the first and foremost task of the state – according to the realist argument – is to secure its own survival (see e.g. Waltz 1979). A task now to be fulfilled by the international police of aliens (see Walters 2002 & Bigo 2002). Refugee flows are constructed as a threat not only to the nation's "geo-body", but also to the bodies of individual citizens (see Kumar & Grundy-Warr 2004: 54).

The notion of a migration flow establishes a metaphorical border (Samaddar 1999: 20); the flow becomes a border between subjectivities and different manners of being in the world. This metaphor is used to make migration and refugee protection problems of the state or region, as in the case of the EU. Through repetitive use metaphors can start to function as "sticky signs" to use Ahmed's words (cited in Tyler 2006: 191; see also Lakoff & Johnson 2003). These sticky signs shape perceptions of others; the figure of the refugee is shaped through the stickiness of notions like flux and inflow. Through this kind of signs some identities and subjectivities (e.g. refugee) become securitized in order to produce and secure other identities and subjectivities (e.g. citizen/national). Refugee protection and the functioning of migration metaphors are questions not only of international human rights regimes, but also of structuring national imaginaries (see Tyler 2006: 192) and activating the politics of citizenship.

Instead of looking just at the refugee or the citizen, more attention should be directed to the notion of *lines, boundaries and borders*. In Barun De's (2004: 207) words, there is another history behind the one dominated by states that is being recovered: the history of popular culture – and, I might add here, a history of lived experience. Boundaries are representational moves that construct subjectivities, both that of the refugee and that of the citizen or national, and they construct spaces in which both subjectivities define their being in the world. Ambivalent migration discourse with the metaphor of "mixed and massive flows" of migrants is used in order to narrow down the amount of those who are considered as legitimate migrants^[4]. Their powers are bodypolitical (see also Salter 2006). The objectified and essentialised understanding of borders and boundaries essentialise the notions of the 'Other'. Otherness becomes a prerequisite, an *a priori* of knowledge, an institutionalized mode of thought (Puumala 2006). Meeting the task to protect the refugee would, in my view, require the emergence of stories that do not reject, renounce, abjectify and abandon (see Soguk 2000). This would imply a move from the politics of emergency to the politics of emergence – the appearance and acknowledgement of the refugee as an active (political) agent.

What role is left for the refugee in the politics of her own protection in the light of these sticky signs? And what does the term "refugee" really mean? Who is a refugee, and what is the difference between refugee and illegal immigrant? The difference between legality and illegality is played with in the notion of migration flows, in order to suggest that the reasons for leaving are not always legitimate. What about those refugees who leave in order to seek "good life", to which category do they belong?

Refugeeism – refugee as a type of migrant?

Massive flows of migrants have led to the development of new administrative concepts as well^[5]. One such is the term "refugeeism", which at least according to the Finnish Ministry for Foreign Affairs, is "related to uncontrolled flows of migration, which often means that people move to another poor country and this further aggravates the problems" (www-document^[6]). Furthermore, refugeeism is "also often linked with serious negative side effects, such as human trafficking and clandestine immigration, prostitution, xenophobia and racism" (ibid.). As Samaddar (2003: 35, 42) notes, presently two discourses are coming together under the term "mixed and massive flows of migrants". One discourse is about illegal immigration and the other about refugees. The term "refugeeism", however, weaves these discourses even more tightly together, making it increasingly hard to separate between the two. The refugee is caught in the middle, and the refugeeism-talk does not do justice to her.

The act of seeking refuge becomes in these interwoven discourses connected with socially negative phenomena, which further implies that the flows have to be controlled. The concept "refugeeism" as such does something: it institutionalizes the refugee situation. It makes it an -ism. This -ism is then seen to have its own dynamics; it becomes another factor in the order of things. The refugee becomes a natural figure; a person whose manner of being in the world is no longer questioned. The term refugee becomes an identificatory marker – another sticky sign. And refugees come to form yet another imagined – and manageable – community, a unitary group. The ones who fall in the cracks of the international system, whose identity is that of the refugee, the stranger, the 'Other', are in Anthony Burke's (2002: 21) words "prisoners of paradox". Our security depends on their insecurity; our identity on their abjection.

But does there actually exist a refugee situation or experience? The 1951 Convention gives rise to the characteristics on which individuals can be recognized as refugees. Thus the existing refugee law points to the existence of a generalisable, unifying refugee experience, which constructs the refugee as a type/kind of migrant (see Malkki 1995). According to Malkki (1995: 506) the international regime in fact "produces the social, political and legal constructions that we now recognize as refugeeness". The question of the protection of refugees is thus also a Foucauldian question of power and knowledge – the power to produce knowledge and the power to produce subjectivities through knowledge production (see Foucault 1998: chapter 5; Dillon 2005: 47). The idea of a single, essential and recognizable refugee experience leads to conceptualizing refugees as an experiential category. This categorization then gives states a way to implement their sovereign need to control the movement of people (for a different and more positive view see Khan 2004). Manageability comes through categorization, but categorization can also be the only means to guarantee the protection of refugees in the first place (Khan 2004: 196). This is the epistemologic underpinning of the expression "mixed and massive flows of migrants", which naturalises the governmental technologies of power and objectifies the refugee as a natural object of knowledge.

Etienne Balibar (1991) has posed a question on the existence of 'neo-racism'. Migration and refugee discourses – and the notions like flows of migrants – are seen to provide interpretative keys not on what individuals are experiencing, but to what they *are* (Balibar 1991). She then comes close to Malkki's notion of the refugee as a privileged source of knowledge in the (inter)national order of things. What does this then do to the task of protecting the refugees?

In the logic of refugeeism body plays on the intersectings between forced migration and the politics of citizenship. By producing and constructing the refugee as a type of migrant, bodypolitical discourses create categories and classifications, which then are followed by instituted sets of restrictions and rights. The right to protection comes only after the individual has been classified as a refugee. Here we are quite far from Hannah Arendt's idea of shared humanity (quoted in Benhabib 2004) as a basis for rights (comp. to Gorlick 2004: 92–93). If we are to consider the context of "mixed and massive flows" of migrants and its implications on the task of protecting refugees, we have to explicitly acknowledge the coming together of two different epistemological stances namely that of universal human rights and the principle of sovereignty. The idea of a shared humanity, and the ethical claims for the duty to protect all humans because of their humanity, fits rather poorly with the powerful logic of sovereignty.

If we instead of addressing the ontology that produces refugees, stateless persons and asylum-seekers, conceptualise "refugeeism", and the uncontrolled flows of migration to which it is allegedly connected, as a national problem, are we not heading to a dead-end in our discussions of protecting the refugee? At least we have entered the Foucauldian sphere where knowledge and power intertwine and become inseparable. There is no knowledge without power, and power has material consequences. The field structures the agents through the relations it imposes; but the field itself is not unchanging.

This said, the current centrality of the modern state in the task of protecting the refugee cannot be left unnoted. It is the field that most bluntly structures notions of agents and legitimate actors. The idea of the holy trinity of state-territory-population that the state tries to establish and maintain (Samaddar 2003: 58; Agamben 1998), has led to the conceptualization of spatialised identifications and identities. Underlying this philosophy is the idea of place and identity being somehow tied together, which in Malkki's (1995: 508) words, leads to "the assumption that to become uprooted and removed from a national community is automatically to lose one's identity, traditions and culture". The country of refuge is thus automatically made strange, and the refugee an *a priori* stranger in it. But is "home" an essentialised dot on the map, or something totally else; a place where one can feel secure and at ease? The politics of borders and boundaries lays the ground on which diverse spatial and spatialised discourses intersect and mix. The drawing of lines makes things familiar or strange (see also Samaddar 1999: 20–23). It is the line which tells us who is an 'Other'.

The politics of protection and the dimensions of violence

By now it might be useful to specify that I approach the issue of protection from a political point of view, not so much from the aspect of international humanitarian (refugee) law. Thus, it is *the politics of protection* with its connections to *the politics of citizenship* and *the politics of border*^[2], which are addressed in this paper. What is that boundary that needs to be secured and supervised when deciding on the politics of protection? And, who has the power/right to protect and give protection, and thus also to demand obedience? We cannot think of refugee protection without addressing the question of power and politics.

Giving protection to the refugee is in my view most of all a political task (comp. to Khan 2004: 194), for it is de-differentiable from the principle of sovereignty – here defined as the authority of discriminations^[3]. This authority is traditionally used by the state, but is not restricted to the state. According to Walker sovereign can be anyone who has the authority to make discriminations. The desire to manage and control migration has led the (Western) states to the creation of what Peter Nyers (2003: 1070) terms *deportspora* – an abject diaspora (on abjection see Kristeva 1982). The dynamism of mixed and massive flows has been met with the invention of a whole array of new ways of excluding. These ways have taken the sticky form of "safe third countries", "asylum shoppers", "anchor children", and other such stigmatizing notions that make it difficult to plea for one's right to protection (see Samaddar 2001). The state's ability – and the non-punitive nature of international law (comp. to Gorlick 2004: 99) – to decide who will be provided with protection is also a claim to monopolise the political (Nyers 2003). Refugees can notice quite quickly that by boundary-crossing they entered the sphere of the floating logic of protection, in which they are considered either as threats or as

victims, legitimate or illegitimate movers (see Malkki 1995: 518). Their lives become politicized to the extreme, while they themselves are depoliticized, moved beyond and above politics. The refugee has become or is made a *homo sacer* (Agamben 1998; see also Rajaram & Grundy-Warr 2004). Her life cannot be sacrificed, but she can be killed and disciplined by the sovereign (Agamben 1998: 71–74). Protection is ultimately about politics, about authority of discriminations.

This politics does not apply equally to all refugees. The gender dimensions of refugee flows and in the claims for a right to protection need to be taken into account. As noted before, the 1951 Geneva Convention, on the basis of which individual claims are estimated, gives rise to a certain kind of refugee experience. A refugee is one who has fled “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”. The Convention is thus better suited for protecting a certain kind of gendered refugee^[9]. Being persecuted for reasons of gender is, however, a threat many refugees face. But they have traditionally been left outside the politics of protection, if their claim for protection was made on the basis of gender.

Hence, the refugee situation is made complicated, for in it direct and structural violence^[10] intertwine and -sect. The act of flight can be caused by either direct or structural violence. Victims of direct violence can articulate their case more effectively in terms of the 1951 Convention, where the ‘rightful’ reasons to flight are outlined. Structural violence, which can also lead to displacement is more difficult in this sense. Nevertheless, the possibilities to “good life” and to the fulfillment of one’s hopes, wishes and identity are endangered. Galtung advocates conceptualizing violence as “*cause of the difference between the potential and the actual*” (Galtung 1969: 168, italics original). Violence is present when something that could have been avoided happens, that is “when the potential is higher than the actual is by definition *avoidable* and when it is avoidable” (Galtung 1969: 169, italics original). This definition of violence opens up important dimensions concerning the task of protecting the refugees.

Are those who seek refuge because of structural violence to be understood as refugees? In (im)migration discourses these refugee seekers are most often termed as “asylum shoppers” or if they are many “refugee flows” or “fluxes”. When is something to be considered as unavoidable in the spaces of the international? And what about the authority who has the power to decide upon the politics of protection? Structural violence can be present in this phase of refuge seeking as well, although it then takes on a slightly different form. It is not (only) the cause of flight – which can here also be direct violence – but, it is the violence embedded in the whole system. As it has been many times noted before, state-centricism is not well-suited with the discourse of humanitarianism^[11] or Arendtian “right to have rights” (see Benhabib 2004: 49–69 & Samaddar 2003: 54–55). Can it then be, that the failures to protect the refugees are in this particular system – or more specifically the *episteme* that gives rise to this system – unavoidable^[12]? The traditional and hegemonic idea of state-nation-territory still prevalent in international politics makes it difficult to find ground for refugee law and such principles of refugee protection that would be acceptable to all sovereigns who have the authority to implement border-control and decide about policy guidelines. Is structural violence embedded in this modern system already at the ontological and epistemological levels? If so, does this mean that if refugees are to be granted ethical and just treatment, the whole *episteme* would have to be altered? How likely is this, and where does it leave the refugee? Violence can be built into the structures as well, which would make it extremely hard in this particular context to surmount the impasse. For, as Galtung put it “[s]tructural violence is silent, it does not show – it is essentially static, it is the tranquil waters” (Galtung 1969: 173, italics original). But is there really any difference between direct/personal and structural violence in their effects on the individual? She may experience both types as *psychological violence*.

We are talking here about institutional modes of subjectivity production (see Radhakrishnan 1993: 761). Can anything change, if the site remains the same?

Any way out of the impasse? – methodological explorations

Seyla Benhabib has made pleaded for fitting the principle “No human is illegal” with “institutional and normative necessities of democracy”. She terms these necessities as “a form of government based upon public autonomy, namely that those subject to the laws also be their authors”. (Benhabib 2004: 221.) Those affected by policy statements should have a say in their making. An individual experience of refuge and fear does not as such translate to the language of politics, ethics or justice. But then again these dimensions should not be disconnected from (inter)subjective, lived experiences, either. Our being in the world, may “we” here mean citizens, refugees or human beings in general, is dialogical in relation to the world and to others who inhabit the world with us (Merleau-Ponty 1993: 83–84). But this is also a question of rights. Of the right to have rights. And again we must face the ontological problem embedded in the logic of protection, namely that the parties should “stand in a relation of reciprocal duty to one another” (Benhabib 2004: 58). This is “the duty to recognize one as a member and as a person entitled to the enjoyment of these rights” (ibid.). Being part of humanity should be enough in order to be recognized as a member, but here the politics enters the picture. The authority of the politics of protection and the subject of protection are not considered to be reciprocally related. According to Samaddar (1999: 44) “the notion of ‘rights’ is the notion of counter-power; the granting of rights is in direct proportion to exercise of power”. There is thus always a risk that the refugee seeker’s claim never meets with the authority’s level of consideration.

Even though individual experience *per se* is not a sufficient basis for regimes of protection, the ethical and moral *ought* should not be reduced to the political *is* (comp. to Benhabib 2004: 67, 143). Here we come close to Galtung’s notion of structural violence and to the persisting question of the limits of possible in refugee law and in international politics. Institutionalised international relations is already in itself tied to the notion of boundedness. Thus, in order to overcome the problems in refugee protection the link between territoriality, representation and democratic voice (see Benhabib 2004: 219) needs to be broken. The creation and introduction of more humane and ethical politics of protection requires the creation and introduction of new sites and logics of representation. Therewith, the focus should be moved to not what *people are* in relation to boundaries, but what *individuals are experiencing*.

The binding logic of the *lines* – be they borders, frontiers, boundaries, borderlines or limits – needs to be questioned. This does not imply that there are no lines. Neither is it a demand for open boundaries, but for the need to acknowledge and theorise refugee and

citizen as de-differentiable. The boundary not only separates them, but also connects them together – connects their fates together – and makes the boundary a lived one. We are all living boundaries, lines and borders, and in living we actualize them. This is then to be seen as a suggestion to try to break away from the notion of essential and objective lines, and to see the boundaries as porous, lived experiences.

If we are to better protect the refugee – and appreciate her as a unique individual and not treat her as a kind of person – then the epistemic principles giving rise to structural violence need to be addressed. The 'Othering' logic of the line and the otherness institutionalised in modern thought do not give much hope for the development of more just, ethical and humane discourses. And the refugee will remain in limbo. The question of "mixed and massive flows" of migration and its relation to the protection of the refugee is ultimately a power game. A game where sovereign power meets with biopower and body politics. This game activates the politics of border and thus shapes and changes our being in the world, may "we" be citizen-nationals or protection seeking refugees.

Through the stories and testimonies of individual refugee seekers the border is questioned; its excluding logic contested and experiences of flowing spaces and floating logics brought forward. The borderline is a dynamic and ambiguous (for this see Samaddar 1999: 52–55) concept, not a stationary one. Migration flows – and lived experiences of what *being a refugee* is in relation to how *the figure of the refugee* is produced – put also the traditional understandings of borders in flux.

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^[1] Canary Islands are located off the north-western coast of Africa (Morocco and the Western Sahara). They form an autonomous community of Spain. Another port of arrival for growing flows of migrants is the island of Lampedusa. Lampedusa is situated 205 km from Sicily and 113 km from Tunisia. Politically and administratively Lampedusa is part of Italy, but geologically it belongs to Africa.

^[2] This is the situation of early September 2006; the amount is increasing all the time. <<http://www.hs.fi/ulkomaat/artikkeli/Espanja+alkoi+karkottaa+laittomia+siirtolaisia/1135221631176>>, accessed 16th October 2006. In September for the first time also a group of Pakistani immigrants landed to the islands: since then asylum seekers and refugees from Asia have arrived to Lampedusa also.

^[3] See Ranabir Samaddar's "Deaths, Responsibility, and Justice" (2004) for an excellent discussion on the use of deaths in international politics.

[4] See Samir Kr Das's article "Wars, Population Movements, and States" for a discussion of the relationship between (historical) patterns of population movements and the state discourse. Here, the historical patterns are left untheorised although they play a central role in the context of "mixed and massive flows" of immigrants.

[5] Here I must first draw attention to the conceptual difference between *the figure of the refugee* and *being a refugee* (see Tyler 2006: 198 & Agamben 1994). This paper does not make clear difference between these two aspects, but rather tries to analyse how the figure and being can come together in lived experiences of refuge. To do this, I need to briefly go through the discourse that partly constructs the figure of the refugee, the two last chapters address more the intertwining of these two aspects.

[6] <<http://formin.finland.fi/public/default.aspx?nodeid=15348&contentlan=2&culture=en-US>>, accessed 15th October 2006.

[7] Paula Banerjee (2004) has addressed the politics of border and its relation to personal, lived experience.

[8] This point was made by R.B.J. Walker in his keynote "Out of line?", Critical Approaches to Security in Europe II – Constructing insecurity and the political, 29 September–1 October 2006, Tampere Peace Research Institute.

[9] In the original text gender as such was not considered to be a relevant factor in the refugee experience, or as a reason for flight. However, in conflict situations women's bodies are used as battlefields (Eduards 2003). Women are instrumentally used in order to weaken the morals of community by e.g. acts of rape, molesting and humiliating. These acts are powerful elements in the wider phenomenon of psychological warfare. The ramifications of these violent acts echo further into the future, as well. Women's bodies are a central factor in nation-building projects, and thus women can be feel threatened and compelled to flee, to seek refuge, even though this has not to do with the 'legitimate' reasons in terms of which one can be considered a refugee. (For a wider discussion on the issue see Hans 2003.)

[10] The term structural violence was first introduced by Johan Galtung in his editorial 1964 in *Journal of Peace Research*. In his article "Violence, Peace, and Peace Research" (1969), he develops his argument further. The notion of structural violence is tightly connected to the historic patterns of migrations, and thus also on the rhetoric of migration flows.

[11] I am a bit cautious to use the term for its connotations. Especially in the western humanitarian discourse the tradition bears a heavy burden: it is often connected with imperialistic attitudes and to the victimization of "the Other" with the consequences that the western subjects secures itself a place in the centre, and negates others their quest for agency (see e.g. Spivak 1988).

[12] Again this raises an epistemological problem: can we talk about violence when nobody is committing violence, i.e. acting, or when the violence is unintended? Galtung's theory of structural violence, however, is based on an affirmative answer to this question; violence where an actor is missing is structural, and this kind of violence can just as well as direct violence lead to individuals being hit and hurt (Galtung 1969: 170–172).

Discuss with the help of case studies the various elements involved in the "right to return" and argue in the context of those elements if the right to return can be considered as a substantive one or otherwise.

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Right to return is regarded as an inalienable right endowed on a refugee. It reflects a belief that members of an ethnic or national group have a right to immigration and naturalisation into the country, or both consider it to be that group's homeland, without prior personal citizenship in that country. The Universal Declaration of Human Rights (UDHR) Article 13 also states "everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own and to return to his country. Providing laws to tackle an issue doesn't necessarily mean that the problem has been resolved. The UN definition of right to return is itself embroiled in ambiguities. Article 13 when suggests 'state' and 'country' is it meant to be one and the same or are they hinting at a political entity and a geographical landmass respectively. Secondly when the article refers to as 'his own' we are faced with a new controversy. The present day nation states are based on the theory of citizens and aliens, the 'we' and 'they' phenomena. Simultaneously it insists on safeguarding its physical boundaries through the conceptual framework of sovereignty. For eg. when we consider the case of India would it offer a Pakistani or Bangladeshi the right to return on the basis of Article 13's claim of 'his own country'.

India defines 'Person of Indian Origin' (PIO) as a person living outside of India and without Indian citizenship, but of Indian origin up to four generations removed. It is available to persons of Indian origin anywhere in the world as long as they have never been citizens of Pakistan or of Bangladesh. This phrase violates Articles 13 because technically a Pakistani and Bangladeshi were originally Indian, considering their citizenship in pre-partitioned India. To stretch the issue still further one may ask as to "Who is then a national?" It is largely acknowledged that we are in someway or the other ourselves refugees. Then why debar a few unfortunate people from acquiring citizenship of the nation they wish to belong to.

Considering the issue of refugees and the right to return with special reference to South Asia one has to remove it from the shadow of partition. Regrettably that's the most difficult task, as the impact of violence and strife during the period of formal laying down of boundaries had a deep impact on the psyche of the nationals of the then created nation states of India and Pakistan. Even today people carry the baggage of the past and treat the borders as permanent lines drawn to secure the citizens within it and debar entry of aliens. The government of the day also finds it convenient to propagate on the similar line. Here I agree with Paula Banerjee that the borders are the present that have never been the past their permanence is only in state sponsored discourses. There is no history of borders and it is natural for those living around it to cross it, thus the borders have been naturalised.

These artificial boundaries are fall out of the colonial rule. Supplementary to these physical borders is the deep-seated xenophobic attitude towards the other religion. The South Asian civilisation is endowed with both centrifugal and centripetal forces. If culture is the unifying force then religion is the divisive force. The colonial repercussion on South Asia has been the whimsical lines drawn on the map by the colonial masters called '*borders*' and creation of antagonistic neighbours out of civilisational entities. The carving out of the states of the Asian subcontinent was the most violent and till date lives in the memories of its inhabitants. This bloody history perpetually haunts the rational mind and makes humane thinking impossible. Hence India partially accepts Article 13 and allows everyone the right to leave his or her country, but the right to return is restricted. The nationalist parties in India acknowledge and accept the right to return to Hindus persecuted in Pakistan and Bangladesh, but the same right is stringently denied to a Muslim from these countries. While the contemporary discourse of the world is globalisation and liberalisation enabling free flow of goods and services the movement of human being is restricted. The West acknowledges the benefits of a borderless world and is slowly moving towards it, whereas the South Asian states are still faithful to the Treaty of West Phalia and the segregation of nation states by rigid boundaries and centralised sovereignty.

The theory of a nation state creates the concept of national and alien. The UDHR Article 12, paragraph 4, does not distinguish between nationals and aliens. Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his country". The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is nationality acquired at birth or by conferral, it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien.

The International Court of Justice in the *Nottebohm* case addressed the issue of nationality; the criteria that it sets forth are the most comprehensive. It says:

"Different factors are taken into consideration, and their importance will vary from one case to the next. There is the habitual residence of the individual concerned but also the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children etc."

Thus a "genuine and effective link" to ones "own country" can be composed of various elements, including language long-term residence, cultural identity, family ties, etc. the right to return is not restricted to nationality in the formal, or *de jure*, sense. One's "own country" implies a broader set of ties and connections that together make up "a genuine and effective link" as defined in the *Nottebohm* case. It allows for those outside their own country to return for the first time, even if they were born elsewhere and would be entering for the first time so long as they have maintained a "genuine and effective link" to the country.

The case of Pakistani national desirous of returning or visiting India can be considered with reference to "genuine and effective link" to ones "own country". But India has prohibited the right to return to these members. In fact getting even a visa itself is a tedious and cumbersome procedure. It is important to note that under the ICCPR the right to return does not depend on a person's status as a refugee. Every individual who has maintained "genuine and effective links" with the territories in question should enjoy the right to return, regardless of whether he or she is a refugee that is someone who fled persecution. The *Mojahirs* stranded in Bangladesh plead the case of statelessness. They claim "genuine and effective links" with Pakistan and are desire to go back. Statelessness is a highly complex legal and often political issue. It has serious humanitarian implications for those it affects, including no legal protection or the right to participate in the political process, poor employment prospects, little opportunity for property, travel restrictions, social exclusion, physical violence and inadequate access to health care and education. Stateless people are essentially international orphans.

The 1954 UN Convention relating to the status of stateless person's identifies a stateless person as someone who does not have the legal bond of nationality with any state. Unlike refugees and internationally displaced persons stateless persons generally do not benefit from the protection and assistance of governments, aid agencies and the UN. The 1961 Convention on the Reduction of Statelessness is the only international instrument, which outlines specific ways of identifying a person's nationality. International laws are teeth less in their implementation and this can be clearly seen in the laws with reference to stateless people. The UNCHR has not been able to compile statistics on stateless people because their nationality is often disputed, the concept itself is ambiguous, reluctance of government to admit the existence of such people in their country and more so have no desire to collect information on these people.

The tragedy of *Mohajirs* in Bangladesh (popularly known as *Biharis*) is that they are invisible to the world outside Bangladesh. That's usually the case with stateless people, their struggle is long drawn and the patience and sympathy of the

world has exhausted by then. And they continue living in an abyss as forgotten people. The Biharis are originally from Bihar a state in India. The residence of the Biharis in present-day Bangladesh is the result of the 1947 partition of the Indian subcontinent and the creation of India and Pakistan. Around one million Biharis migrated from India to East Pakistan at that time. The Biharis share a common religion with the majority Muslim population. However, they speak multiple languages including Urdu and Bengali and have different social customs than the dominant Bengalis. The Biharis were a skilled workforce who could speak Urdu, the official language of Pakistan, and thus they were able to fill key bureaucratic and private sector positions in East Pakistan. The oppressive domination of West Pakistan against the Bengalis in East Pakistan resulted in hostility against the Bihari community. During the East Pakistani struggle for independence in 1970-71, the Biharis sided with West Pakistanis and some Biharis joined armed movements to support them.

Following the creation of Bangladesh, clashes between the Biharis and Bangladeshis ensued. The Biharis were stripped of their properties, several thousand were jailed, and the majority were to reside in camps in urban centres. The Biharis chose to move to Pakistan, as their cultural ties were closer with the West Pakistanis. Pakistan's initial agreement to the repatriation of these Biharis was soon curtailed due to certain developments within Pakistan. The Biharis are primarily Urdu-speakers like the Mohajir community that resides in Pakistan's Sindh province. Violent disputes between the Mohajirs and the Sindhi-speaking population in Pakistan led the Pakistani government to fear that any future repatriation would tip the balance in favour of the Urdu-speakers and spark further violent unrest in Sindh province. As a result, successive Pakistani governments have shown a great deal of reluctance to accept Biharis as citizens. The Stranded Pakistanis are at risk as they are subject to discrimination; they are disadvantaged due to past discrimination.

The Biharis are considered as stateless as most have neither Bangladeshi nor Pakistani citizenship. As a result, they are denied basic political rights such as the right to vote and recruitment to the civil service, police, military, and political office. These political restrictions severely limit the group's economic opportunities and continue to perpetuate their poverty and under representation. Most Biharis are still seeking repatriation to Pakistan. It is also unclear whether the Bangladesh government is willing to accept them, as talks have been held between the Bangladesh and Pakistani government on the issue. Economic concerns are also a major issue as their lack of citizenship restricts the types of employment they are able to obtain. The Bangladesh government has largely been indifferent to the plight of the Biharis while also continuously pressing Pakistan to repatriate them.

The Mohajirs do not fit the standard definition of refugees of United Nations High Commissioner for Refugees (UNHCR). The countries they claim as their own do not accept them as their citizens. They have been stateless for the last three decades and are the creation of state formation in South Asia. Though the 1948 Universal Declaration of Human Rights asserts, "everyone has the right to a nationality" Bangladeshi Biharis are citizens of nowhere. They pass their days worse than refugees because they did not leave their country: their country left them.

The lack of education, combined with an already impoverished economy, provides little opportunity for employment inside or outside the camps. Most of them work as daily wage labourers. Although they find jobs in the private sector they are unable to hold official government jobs. They are socially ostracised. Women and children are the most vulnerable as they are allegedly targeted by sex-traffickers. Life in these camps is totally insecure. Over the years they have become centres of criminal activities and lawlessness. The condition of Biharis worsened further when they lost their government-subsidised food aid. Besides they face the problem of forced eviction from the camp.

Two generations of Mohajirs now live in camps. The older generation still longs to return to Pakistan, but for many of their children, Bangladesh is the only home they have ever known. Over the last few years, the younger generation has begun pushing for citizenship in Bangladesh. In the spring of 2003, a high court ruling in Bangladesh allowed 10 Biharis to assume Bangladeshi citizenship with voting rights. For many it was the first true sign of hope for a future outside the camps. The struggle today stands divided today between the old and the young generation, one group demanding repatriation to Pakistan and the other demanding citizenship of Bangladesh. There is a serious dilemma here, which needs to be addressed. The right to return granted after decades to those demanding it may not hold any connotation especially to the younger generation who are born in the country where their older generation were stranded. Even if allowed to return to their so-called country today, do they really have genuine and effective links with it? Many of them may not have ever been to this country to which they have been struggling to return. What is in store for them in this new country even if they are allowed to return? If they again face discrimination in this country they would then have to wage yet another struggle either to return once again to Bangladesh or for their rights in Pakistan.

As per International Law of compensation to a refugee if a former home no longer exists or is occupied by an innocent third party, return should be permitted to the vicinity of the former home. As in the case of all displaced people, those unable to return to a former home because it is occupied or has been destroyed, or those who have lost property, are entitled to compensation. With regards to Biharis they have never been to Pakistan and if at all they had any property that must have been in the Bihar, which is in India. So even when repatriated to Pakistan they would yet again be accommodated in a camp. Thus the right to return in case of the Biharis in Bangladesh or any other category of stateless people if not granted in time may become meaningless. Justice delayed is justice denied. Ideally each displaced person needs to be given three options: local integration, third-country resettlement, and voluntary repatriation. No government can violate the right to return. Only individuals may elect to exercise it.

Major displacement internally as well as across borders has occurred in the South Asian region for over half a century. Each category of group displaced has its own story to tell. But whatever may have been the cause of the displacement it needs to

be addressed in a humane manner. Asians being emotionally attached to their motherland crave to return. But the creation of borders have actually closed doors to any movement of even those who had to leave the nation due to well founded fear. The need of the hour is to change the western notion of nation and rebuild a new nation theory, which is more accommodative to the present times and South Asia specific. No longer is it possible nor can any nation claim to possess a homogeneous population and to strive to achieve it is a utopian idea. We need to accept that pluralistic societies are here to stay and we better accept this or get ready to face an many more refugees and stateless people.

The South Asian region is unique in many respects hence to apply rules generally acceptable to the West cannot work in the subcontinent. Moreover the theories of nation states have outlived its purpose and need to be revamped to suit the problems faced by the region. The experience of India and Nepal to provide free access to its citizens can be replicated with other SAARC nations. If the European Union can work why not a Union of SAARC nations. As Dr Samaddar suggested in his article "No-where People on the Indo-Bangladesh Border" maybe an introduction of a liberal visa regime; a work permit for the entire zone which should be regarded as a common market: introduction and encouragement of border trade: a democratic management of the border etc. can help bring the region together. But this may not be as simple because to forget the past is the most difficult task for those who have lived through the birth pangs of the creation of nation states in South Asia. Moreover the sheer size of India against the other members may bring in the hegemony theory, which may mar the process.

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<%'-----Madhumita Sengupta -----%>

Prepare and present a fact sheet of newspaper reports (4 pages) on an event or topic related to any of the four themes mentioned in the title of the module and show thereby how a refugee situation or that of internal displacement is created.

Madhumita Sengupta

The event in question took place in 1979 in Assam, at a time when the Assam Movement led by the All Assam Students Union (AASU) and the Assam Gana Sangram Parishad against immigration from neighbouring Bangladesh, had just begun. A Bardoloi Trophy football match between Bangkok Port Authority and East Bengal in Guwahati led to a series of events that had serious ramifications for the already strained relations between the Assamese and Bengalis in Assam. Massive show of support for the visiting team and snide remarks against East Bengal by a section of the spectators at the stadium drew provocative gestures from Ulganathan of the East Bengal team. The crowd reacted strongly, culminating in the trophy being carried off to the Gauhati University. This was followed by attacks on Bengalis in several places in the city including an assault on a bus carrying students of the Gauhati Engineering College leading to the death of a student who succumbed to his injuries. Too young then to understand the implications of these incidents, I could, however, sense the fear psychosis generated by the latter. What affected me most was the brutal assault on one of our neighbours- a lad belonging to a resident Muslim family of our locality- who was beaten up by a group of local Assamese youth.

Years later, I would ask myself why Bengalis who had been residing in Assam for a long time were targetted by alleged supporters of a movement that claimed to oppose immigration. Incidentally Assam had already witnessed an anti- Bengali Bongal Kheda movement in 1966-67 in course of which resident Bengalis had become targets of sporadic violence. Clearly, immigrants or 'foreigners' and residents had come to be identified as one by at least some because of their common linguistic background. I seek to relate this incident with internal displacement for the simple reason that it was cited, among other factors, by my father, and many of our acquaintances for justifying their migration to West Bengal after years of residing in Assam. The ethnic Assamese could not be trusted any more. I personally know several families who reluctantly took the decision to relocate in West Bengal after their retirement, citing among other factors, deterioration of career opportunities for their children owing to alleged discrimination against people who were not ethnic Assamese. As it is, in the wake of the country's independence, the electoral majority of the Congress had helped the Assamese middle class to corner the best jobs and other opportunities provided by the state government. In fact, over the years there has been a steady

migration of Hindu Bengali families out of the state. Although I cannot back my claim with statistical evidence, what enables me to make such a statement is my personal acquaintance with many such people who chose not to 'risk' staying on in Assam. As for myself, I remember the heartburn my father's decision caused. I simply did not want to be removed from the place where I had been born and brought up. I felt rootless in Kolkata. Unfortunately, in the Assam of my childhood, xenophobia had taken a strange turn and ended up targeting people who were not immigrants judged by the definition the AASU was insisting upon.

There was a time when xenophobic reactions of the kind referred to constituted a regular feature of life in Assam. Such tendencies persist even today. The state also witnesses ethnic violence perpetrated by members of a dominant community against an immigrant community even when such immigration and settlement by the latter have taken place in the distant past. Some such incidents belonging to both these categories reported in the print media should provide an idea of the magnitude of the problem- one that has now become complicated on account of organised resistance, often in the form of counter attacks, on the part of the victims.

News Paper Reports

Small traders bear attack brunt (Statesman News Service; Oct.19, 2006)

StatesmanNewsService

GUWAHATI, Oct. 19: As the peace initiative stands deadlocked violence and killings have come back to disrupt normal life in Assam. The common men and especially the small time non-Assamese traders are bearing the brunt of Ulfa belligerence.

Guns of the Ulfa militants and security forces started booming again, especially in the militants stronghold in Upper Assam since 22 September when the security forces resumed anti-Ulfa operations. Earlier, the Centre had decided against extension of unilateral truce granted by it since 14 August. The Ulfa has killed at least 10 persons including a policeman, a tea executive, a boy, three small traders and four surrendered militants besides injuring several civilians and security personnel and detonated at least 15 bombs since the resumption of Army operation on 22 September. Twelve of these bomb or grenade attacks were targeted at policemen, Army and police stations.

The security forces have intensified operations against the militant group. So far, at least five Ulfa ultras — Mohipal Moran, Bitupon Bora, Sisuram Saikia, Debojit Konwar and another in Dhomdhoma, Nalbari District — have been shot dead by the Army and police. Two bomb carriers — Gautom Kalita and another at Bongaigon — died in accidental blasts in since 22 September. Police and Army have busted two Ulfa camps inside bordering Arunachal Pradesh and killed two Ulfa ultras. Six Ulfa militants including four cadres were apprehended by the security forces and Prasanta Gohain, a close aide of the Ulfa commander-in-chief Paresh Baruah surrendered before police at Dibrugarh.

The Ulfa has made life miserable for small traders in sub-urban areas through extortion demands. It has especially put non-Assamese businessmen under pressure. Since 22 September, Ulfa killed three traders including two Marwari grocers. The Ulfa warned to intensify their "movement" if the Army continued to perpetrate "atrocities" on the people in the name of anti-Ulfa operations.

In an article published in the latest issue of its mouthpiece Freedom, the Ulfa said that re-launching of operations against it by the Unified Command, a three-tier counter-insurgency structure comprising Army, police and the administration, had dimmed chances of resumption of the peace process between the outfit and the Centre.

Ethnic violence worries Cachar tea industry (Statesman News Service; April 7, 2006)

April 7. — The tea industry in Cachar, southern Assam, hit by recession and insurgency, now fears a possible "spill over effect" of ethnic clashes in the districts.

Last week militants drove out Dimasas from Mazertuk village. They spent the night at the Pathemara Tea Estate's Nagadum division, while the workers stayed inside the factory. Some labourers were roughed up by the militants.

A tea industry official said the militants even fired in the air before they left. "There could have been trouble if any labourer got shot," he said. There are many gardens in the "conflict zones" and if such clashes continue workers will be affected.

Mr Junio Jagoi, assistant manager of the Bicrampore Tea Estate's Koorcoorie division, was abducted on 1 April by suspected NSCN-IM militants.

A few newspapers had reported that the abductors had demanded Rs 60 lakh as ransom. Mr Jagoi remains untraced. His was the second abduction this year. In February, the assistant manager of Jatinga Valley Tea Estate was abducted. He was released after a week. It is not known if any ransom had been paid.

In the last few years, at least 35 tea garden staff or their kin, including a three year-old girl and a woman, were abducted and later released. Six were killed.

On recession, the official said: "Over the last five years the average price of tea has dipped by over Rs 22 a kg while the production cost has increased by over 38 per cent."

Three hurt in Guwahati blast (Statesman News Service; May 24,2005)

Statesman News Service

GUWAHATI, May 23. — Three persons including a CRPF jawan were injured when suspected Ulfa militants triggered a blast on the railway track outside the Guwahati refinery of the Indian Oil Corporation Limited around 8:30 a.m. today creating panic in the state capital.

The operation in the refinery, however, was not affected by the blast. Police have launched a combing operation and set up numerous check points, along the city roads.

The sparsely populated area within the vicinity of the refinery has been a happy hunting ground for the Ulfa militants who detonated several blasts in the past. Recent spurt of violence has been witnessed in Assam following outfit's displeasure over the delay on part of the Centre to respond to peace overtures initiated by noted litterateur Dr Mamoni Raisom Goswami.

Chief minister Mr Tarun Gogoi had last week told the media that a formal letter from the PMO to be sent through Dr Goswami was being readied and hoped that the outfit would come forward for talks. Mr Gogoi, who claimed to have restored normalcy in the state during the last four years of his tenure, visited the ancestral house of Ulfa C-in-C Paresh Barua in Dibrugarh and the aged mother of the rebel leader.

Assam bandh partial (Statesman News Service; May25, 2005)

DIBRUGARH/GUWAHATI, May 24. — Sporadic incidents of violence marked the 10-hour Assam bandh called by the All Assam Minority Students Union (AAMSU) today in protest against "harassments" meted out to the people from minority community in Upper Assam on the pretext of imposing economic sanctions on Bangladeshi immigrants.

More than 500 members of the minority body were arrested for disturbing normal life. Barring some minority areas in Nagaon, Dhubri, Goalpara, Barpeta districts, life was normal in rest of the state. The bandh was opposed by the BJP, RSS and the All Assam Students Union (AASU).

Meanwhile, Chiring Chapori Juba Mancha (CCJM), the organisation, which allegedly forced foreign nationals to quit Dibrugarh recently, claimed today that it was not affiliated to any political party.

Some parties were "trying to malign us to disrupt the age old unity and integration of the great Assamese composite society and are trying to mislead people," CCJM spokesperson Mr Anup Kumar Gogoi said. He said the objective of the organisation was to deport illegal Bangladeshis and not the Indian citizens. — SNS & PTI

[NDFB](#) terrorists massacre 22 civilians after dragging them out of their houses in Datgiri village, Kokrajhar district.

July 14: Suspected NDFB terrorists massacre nine tribals at the West Maligaon forest village relief camps, Kokrajhar district.

April 5: NDFB terrorists kill five tribals at Hatiphuli relief camp in Kokrajhar and another at the relief camp in Tongsi, Dhubri district.

2001

June 3: 10 tribals are killed by suspected NDFB terrorists at the Lungsung Reserved forest area.

2000

December 31: Four Hind-speaking persons are killed by suspected UPDS terrorists at Disobai forest in Karbi Anglong district.

December 28: Eight persons from the Hindi-speaking community are killed by suspected UPDS terrorists at Ranganagar village in Karbi Anglong district.

December 7: 28 Hindi-speaking traders and farm workers from Bihar are killed by suspected ULFA terrorists near Sadiya.

November 30: 22 persons -- a majority of them non-Assamese, including eight Bihari truck drivers – are killed in three separate massacres in the Bongaigaon district.

November 8: Eight civilians, including seven of a non-Assamese community, are killed by suspected NDFB terrorists in Barpeta district.

1998

December 12: Bodo terrorists kill 23 Muslim settlers in Kokrajhar district.

October 11: BLTF terrorists kill 13 Assamese and Bengali-speaking people in Darrang district.

1996

May 23: Violent clashes between Bodo terrorists and Santhals leave more than 80 people dead in Kokrajhar and Bongaigaon districts.

1994

May 27 - July 27: Bodo terrorists carry out large-scale attacks on non-Bodos, leaving more than 100 people dead and over 60,000 homeless.

1990

May 9: ULFA terrorists kill Surendra Paul, a leading tea planter, causing many tea estate managers to flee the State.

Xenophobia and Forced Migration

Bengali Hindus trying to migrate to neighbouring West Bengal constitute a typical case of internal displacement. Unfortunately, however, most of the victims are not as fortunate and as the reports quoted above show, most are forced to live in relief camps, which hardly provide any relief worth the name. In all these cases fear for life drives these victims of organised xenophobic reactions on the part of the ethnic Assamese or tribal groups such as the Bodos and the Dimasas in Assam to flee their homes and take shelter elsewhere, thereby adding to the number of the internally displaced. According to a BBC News Report,

"...Tens of thousands of Bengalis, Hindus and Muslims, were displaced all over Assam in violence unleashed during the 1960s and 1970s, particularly during six years of agitation led by students and youth groups upset by migration from neighbouring Bangladesh.

Thousands died in the riots during the agitation between 1979 and 1985 - almost 2,000 in the village of Nellie alone. <

Delhi signed an accord with the All Assam Students Union in 1985 to bring the agitation to an end.

However, ethnic conflicts erupted elsewhere in the state - mostly in areas settled by indigenous tribes people like the Bodos.

The Bodos resented Assamese domination and the loss of land to settlers ranging from Bengali Hindus and Muslims to Santhal and Oraon tribesmen who were brought from central India as cheap labour for Assam's tea estates in the 19th and 20th centuries.

As armed Bodo groups pressed for a separate state, the settlers became targets of attacks.

Hundreds were killed by Bodo rebels and nearly a quarter million people fled into makeshift camps to save their lives.

"At the peak of the Bodo armed movement, Assam accounted for nearly more than half of India's population of internally displaced," says Sanjib Baruah of the Centre for Policy Research in Delhi." (Assam's paths of violence, by Subir Bhaumik, BBC News, Guwahati)

The complex relation between xenophobia and forced victimisation can best be indicated through a concrete example. In the subsequent pages I have tried to show how the colonial situation actively fostered xenophobic tendencies in Assam and how the failure of academia to engage with the issue resulted in the persistence of these tendencies into the post-colonial period- a factor that explains acts of violence against resident Bengalis.

It has been rather common to ascribe assaults on resident Bengalis and Muslims to aberrations of mob frenzy in the wake of unrestrained immigration. While this is quite likely, my explanation for what happened in Assam is slightly different. I would argue instead that in Assam old feelings of distrust between the two communities were exacerbated by the renewed flow of immigrants. In other words, in such a paradigm, pre-existing feeling of distrust is as important as the practical reality of immigration. In fact, in the case of Assam, such feelings have been institutionalised, by which I mean that they have found their way into acknowledged histories on the formation of Assamese identity. This is serious, for unless it is rectified, it keeps alive perpetually the threat to the hapless non-ethnic Assamese residents of Assam, in this case, the Hindus and Muslims of Bengali descent. Academic perceptions must change also because the academia can play an important role in the formulation of public opinion. By way of substantiating my argument, I am providing below a brief overview of the current historiographical approach to the question of the formation of the Assamese identity in the late nineteenth century and its rather unfair treatment of the role of the Bengali immigrants as stimuli, a view that must be rectified for improvement of relations between the two communities.

The British province of Assam was a multi-ethnic region. It was home to peoples speaking a variety of languages and dialects such as Assamese, Bodo, Mising, Karbi, Manipuri, Garo and Rabha. While these languages are considered as 'indigenous', there are other language groups such as Bengali, Hindi, Nepali, Oriya and Santhali, which are considered 'non-indigenous' by contrast. After its annexation in 1836, Assam was made a part of the British province of Bengal. The latter encouraged immigration into Assam from neighbouring

Bengal. This was followed by the imposition of Bengali as the official language of the province. The need to induct outsiders into Assam first arose apparently owing to the acute manpower shortage in Assam, the problem being magnified by the demand for labour coming from the tea plantations. The easy availability of educated personnel from Bengal and the consequent redundancy of building an expensive educational infrastructure in Assam encouraged the employment of Bengalis in government offices. From the 1850s onwards there was a strong reaction against the decision to impose the Bengali language and demands were made for introducing Assamese as the official language of the region. It was claimed that Assamese alone could legitimately claim such a status. The government responded to the mounting pressure by revoking the earlier decision and Assamese was accorded due recognition in 1873. In the same year Assam was also given the status of a Chief Commissioner's province. While these decisions were highly appreciated, the subsequent decision in 1874 to include the Bengali speaking district of Sylhet in Assam on administrative grounds, caused immense resentment for it further increased the number of Bengalis in Assam. From the 20th century onwards the government encouraged immigration from overpopulated East Bengal to work the cultivable wastelands with an eye to increasing the revenue yielding capacity of the province. Having first settled in the jungle infested riverine belt, the Mymensinghians as the immigrants were popularly called, gradually spread out to claim areas held by the autochthones. Being better cultivators they could offer higher prices to induce Assamese peasants to sell off portions of their land holdings. This gave a fresh impetus to identity politics in Assam, which continued unabated although with varying fortunes, and with varying relationship with the ongoing national movement.

Current Historiographical Approach

The movement for an Assamese identity is explained, first and foremost, as the outcome of the Assamese fear that they would be turned into a minority in their own land. According to some scholars, the actual reason was economic-i.e. an attempt to put an end to competition from the immigrant Bengali Hindus who competed with the dominant Assamese middle class for land, jobs and local power. The other factor that is almost invariably cited as having played a crucial role, was the chauvinistic attitude of a section of the Bengali community in Assam. It seems that well-placed Bengalis often appeared to endorse the colonial rulers' line of neglecting Assam. Apparently, since the common man often confronted the government in the person of the petty Bengali official, he often felt a blind resentment against Bengalis in general. Some scholars also highlight the ruthless attitude of the Bengali functionaries of the imperial administration as well as the latter's supercilious outlook in considering the Assamese as a subordinate and inferior people. It is pointed out that in 1836, when Bengali was introduced as the official language, Bengali subordinates helped Henry Hopkinson, the Commissioner of Assam, argue that Assamese was a mere variant of the Bengali language.

Interrogating Existing Historiography

I have certain reservations about these arguments. While I am willing to concede that the high-handed attitude of a section of the Bengali population in Assam possibly added fuel to the smouldering fire of Assamese outrage, my research indicates that the growth of an ethnic movement is a much more complex issue than the way it has been portrayed. Let me elaborate. One need have no dispute with the claim that the pre-1873 outrage of the Assamese was both cultural and economic. But in that year Assamese was reinstated as the language of education and the courts. One naturally expects language to move lower down in the hierarchy of issues in the subsequent stages of the ongoing 'ethnic' struggle now that it had received official sanction and its status was no longer at stake. Language, however, continued to occupy center-stage. It has been suggested that the language question was kept alive by the inclusion of Sylhet in 1874. The English educated Sylhetis were apparently monopolizing government jobs to the annoyance of the newly emerging Assamese middle class. While it is not difficult to understand both the cultural and economic implications of this decision, one cannot help noting that the grievance here is more likely to be an economic one especially in the light of the removal of Bengali as the official language. However in reality, the subsequent stages of the identity movement in Assam were primarily language centric. While one can appreciate attempts to develop a rich literature in Assamese, it is not easy to explain the rather militant tone of this effort. One cannot help noting that fighting for the language would not have safeguarded the economic interests of the community, which ought to have been the chief concern. It is true that fighting for the recognition of one's language is also integral to a community's economic interests. However, post 1873, the nature of the 'threat' had shifted out of the ambit of the language, which now need not have been invoked to solve the demographic transformation. Thus the cause and effect relationship between the inclusion of Sylhet and the growth of linguistic nationalism in Assam is not clear.

Moreover, for a people to be antagonised by an assault on their language, prior existence of community consciousness (in this case the sense of belonging to a linguistic community) is essential. We cannot however argue in favour of the existence of this kind of a community consciousness in Assam prior to 1836 because it has been seen that from 1836 when Bengali was introduced to 1853 there was no perceptible reaction against the decision. The protest came up loud and clear only in 1853 when an official inspection was being carried out.

Actually, the premise underlying these claims is that an Assamese community existed in a nascent state prior to 1836, and that it was the imposition of Bengali that caused a moral outrage and consolidated the sense of peoplehood. I beg to differ from this line of argument. It is my proposition that,

a new linguistic community was consciously forged in the nineteenth century, and that the emergence of this community signalled the disintegration of pre-existing ethnic boundaries.

Actually, towards the later part of the nineteenth century, two events happened simultaneously. Firstly, there was a widening of the parameters of the ethnic Assamese identity, which came to be defined in terms of language alone. Secondly, the public identity of the entire region was consciously defined in terms of the Assamese language, which was the language spoken by the dominant community and the only language of the region with a proper script of its own, but, by no means, the language common to all the natives of this place. The act of defining the public identity of this heterogeneous province in terms of a single language tantamounted to forging a composite identity by deciding on a common marker of public identity. This composite identity went by the name of Assamese identity, the name of the dominant community of the region.

Justification

In support of my first point, regarding the widening of the parameters of the ethnic Assamese identity, I would like to cite recent research^[1] which indicates that during the period under discussion the very exponents of a linguistic identity i.e. urban middle class Assamese intellectuals themselves began to verbally privilege yet another cultural symbol unique to them. This was their religion- i.e. Vaishnava Hinduism. It seems that an influential section of the Assamese intelligentsia who stressed the polyethnic nature of Assamese society, at the same time felt that it was the Hindu, and particularly the Vaishnavite faith, which served as the main cementing force of Assamese society. However, in public expression the term 'Assamese' was used to refer to the composite society of the whole of British Assam, knowing fully well that this region was also religiously diverse.

What this implies is that these men believed in the existence of a core group of true or legitimate Assamiyas within the bigger composite community. In other words, hidden beneath all the 19th century rhetoric about a multi-cultural identity was the firm belief that the Assamese identity was not an inclusive one, i.e., certain cultural parameters defined the contours of the community. Those not conforming to these markers were not accepted as true Assamiyas. While one parameter was definitely the Assamese language the second was the Vaishnava Hindu religion. However, the Assamese language was given wide publicity and insisted upon as the basis of Assam's composite culture, while the second one was also acknowledged as integral to the 'Assamese' community, but not highlighted in connection with the public identity of the province. In this connection, it must be noted that Assamese had been the language of communication among the different ethnic groups in the pre-colonial period and therefore enjoyed a degree of familiarity in the region.

Questions

My paper will remain incomplete if I simply relate what happened without stating why I think this happened. Here let me point out that in the case of the ethnic Assamese identity, it is not possible to take its evolution as usual and therefore not worthy of being mentioned, for the simple reason that it was too serious to have happened naturally. One is naturally tempted to ask why there was a widening of the parameters of the ethnic Assamese identity with its original emphasis on both language and religion? It is evident from numerous statements made by these men (which I cannot quote for want of time) that the forging of a composite identity did not come naturally to them and that they were not happy with having to sacrifice their other, and perhaps dearer, cultural symbol, i.e. religion. What then was the historical compulsion that forced such a decision on them in the later half of the nineteenth century, and made them go through a process of conscious selection and choice in deciding a common marker of identity? More directly, why was the creation of a composite identity so essential at this stage? More importantly, how did the vision of an Assamese Assam emerge- a vision that insisted that multi-ethnic Assam should be defined in terms of the Assamese language alone? It could not simply have been a case of a dominant community imposing its cultural symbols on the rest of the people for the sole reason that there would then be no selection of identity markers to account for either. Both the symbols would have been available for imposition. It is this selection that prompts us to think that a composite identity was forged deliberately but not spontaneously. At least, even if we grant that there was imposition involved it was at least not solely that. In fact, what seems to have happened was that the selection of markers of identity by Assamese intellectuals in the 19th and 20th centuries leading to a complete transformation and, subsequently, disintegration of the previous identity markers. In other words, what I am proposing is that a new community emerged in Assam in the 19th century with a predominantly, although not yet exclusively, linguistic identity. I do not regard this community as a so-called 'ethnic group' or 'ethnie' for if such a thing existed, then this could only have done so with a character quite distinct from the way it is perceived by available literature. Contemporary studies, on the other hand, regard the Assamese identity of the 19th century as an 'ethnic' one and vouch for its existence in a somewhat nascent state even prior to the 19th century. It is, however, my conjecture from the foregoing literature survey that the emergence of a linguistic community in the 19th century was something entirely novel and that it synchronised with the politicisation and disintegration of specific ethnic boundaries in colonial Assam.

It is my proposition that the colonial situation provided the context for articulation of identity in terms of language. I feel that missionaries in Assam played a vital role in this regard, by imparting the as yet undefined community a linguistic identity. The Assamese identity was thus a nineteenth century phenomenon, brought

into being in a colonial context where both the Christian missionaries and the colonial state constituted active mediators. Once in place, the notion of the Assamese language as the basis of a composite identity, appealed to the urban ethnic Assamese intellectuals, in a situation of mounting pressures and complications following in the wake of coloniality. Their actions were determined to a large extent by their inability to cope with a situation in deciding which, they had but little say. Some may still argue that given the ethnic diversity of Assam, a genuine desire to look beyond narrow ethnic boundaries on the part of the Assamese intelligentsia might not perhaps have been impossible. Whatever it may be, there is no doubt that such a step would have made a major difference to this region. I say this because it is today beyond dispute that it was Assamese over-zealousness in espousing their linguistic identity that led to the alienation of the tribal communities of Assam. Today, even after six new states have been carved out of the erstwhile state of Assam, its peoples are still at loggerheads. Assam has been forced to live an embattled existence as it tries to sort out fresh challenges to its claims of a common identity for all its peoples.

In search of a common identity: The Road to Peace and Reconciliation

In the forgoing account, the case of Assam has been cited to illustrate the different manifestations of xenophobia as well as to highlight how misconceptions can lead to ethnic violence resulting in forced migration. I seek to draw attention to the failure of academia to acknowledge the evolving nature of Assamese identity. I am inclined to blame this failure for the hardening of feelings against the Bengalis in Assam- a feeling which can perhaps explain the tendency to attack resident Bengalis in a situation of immigration from outside. How does one deal with such a situation? Here one must remember that any solution must simultaneously address the economic and cultural concerns of the aggrieved, while taking steps to provide relief to the displaced. Referring to the Assam movement of 1979-1985, Sanjib Baruah remarked that it was wrong to regard the illegal immigration controversy in Assam as really another way of engaging in ethnic conflict, as "certain analysis based on ethnicity-obsessed paradigms might suggest."^[2] He added that such a view "underestimates the capacity of the Constitution and Laws to construct a normative universe and the destabilizing effects of the erosion of law-as- meaning on social and political order."^[3] One must agree with the author that the law has an important role to play in assuaging the genuine fears of the supporters of such movements by addressing their grievances, in this case their demands for dealing with the issue of immigration. The best way to do this is to approach the issue with an open mind and to encourage meaningful interaction between the peoples so that the latter can take an active part in the peace process, without which chances of any solution will be remote. It must be remembered that in the case of Assam it was the failure of the government to tackle the immigration question that led to radicalisation of public opinion and the consequent expansion of the support base of the militant outfit, the United Liberation Front of Assam.

Last but not least, it is equally, if not more, important to realise that identities evolve. In a lecture on the Indian Identity, Noble Laureate Amartya Sen referred to Rabindranath Tagore's claim that the the 'idea of India' itself militates "against the intense consciousness of separateness of one's own people from others."^[4] What the poet meant was that the Indian nation was forged in course of its encounter with the colonial state. More importantly, the notion of India was the outcome of the desire to simultaneously affirm, and yet partially transcend, the boundaries of narrow identities in search of a peaceful co-existence of the numerous communities inhabiting this land. Even when this notion is under threats today, whether in Kashmir or in Nagaland, there is no denying the fact that it is these notions that enables us to resist two unfounded but often implicitly invoked assumptions in connection with the idea of identity. These are, a) the presumption that we must have a single or at least a principal and dominant identity; and b) the supposition that we discover rather than choose our identity.^[5] Once we have guarded against these assumptions we can aspire to transcend narrow identities and strive for a broader and inclusive common identity that alone contains the key to peace and reconciliation. In fact, the very historicity of the evolving nature of identities, itself should caution us against becoming dogmatic on the question of identities. The academia can play an important role in this respect by highlighting the evolving nature of identities.

^[1] *The Transformation of Assamese Identity: A Historical Survey*, Udayon Misra. H. K. Barpujari Endowment Lecture (4), The North East India History Association, Shillong, 2001.

^[2] Baruah, Sanjib, *India Against Itself: Assam and the Politics of Identity*, Oxford University Press, New Delhi, 2001, p 117.

^[3] *Ibid.*

^[4] *The Indian Identity Neither Singular nor Fragile*, Amartya Sen, Excerpts published in *The Statesman* from the second Dorab Tata Memorial Lecture delivered in New Delhi on February 26.

<%'-----O.P. Vyas-----%>

Discuss with the help of case studies the various elements involved in the "right to return" and argue in the context of those elements if the right to return can be considered as a substantive one or otherwise.

O.P. Vyas

1. The various elements involved in the 'right to return' and arguments in the context of those elements as the rights to return can be considered as substantive one and certainly not otherwise. The right to return is for refugees and it is essentially to know the meaning of refugees. The definition of a refugee in International law is of critical importance. For it can mean the difference between life and death for an individual seeking asylum. In general the word refugee is used to describe a person who is forced to flee his or her home for any reason for which the individual is not responsible, be it persecution, public disorder, civil war, famine, earthquake or environmental degradation. However in international law a refugee is a person who is forced to leave home for certain specified reasons and who, furthermore, is outside the country of his or her origin and does not have its protection. Persons who are compelled to move but do not cross international borders are classified as internally displaced persons. In our discussion we are going to cover both these categories.

2. The various elements involved in this problem have been indicated in the above definition and the factors such as civil, political, economic, social and cultural are associated being integral part of it. In the context of Indian scenario in particular, it could be seen that the Tibetans were forced to leave their homeland and taking refuge in India owing to Civil, Political, Social and Cultural factors. They had to move out enmasse on account of continued harassment and atrocities committed upon them by the Chinese regime. Even their religious existence was in danger. Therefore on account of these cumulative factors they were forced to leave and seek asylum in India. Now the right to return becomes meaningful only when they find the atmosphere in Tibet conducive. Fact remains that the Tibetans are still coming to India, though in lesser numbers despite all odds since the ground realities have not altered. They certainly want to return back to their homeland but the rights to return is meaningless under the given circumstances.

3. On the other hand after the atrocities committed upon the minority Tamils in Sri Lanka, the Tamilians on account of Civil & political factors migrated to India in order to save their lives. When the ethnic conflict subsided and the changes political in nature took place in India and Sri Lanka, most of the Tamil Refugees exercised their rights to return and went back to Sri Lanka.

4. However, when we discuss the issue of mass exodus in 1947 wherein Lakhs of people crossed over from Pakistan to India and India to Pakistan, it was altogether different. This movement was aimed at for permanent domicile as Hindus opted for India and Muslims of this exodus opted for permanent domicile in Pakistan purely on the basis of religion. It is noteworthy that many Muslims from Mewat region of Haryana who went to Pakistan, soon realized that the conditions were better in India and several of them returned back to their homeland. This example can be termed as a classic example of right to return exercised by the people of Mewat. It is a matter of great pride that most of the Muslim people who went away from West Bengal during the turmoil of 1950 have comeback from East Pakistan. The Mohajirs in Pakistan are facing discrimination there and many of them wants to return back to their roots in India. Many such elders in their twilight zone particularly having their roots in Jodhpur and Bikaner regions of Rajasthan when came on visitors visa to meet their relatives here, were reluctant to go back, since they wanted to die here only being their last desire but were deported back.

5. The refugees of Indian origin, who came to India after Burma's independence either of the dominant Burman nationality or other smaller nationalities like the Chins and the Arakanese, who have come to India primarily since the mid- 1980s after the Burmese military crackdown on both the pro-democracy movement and the struggle of the nationalities to attain self-rule or independence. The difference between the two influx patterns should not escape our notice. For the Indian who came back from Burma, the return was seen in the host country as refugees who will have to ultimately go back. More than 90 years of those who came back from Burma were of Tamil origin – most of them returned to Tamil Nadu. The Tamil Nadu Govt. officially rehabilitated one lakh forty four thousand four forty five refugee from Burma till march 2001. Most of these returnees have some family members or close relatives left behind in Burma.

6. East Pakistan had a population of 75 million in 1971. About 10 million of them came to India as refugees. Bangladesh became an independent nation on 17th Dec.1971. The refugees started repatriating of their own will on foot, rickshaws and. Cycles. The majority of the refugees were getting impatient to leave the camps and reach their own villages and towns. They were afraid that any delay might affect their rights of possession over their movable and immovable property left behind in Bangladesh. The end of January 1972 was fixed as the deadline for the repatriation of the refugees. About 20% of the refugees stayed back after the deadline. Later they also get repatriated.

7. According to Shreyashi Chaudhuri, the term Right to return reflects a belief that members of an ethnic or national group have a right to immigration and naturalization into the country that they, the country, or both consider to be that group's homeland, without prior personal citizenship in that country. This belief is sometimes reflected in special consideration in a country's immigration laws which facilitate or encourage the reunion of a diaspora or dispersed ethnic population. The phrase right to return has several dimensions. The right to return seems to be very elementary and simple. But when the specific context and specific groups are considered it becomes important to think whether this right to return is applicable or should be applicable. The question of right to return in Sri Lanka and in many countries evolves from the perspective of national security and economic burden. Till the 1960s the uprooted people from East Pakistan dreamt that one day they would go back. But they could never do so and their vulnerability remained. Therefore along with the right to return unless and until the security of life is ensured the right to return cannot be exercised. Once a group of people is displaced from a place the place does not remain unoccupied. This also restricts the right to return.

8. Serious problems can arise when internally displaced persons are compelled to return to unsafe areas or to areas where they do not wish to reside. Sudan offers an example: the government has forcibly moved the displaced from Khartoum to outlying areas where they are neither part of the urban community nor in their own natural setting. In Peru the government provides assistance only to those internally displaced persons who return to their original homes. In Sri Lanka assistance has been used to induce returns, but to its credit the government has adopted guidelines against physical coercion. The provision of protection upon return also requires special attention. They may find their homes, land and personal property taken by others and no functioning judicial system to resolve disputes. Another problem returnees may face are land mines. In Mozambique these have killed more than 10,000 displaced persons over the course of the return and resettlement program. The plight of the Aboriginal people, original inhabitants, of Australia is disheartening. They have been pushed back into Jungles from their homes due to racial discrimination. Similarly the plight of Palestinians is also disturbing. Israel must compensate and must recognize that the territory of Israel is also the home land of the Palestinians where they too have rights to return.

9. The South Asian Experiences of the Right to Return according to Ms. Paula Banerjee and Shri Ranabir Samaddar is that the Refugees enjoy very few rights but one of the most intrinsic rights for a refugee is the right to return. Although much debated internationally the right to return is most clearly enshrined in the 1966 International Covenant on Civil and Political Rights (ICCPR) under its provisions on the right to freedom of movement (Article 12.4) which says that No one shall be arbitrarily deprived of the right to enter his own country. But this right has often proved to be a chimera. The situation in South Asian countries has been described by them in their paper which states that on the basis of three case studies it could be demonstrated that from its inception South Asian states have denied displaced people the right to return. In fact it has acquired nation form on the basis of such denials.

10. Perhaps the first group of people whose right to return was denied by a South Asian state were the Indian emigrants who travelled abroad in the eighteenth and nineteenth centuries to work as plantation labourers. All through the nationalist period the fate of these labourers in their country of domicile was a rallying point for Indian leaders to portray the dark side of foreign rule. There was constant reiteration that they state was responsible for all the people who were born in India. Yet during the legislative assembly debates in 1944 the leaders came to a consensus that these émigrants' rightfully belonged to their country of domicile and not in India. Unlike nationalists during the colonial period, the leaders of the post-colonial State formation project no longer looked forward to the return of the emigrants who were slowly being considered as foreigners.

11. South Asian independence was accompanied by a blood bath. The partition of India and Pakistan resulted in two million deaths and about 15 million people were displaced. Most of the refugees were lucky enough to get domicile and often citizenship in their country of domicile. Yet problem arose over the issue of return. In peoples memory their Desh (country) was where they were born. But once displaced they did not have the right to return even when they so desired. South Asian states passed legislations whereby property of the displaced were confiscated by the state and treated as enemy property. So the home that they wanted to go back to remained only in their own imagination.

12. One often hears the argument that because partition refugees have got an alternate citizenship they have lost the right to return. In South Asia there are however, other groups of refugees who remain as stateless people and yet they are denied the right to return. It has been stated further that two such groups of refugees: the Chakmas (Jumma people) and the Bhutanese. The Chakmas form part of the great Tibeto-Burman language family. The jungles of the Chittagong Hill Tracts (CHT) are home to several such Tibeto-Burman tribes, among whom Chakmas and Marmas are the largest and they are collectively called the Jumma people. The 1935 Government of India Act defined the hills as a "Totally Excluded Area", taking it out of Bengal's control. The first political blow suffered by the Chakmas was when their territory was placed within East Pakistan although they wanted to remain within India. During the 1971 war for Bangladesh's liberation, the CHT population backed the Mukti Bahini against the Pakistani army. The following year, Manobendra Larma, who had been elected to the national parliament from the Hill Tracts, called on Sheikh Mujibur Rahman with a delegation in order to place Chakma concerns on the new nation's political agenda. As it became clear that Shiekh Mujibur and the new establishment he represented were in no mood to listen, Mr Larma set up the Jana Sanghata Samiti as a political

group, and later, its armed wing, the Shanti Bahini. The Jumma people have been consistently displaced from the CHT by the machinations of first the East Pakistan government and then the Bangladesh state.

13. In 1964 when the Kaptai Dam was built over 30,000 development refugees came to the Lushai and Cachar Hills in India because the East Pakistani government refused to pay them any compensation. Later in the 1970s and 80s the CHT became the site for enormous violence and the Bangladeshi government began its draconian policies to contain any protest whereby over 80,000 Jumma people were displaced. Repatriation talks between the Bangladesh authorities, the Indian Government and the Chakma leadership have continued over the past many years and an accord was signed in 1997 but yet the Chakmas could not return. Those who returned found their land taken by Bengali settlers and so they could not be resettled and many became refugees for another time. The present Bangladesh government is ambivalent about its attitude to Chakma refugees and so many, who are remaining in India have no hope of going back.

14. In the 1970s and 1980s, the Bhutanese government introduced a series of repressive citizenship laws and "Bhutanization" policies that focused on the political, economic, and cultural exclusion of ethnic Nepalese living in southern Bhutan. The Citizenship Acts of 1977 and 1985 included several provisions permitting the revocation of citizenship. The government began enforcing the 1985 Act in a discriminatory manner through a 1988 census, resulting in the mass denationalization of thousands of Bhutanese of Nepali origin in violation of international human rights law. In the early 1990s, the Bhutanese government crushed resistance by ethnic Nepalese and others who protested against the policies through large public demonstrations and called for a multi-party democratic system. The government closed schools and suspended health services in southern Bhutan. Members of the Bhutanese police and army imprisoned, raped, and tortured many of those who were directly, indirectly, or incorrectly presumed to be associated with the demonstrations. Government forces also destroyed houses and forced many ethnic Nepalese off of their lands. International NGOs began operations to aid the Bhutanese refugees, and in 1991, the government of Nepal and UNHCR established refugee camps. By mid-1994, approximately eighty-six thousand refugees resided in the camps. Since then many of these people have been agitating so that the international refugee regime recognise their right to return. Only recently the Government of Bhutan and the Government of Nepal have agreed to discuss the repatriation of some refugees but their terms of reference are such that it will deny the right to return to the overwhelming majority.

15. According to the News paper report published on 6.11.2006 in the 'Hindustan Times' captioned as "Bhutanese refugees fan anti India fire", it has been reported that anti India sentiments are brewing at the Himalayan foot hills in Nepal fanned by belligerent groups of refugees from far away Bhutan. They are desperate to return home, but India bars their passage. And the anger threatens to snowball into acts of terror against India. Forty percent of the 1,10,000 refugees from Bhutan (aged 17-40 years) are seething with rage against India for repeatedly scuppering their efforts to go back home. So far 15 rounds of talks have been held between Nepal and Bhutan but in vain. It has been alleged that over the past two decades, Indian security forces thwarted nearly ten attempts of refugee groups to re enter Bhutan.

16. Approximately 60,000 Afghan refugees are estimated to be in Delhi. But since the beginning of 1999 the Indian Government's Foreigners Regional Registration Office (FRRO) has refused to renew their residence visas. As a result, the residence visas of most of these refugees have expired and they are now living in the country illegally, a predicament that every Afghan refugee in India will share by the end of the year. This situation has had predictable consequences. For example, most of these refugees are now wary about traveling outside their own neighborhoods for fear of extortion, or, even worse, deportation at the hands of the police. The situation for Afghan refugees is rapidly deteriorating.

17. The another example is of rather peculiar situation. Lakhs of Bangladeshi Nationals have since been illegally crossed over to India for employment and at the time of their deportation, the Bangladeshi immigration and security authorities on many occasions refuses to take them back. In Delhi and particularly in the Tilak Nagar area, several Afghan refugees belonging to Sikh community have obtained Indian passports and have been earning handsomely in electronics and other business occupations.

18. The case of barricaded Kashmiri Pandits and their Right to Return is very sensitive and heartening to note. In the 10 years of insurgency in the Kashmir valley and the border hill districts girdling the epicentre of conflict, more than a half million people have been displaced on both sides of the LOC. The exodus includes, 200,000 Kashmiri Pandits, 70,000 Kashmiri Muslims to India and 120,000 to Pakistan. From Kargil and the border districts some 35,000 people have been displaced in Pakistan and 100,000 in India. As the guns fall silent along the LOC, after the Kargil war, the people of the border districts will return to bury their animals, rebuild their homes and replant their crops till the artillery duels across the LaC erupt again. But for the thousands of displaced Kashmiri Pandits, can there be a return home? Can there be a return to the "homeland", a return to a remembered society imbued in the ethos of Kashmiriyat Le. a common Muslim-Pandit identity constructed around a shared history, language and culture?

19. The mass exodus of Pandits from the valley in 1990 played into the hands of the propagandists on both sides and people who had grown up in a culture of social and economic interdependence have been communalised. The poison of communal politics has constructed negative images of the Pandit as abandoning his Muslim brethren to the guns of the Indian state and the Muslim as waiting to grab the property of his Pandit

neighbour. Also, these 10 years have seen a hardening of the Islamicisation core of the struggle and an Islamicisation of a reconstructed Kashmiri identity. Symbolic of the new Islamicised Kashmir, is the fact that many more women are wearing burqua. The measure of the change in the ethos of Kashmir can be gauged by the relatively contained public outrage at the burning down of Charar I Sharif, the majuoleum of Nund Rishi, the most revered Sufi Pir of Kashmir. But the political, human rights and humanitarian discourse remains locked in the presumption of return to an "original homeland". The recommendations of the J & K Regional Autonomous Council on the "Return of the Migrants" has proposed the creation of a Protector General of Migrant Properties, the setting up of transit settlements and .the promotion of a social dialogue between the migrants and the majority community. The presumption is that Pandits can and must return, irrespective of the transformation of the "homeland".

20. For 10 years Kashmiri Pandit have been living as materially and psychologically displaced, as poignantly evoked in Khema Kaul's elegiac "My Diary". The possibility of return remains blocked, not only because of the series of communal massacres by the militants but because of the communalised mind set which has become entrenched in these 10 years. The April'99 recommendations of the controversial J&K Regional Autonomy Council insidiously seek to formalise the communalisation of the state in its territorial recasting of Jammu and Kashmir Divisions. No deal cut at a negotiating table to decide the final settlement of the Kashmir dispute, including the fate of the displaced Kashmiri Pandits, can be sustainable unless it is backed by the people of Kashmir. It has to be Kashmiri civil society, which has to demonstrate the capacity for reconciliation, accommodation and tolerance, for the return to be possible. JKDP (Jammu Kashmir Democrate Party) leader Shabir Shah has made a small political gesture in choosing as the first beneficiaries of his Rs1 crore fund, 70 displaced Pandit families in Budgam. The healing process has to be nurtured by civil society initiatives, which are not visible.

21. Where is the Pandit voice to weep over the suffering of the people of Kashmir trapped between two guns." They brought it on themselves", retorts Dr Shakti Bhan, a founder member of Daughters of Vitasta, the women's wing of Panun Kashmir. In 1993, at the National Conference of Kashmiri Pandits a resolution was passed expressing solidarity with Kashmiri women. But Dr Bhan clarified, "my heart goes to the innocent women of Kashmir, not to the Dukhtarane Millat". The problem is that in these 10 years, on both sides the moderate voices have been silenced by fund mentalist ones. Over interpreting the significance of Kashmiri Muslims caring for stranded Hindu pilgrims to Amarantha caves is an apology for a much-needed un-blinkered look at the possibility of return to what is an irrevocably transformed Kashmir society.

22. However, the structure of the governmental and human rights and humanitarian agencies' discourse, remains tied to the logic of return and thus oriented towards relief and not the reconstruction of lives. Is it time, then, to advocate a move away from the damaging attachment to an "original homeland" transformed beyond recognition, and turn to coping with reconstructing home, identity and even an "imagined community"? It is a revolutionary (counter-revolutionary) attitude that strikes at the basic presumption of man/ women's rooted ness in land and the territoriality of the nation state. But what is the option perpetuating the psyche of displacement, predicating another generation of Kashmiri Pandits to be brought up as "displaced" in migrant camps? In these 10 years a generation has grown up in the valley and camps, which has no memory beyond the bitterness of the Pandit-Muslim divide. School children have learnt to view the Hindu as "the other". "Hindus; drink urine!", a student of the elite Burn Hall school said to me. In Poonch, a group of young schoolgirls I stopped to chat with, wanted first of all to know, "What is your religion?"

23. The CHT has been overrun by Bengali Muslim settlers from over populated Bangladeshi main land and scattered groups of hill people survive under trying circumstances as refugees in Tripura, Mizoram, Arunachal Pradesh. We have discussed the issue of right to return and factors governing thereof in the context of persons crossing the International border. However the issue is equally applicable under the domestic circumstances as well. Be it in Jammu & Kashmir, Gujarat, Maharashtra , Assam , Punjab or any other part of India. The disturbances which have taken place during the last of 6 decades have direct bearing on this aspect. The Kashmir Valley has been deserted enmasse by the Pandits and in order to save their lives. They are forced to live either in Jammu or elsewhere in India. They certainly want to return to their homeland but when and how are the two big question marks which are yet to be answered.

24.The terrorism in Punjab forced many families to take shelter in Haryana, Delhi and elsewhere. When the situation was brought under control majority of them returned back and hence right to return becomes meaningful in this case. Similarly after the 1992 Bombay blasts and after the Godhra incident in Gujarat, the people of minority community who left their homes have returned back and in this case also, right to return becomes meaningful and understandable. However on account of insurgency in Assam and other parts of North East the situation has not improved up to the desired level and the people who have been displaced and forced to live in Rajasthan and elsewhere are still finding it difficult to return back. It is unlikely that they will get back what they had left behind in North East as it is believed that their properties and establishments have been taken over by the insurgents or have been disposed off. Time will only tell as to the efficacy of right to return in this case.

25. The assesement of ground realities makes the right to return a chimera. There is an urgent need for a political study of places and communities in violent South Asia. Such a study will show the gap between how we

live and what we idealise, the gap that is a paradox, produced by the most extra ordinary juxtaposition of nationalising polities by fictive ethnicities, a homogenous citizenship, and the claims to pluralism, democracy, and accommodation. Which then is South Asia's political history? How is this history predicated by aliens, half-citizens, exiles, refuge, temporary shelters where citizens pass away their lives, illegal immigrants, - in short, the non-state persons who are beyond the pale of citizenship rights, and who are not even the proper subjects of the international law on non-state persons? The focus in any discussion on the right to return of citizens expelled has to be thus on the need to move away from the classical theories of sovereignty, democracy, State, and citizenship, and take the exile, the alien, the displaced (both internally and trans-border), and the half-citizen as the central figure of the politics in South Asia, the figure who is with us like the eternally accompanying shadow, so normalised that we forget its existence which we have taken for granted. In this physical milieu of expulsion, de-enfranchisement, and nationalisation, the right to return is at once the most crucial question and the most hallucinatory claim.

26. The right to return can become meaningful with strong political will at the domestic and international level. The UN can also play a vibrant role in this regard and can come forward with an effective and meaningful international covenant binding upon all the member states. When the entire world is getting closer in this era of globalization, the juridical rules could also be framed and laws could be made by introducing innovations in the legal jurisprudence. The International and domestic laws could be drafted with humane approach by bringing about a consensus for promoting and protecting the right to return of these hapless persons which is an integral part of their human rights. The help of respective National Human Rights Commissions could also be taken for better coordination, monitoring and implementation at the ground level. The international bodies like Asia Pacific Forum of National Human Rights Institutions could also contribute a lot in such moves. The concerted efforts would bring about enormous peace and by respecting the right to return, we shall be able to do justice for the present generation and the next one as well.