

# Term Paper for Module A 2007

## Report on the Refugee Situation in Serbia / Kosovo

by Barbara Keller

### 1. Introduction

One of the realities of life in post-war Serbia is the large number of refugees that remain in the country as a result of ethnic persecution and the ethnic conflict of the 90ies. Depending on the source of data, there are estimated to be between 350'000 and 600'000 refugees and internally displaced persons (IDPs) living in camps or makeshift accommodation throughout Serbia. The refugees originate from former Serbian enclaves like Krajina or Slavonia, or Serbs from Bosnia-Herzegovina, while the internally displaced persons are either ethnic Serbs or Roma from Kosovo.

Many of the refugees and displaced people just arrived with their clothes on the back and the adaptation to the new circumstances turned in many cases out to be difficult (Mitchell 2005: 33). Mitchell argues that this had to do as well with the cultural differences as with the war trauma of these refugees. In some cases, refugee Serbs such as rural farmers from Krajina, found little in common with the communities that they found themselves in even if there existed no distinctive ethnical differences anymore.

According to UNHCR (Internet: UNHCR) the greatest number of refugees are housed in Belgrade, Vojvodina and in municipalities in western Serbia. In many ways the IDP are the worst off, because as they originate from within Serbia's national boundaries in Kosovo, they do not qualify as bona fide refugees. Consequently, they received little of the meagre state or foreign aid that is available to refugees from beyond Serbia's borders (Mitchell 2005: 35).

According to the census of 2002, the population in Serbia consists of 63% Serbs, 17% Albanians, 5% Montenegrins, 3.5% Hungarians, 2% Bosnians, 1.5% Romas and 10% other nationalities.<sup>[i]</sup> According to the UNO Resolution 1244 Kosovo is today under UN administration as an international protectorate. For my master paper I did research in Serbia and Kosovo. According to information of several interviewees during my field study, the situation in Kosovo has completely changed. In connection with Kosovo's endeavour to get autonomy, the living conditions for Serbs got difficult. It is hard for them to find an employment as well as housing. While in the beginning of the 90ies the parallel Albanian structures appeared as a rejection of the new reality, as an answer to the suspension of Kosovo's autonomy, the Serbian parallel structures appeared as a rejection of the new reality by the UN's Resolution 1244. Serbs understand it as a merely temporary situation until Kosovo is ready to return to Serbia (Bjelica, 2006: 178). These parallel structures base on adverseness and strong stereotypes between the different ethnicities, as well as fear of the other. This paper shall give a survey of the refugee situation in Serbia and Kosovo and highlight one case in which differences between ethnicities can be handled in a positive manner.

### 2. Political and historical background

Josip Broz Tito died in the year 1980. Belgrade was the capital of Yugoslavia which started to fall apart immediately after the death of Tito. Then, the crisis became obvious. Especially the deterioration of the economic situation in the whole country reduced the standard of living which of course had a significant influence on the well-being of the population (Ploetz 1998: 1541). Feelings of nationalism became again stronger. The old ways of taking neighbours as enemies of the last time of the Second World War reappeared. Politicians emphasized all of a sudden ethnical and religious differences between Slovenians, Croats, Serbs, Macedonians and Albanians.

In that time the future ruler of Serbia, Slobodan Milošević could celebrate his rise. Even if he spoke in the first years of his rule about preserving the Socialist Federal Republic of Yugoslavia he did not accept an equal division of power between the different states. The Republic of Yugoslavia could not be preserved. The armed conflicts started in Slovenia and in Croatia in 1991 and were followed by war in Bosnia and Herzegovina. In all three countries it was the Yugoslav People's Army which lead this war in the beginning. (Bachmann 2005: 7) Because of historical reasons<sup>[ii]</sup>, the territory of the province of Kosovo plays an important role for the nationalistic politicians and nationalistic oriented citizens of Serbia. During the war and under Slobodan Milošević's reign, the military pressure on the Albanian majority of the population of Kosovo grew distinctively. 'Ethnical cleansing' is a term which stands in direct connection with the conflict in Yugoslavia, and a practice which was widely used in order to produce mono-ethnic regions in the former Yugoslavia. Ethnical cleansing forced thousands of Albanians and other minorities of the province of Kosovo to leave their house and ground under the regime of Milošević. Human Rights Watch reports that in Kosovo, the ethnical cleansing campaign by the Serbians was stepped up and within a week of the war starting, over 300,000 Kosovo Albanians had fled into neighboring Albania and Macedonia, with many thousands more displaced within Kosovo. By April 1999, the United Nations was reporting that 850,000 people - the vast majority of them Albanians - had fled their homes and took shelter as IDPs or refugees in one of the camps or with relatives or friends. In 1999 the NATO tried to force Milošević to stop his military forces in Kosovo. The NATO intervention campaign was initially designed to destroy Yugoslav air defences and high-value military targets. NATO's bombing campaign lasted over ten weeks from March 24 to June 11, 1999. When the war ended on June 11, 1999, it left Kosovo in chaos and Yugoslavia as a whole facing an unknown future (Bachmann 2005: 18).

### 3. The refugee situation in Serbia today

According to the Global Report of UNHCR 2006, published in June 2007 (Internet: Global Report 2006), the number of refugees in Serbia continued to decrease from approximately 138,900 at the end of 2005 to some 98,300 at the end of 2006.

The decrease is due partially to voluntary repatriation and, to a greater extent, to local integration in Serbia. Twenty-two collective centres, hosting approximately 1,000 refugees and more than 550 internally displaced persons (IDPs), were closed and the residents received housing and self-reliance assistance. Still, according to the total size of the population of 10.5 million, the number of 206'500 IDPs in Serbia and additional 21'000 IDPs in Kosovo is a quite high amount of people and a big challenge for the Serbian state.

While the IDPs during the war were mostly Albanians, the situation seven years after the end of the open conflict is different. The figures of UNHCR from summer 2007 show, that most of the internally displaced people in Serbia are ethnic Serbs originating from Kosovo. They fled the province for fear of reprisals from the ethnic Albanian population after NATO air strikes in June 1999 had ended years of oppression of the ethnic Albanian majority by the Serbian government. Also a large number of Roma, accused by the Kosovo Albanians of collaborating with the Serbs, has left their homes at the same time and sought refuge in Serbia and Montenegro. The Serbian Commissariat for Refugees and IDPs estimates 148,000 of the displaced are Serbs which corresponds to two thirds of the total amount. The remaining IDPs belong to some 30 different minorities, of which the Roma are the biggest group. The IDPs of Kosovo are also mostly Serbs who had to leave their hometown because of the strong spatial and social segregation of society in Kosovo. Today, the Serbian population in Kosovo mostly lives in the northern part of the province, socially and spatially isolated from the Albanian population which lives in the southern part of Kosovo and in the capital of Prishtina.

Summarizing we can say that the overwhelming majority of IDPs live in Serbia, but smaller numbers have also found refuge in Montenegro and parts of Kosovo. The development in direction of a highly segregated society in Kosovo and the wide spread of stereotypes, adverseness and xenophobia all over Serbia mark a step further in the separation of communities and ethnicities and results in a serious loss of confidence in the capacity of local authorities and the international community to rebuild a multi-ethnic Kosovo. The refugee and IDP situation seven years after the end of the war is strongly different compared to the situation during the war. While during the war mostly Albanians were forced to leave their homes due to the military pressure of the Serbs, today members of the Serbian minority from Kosovo lives as IDPs in Serbia or the northern (Serbian) part of Kosovo.

Despite the rather severe situation of refugees and IDPs in Serbia/Kosovo, also a progress can be seen. Jelena Bjelica (2006) highlights the improvements that have been made in terms of freedom of movement and safety conditions for minorities in Kosovo and Serbia. Improvements are initiated as well from the official side of the Serbian government as through initiatives of international organizations all over Serbia.

Most of the assessments of international organizations focuses on voluntary returns and reintegration. As key topics of national and international engagement the following points can be listed:

- housing and infrastructure
- legal assistance
- education
- health and nutrition
- income generation

The protection of the rights of displaced persons and refugees in all these points are treated with priority. This means according to Human Rights Watch (Internet: Human Rights Watch), that specific ethnic minorities should continue to benefit from international protection, or at least complementary forms of protection. In view of this, different organizations as for example UNHCR but also the state maintained their policy of facilitating returns and repatriation to Kosovo on a strictly voluntary basis only and of creating conditions conducive to return. According to their policy those who wish to return must have the right to do so. But sustainable return to Kosovo cannot be considered as an option for many IDPs or refugees. Human Rights Watch (Internet: Human Rights Watch) suggests further that "those who wish to go home and understand fully the potential consequences of that choice should be able to do so in safety and dignity. Those unwilling to return to Kosovo should be provided with the possibility to integrate in their country of exile and be provided with assistance in doing so." Many displaced persons and refugees though have begun a new life elsewhere and do not intend to return to their places of origin. Some have sold their properties. Many live in poor housing conditions in other areas of Kosovo or in Serbia. But much time has passed since they left their homes and most of them know that when returning, they won't find what they have left behind.

#### **4. The refugee situation in Serbia/Kosovo under the aspect of racism and xenophobia**

One strong reason for not returning back to their home towns are, as already noted before, the somehow persisting differences and spatial and social separation between the different ethnical groups in the latest years. As the report from July 2007 of the European Council on Social, Health and Family Affairs Committee has observed „ethnic divisions have by no means disappeared and systematic exclusion of, and discrimination against, minorities continue to exist in all parts of the country.“<sup>[1]</sup> Also the difficult situation of refugees and IDS is strongly connected with the rampant prejudices against the members of other ethnical groups. A normalisation of the situation is still quite far away.

The research of a professor from Glasgow, Claire Wallace, shows significantly, that xenophobia as an attitude towards 'the others' has increased during the last 20 years in post-communist states. One theme that emerges is the reliance of xenophobia on the emergence of right-wing political groups and in the dominant political discourses (Wallace 1999: 3). This applies perfectly on the situation of Serbia. The ultra-nationalist regime of Slobodan Milošević has still repercussions on the political situation today. The person who benefited from the war are today still in powerful political positions, especially the security and legal system has not yet changed much since the war ended (Hollenstein 2007: 13). Also the results of the latest votes in October 2006 confirmed this tendency. One third of the legal votes went to the radical political party which follows nationalistic and xenophobic politics. It is obvious that this situation has no promotive effects on the situation of refugees and IDP. As Wallace highlights, the current role of minorities is a product "of the dynamic between a national minority and a nationalizing state to which the minority might belong." (Wallace 1999: 7)

The following example from my field study shall serve as illustration of the connection between the political situation and the prevalent relations between members with different ethnical background as well as the related consequences for refugees and IDPs.

### **5. Three different ways to handle differences in the local or regional society**

In my research I recognised three different possible attitudes towards the other in the own society. They shall be presented here in order to illuminate the situation of the refugees and IDP in their place of migration or displacement, where they are often perceived as 'the others' and the different. The reactions when dealing with differences inside a society are various and are influenced by several local and individual factors. Still some general observations can be presented. (Keller 2007)

(1) One of the possibilities can be described as the *exclusion* of 'the other' or the different from the society controlled by the majority.

(2) The second possibility can be described as *integration* of 'the other' or the different in the society of admission.

(3) But there is a third attitude towards differences and the other. This one is regarded as more tolerant and open towards the other in the own society. In this attitude differences are seen as cultural diversity and as an enrichment of society. Thus differences get positive connoted and are not treated as not as a threat to the values of the majority of society, but as an enriching factor for a group.

The two first possibilities refer to the same set of goals, even though the consequences for majority and minority population are striking different. But the aim in social processes, inclusion or exclusion of 'the other', is the creation of order and security inside the society. Both ways of handling differences lead to the reduction of differences in society; in one way through exclusion in the other through integration. In both processes, differences in society are seen as something unwanted and unnecessary. In consequence they are fought with various means.

Out of doubt, variations exist at a small scale. Which one of these three attitudes toward the others (i.e. refugees or IDP) a local society pursues is subject of a complex net of factors and reasons which can not be elucidated at this place. During my field study I experienced all three different kinds of attitudes towards differences in the local societies of Serbia.

In the northern part of Serbia (ex. the province of Vojvodina) tendencies of integrating differences (1) prevailed. In opposition to that exclusion (2) was strongly visible and noticeable in Kosovo. As I already presented in chapter 1, parallel structures are strongly developed in the local society of Kosovo. They are a strong symbol for an excluding way of dealing with differences. Parallel structures exist in this region comprised of the provincial executive bodies of the authority, of health and of the entire educational system (Bjelica 2006). The field study discloses that especially the matter of fact of a totally segregated school system and a distinctively segregated settlement structure seemed to emphasise the differences in society and produce a vicious circle with no way out of it. Educational collaboration is extremely important as children and youngsters play an important role in the overcoming of nationalistic and xenophobic tendencies in society. In addition they will highly influence the future of the country. The next chapter will illustrate this fact.

### **6. The role of youth in a society with racist and xenophobic tendencies**

In many situations, young members of the society manage to build bridges over differences in society. In Serbia and Kosovo this is an extremely difficult because of the mentioned parallel structures and segregation in society. Young people in this country (especially in the south) have in their everyday life almost no possibilities to interact and make positive experiences with each other.

Thus, also the council of Europe highlights the role of youth in overcoming racism and prejudices under different ethnical groups: The Council of Europe agrees "that the healing and reintegration needs of children are central when developing peace-building programmes following conflicts or periods of political disorder" (Internet: Council of Europe). This involves family reunification, ensuring regular monitoring of children's physical and mental health, guaranteeing schooling and/or vocational training, as well as psychosocial support and community-based reintegration. Such programmes must take account of children's best interests and aspirations, and at best be long-term. The council of Europe emphasises the need for children from minorities and displaced children are admitted to normal education systems and provided with special assistance, and ban the practice of directing them automatically into so-called special classes.

During my three weeks field study I observed a positive example how the interaction between young people, IDP and local youngsters, could happen in spite of the existing segregation and aversion against the other. KIOSK NGO, a non-governmental organisation established by artists from Belgrade, organised in four different parts of Serbia photographic workshops with youngsters between 15 and 19 years. During 3 months they met regularly once a week in a group of twenty people. Each of the participants received a camera and every week they got a topic to which they took pictures of their everyday lives. These pictures served during the weekly meetings as an initial point for the discussions of their different realities. The pictures served as nonverbal means of communication; even though language was used in a second step, art served as a help to understand the different realities of young people with different ethnical background in one city, which have almost no interaction in their everyday lives [iii]. The aim of the organizers of this art project was to initiate communication between youngsters and to promote art as a possibility to find solutions to social problems. (Adamovic 2006: 2)

### **Summary:**

Also seven years after the end of the war in Serbia and Ex-Yugoslavia, the amount of IDP (227'500) in whole Serbia/Kosovo and of refugees (174'000) is high and poses a challenge to the Serbian society during the post-war reconstruction. Most of the refugees and IDPs are ethnic Serbs from Kosovo or from the surrounding states, which fled to Serbia during the war in search for security. A considerable part of the refugee and IDPs are also Romas which build a strongly discriminated minority in Serbia. The problems of these people in their new social environment are influenced by the nationalistic and xenophobic tendencies of the strongest political party in Serbia. Exclusion of differences is the widespread attitude towards differences in society even though inclusionary tendencies towards the other are visible for example in the northern province of Vojvodina.

Young people play an important role in promoting differences as a cultural richness. The art project of KIOSK NGO made clear, that there exist ways of communication in spite of the segregated and stereotyped society where the communication is enriched by the differences between local youngsters and young people who came as internally displaced people to the city.

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[i] In these numbers, Kosovo is not included, as the last census in the province was in 1981. The World Bank estimates the ethnical composition of Kosovo consisting of 92% Albanians and 5.3% Serbs.

[ii] In *Kosovska bitka* in Serbian or *Kosovu polju* in Albanian the Serbia lost in 1389 a battle against the Turks. This defeat offended the Serbs and provoked a high nationalistic mystification of the province of Kosovo.

[i] Even though we can say that the situation in the North (ex. the province of Vojvodina) is much more relaxed than the one in the South.

[ii] The topics were for example: happiness, past, hope, family, friendship or otherness.

## Discuss with suitable case studies, the problems associated with the interpretation of the phrase "well founded fear".

by Geetisha Dasgupta

Article 1A(2) of the Convention relating to the status of Refugees 1951 [1](the Convention) states precisely that, the term refugee shall apply to all and sundry who "...owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality...or country of former habitual residence...". [2]

Thus arose the concept of well founded fear, to be later made immensely popular by being the title of "Well-Founded Fear"—a documentary film, shot and produced by Michael Camerini and Shari Robertson. Aimed at making Americans more conscious about and responsive to the world the documentary is based on real life refugee experiences inside the asylum offices of the U.S. Immigration and Naturalisation Service (INS), where the fate of applicants for political asylum depends on a single interview, in which they have an opportunity to convince an asylum officer that they have a "well-founded fear of persecution on grounds of race, religion, nationality, membership in a particular social group, or political opinion" if they return to their home country . Made in the last half of the '90s, the documentary provided path breaking evidences pertaining to the total refugee asylum scenario.

Soon after its inception, well founded fear was sought to be more nuanced by the practitioners of the concept. While it was generally agreed that the "well-founded fear" requirement limits refugee status to persons who face an actual, forward-looking risk of being persecuted (the "objective element"), linguistic ambiguity resulted in a divergence of views regarding whether the test also involves assessment of the state of mind of the person seeking recognition of refugee status (the "subjective element"). Therefore, even at the very onset, the concept demanded at least two clarifications: the subjective

premise of operation and the objective. At one point at least, one must care for the subjective feelings that the refugee status gives birth to.

Therefore, at the subjective level, it might not be actual persecution resulting from factors of social segregation that a person is afraid of, but the possibility thereof. We could say, with due reasons, that this is more projective in nature, and is a forward looking risk—a risk that could materialise anytime in the future. Though there cannot be any litmus test to ensure the fear factor, the mind of the refugee must be taken into consideration. The subjective element concerns the state of the mind of the applicant. Whether an applicant has a genuine fear is *the* question. While the requirement of a genuine fear factor cannot be ignored, in many cases, it does not become an issue. Many a time, the Tribunal is entitled to consider whether an applicant objectively has a well-founded fear of persecution before testing if the fear is present at a subjective level too.

That assured, the concept tends to develop into a much more nuanced category that speaks of the refugee status itself, defining the condition of being a refugee. In the process of its evolution, it seeks to question the "safe"ness of a particular state, i.e, whether the people (citizens or the refugees) feel enough safe from persecution over there. Well founded fear therefore, has matured and moved its focus from the individual refugee to the entire group affected potentially. In fact, whether a person or a group thereof should be given asylum, depends to a great measure upon the acknowledgement on part of the the asylum givers, of the presence or absence of well founded fear. The latter therefore, is a decisive category.

Let us now look into the objective parameter of the concept. The objective parameter essentially talks of evidences, facts that clearly point out, or at least support the the claim of having a well-founded fear of persecution. Assessment of the objective determinants would need a consideration of the general information about the condition in an applicant's native country, as well as the assessment of the applicant's own claims in the light of any material provided in support of such claims.

The Third Colloquium on Challenges in International Refugee Law, convened by The Program in Refugee and Asylum Law, University of Michigan Law School (March 26-28, 2004) [3] drafted a few measures that somewhat succeed in providing a guideline at objectively distinguishing the refugee to be granted asylum. The following are the points:

a. In contrast to the question of whether an applicant is unable or unwilling to avail himself or herself of the country of origin's protection, the assessment of well-founded fear does not comprise any evaluation of an applicant's state of mind.

b. Most critically, the protection of the Refugee Convention is not predicated on the existence of "fear" in the sense of trepidation. It requires instead the demonstration of "fear" understood as a forward-looking expectation of risk. Once fear so conceived is voiced by the act of seeking protection, it falls to the state party assessing refugee status to determine whether that expectation is borne out by the actual circumstances of the case. If it is, then the applicant's fear (that is, his or her expectation) of being persecuted should be adjudged well-founded.

c. An understanding of "fear" as forward-looking expectation of risk is fully justified by one of the plain meanings of the English text, and is confirmed by dominant interpretations of the equally authoritative French language text (" craignant avec raison "), which do not canvass subjective trepidation. This construction avoids the enormous practical risks inherent in attempting objectively to assess the feelings and emotions of an applicant. It is moreover consistent with the internal structure of the Convention, for example with the principle that refugee status ceases when the actual risk of being persecuted comes to an end, though not on the basis of an absence of trepidation (Art. 1(C)5-6), and with the fact that the core duty of non-refoulement applies where there is a genuine risk of being persecuted, with no account taken of whether a refugee stands in trepidation of that risk (Art. 33). More generally, the human rights context of the Convention requires that protection be equally open to all on the basis of evidence of an actual and relevant form of risk.

d. The determination of whether an applicant's "fear" – in the sense of forward-looking expectation of risk – is, or is not, "well-founded" is thus purely evidentiary in nature. It requires the state party assessing refugee status to determine whether there is a significant risk that the applicant may be persecuted. While the mere chance or remote possibility of being persecuted is insufficient to establish a well-founded fear, the applicant need not show that there is a clear probability that he or she will be persecuted.

By now, it must be clear to us that as a concept, well-founded fear undergoes several challenges. World wide, refugee problem is evolutionary by nature. It develops with each new case of xenophobic harassment and counter action. Refugee law, therefore, by all means, needs to buckle up further to meet the newer challenges, while at the same time try and be more sensitive to ease out the already existing problems within. The following case histories might be useful in taking the study a little further.

#### 1) ***Immigration and Naturalization Service v. Cardoza-Fonseca*** , 480 U.S. 421 (1987) [4]

Cardoza-Fonseca was a Nicaraguan visitor, who entered the U.S.A. in 1979. Since she overstayed her visa, the INS began proceedings to deport her. Admitting her fault at being in the USA illegally, she pleaded for two kinds of relief at once— asylum and withholding of deportation. She demanded that she would be persecuted once she returned to Nicaragua on political grounds. In the first round, Fonseca was denied asylum and withholding of deportation as an immigration judge found her plea not enough substantiated and held that she had not established a clear possibility of persecution on return. The judge made a mistake in believing that same legal standards applied to both categories of refugee treatment. The Board of Immigration Appeals (BIA) conceded to the judicial viewpoint.

Cardoza appealed only the denial of her claim for asylum to the Ninth Circuit. The Ninth Circuit ruled that the BIA incorrectly applied the same standard to Cardoza's claims for both asylum and withholding of deportation, because the statutes giving the Attorney General authority to grant these forms of relief to aliens were phrased differently. It held that the standard for asylum was lower than that for withholding of deportation, and that asylum only required a showing of a "well-founded fear" of persecution instead of a "clear probability." The INS asked the Supreme Court to hear the case, and it agreed.

The laws were found to prescribe that, a person is eligible for the *discretionary* relief of asylum in case of being a refugee. However, by contrast, the same person is eligible for the *mandatory* relief of withholding of deportation if he/she could demonstrate that there lies a "clear probability" of persecution upon return to his/her native land. In this case, because of the sheer shortcoming of judicial language, so to say, well-founded fear stood apart from what came to be called a clear probability.

The INS argued that it would be anomalous for there to exist a lower standard for asylum, which affords greater benefits to an alien, than for withholding of deportation. Asylum allows a person to become a lawful permanent resident of the United States; withholding of deportation, by contrast, is subject to quotas from certain countries and conditioned on deportation to a hospitable third country not being available. But this argument overlooked the fact that asylum is discretionary on the part of the Attorney General, while withholding of deportation is mandatory.

Finally, the court held that, to establish eligibility for asylum under the Immigration and Nationality Act, an alien need only show a well-founded fear of persecution, which is something less than a 50% probability that the alien will be persecuted if he returns to his home country.

## II) **The case of Ahmed Ressam** [5]

In 1999, Ahmed Ressam, having passed through U.S. customs in Canada, drove a rental car filled with explosives onto a ferry from Victoria, Canada to Port Angeles, Washington. His intent was to bomb Los Angeles International Airport. Fortunately customs officers in Port Angeles noticed Ressam's nervous behavior and arrested him when he attempted to flee. An Algerian by birth, Ressam had used a fraudulently obtained, but authentic, Canadian passport to gain entry onto the ferry and a United States Immigration and Naturalization Service official did not detect anything suspicious because Ressam's name was not on the passport.

While there have been numerous steps taken to strengthen the United States' border and immigration system, it is not outside the realm of possibilities. Ressam is not the only terrorist to gain entry into the United States through Canada. For example, from 1995 to 1999, 14 suspected terrorists came into the United States through its northern border, including Gazi Ibrahim Abu Merzer who attempted to bomb the New York City subways. Weaknesses in both the U.S. border and immigration system and the Canadian asylum system may be to blame. For instance, Ressam was able to gain entry into Canada initially by using French passports with a fake name, and then claimed political asylum upon entry. Ressam was then released pending a determination of his asylum claim, and he repeatedly failed to return to hearings after being arrested for petty crimes on four different occasions. He was never deported or jailed. Ressam eventually obtained a fraudulent passport from a "document vendor" in Canada, which allowed him to travel for terrorist training and then return to Canada. To enter the United States, Ressam used the fraudulently obtained, but real, Canadian passport from which he removed the stamps from his trips to Afghanistan.

The Immigration and Refugee Protection Act (IRPA), 2002, Canada, among several other provisions seeks to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual punishment.

One of the major changes the IRPA ushered in with regard to refugee protection is that it expanded the classes of refugees that are eligible for refugee protection. The main classes of refugees are: "convention refugees" or someone with a similar claim who applies for refugee status outside of Canada and their claim is accepted by a Canadian immigration officer; a person the Immigration and Refugee Board ("IRB") determines to be a convention refugee or "a person in need of protection"; or someone for whom the Minister grants an application. A "convention refugee" is a person who falls under the requirements of the 1951 United Nations Convention Relating to the Status of Refugees. In *Rajudeen v. Canada*, the Canadian Federal Court found persecution to be any systematic use of harassment directed against the person seeking asylum on any of the Convention grounds, i.e. race or religion. The Canadian courts have held that there should be no negative inference drawn with regard to "well-founded fear" if the applicant failed to make the claim previously in another country, or if the applicant failed to make the refugee claim to a visa officer at the first opportunity. The applicant only has to show that they have a subjective fear of persecution, not that they would actually be persecuted should they return to their home country. The necessary objective degree of fear was described by one court as "slightly more than a mere possibility." Speaking in terms of probability, the fear would not have to be over fifty percent, but more than one.

Thus, while the USA offers two categories of asylum, i.e. under well-founded fear clause and credible fear clause, the Canadian system offers only one provision but much slackened, for which trans border passages are rendered extraordinarily easy. Also, one can state, the areas where the concept of well-founded fear has been found to be ambiguous or not much enlightening, it has been supplemented with auxiliary measures that defined the situation.

Whichever part of the world we look at, the language of law and justice often gives us enough leeway to affect the guileless unfavourably, as has been cited from Kafka by Dr. Samaddar. [6] Indeed, as he has commented, "If fear is well founded, it must match upto the language of law, justice and the judge..." . Therefore, it could be surely said, what often is not understood by clear reasoning is probably a play of power and a little bit of language.

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- b) [http://www.centerforsocialmedia.org/resources/articles/well\\_founded\\_fear\\_a\\_case\\_study](http://www.centerforsocialmedia.org/resources/articles/well_founded_fear_a_case_study)
- c) [http://www.mrt-rrt.gov.au/docs/quiderefaw/wff\\_ch3.pdf](http://www.mrt-rrt.gov.au/docs/quiderefaw/wff_ch3.pdf)
- d) [http://links.jstor.org/sici?sici=0011-3204\(197903\)20%3A1%3C95%3AHPOM%3E2.0.CO%3B2-Y](http://links.jstor.org/sici?sici=0011-3204(197903)20%3A1%3C95%3AHPOM%3E2.0.CO%3B2-Y)

## **FORCED MIGRATION, RACISM, IMMIGRATION AND XENOPHOBIA**

by *QAISAR JAMALI*

"The power of population is so superior to the power of the earth to produce subsistences for man that premature death must in some shape or other visit the human race...levelling the population with the food of the world." (*Thomas Malthus, Essay on the Principle of Population, 1789*).

The Malthusian ghost has come to haunt the world again -- this time with an awful sense of irony. This was indirectly supported by Gandhi as well when he linked it with lust and greed by saying 'Earth has the natural resources to meet the needs of human race but not its greed.'

Amid the razzle-dazzle of the 21<sup>st</sup> century -- with all its opulence, technical ingenuity and march towards globalisation -- the glum prediction of the English thinker about a world breeding more people than it can feed seems closer to reality.

Food security has always been an issue for nations plagued by anarchy, droughts or war.

There are some 854 million malnourished women, men and children around the globe, and 10 million die every year for reasons associated with hunger.

I have tried to give a new dimension to the problem of forced migration and racism. By highlighting the importance of shortage of food and of course ever increasing population in the world which is directly related to the issues of IDPs and Refugees. I call it the mother of all problems because most of the displacement and refuge takes place due to this problem which eventually leads to the issues of racism and xenophobia.

Coming to the four digital topic of our essay I fully endorsed the views of (Inaotomba Thongbam) who rightly says all of them are either correlated or synonymous. According to Inaotomba the first two relates with movement of people owing to various factors in which racism is one of most important one. Racism induced people to flee their original or habitual place of settlement within or across the border thereby creating fear (xenophobia) amongst those receiving the displaced people.

Before going to the details of the issue it will be appropriate to define and differentiate between the terms IDPs and Refugees. Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border. Whereas those IDPs who cross the internationally recognized border and migrate to other state are called refugees due to reasons already highlighted above.

According to Professor Norman Myers there are at least 25 million environmental refugees today, a total to be compared with 22 million refugees of traditional kind. They are mainly located in Sub-Saharan Africa, Indian Sub-Continent, China, Mexico and Central America. The total may doubled by the year 2010 as increasing numbers of impoverished people press ever harder on over-loaded environments. Due to **global warming** a rapid growth is expected with the rise in sea-level and flooding of coastal communities which will lead to agricultural dislocations like droughts, change in the monsoons and rainfall systems. Which might increase the number to 200 million IDPs. Moreover, deforestation, soil erosion drought may cause major problems. He calls them all Environmental Refugees.

The type may be of marginal people who are driven into marginal environments. They have been by-passed by development processes; like roads, dams and other some development projects and also of **political reasons** like the war in the neighbouring countries, a classic example is of Afghan refugees who have been living in Pakistan for the last 30 years who had come as refugees but now they are settled here. Their settlement has created an issue of IDPs in Pakistan as they are sharing all the facilities and income generating activities in Pakistan. They have further created problem of law and order.

Additional problems related with environmental factors displacing people are **population** pressures already shared in the beginning of the essay. As far as **poverty** is concerned there are 1.4 billion people who are living in absolute poverty and this number will be 1.8 billion in 2010 even though there will be a decline in the proportion.

#### **Rapid urbanisation and mega cities**

Between 1991 and 2010 one billion rural population is expected to migrate to mega cities in developing countries like China, Mexico and India. This will engender greatly increase demand for water for household use which will adversely affect the agriculture besides many other related problems.

#### **Trans-border Migration due to ethnic reasons.**

Besides being potential refugees who might cross international borders most of the IDPs living in these countries share ethnic continuities with the people of the neighbouring countries. The Baloch people living in the province of Balochistan in Pakistan and Seestan and Balochistan in Iran. The Pushtoons of North West Pakistan seem to harbour an active interest in the affairs of their ethnic cousins living in Afghanistan and Iran and vice versa. This shows the creation of national borders could not make many of these pre-existing ethnic spaces completely obsolescent.

One of the major offshoots of this forced migration or internal displacement due to globalisation and unequal distribution of resources is the **rise in human trafficking**. Although this year sees the celebration of the 200<sup>th</sup> anniversary of the legal abolition of slave trade but even then it exist in the form of forced migration and IDPs. Trafficking in persons is a global problem from which almost no part of the world is exempt. The key priorities in tackling it a generally conceived in terms of prevention, protection and prosecution, or the 3P's. It's a problem of internal migration especially in South East Asia particularly into the highly segmented sex markets. However, cross-border migration also occurs in Cambodia for labour purposes. The factors or the root causes of human trafficking are similar to that of forced migration like poverty; unemployment and conflict are the typical factors which render human beings vulnerable to becoming victims of trafficking/forced migration. It is important to recognize the general conditions, the regional differences which prevail in those countries including discrimination and domestic violence which render individuals or groups of individuals particularly vulnerable.

The UN has recognized this problem of IDPs and Refugees by setting up a law in different international regional regimes and a commission to address this issue of IDPs and refugees.

Refuge Law is a relatively new branch of International law. The first major step towards developing an international regime of protection was the 1951 Convention that was later modified by the 1967 Protocol. From then on the 1951 convention has formed the core of all Human Rights Law and Humanitarian Law for the protection of refugees. But it has not set much on the IDPs. However, UN has been successful in setting up of guiding principles to address the specific needs of IDPs worldwide.

The need for some mechanism for IDPs was increasingly felt in South Asia. Luckily the formation of these guiding principles by the international community has given us a framework within which rehabilitation and care of internally displaced people in South Asia can be organised. Keeping that in mind it becomes imperative for scholars working on issues of forced migration in South Asia to consider whether South Asian states have taken the Guiding Principles into account while organising programmes for rehabilitation and care for the internally displaced persons (IDPs).

These principles have set out the rights of IDPs relevant to the needs they encounter in different stages of displacement. They are helpful in designing a national policy or law on IDPs that is focused on the individual concerned and responsive to the requirements of international law. Moreover, these principles have given special attention to women by stating that expectant mothers with young children and female heads of households need special attention. It is further highlighted that in displacement women are the worst sufferers as they are subject to rape, torture, degrading treatment and other gender

specific violence like forced prostitution. For this four principles specially deal with women. Many other international mechanisms were also developed to deal with displaced women.

These principles are so simple that they create awareness among the IDPs to know their rights. One of the biggest contributions of these guiding principles is that they have provided a definition to IDPs. Moreover, they have been successful in warming the Economic and Social Council and the General Assembly at the UN. As a result of this now an increasing number of States, UN agencies and other organisations are applying them as a standard and relevant reference while talking about the IDPs.

However, it is pertinent to note that these principles do not prohibit displacement. In both cases namely humanitarian and human rights law exceptions to the rules are available. For example principle 7 provides a sort of roadmap for avoiding arbitrariness. To sum up, the debate it is always better to explore all possible alternatives and all measures must be taken to minimize the effects and duration of displacement.

We have discussed the definition of IDPs, Refugees and their difference plus highlighted the possible causes of migration and displacement of people. After throwing a light on the guiding principles and slightly touching the role of the UN it will be worthwhile to share the possible and durable solutions to internal displacement in the light of available solution keeping in mind the future outlook. The issues of racism and xenophobia will be discussed along.

There are three durable solutions to situations of displacement voluntary repatriation, resettlement in the third country and local settlement (local integration). The main idea behind this originally devised by UNHCR in relation to the plight of refugees is to help the displaced to become self-sufficient, independent from aid, and to enable forced migrants to participate fully in economic life, either in their new home or back where they are.

For both refugees and IDPs the most accepted solution is considered to be repatriation, since most crises of displacement, even protracted ones, are regarded as temporary. However, due to limited prospects of a *safe return*, repatriation is a poor alternate and creates false expectations with long, frustrating and dangerous waiting games. The authorities encourage return as a political tool for reclaiming territories, while the IDPs seek only to reclaim their homes and livelihoods.

When return is possible, returnees face number of challenges due to which Socio-Economic status and livelihood opportunities have often suffered as a result of displacement, and new disputes between social groups have emerged. People do not generally return to the exact life and community they left behind, thus making return an ambiguous solution.

A main question arising from discussion of the solution to internal displacement is when does displacement end? As there is no formal process for recognising that IDPs are no longer regarded as displaced.

As peace is a precondition for the end of internal displacement. However, it does not in itself guarantee its end (Dayton Peace Agreement). In other words becoming 'ordinary citizens' with some degree of both legal and physical safety, some land and property rights and access to a sustainable livelihood – is the main precondition for the end of displacement.

Here are the issue of racism and xenophobia also plays its part and become a permanent hindrance in resettlement. To understand this problem it is better to discuss it in detail.

The origin of racism and xenophobia is directly related to the concept of Nation State and Nationalism. The philosophy of nation state was the direct contribution of the French Revolution of 1789 when the Nation State was born and seeds of Nationalism were also sworn. With the passage of time the spirit of Nation State, Nationalism got modified and eventually became Internationalism. Just to trace the history of Nationalism and Nation State it is appropriate to share few examples, the Napoleonic wars the origin of first and second world wars all were fought on the pretext of defending the mother state and thinking that your race is superior to others. This spirit eventually leads to racism and xenophobia.

It will be worthwhile to define racism. Racism can be defined as the belief that each race has certain qualities or abilities, giving rise to the belief that certain races are better than the others. It can also be defined as discrimination against hostility towards other races or groups. In short race is a group of people or things with a common feature. Thus, racism can be defined as a prejudice that members of one race are intrinsically superior to members of other races. It can also be defined as discriminatory or abusive behaviour towards members of other race.

**"We Germans can not walk second."** This was said by a German student at Upsala University in Sweden when she was asked by her classmates why she always walks in front of them. If this is a thinking of common man in Germany one has to trace the reasons of this thinking which are inherited in the new German race after the humiliation of World War-I and Hitler's concept of Neo-Nazism. This clearly shows that racism or ideology of Nationalism is the root cause of construction of a nation based on the common character of a group of people.

Almost all the modern states in the world had evolved through racism or nationalism. The presently continued process of nation-building as being waging across the world are based on the ideology of nationalism or racism. The emergence of Pakistan and Bangladesh marked by the large scale displacement were products of nationalism based on religion. The other examples of racism in Pakistan can be the influx of Afghan people into Pakistan after the war had directly affected the Pushtoon community. Pushtoon community facing the brunt of war or mass exodus. Even today when there is an ongoing operation by the US in Afghanistan and Pakistani forces in the tribal belt of Pakistan. Similarly the Baloch facing the same problem in Iran and Pakistan. The other examples of racism in Asia can be Cambodia. In Cambodia there has been a strong anti-Vietnamese sentiment.

In Indonesia there has been a lot of violence against the affluent Chinese population who have been blamed for economic problems that have plagued the country in recent years.

Racism has been one of the main factors influencing force displacement as it had been and has been witnessing in different countries around the world. With its vague ideology of nation building based on discriminatory, suppressive or racism based on racial origin has been the main factor enhancing displacement of people, both within the borders of a country and across borders.

It will be worthwhile to study the linkage between racism, human rights and xenophobia by examining racism and ethnic conflicts as some of root causes of the refuge crises. To find ways and means to stop the expansion of racism and ethnic conflicts; and to examine how better protection vulnerable groups within the states concerned might ensured. IDPs oftenly leave their country or community of origin because of a fear of persecution that might be based on race, ethnicity or



nationality. Racism and ethnic conflicts are major causes of forced displacement, and ethnic tensions are often exploited, deliberately fostered and exacerbated to further political objectives.

Before discussing the measures to curb the strength of racism and xenophobia it will be appropriate to discuss the role of globalisation. Globalisation in its current form expands, so too does the inequality that accompanies it. Rising inequality can result in an increase in racial bias for scapegoating or advancing xenophobic and isolationist tendencies

As Sivanandan describes it in the book "Poverty is the New Black" as the increasing "xenophobic culture of globalisation" seen in some parts of the world.

Racism has always been both an instrument of discrimination and a tool of exploitation. But it manifests itself as a cultural phenomenon, susceptible to cultural solutions, such as multicultural education and the promotion of ethnic identities.

Tackling the problem of cultural inequality, however, does not by itself redress the problem of economic inequality. Racism is conditioned by economic imperatives, but negotiated through culture: religion, literature, art, science and the media.

In short globalisation for the citizens of the underdeveloped countries who try to escape authoritarian regime are finding it difficult to get into first world countries. The rules and policies of immigration to developed countries further complicate the situation. From the prospective of globalisation 'the skills pool, not the genes pool is key'.

When we look back to the root of conflict it is revealed that the ideology of racism based on ethnic line had led to large scaled displacement of people. The growing concentration of communities based on tribe and clan line is also one direct repercussion of the ethnic clash. The increasing lack of economic opportunities, commercialization of lifestyles, soaring prices of essential commodities and the widening gap between the rich and the poor, people all over the world have been grabbing every opportunities for earning livelihood.

No doubt the dual phenomena of racism and xenophobia have become almost universal phenomena. Racism has appeared in new form, cultural differences are essentialised as biological difference on the supposed reality of which old racism arose and persisted. Conflicts drawn to its extreme level produces neo-racist difference, the sing of which is the increasing division of population groups along supposed physical lines, segregating groups thereby in an extreme manner. Such extreme differences become in time hereditary principles of discrimination. Xenophobia is a related phenomenon; aggressive attitude towards national differences produces neo-racist difference. A classic example is partition of India and Pakistan as acted reshaping minds in xenophobia.

In a nut shell there is no doubt that all these four words are either correlated or synonymous so the measures taken to curb this trend should also lie in the same basket. The development of normative framework and of effective institutional responses at the international, regional and in country missions, and research into various aspects of internal displacement and use of guiding principles is recommended. The issue of systematic and specific monitoring of IDPs worldwide by the UN systems preventive activities through contingency planning efforts to both phenomena. For this effective system of networking is required.

Moreover, the universal acceptance of human rights, refugee and humanitarian law and adoption by the states of all necessary measures at the national level to ensure the implementation of their obligations under the law. A global definition and strategy by the UN to address racial discrimination, the explosion of ethnic conflict and alarming proportions of ethnic violence are regular assessment of strategy with follow-up measures is needed. Preventive diplomacy, rapid reaction and early warning through active involvement of the HCHR as well as of the Security Council. Finally the effective use of media to fight racism, xenophobia and related issues is recommended.

Last but not the least everything revolves around what Gandhi has said that 'Earth has the natural resources to meet the needs of human race but not its greed.'

## **Argue with the help of ethnographic studies why forced migration induced by partition is a continuing process rather than its product.**

by *Sanam Roohi*

### **1. Introduction**

The year 1947 marked the heralding of a new beginning for the two fledgling nations of India and Pakistan (and later Bangladesh) to come to terms with their independent existences along with the baggage of their colonial past. One such difficult reality was the religious divide among the Muslims and Hindus of the erstwhile British India, which when translated itself in the historical certainty of two different states emerging from one, rendered huge number of population as refugees. The immediate aftermath of the partition of British India was the 15 million refugee flow across the borders; refugees who poured across the hastily drawn borders to regions completely unfamiliar to them, which had transformed its alien nature almost overnight and became a new homeland. Aiming at providing solution to the problems of ethnic conflict, the partition proved to 'stimulate strife' rather than ending it.<sup>[i]</sup> But the new homeland they chose, often out of compulsion, posed an immense humanitarian problem for the nation state. This paper seeks to understand the question of the huge refugee flow on both sides of the Indian border, east and west and the role of the government in tackling this alarming situation. The paper will look at the ethnographic studies to understand the experiences of the refugees from the then east and west Pakistan who struggled for existence and lived through the trauma of refugee hood in India while also touching on the issues of those rendered as refugees across the border. The paper will end with the emergence of the minority problem and the ensuing crisis in Kashmir (that were a direct legacy of the partition) thereby proving how forced migration induced by partition is a continuing process rather than its product.

The traditional Partition historiography has largely tried to look at the causes of India's Partition and the 'high politics' behind it. In contrast, the 'new partition historiography' aims at highlighting the experience of the common people who had gone through it<sup>[ii]</sup>. Historians wrote academic tomes based on archival research, explaining why and how the politicians failed to save the unity of India. Those with a more literary sensibility wrote books based on interviews, capturing the voices and

sentiments of those who lost homes as well as loved ones in 1947.<sup>[iii]</sup> However, this paper shall not deal with the historiography of partition.

Joya Chatterjee calls the partition 'a messy long drawn affair' which did not tidily end with August 1947. The product is still unfinished today.<sup>[iv]</sup> (jstor) Forced migration resulting from partition creates a paradoxical situation. The refugees of partition seeking a safe haven arrives to a new 'homeland' often being forced to chose it as they fearing persecution if they remain behind. The partition of British India largely forced the muslims of India and the hindus of Pakistan to seek a new 'home' in an alien region. Though largely a painful experience of being uprooted, partition is combined with optimism and pessimism. As Ranabir Samaddar has pointed out in "Divided countries, Separated Cities", it is optimistic as it is a dream of 'sovereignty fulfilled', yet at the same time it is a partially fulfilled dream.<sup>[v]</sup> The partition of British India created memories and oral narratives that explored the tense conflict of loss and recovery and determined 'that the experience of partition defying the violence and death it summoned, appealed to life as its only refuge.'<sup>[vi]</sup>

## **2. Partition of India and the question of refugees: A question of numbers**

The partition of India left both India and Pakistan overwhelmed by the large scale violence in pockets across the subcontinent and left an unprecedented number of people as homeless or dead as the process of partition had claimed many lives in the ensuing riots. Many others were raped and looted. Women, were specifically used as instruments of power by the Hindus and the Muslims. Not only was the country divided, but so were the provinces of Punjab and Bengal; divisions which caused catastrophic riots and claimed the lives of Hindus, Muslims and Sikhs alike. Pakistan had to face the separation of Bangladesh in 1971. India and Pakistan went to war twice since the partition and are still in a deadlock over the issue of Kashmir, which still persists today.<sup>[vii]</sup>

Individual suffering and loss occurred on both sides of the border. There exists many accounts of the exact number of people affected by the partition. Gyanendra Pandey in an article talks of huge disparities in the estimate of the affected people. He writes:

"By the time the rape and loot and migrations were finished, two researchers have said of the violence of 1947, "about eight to ten million people had crossed over from Punjab and Bengal and about 5,00,000-10,00,000 had perished."<sup>17</sup> "Estimates of the dead vary from 200,000 (the contemporary British figure) to two million (a later Indian estimate)", writes another, "but that somewhere around a million people died is now widely accepted. The former, Menon and Bhasin, choose half-a-million to a million; the latter, Butalia, "somewhere around a million". Other scholars do the same. Mohammad Waseem accepts a figure of "about half a million". Wolpert settles for approximately one million."

Papiya Ghosh's seminal work, which was reproduced in Refugee Watch, issue 29.<sup>[viii]</sup> brings out the nature of the migration and she details how by December 1951, 6,597,000 refugees had moved from India to West Pakistan, and 7,94,127 refugees moved to what was then East Pakistan. She offers statistics of the Indian Muslims too who headed for Pakistan during 1947-48. It is learnt that 95.9% of the migrants from Assam, West Bengal and Bihar moved to East Pakistan and 3.2% to Karachi. "According to the 1951 census, 66.69% of the migrants in East Pakistan came from West Bengal, 14.50% from Bihar, 11.84% from Assam and 6.97% from other places in India.<sup>[ix]</sup> A passport and visa scheme was introduced only on 15 October 1952. But travel documents were not even required until 1953<sup>54</sup>, several years after India and Pakistan became two separate countries". An interesting observation she makes is that several government employees opted for Pakistan, although some changed their minds later and returned to India. Following riots in Khulna and Calcutta in January 1964 and as a reaction, in Jamshedpur and Rourkela in March 1964, there was a yet another spate of migrations in both directions. The destination of migration changed from Pakistan to Middle East, 'which had emerged as an alternative.'

## **3. The 'crisis' to be solved: The Indian government's response to the refugees**

Ranabir Samaddar in his article 'Power, Fear, Ethics' has pointed out how power structure in democracies makes groups of people as its victim, which can include the displaced people. He terms it as a question of 'democratic deficit'. Since international organisations have no legal authority to enforce the state to observe the human rights, this democratic deficit translates into humanitarian deficit too. Though there is a need for the universality of the ethical language of care and justice, there is no unilinear approach on what the ethical principles and practices should be. To develop this ethical language, there is a need for a dialogical understanding between the giver and the recipient of this care. Refugees formed

such groups needing care. But the Government of India's approach towards these groups were a question of numbers – a disaster of humanitarian nature. What was needed was a combination of comprehensive approach which combined the rights based approach and the humanitarian approach to rehabilitate the victims of this mass displacement. It cannot be denied, however, that for any fledgling state, this massive numbers of refugee migration would have been a daunting task and so was it for India and Pakistan too.

In an era when the nation-state is considered as the highest expression of any community, the refugees 'disrupt this tidy view of nation, narration, and belonging'.<sup>[x]</sup> In 'The Marginal Nation' Ranabir Samaddar speaks of the how human rights abuses occur when people abandon their homes out of a feeling of (perpetual) threat to their existence. When such population, on the move is denied shelter and sustenance as the state's perspective of security human right abuses are compounded.<sup>[xi]</sup> The Boundary Commission was set up to draw a border to separate India and Pakistan. Instead of resolving tension by clearly separating religious groups, the Boundary Commission may actually have contributed to the upheaval, albeit without malicious intent. The surge in violence that began shortly before the Radcliffe award was announced can be traced in part to rumors and uncertainty over where the Line would fall. It is suggested that a lengthier and more transparent boundary-making process might have averted this situation.<sup>[xii]</sup>

The experience of Partition was markedly different in the two regions. Northern India witnessed a tremendous and violent upheaval over a roughly three-year period (1947–1950), characterized mainly by a disorderly population exchange between Hindus and Sikhs coming to India and Muslims arriving in Pakistan followed by massive rioting. Yet there existed significant government intervention and resettlement and rehabilitation efforts, with refugee populations often occupying the homes and businesses of their departing counterparts. A new capital city of Chandigarh was built for the Indian province of Punjab while the national capital New Delhi absorbed so many newcomers that it has been described by some as a "city of refugees," particularly of a Punjabi refugee diaspora.<sup>[xiii]</sup>

In Eastern India, the Partition was similarly violent, but occurred as part of a much more gradual and recurring process, and with far less population exchange or governmental intervention. The earlier Partition of Bengal in 1905 under the guise of administrative reform remained a pivotal memory for many Bengalis, especially those who had been involved in the nascent nationalist struggle and who felt the British action was punishment for their politicization. Partition again happened in 1947 and then in 1971, bringing with itself a saga of misery and trauma, yet also a will to survive all odds. The issue is dealt with in the following paragraphs.

Refugees from the Western side of the border

Much has been written on the question of Punjabi identity but as yet the scholars are not agreed on whether such an identity was important in the lives of the Punjabi-speaking people or that religion, caste, biradari (kinship lineage) or sect played a greater role in creating networks and solidarity groups. I think the notion of a composite Punjab in which all Punjabis shared a strong sense of solidarity, derived from their common culture; as well as the one that religious differences make for a permanent conflict among Punjabis are exaggerated — each of these is an oversimplification of reality<sup>[xiv]</sup>

In Punjab and Rajasthan, many private organisations—from ICRC to RSS provided for immediate relief as the state could not alone handle the pressure of providing these to the traumatised migrants from West Pakistan.<sup>[xv]</sup> The need of the hour was not just physical and economic security but also socio legal and psychological security. For details of the influx of refugee flow, the camp situation and the attempt by the government to provide for Relief and Rehabilitation / compensation one can go through Ritu Menon's chapter on Social Security Commitments in Ranabir Samaddar edited *Refugee and the State*.

### **Refugees from the Eastern side of the border**

Within a month, nearly a million refugees had entered India, fleeing the military repression in East Pakistan. By the end of May, the average daily influx into India was over 100,000 and had reached a total of almost four million. By the end of 1971, figures provided by the Indian government to the United Nations indicated that this total had reached 10 million. Such an exodus of refugees inevitably produced extraordinary problems for the host country, India. From the beginning, the Indian government made it clear that there were no circumstances under which it would allow the refugees to settle in India. The way was now open for the return of the refugees. India quickly announced that all refugees who had entered the country after 25 March 1971 would need to return to Bangladesh by the end of February 1972, an optimistic dream. Within days of the conclusion of hostilities, the refugees began returning home of their own accord. During the return, refugees were given food for the journey, medical assistance, and two weeks' basic rations. Remarkably, by the end of February 1972, over nine million refugees had gone back to Bangladesh. The desire to return home had outweighed practical problems. On 25 March, the Indian government estimated that only 60,000 refugees remained in the country.<sup>[xvi]</sup> Joya Chatterjee has called the effort of the government to providing relief and rehabilitation to the refugees as an instrument for the communist party to further its campaign.<sup>[xvii]</sup>

On 28 August 1973, the governments of Bangladesh, India and Pakistan signed the New Delhi Agreement, which included provisions for the simultaneous repatriation of three primary groups. These comprised Pakistani prisoners of war and civilian internees in India, all Bengalis in Pakistan, and 'a substantial number of non-Bengalis' present in Bangladesh who had 'opted for repatriation to Pakistan'. The 'non-Bengalis' were commonly referred to as Biharis, since a majority of them were Indian Muslims originally from the state of Bihar in India who had come to East Pakistan at the time of partition in 1947. The United Nations was requested to provide assistance to facilitate the repatriation. Given its recent involvement as the Focal Point, the Secretary-General asked UNHCR to coordinate all activities relating to the humanitarian effort.<sup>[xviii]</sup> Samir Das has given a detailed account of the state's response to the refugee crisis in the East and the measures of relief and rehabilitation by the state government (between 1946 – 1958) who had assumed the refugee problem as a temporary one and had to formulate a

separate legal regime for these 'displaced persons' once it was known that most of the refugees were here to stay. The number of refugees sent back returned to West Bengal once the violence had lulled. But the partition of East Pakistan brought a fresh wave of refugees seeking asylum in Bengal which crossed over from 4 million in from 1947 – 1956 to 3 million people in a span of 2 months in 1971.[\[xix\]](#) However, unlike earlier, the government was successful in repatriating large number of refugees.

The refugees, finding themselves sharing the same kind of devastating circumstances, came together and one such successful example was the Bijoygarh market where community feeling gave rise to an activated network. However, the city of Kolkata could not grapple with the refugee flow. In a survey it was found out that app 68 percent of the hawkers in Kolkata were of east Pakistani origin. Adversely, during 'Operation Sunshine' many such persons were subjected to economic displacement, and most of them had meagre income of less than Rs. 1000.[\[xx\]](#) It is just one of few examples to show how the problem and status of refugee-hood continues to preoccupy the existential realities of those who have long been naturalised as citizens.

#### **4. Refugees that side of the border**

##### **Biharis in Bangladesh**

After the holocaust of communal riots in British India at the advent of its partition into two sovereign States, India and Pakistan (comprising two wings of East and West Pakistan), Biharis, as they are known migrated from different states of India, mainly from the state of Bihar (as it then was) to East Pakistan. They abandoned their homelands in India, and migrated to the soil, now known as Bangladesh, as their adopted land in 1947-71. Majority of them are now the 1st, 2nd and 3rd generations of the Indian migrants. They are citizens by birth under the Constitution and the law with distinct language and culture. 1971-War of Liberation in Bangladesh brought them to the different camps, and they were called by a new nomenclature of "Stranded Pakistanis" on the basis of their registration with the ICRC in 1972. Following the Simla Agreement, India, Pakistan and Bangladesh resolved to address the issues of their stranded citizens in Pakistan and Bangladesh under the two Delhi Agreements signed on 28 August 1973 and 9 April 1974 respectively. The basis of repatriation was domicile, which every person acquires either by birth or by naturalization and habitation in the ICRC built shelters in the false hope of repatriation. The Government of Bangladesh also gave them the status of Stranded Pakistanis.[\[xxi\]](#) After India's intervention in December 1971, Pakistan evacuated Bangladesh. Left behind, in a country that had formed around them, were over one million Urdu-speaking Biharis. Persecuted, their property and houses seized, their jobs terminated, by 1972 1,008,680 Biharis were interned in camps across Bangladesh. While these 'temporary' camps were being constructed, officials from Pakistan, Bangladesh and the international community committed themselves to finding a solution. Of these three, the first agreed to repatriate the Biharis, the second to tolerate them for the time being, and the third to support them. The agreement is now decades old, but Islamabad accepted only a few of those it had promised to repatriate, while Dhaka let them sink to the absolute margins of society. The international community turned its attention to new challenges, and the Biharis became stateless. And there, in the camps, the Biharis remain. Over half (600,000) accepted Bangladesh's offer of citizenship in 1974, while 539,000 registered with the International Community of the Red Cross as refugees, to "return to their country of nationality – Pakistan". Since 1972, Pakistan has accepted back around 175,000 Biharis. 300,000, meanwhile, have continued to live in the camps for more than three decades. Camp conditions are deplorable, characterised by chronic shortages of clean or running water, undependable electricity, communal kitchens and hour-long queues for squalid bathrooms. The majority of Biharis held university degrees in 1947; today, while primary enrollment in Bangladesh nears 100 percent, less than 20 percent of Bihari children are in schools. The refugees are refused admittance into most government public schools and universities, and are prohibited from joining civil service, the police, the military or holding political office. Unemployment and extreme poverty are rampant, as two generations have been denied the resources, knowledge and skills needed to improve their lives. In 2001, 10 Biharis born after 1971 successfully petitioned a court for the right to vote. Hundreds of thousands of others, however, have been stripped of even the most basic of human rights. Both Pakistan and Bangladesh refuse to recognise their suffering and grant them citizenship. All but forgotten by the international community, the Bihari wait, desperate for attention, afraid to dream of a better future for their children.[\[xxii\]](#)

A permanent solution is possible if the governments of Pakistan and Bangladesh offer citizenship to the Biharis. Some camp residents think of themselves as Pakistani and would like to be reunited with family members in Pakistan. This repatriation could be funded by money already put aside by the Pakistani government. Others, who have never been to and have no family in Pakistan, can only imagine a life in Bangladesh. Those Biharis that are keen to establish lives as Bangladeshi citizens sometimes see "no other way" and marry local Bangladeshis. Others, such as 20-year-old Abdul, who survives hand to mouth as a garment factory worker, says he would like to go to Pakistan. In any case, the Office of the United Nations High Commissioner for Refugees (UNHCR) is not addressing the plight of the Biharis.[\[xxiii\]](#) From a report one learns that all most all Urdu-speaking population living in or outside the camps has been enrolled as voters for the national elections to be held in early part of 2007.[\[xxiv\]](#)

##### **Pakistani muhajirs**

The Muhajirs have no roots in Pakistan unlike the Punjabis, Sindhis, Baluchis and Pathans. Before the creation of Pakistan religion was thought to be the most important identity and the Hindu was seen as the oppressor. Now in Pakistan ethnic and linguistic identities have become the most important and the majority ethnic community, the Punjabis, are perceived as the oppressor. It is not Muhajirs alone who have serious grievances against the Punjabis but Baluchis, Sindhis and Pathans too. Since the early 1980's the Muhajirs had raised the banner of revolt against the federal Pakistani and provincial Sindhi authorities. This had made Karachi (where large number of such refugees settled) one of the most violent cities in South Asia. The Muhajir Quami Mahaz (MQM) party formed as a manifestation of this angst demands for the recognition of the Muhajirs as a separate fifth nationality. This indicates how Pakistan has yet to come to term with the political implications of partition and also how religion is not the sole basis for forging a unified national identity.[\[xxv\]](#)

## 5. In search of a new 'Home': Attempts at rebuilding lives

Thousands of state-less South Asians live across 197 'enclaves' (a portion of one state completely surrounded by the territory of another) strewn along the northern border of Bangladesh. A product of 1947, 123 of these are Indian, while 74 belong to Bangladesh. As Atul Mishra quotes Historian Willem Van Schendel: "In their complexity, number, political significance and social eccentricity, they have no parallel in the world." The proxy citizens of these enclaves represent a trans-territorial dimension of nationalism that emerged in the aftermath of August 1947. Although the first official movement on this issue in years took place in May 2007, when a high-level joint mission visited a number of the enclaves, the fact remains that both New Delhi and Dhaka have long had incentives to positively revive cross border relations along these enclaves, but the status quo has instead been preferred. [xxvi] Many of these groups, for example, have developed vibrant, established, "successful" diasporic communities in their countries of refuge; others remain marginalized, often continuing to live for decades in camps under less than ideal conditions and denied the rights and privileges enjoyed by their immediate neighbours. Examining the diverse and complex experiences of resettlement, integration, and ongoing relationships with assumed homelands is a 'key component in understanding the makeup and mentality of refugee diasporas.' [xxvii]

The memories of the partition were entrenched in the minds of the refugees. In the words of Dipesh Chakravorty 'there are two aspects of this memory: the sentiment of nostalgia and the sense of trauma, and their contradictory relationship to the question of past. A traumatised memory has a narrative structure, which works on a principle opposite to that of any historical narrative. At the same time, however, this memory, in order to be the memory of a trauma, has to place the event within a past that gives force to the claim of victim.' He unearths the nostalgia for the lost homeland, which was viewed as sacred and patrilineal, and essentially Hindu in content. Muslims are mentioned in the narratives; however, their traditions are not a part of the idyllic representation of the homeland of the Bengali Hindus. [xxviii] The homeland the refugees lost was their home alone. It was one of the fundamental problems in the history of modern Bengali nationality that this nationalist construction of 'home' was a Hindu home. It was not a home for all Bengalis. 'Hindu nationalism had created a sense of home that combined sacredness with beauty. This sacred was not intolerant of the Muslim. The Muslim Bengali had a place in it created through the idea of kingship.' A kind of deafness to the call of the Others was very much present in the relationship between the two communities. This deafness is as constitutive of ethnic distance as may be the more explicit elements of violence. In the moment of crisis, this deafness posed a serious obstacle to hearing the voice of the other. [xxix]

## 6. The minorities' problem: A legacy of the partition

The violence of 1947 created new subjects and subject positions. Life and conditions in the two new nations, of the individuals families, and communities that made them up, were remade and still are being fashioned in numerous ways by that violence and the curious 'memory-history' that exists of those times. It was not merely the immediate problem of rehabilitation and resettlement, but also the fashioning of longer-term policies, mentalities and prejudices, seen in wide evidence. [xxx]

It was also followed by a moment of contest and an intense debate about what the character of the new nation-state should be, on who would constitute its 'natural citizens'. For, the Muslims who stayed on in India (like the Hindus who stayed on in Pakistan) now constituted a minority problem. The abducted persons who remained on the wrong side of the international border also constituted a different sort of problem - they were conceived of as impurity, or theft or both. The question posed was what their place in the new dispensations of India and Pakistan would be. Post 1947, Muslims were asked to demonstrate their loyalty to India. Their willingness to "shed their blood for India" became a desperate password for citizenship, for being Indian. While being part of a community was enough to deny nationality to or confer it on certain others naturally; for the many abducted women, it was in the process of their recovery and restoration that the new nationalisation was decided. Mass upheavals of partition bear hardest on women, who in every conflict and every partition have become a routine target for mass rape and all manner of other brutalities. In 1947, women who were long considered as having no religion or community or nation, came for that moment to stand for nothing else. Represented as nothing but the possessions of their men, their communities and their nations, many of the women and children who were victims identified by this programme became mere pawns and had little say in the crossfire of nationalist demands. [xxxi]

The fifties were relatively peaceful, but by the sixties communal riots were once again very much a part of the Indian political scene. The decade began with the Jabalpur riots of 1961, triggered reportedly by a Hindu girl eloping with a Muslim boy, and ended with a major conflagration in Ahmedabad, in 1969, which bore all the familiar characteristics of the major riots that followed — including the political assertion of the RSS/Jan Sangh. The riots of 1992-93, following the Babri Masjid demolition almost constructed the identities of the two communities involved in these riots as becoming more pronounced. Sociologist Paul Brass has argued that this "production of Hindu-Muslim communal violence", often occurring in waves, was linked to the political construction of 'Hindu' and 'Muslim' identities in post-Independence India. But Partition did more than coalesce only communal identities. Its fearsome repercussions branded the lives of the women of the subcontinent. [xxxii] Inherently vulnerable, they were attacked in innumerable and horrific ways — outlined graphically in work done by feminists like Ritu Menon, Kamala Bhasin, Urvashi Butalia and many others — because they came to define the identities of the warring groups and represent community honour. The women became "their respective countries" bearing on their bodies the mark of their group/community identities. This legacy carried on, well into the post-Independence years. Large scale communal violence reared it's ugliest head in the post Godhra carnage which saw rioting at an unprecedented scale since the partition. The most appalling facet of this state monitored pogrom was the guiltless and unapologetic approach of the government of Gujarat towards the minority community in the state. The social conditions of the largest minority community in India has been brought out by Report on Social, Economic and Educational Status of the Muslim Community of India (November 2006) The very fact that the Government of India thought it fit to enquire into the Muslim problem is a testimony enough to reflect how the Muslims are being left behind. This four hundred page report is an exceptionally candid document which details the backwardness of the Muslims in India. The current Muslim population is over 150 million about the same as Pakistan and Bangladesh which at the time of partition was about 50 million. At the current rate of growth in the decade of 2030s the Muslim population would stabilise at about 320 million. Yet the presence of Muslims was found to be only 3% in the IAS, 1.8% in the IFS and 4% in the IPS. [xxxiii] Therefore it is not a surprise that increasingly uneducated youths of the community are taking to fundamentalism, especially in the aftermath of 9/11.

## 7. Kashmir: The unresolved dispute

'Kashmir' was one of the great populist symbols of this new national enterprise of a Muslim-majority state aligning with secular India at the behest of the popular Muslim leader of the state's people's movement, and confirming its commitment to the new India through its participation in periodic elections. Kashmir had become an international question as early as the end of 1947, and hence a prestige issue for India's home affairs. The province became an important symbol in the Indian state's self-representation as a bastion of secularism and democracy; and, once the international dispute with Pakistan had arisen, it was no less important to the matter of national sovereignty and integrity.<sup>[xxxiv]</sup>

In the present state of Jammu and Kashmir, there exists a steep communal divide, compounded by the state's discriminating responses to different groups of people. Several waves of displacements have taken place due to the conflict - those uprooted by the partition of Jammu and Kashmir in 1947-48, and thereafter by some territorial alterations in subsequent wars in 1965 and 1971, those who have been forced to flee, in the last couple of decades, from the Indian side of Kashmir to the Pakistani side, those displaced due to recent India-Pakistan border confrontation after the Kargil War and subsequently Operation Parakaram and finally those displaced due to violence in militancy-hit areas and those displaced from one militancy-infested area to a slightly lesser one.<sup>[xxxv]</sup>

The conflict in Kashmir is the primary cause of continuing hostility between India and Pakistan which has led to 'institutionalising in a microcosm all the historical irritations between the two countries.'<sup>[xxxvi]</sup> The nuclear muscle power shown by India and then by Pakistan in 1998 and the failed Agra Summit in 2001 are cases in point.

## 8. Concluding comments

The division of the Indian subcontinent by the British in 1947 at the moment of their departure signified a simultaneously momentous and calamitous event. The creation of a majority Hindu India and a bifurcated, mainly Muslim Pakistan (with eastern and western wings) was predicated on the colonial notion of two indigenous populations locked in eternal enmity and strife.<sup>[xxxvii]</sup> On reading the Module note of Module the enlightens one as to how racism and xenophobia have become almost universal phenomena. "Racism has appeared in new forms, cultural differences are essentialised as biological differences", as in the case of Hindus and Muslims residing in the whole of South Asia - a region marred by communal conflicts. Xenophobia is a related phenomenon where aggressive attitude towards national and also community based (as among the minorities of Bangladesh and India) or linguistic based (as in the case of Muhajirs) differences produces neo-racist differences. Partition of states produces the most concentrated violence, reshaping states, reshape minds, and the formation of new states happens amidst mass murders, mass dislocations, and mass displacements, as it had happened in 1947 and reoccurred in 1971.

Migrations did not end post partition. There has been a continuity in the migration of the 80's and 90's with that of the 1950's which can determine how ethnic boundaries will melt or harden, (which in reality they certainly do) thus discouraging people from migrating. Migration today is more in economic lines and renders the phenomenon of trans-border migration a secular event. Illegal migrants have their own notions of rights and they negotiate the meaning of citizenship, which invariably create the notion of non-state persons. This category emerges from the very core of the nationalist discourse of citizenship.<sup>[xxxviii]</sup> Migration has become linked with the emergence of the 'New Right' with the increase 'fascization' of polity of most of the nations in South Asia and the question of national security taking precedence over human rights. These rights cannot be guaranteed by the nation state as it is the very process by which they are formed that leads to displacement. The flow of population has a deep mark on the politics of care in this country. This politics of care produces power.<sup>[xxxix]</sup> The world of care is a game of protection, hospitality, security, citizenship and nation-making among others.

The whole of South Asia has to deal with the refugees and migrants as unwanted guests. As both the destination of their migration and the state to which they belong to, do not want them and they are left in a dilemma. This quagmire teaches them the art of bargaining and negotiating with their status of statelessness. Like the different kinds of community at stake in the stories and accounts of the stories of Partition, the nation too might be seen as an alterable, malleable construction. The violence is produced by the partition central to an investigation of our times, 'of our future and past politics', as put by Gyanendra Pandey. 'Understanding its nuances, its moment, might help redefine and reshape contemporary society and at the same time, effectively pose a challenge to the attempted definition of communities as rigid, 'natural, permanent' entities, as an increasingly vociferous right-wing polity is seeking to do'.<sup>[xli]</sup> Ashish Nandy, while writing on the huge loss of life and the imperviousness of the people of South Asia towards such crime, aptly sums up that 'South Asia has paid heavily for not coming to grips with the violence of partition and its long-term consequences. Not merely the pervasive culture of immunity today but the paranoiac and psychopathic features of the national security states we have built in the region have their roots in that cultivated forgetfulness.'<sup>[xlii]</sup> So the story of partition(s) is intrinsic for us to understand the politics of South Asia today. Perhaps it may allow us to throw some new light - or a whole new dimension to understanding and perhaps initiating a dialogue in the region, for a less volatile and more peaceful South Asia.

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