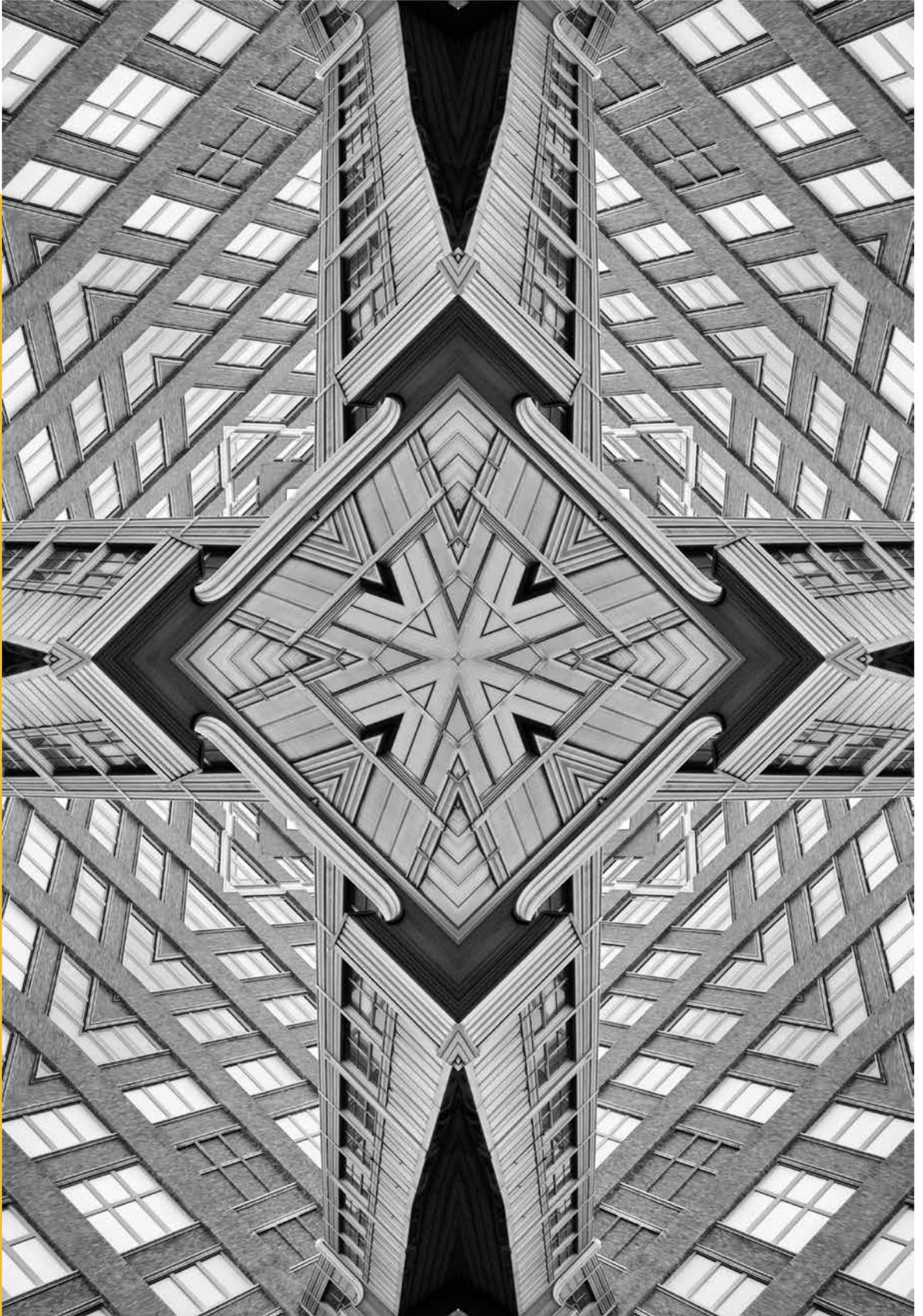


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Trans-Border Migration: Bridging the Gap between State and Human Security

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Abstract

Cross-border migration poses security challenges for the modern nation-state, as the influx of populations exert massive pressures on a country's resources and governance ecosystems. The undocumented migrants, for their part, not only struggle for their livelihood but often face fundamental crises of identity and belonging. Using the case of India's eastern borders, this paper problematises the phenomenon of migration against the dichotomous perspectives of 'state security' and 'human security'. It argues that the 'securitisation of borders' does not necessarily translate to 'securitisation of migration'.

Trans-border migration was not considered a severe threat in South Asia in the immediate aftermath of Partition in 1947, at least until the passport system was introduced in the early 1950s as the phase was marked as a period of political transition in the newly independent states of India and Pakistan. Indeed, the debate on trans-border migration heightened only in the past few decades and today, this phenomenon is regarded as a massive security challenge for the modern nation-state.

The ‘mixed’ and massive flow of people out of one South Asian country to another, exerts pressures on the recipient country’s resources and tests the limits of its governance systems. Very often the undocumented migrants are perceived to be ‘illegal outsiders’ and ‘encroachers’. They are faced with economic and identity crises which, multiplied manifold, accumulate to a serious humanitarian emergency. This paper problematises the phenomenon of migration—both legal and voluntary, and illegal and forced—against the dichotomous perspectives of ‘state security’ and ‘human security’.

It examines, in particular, the nature of migration that takes place in the eastern side of India’s international borders. It argues that the ‘securitisation of borders’ is not equivalent to the ‘securitisation of migration’. The paper analyses how the phenomenon of migration poses a challenge to the territorial and demographic boundaries of nation-states and briefly discusses the dichotomous relationship between state security and human security; explores the international legal regimes that aim to deal with trans-border migration; explains the socio-political dynamics of the eastern regions of the Indian subcontinent, their historical legacies including border formations; examines how migration assumes a security dimension in the context of violence-induced displacement and economic necessity-induced migration into India; and outlines how a humanitarian perspective on the issue of migration can disentangle the ‘hard’ concept of securitised borders.

Trans-Border Migration as a Threat to the Nation-State

The migration^a of people across countries in search of better life opportunities and security, is a constant process^b that has been ongoing since humans began building communities. It was when the modern concept of the territorial nation-state emerged, after the Treaties of Westphalia^c (1648) that this phenomenon became a problem to be dealt with and solved. Indeed, the term ‘migration’ attracts political and social controversy, whereas ‘mobility’ does not.¹ The identity of a territorially defined modern state is premised upon its boundaries and the identity of the people who reside within those boundaries.^d States aim to safeguard both the territorial sanctity as well as demographic sanctity^e in order to uphold their coherent identity as a sovereign political unit in the modern state system.²

Migration is influenced by both pull and push factors,^{f,3} although not in simplistic ways.⁴ It is important to make a distinction between “voluntary” and “forced” migration: voluntary refers to movement by choice, and forced, to movement compelled by any combination of political, economic, social and environmental reasons.⁵ In this context, the phenomenon of undocumented migration of people from one country to another poses a formidable threat to both the territorial as well as demographic jurisdiction of a country. The identity of the trans-border migrants in an alien land triggers crucial issues related

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- a Migration is generally defined as “a permanent change in place of residence by the crossing of specified administrative or political boundaries”.
 - b The nomadic movements and mobility of the seasonal/temporary migrants constitute other forms of migration.
 - c See Roland Axtmann, “The State of the State: The Model of the Modern State and Its Contemporary Transformation”, *International Political Science Review*, Jul., 2004, Vol. 25, No. 3, pp. 259-279
 - d The boundaries of a nation-state are the indicator of their jurisdiction of control, possession and sovereignty. The need for territorial demarcation makes the function of international borders, which differentiate one territorial state from the other, sacrosanct and inviolable. See Etienne Balibar, *Race, Nation, Class-Ambiguous Identities*, (London: Verso,1993), 43.
 - e The desire of a territorially defined nation state to grant its membership to a certain section of ostensibly ‘homogenous’ people who purely belong to the land and not to the ‘outsiders’, is considered as demographic sanctity.
 - f Push factors include unsuitable political, economic and environmental living conditions; the pull factors are favourable economic opportunities, suitable political and security conditions, and ethnic proximity.

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to national identity, political membership, and citizenship—all being defined within the binary of what is “legal” and what is not. Therefore, cross-border migration makes nation states paranoid—defined as they are by territory—about their security and identity.⁶ Victims of forced, undocumented migration do not benefit from any protection.⁷ On the contrary, they are most often in a situation of illegality⁸ outside the domain of national law and are extremely vulnerable.⁹

Historically, national security has been defined based on threats like external aggression or military warfare.¹⁰ As the traditional military threats have receded over the decades, national security is being increasingly defined according to non-traditional threats: social, cultural, environmental, demographic, ecological, and technological.⁸ Among these is migration, which has emerged as a “monumental security threat”¹¹ for nation-states.

The cross-border flow of people creates more serious foreign policy crisis when the host country views the influx of people into its territory as a result of “coercively engineered migration”¹² perpetrated by the sending state.^h Migration throws two types of challenges for a receiving state: first, the flow of people into another territory can threaten the political and cultural pre-eminence of the local population; second, the presence of migrants exerts great pressure on the economic resources of the host country.¹³ Moreover, migrants are often regarded as “destitute”, “impoverished”, and “resource starved”; this makes them vulnerable to suspicions from among the local people. And despite the figure of the immigrant or refugee being ‘impoverished’ and ‘destitute’, it creates a sense of uneasiness in the migrant-receiving state as well as animosity within its natives.

g Arising out of the demographic factor of non-traditional security threat, the phenomenon of constant and clandestine cross-border flow of people becomes a major concern for a modern nation-state. See J. Peter. Burgess, “Non-military Security Challenges”, in C.A. Snyder (eds.), *Contemporary Security and Strategy*, 2nd edition, (London: Palgrave, 2007), 60-78.

h Ironically, even the first document on Refugees, 1951 Refugee Convention, defined the term ‘refugee’ keeping the security conditions in mind. See. Partha. S. Ghosh, *Migrants, Refugees and Stateless in South Asia*, (New Delhi: Sage, 2016), 126-127.

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With the rise of democracies, the issue of migration and forced migration has become more politicised and securitised.¹⁴ The significance of demographic strength in determining political outcomes in a democracy makes the presence of large number of undocumented 'immigrants' controversial which can eventually have further economic and cultural implications for the native people.

Historically, immigrants and refugees who have fled their native countries due to adverse conditions have found refuge in foreign lands.¹⁵ But such magnanimity has been conditional, temporary, and selective, based largely on the generosity of the receiving states and not premised on any obligatory legal framework.¹⁶ Yet official government positions, and public opinion, regarding refugees and immigrants are neither unified nor constant. Over time, the empathy shown to refugees is seen to turn to hostility towards 'illegal outsiders' in many countries.¹⁷ Therefore, as pointed out by political scientist Seyla Benhabib, the question of the "right to visitation" of the immigrants becomes problematic when it coincides with their 'right to permanent residency.'¹⁸

Contextualising Human Security

The migration of people across borders poses threats both to state and human security. The presence of 'illegal' immigrants in their territory makes the nation states paranoid about their national security as well as the interest of their native population. In turn, the concern for state security jeopardises the prospect of suitable conditions for the undocumented migrants to sustain themselves within the territorial boundaries of their host state.¹⁹ This creates a dichotomous positioning of the nation-states towards the immigrants: between paranoia, and the imperative of care. The country hardens its borders by militarisation, border patrols, surveillance, and erection of physical walls to prevent the flow of immigrants.

This means that the very process of migration and the presence of migrants is itself securitised and politicised. This has relegated the immigrants to the margins, to be regarded as 'aliens'. Such a perception of migrants as 'other' has been established in the political imagination of the state, as well as in the everyday transaction of social and economic life. This compels migrants to make themselves invisible to escape "everyday forms of violence."²⁰

Trans-Border Migration as a Threat to the Nation-State

The fear of the migrants, refugees, stateless peopleⁱ and the negative perception of them as usurpers of land, jobs, security, culture and dominance of the local people propels the phenomenon of securitisation of borders: borders are hardened to prevent any encroachment by the “alien migrants”.²¹ The term ‘refugee’ or ‘immigrant’ is thus transformed in a “limit concept” to determine who is a legitimate citizen and who is an outsider—categories that are embedded in a grid of inclusion and exclusion.²²

The act of crossing the international boundary violates the jurisdiction of the sovereign state,²³ thereby making migration a security concern of that territorial state. The state reacts by safeguarding its boundaries and reinforcing the inviolability of its borders. The problem lies in the conflation of the concept of hard border and restricting the flow of people, perceiving it entirely from the domain of state security and leaving unattended the rights of the undocumented migrants, refugees, and the stateless.^{24,25}

International Legal Framework

The 1951 United Nations (UN) Convention Relating to the Status of Refugees^j defined a ‘refugee’ as a person who “as a result of events occurring before first January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of its nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”²⁶ In 1967, the UN protocol omitted the phrases “as a result of events occurring before 1 January 1951 and ...” and “... as result of such events” from the definition.²⁷ The core principle of the Convention and Protocol is Non-refoulement, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom. This is now considered a rule of customary international law.²⁸ There is also the Cartagena Declaration on Refugees, a regional,

i In 1954 the Convention relating to the Status of Stateless Persons defined the ‘stateless’ as a “person who is not considered as a national by any State under the operation of its law”.

j The Convention was ratified by 145 countries.

Partition, Decolonisation, and Migration in East of South Asia

In the last seven decades, more than 50 million people have migrated across South Asia due to political instability, religious persecution, search for economic opportunities, and ethnic proximities.³² As colonial rule ended, territorial boundaries between the South Asian states were arbitrarily drawn.³³ This has resulted in the contested understanding of territorial jurisdictions, in turn leading to the constant flow of people from one state to the other.

South Asia has complex community networks based on variegated identities encompassing caste, ethnicity, kinship, and religion.³⁴ These overlapping identities have made the making of territorially defined Westphalian nation-states, a herculean task.³⁵ The process of making, unmaking and remaking of the borders of the new nation-states has made considerable impact on the demographic as well as cartographic imaginations of states in South Asia. The bitterness of the past, the lack of mutual confidence at present, the security concerns of all these states along with various linkages make the borders unique, both spatially and metaphorically.³⁶ As the South Asian states remained insecure due to its violent history of territorial reconstruction based on communal and ethnic lines, the strand of nationalism in these states is largely “reflexive” in nature.³⁷ That makes the states wary of their imagined external ‘other’ which emanates from the faultlines of historical tragedies and modern-day political exigencies.

South Asia experienced partition twice: in 1947, when the united India was divided into the two dominions of India and Pakistan; and again in 1971, when Pakistan was bifurcated and Bangladesh was created. Historical evidence reveals how the creation of a new state has been linked to a “refugee generating process.”³⁸ Two significant moments of history have particularly altered the political, social, geographical, cultural as well as regional configuration of South Asia, in general and India, Pakistan and Bangladesh, in particular. These two partitions led to sudden rupturing of the territorial and demographic continuity which was based on deep-rooted ethnic, kinship and civilisational ties. At the same time, they sowed the seeds

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of fear, distrust and suspicion which eventually led to the production of the 'other' in the national imagination of citizenship in the newly constructed nation-states. The nationalistic and religious faultlines had their repercussions on the territorial demarcations as well as the identity of the people. The psychological sense of community belonging and the concept of 'homeland' remain embedded, and there is a strong refusal to make peace with the newly imposed territorially defined nation.³⁹

Partition in 1947 resulted in the massive exodus of people in the eastern as well as western parts of South Asia. It altered existing notions of citizenship, nationality, and homeland.⁴⁰ The legacy of partition is so deeply rooted in the political, diplomatic, cultural, social and economic realms of people's lives in South Asia that its ramifications are being felt until today.⁴¹ Political scientist Ranabir Samadhar once wrote: "Even if the event (of partition) goes back to the forties, it has remained a reality, a deep metaphor for violence, fear, domination, separation, a metaphor, in one word, for the past, one that goes on making the present inadequate."⁴²

The Second Partition of 1971: the Birth of Bangladesh

Another event that influenced the territorial and demographic configuration of South Asia is the bifurcation of Pakistan and the creation of Bangladesh in 1971. The outbreak of civil war in the erstwhile East Pakistan and the military crackdown by the Pakistani state led to the massive flow of people into eastern and northeastern India in search of security and shelter. After Indian military intervention and the creation of Bangladesh, a large number of displaced East Pakistanis took refuge in India's east and northeastern states.⁴³ The entire period was marred by violence⁴⁴ and persecution.⁴⁵

Thus, both partitions created new demarcations of territorial borders that reconstructed the lives of people in the region. First, the pain and trauma of displacement from one's own home created a sense of loss and rootlessness amongst the migrants.⁴⁶ Second, the migrant population who did not fit into the dominant narrative of the majority population on the other side of the border were discriminated against and remained at the margins of society.⁴⁷ And third, the problems related to weak state capacity and resource scarcity relegated the already vulnerable and marginalised population further to the bottom of the socio-economic hierarchy.

Partition, Decolonisation, and Migration in East of South Asia

As mentioned earlier, not one of the countries in the region is a signatory⁴⁸ to the International Refugee Convention or the Convention on Statelessness.⁴⁹ In the absence of any legal obligation on the part of the governments of South Asian countries, the question of the well-being of migrants and refugees⁵⁰ has become a matter of these states' 'generosity', 'charity' and 'magnanimity'. India, by virtue of being at the epicentre of South Asia and due to its having the largest geographical expanse in the region—complemented by its relative political, social and economic stability—naturally became the most favoured destination of migrants, refugees and the stateless people from the adjoining South Asian nations.¹ The events of 1947 and 1971 had led India to receive a large number of persecuted and displaced people from both Pakistan and Bangladesh. Besides these “episodic” determinants for massive displacement of people, economic and livelihood concerns as well as community and kinship ties across borders, other incidents of political, ethnic and religious persecution have led to the continuous flow of people into India.⁵¹

To begin with, South Asian borders are “unique and complex both spatially and metaphorically”. “These spaces (borderlands) bear within lines of hatred, disunity, informal connections and voluminous informal trade, securitized and militarized lines, heavy para-military presence, communal discord, humanitarian crisis, human rights abuses and enormous suspicion...”.⁵² It has been well-documented how in the western side of India’s borders, there has been comparatively limited flow of people since the aftermath of partition partly due to the hard nature of the India-Pakistan border that can be attributed to the enduring hostility between the two. The eastern side of the Indian border has remained more porous; this comprises India’s borders with relatively friendly neighbours like Bangladesh, Nepal, Bhutan and Myanmar.⁵³

¹ India also sends a large population as migrants to other countries across the world. See “175 lakh Indians now live abroad even as the number of migrants into the country drops”, *The Scroll*, September 20, 2020, <https://scroll.in/article/937865/175-lakh-indians-now-live-abroad-even-as-the-number-of-migrants-into-the-country-drops>

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Oscar Martinez's categorisation^m of South Asian borders is worth noting: he identifies the India-Bangladesh border as 'interdependent' while those of India-Myanmar and India-Nepal as 'integrated'.⁵⁴

This paper examines migration in India's border with Bangladesh and Myanmar.ⁿ The India-Myanmar border is unique in nature as the people residing in the areas adjacent to the international border (on both sides) enjoy "Free Movement Regime" (FMR).^o The analysis focuses on violence-induced migration and migration due to economic and livelihood necessities. Another key vulnerability of migration in South Asia—that which is caused by the challenges emanating from climate change and the public health crisis resulting from the COVID-19 pandemic—is beyond the scope of this paper.⁵⁵

m First, in "alienated" borderlands like the India-Pakistan border in Jammu & Kashmir and Punjab, routine cross-border infiltrations do not take place because of enmity between the bordering states. Second, is the "coexistent" borderlands like India-Pakistan border in Rajasthan and Sind where some interactions do take place despite the antagonistic relationship. Third, "interdependent" borderlands like India-Bangladesh and India-Sri Lanka where cross-border movements take place as social and economic transactions but not as officially sanctioned ones. Fourth, are the "integrated" borderlands example of which is the India-Nepal border that is officially recognised and the India-Myanmar border under the "Free Movement Regime" (FMR) for people residing in villages near the 1,643 km-long India-Myanmar border. See Partha. S. Ghosh, *Migrants, Refugees and Stateless in South Asia*, (New Delhi: Sage, 2016); Sujana Dutta, "India and Myanmar quietly open up their border for villagers and trade", *The Print*, October 25, 2018, <https://theprint.in/diplomacy/india-and-myanmar-quietly-open-up-their-border-for-villagers-and-trade/139877/>

n The paper will not focus on India's borders with Nepal and Butan as these borders are 'open borders' and people do not require any official permission to cross them.

o India and Myanmar share an unfenced border of 1,643 km, touching Arunachal Pradesh (520 km), Nagaland (215 km), Manipur (398 km) and Mizoram (510 km).The Free Movement Regime(FMR) is a unique travel arrangement between India and Myanmar. FMR permits the tribes residing along the border to travel 16-km across the boundary without visa restrictions.The FMR helps tribes across the border to maintain their age-old ties. See "Free Movement Along Myanmar Border", *The Hindu*, October 16, 2017, <https://www.thehindu.com/news/national/free-movement-along-myanmar-border/article19872675.ece>

Violence-Induced Migration into India

The process of state formation in South Asia has been inextricably linked to collective violence. In turn, the societal and political conflicts are often due to the failures of nation-building.⁵⁶ Such violence is perpetrated by the “majority” communities: the Islamist forces in Pakistan, or the Bengali nationalists as well as Islamist fundamentalists in Bangladesh, or the Buddhists in Myanmar—and often encouraged by the state through either outright patronage, or neglect. The violence becomes a tool for creating the “other”,⁵⁷ only to be aggravated by already existing communal faultlines.⁵⁸ Owing to the inhospitable living conditions created by these instances of collective violence, the targeted population finds the bordering country to be their only refuge.

India has been one of the destinations for the persecuted and displaced refugees and stateless people from neighbouring states, even more so in the eastern side due to its more porous borders.⁵⁹ Three episodes of violence in India’s eastern neighbours were defining. First, the partition^p along religious lines. As a receiving country for the refugees, India has made efforts to rehabilitate them (albeit inconsistently) while also recalibrating its ideas of citizenship.⁶⁰ However, religious prejudices, the psychological scars of ‘collective violence’, and the lingering suspicion towards the people on the other side of the border, have kept the legacy of partition alive.⁶¹ The threat of sporadic, ‘everyday violence’, makes violence-induced migration into India a constant possibility.⁶²

Following their migration to India, partition refugees have struggled for their very survival, often experiencing a sense of rootlessness and deprivation amidst the difficulties of camp life.⁶³ Absent a coherent refugee and statelessness management policy on the part of India, the country continues to face difficult challenges in managing and rehabilitating the partition refugees, especially in the eastern regions.⁶⁴

p The partition of India was based on religious lines that bifurcated India in both the eastern as well as western sides. What ensued was the mass exodus of persecuted Hindus to the freshly demarcated dominion of India.

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The second mass movement of people into eastern India was in 1964. Following the construction of the Kaptai Dam in erstwhile East Pakistan, as well as religious persecution, Buddhist Chakmas and Hindu Hajongs were evicted from the Chittagong Hill Tracts (CHT) of erstwhile East Pakistan.⁶⁵ The displaced population crossed into the Indian border and were given refuge by the Indian state. These refugees were eventually rehabilitated in the empty land in the North East Frontier Agency (NEFA) in present-day Arunachal Pradesh. They were used as pawns to settle inter-tribal tussles in a remote periphery of India.⁶⁶ In 1987, when Arunachal Pradesh became a full-fledged provincial state, the issue of the presence of Chakma and Hajongs became a bone of contention for the indigenous tribes of the state.⁶⁷ They viewed the refugees as ‘outsiders’ who would leave them politically, economically and culturally marginalised in their ‘own land’.⁶⁸ Today the Hajongs and the Chakmas continue to live in the margins of society in Arunachal Pradesh.⁶⁹

Third, as discussed earlier, the huge influx of people into India happened in the wake of the liberation war of Bangladesh in 1971.⁹ India treaded on humanitarian ground and gave shelter to the lakhs of East Pakistani refugees^r within its territory. After the creation of Bangladesh, the majority of the refugees were then repatriated to their newly formed country.⁷⁰ But the arrival of the undocumented Bangladeshi immigrants in India’s northeast and eastern states continued and became the genesis of an anti-immigrant movement in India in 1978 by the native population of Assam.⁷¹ The constant flow of immigrants^s reinforced the securitised concept of India-Bangladesh border and cemented the idea

q The genocide of the Bengali-speaking population of East Pakistan took place in the hands of the Urdu-speaking majoritarian Pakistani state apparatus in 1971.

r The persecuted ethnic Bengali-speaking population of East Pakistan.

s Their number remains disputed.

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of the ‘other’ in the psyche of the people of Assam.⁷² Many years later, in 2019, the implementation of the National Register of Citizens (NRC) in Assam⁷³ was based on the idea of identifying the illegal immigrants from Bangladesh. Therefore, the political crisis⁷⁴ that was triggered in Assam and in other parts of India’s Northeast due to the flow of people from erstwhile East Pakistan, continues to have repercussions^t on how India constructs its narrative on citizenship and the ‘other’.⁷⁵

Ethnic violence in Myanmar has also led to the influx of Rohingya refugees into India and Bangladesh.^u According to data from the Indian government and the United Nations High Commissioner for Refugees (UNHRC), between 1988 and 2001, 6,324 people who fled Myanmar entered India.⁷⁶ Of them, 1,245 were granted UNHRC refugee status. The Myanmar government feared that the rebel group, Karen National Union (KNU) of Myanmar also crossed the border and received shelter and support from India. However, towards the late 1990s, the Indian government became less supportive of Myanmarese refugees and the pro-democracy movement partly due to China’s growing proximity with Myanmar, and also because of the fear of Myanmar’s support to the insurgency groups in India’s Northeast. As Myanmar’s relationship with India improved after 1990, India stopped displaying a similar kind of ‘hospitable demeanor’ towards the persecuted Rohingyas from Myanmar that it had shown before. In recent times, they are perceived as the ‘dispensable other’ and a sizeable section of them have been repatriated to Myanmar.⁷⁷

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- t The prejudiced perception of the majority and minority communities in South Asia created fresh flashpoints conducive for displacement or migration of vulnerable people. For instance, Hindu minorities from Pakistan and Bangladesh face religious persecution in their country and are compelled to take refuge in India. Such communal backlash aggravates in the wake of communal violence in India, as during the unrest after the Babri Masjid demolition in 1992. See Shreyasee Raj, “Safe But Betrayed: Pakistani Hindu Refugees in India”, *The Diplomat*, January 22, 2019, <https://thediplomat.com/2019/01/safe-but-betrayed-pakistani-hindu-refugees-in-india/>; Monshipouri Mahmood. “Backlash to the Destruction at Ayodhya: A View from Pakistan”, *Asian Survey*, Vol. 33, No. 7, (July 1993); Shekhar Gupta, “Babri Masjid demolition 1992: How the world reacted”, *India Today*, December 5, 2011, <https://www.indiatoday.in/india/story/babri-masjid-demolition-1992-ayodhya-pakistan-international-community-147820-2011-12-05> accessed on 20 January 2020.
- u At the end of the 1980s, the pro-democracy movement in Myanmar was met with state repression, and people fled to India or Thailand.

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In his book, *Migrants, Refugees and Stateless in South Asia*, Partha S. Ghosh argued that insurgencies in India's Northeast are difficult to control as they emanate from “cross-border linkages” that are sustained by the “cross-border movement of people”.⁷⁸ As cross-border geographical as well as ethnic connections in the India's Northeast often breed not only perceptions of insecurity but also real threats from the brewing insurgencies that have cross-border networks, the regulation of migration becomes a necessity both for the state's security as well as that of the undocumented migrants. Indeed, India needs more cooperation from its neighbouring countries like Bangladesh and Bhutan to crush insurgents' bases in their own territories.

In Search of a Humane Approach

The imperative is to regulate and manage such violence-induced migration in South Asia in a more humanitarian manner. A coercive mechanism fails as it disincentivises the displaced people from the other side of the border to disclose their identity to the Indian government. The structures like Foreigner's Tribunal Order, 1964⁷⁹ and the subsequent Illegal Migrants (Determination by Tribunal) Act 1983—which was later squashed by the Supreme Court—have been largely ineffective.⁸⁰ In the absence of any legal protection regime,⁸¹ India must look at the issue of violence-inflicted refugees from a humanitarian perspective.⁸²

These people suffer both in their country of birth where they are persecuted, and in their host country where they are left unprotected.⁸³ Therefore, how should India deal with the refugees and stateless people and undocumented migrants immediately after they enter its territory in the absence of any consistent long-term policy? How can India collaborate with the refugees/stateless people's homeland to prevent the further occurrence of violence that induces the displacement of people? And what should be India's approach to refugees/stateless people who have lived on its soil for a long time and have been promised citizenship?

A Policy Framework for Refugees and the Stateless in India

Whether the partition refugees after 1947, Tibetan refugees in late 1950s, the Chakma and Hajong refugees in 1960s or the displaced people of East Pakistan in 1971—India had received them into its territory at a time when the country itself was resource-starved and facing tremendous challenges in nation-building. However, a mere normative positioning of ‘ethical obligation’ towards these displaced communities is no longer tenable for the long term. India will need to explore a more sustainable, legal framework for its response.

Although India is not a signatory to the Refugee Convention of 1951 and the Protocol of 1967, it is obligated by the other international legal regimes to deal with the refugees in a humane manner. Most importantly, the doctrine of non-refoulement remains a compelling legal motivation for India. As India is signatory to multiple human rights regimes, the country should create a more institutionalised mechanism of humanely dealing with refugees. India is signatory to the six core human rights covenants, and also the two Optional Protocols to the Convention of the Rights of the Child. The first set of rights in the Human Rights Declaration from Article 2 to Article 21 have heavily influenced India’s domestic constitutional rights enshrined in Article 12 to Article 35 of the Indian Constitution. Indeed, certain fundamental rights guaranteeing life and personal liberty (Article 14) as well as equal legal protection (Article 21) are accorded to not only Indian citizens, but also to non-citizen residents on Indian soil.⁸⁴ The second set of rights guaranteed in Articles 22 to 28 of the Human Rights Declaration are also incorporated under Directive Principles of State Policy - Article 36 to 51 of the Indian Constitution.⁸⁵ Therefore, not only do India’s international obligations mandate a humanitarian approach towards undocumented migrants and refugees, but also its own domestic legal apparatus. However, unless

“While India is not a signatory to the Refugee Convention of 1951 and the Protocol of 1967, it is obligated by other international legal regimes to deal with refugees in a humane manner.”

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these protections are not deeply embedded in the Constitution's justiciable frame and backed by political will, such existing legal pronouncements will fail to translate to real protections for refugees and the stateless.

This paper recommends the following measures.

Proper documentation

The refugees must be registered by the government and given a legitimate refugee status. For that purpose, India should pass a Refugee Law.⁸⁶ As suggested by Sanjeev Tripathi,⁸⁷ former head of the Indian government's Research and Analysis Wing (RAW), the model refugee law made in 1997 by the Eminent Persons Group (EPG) led by Justice PN Bhagwati⁸⁸ can serve as a model, along with the South Asia Declaration on Refugees of 2004⁸⁹ and the draft Asylum Bill proposed by MP Shashi Tharoor in 2015.⁹⁰ Such a refugee law should also deal with the status of stateless people. A legalised mechanism would enable the government to monitor the influx in more accurate terms so that it can take the appropriate actions. Furthermore, a documented identity of the refugee would also entitle them to certain basic rights. Given the magnitude of the influx, there needs to be long-term planning to avoid complications.

India could seek assistance from the country office of the UNHCR,⁹¹ and aim to design a straightforward official procedure for dealing with refugees and stateless people.⁹² While this paper is not suggesting that all refugees be given citizenship, India should at least guarantee them the basic security of what political scientist Hannah Arendt called the "right to have rights". This is only possible with the recognition of the "universal status of personhood" of every human being, as scholar Seyla Benhabib has suggested.⁹³

Promotion of dialogue

It is important to adopt a more effective channel of communication between India and the home country of the refugees, to facilitate their eventual safe return. This would require India to foster a cooperative and trust-based approach towards the origin country. A joint verification procedure to determine the nationality of the refugee can be initiated by India with the cooperation of the neighbouring countries like Bangladesh and Myanmar. Such task should be straightforward

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enough, as India has long-standing, effective domestic channels with these countries, to begin with. If India aims to send back the refugees, it needs those countries on its side. The repatriation of Chakma refugees from Tripura to Bangladesh in 2014 is a case in point.⁹⁴ Any attempt at deportation that is confrontational or forcible will be untenable and only embitter the bilateral ties.

A comprehensive cross-border trust-building mechanism needs to be established to facilitate information-sharing and the full comprehension of the situation on both sides of the border. Such trust-building exercise can take place at two levels. First, states should attempt open interaction for mutual benefits of stability, peace and avoidance of displacement of people, without jeopardising each other's sovereignty concerns.

International bodies like UNHCR and the International Organization for Migration (IOM) may assist the countries in these exercises. Second, the cross-border kinship and community ties that bind the countries of South Asia should be promoted and utilised to enable their people to transcend their separate national identities. Here, the role of civil society institutions like NGOs on both sides of the border will be crucial. For instance, some Kolkata-based NGOs dealing with Bangladeshis living in India^{v,95} might be able to assist in the trust-building processes and also in the registration and verification of these refugees from Bangladesh and Myanmar.

Addressing the 'citizenship' question

India should pay attention to the refugees to whom it has promised citizenship several decades ago but still remain at the margins of society, living without an 'official' identity.⁹⁶ History is replete with narratives of how refugees are perceived differently by the central government and the respective states where the refugees are located, giving this issue a federal dimension in India.^w In the case of the Chakmas and

v These include the Bangladesh Udbastu Kalyan Parishad, Bangladesh UdbastuUnnayanSangsad, Nikhil Banga Nagarik Sangha and Bangladesh Mohajir Sangha. There is also the Delhi-based Rohingya Human Rights Initiative.

w In 2004 some 1,497 Chakmas were included in the voter lists but were later withdrawn by the Congress regime due to the All Arunachal Pradesh Student Union's protest. In 2002, the State Government of Arunachal Pradesh granted citizenship to 90 Tibetan refugee families of Shyo village in Tawang district of Arunachal Pradesh bordering China, though they had come much later than the Chakmas. The State government cites the East Bengal Regulation Act of 1873 for forcible deportation of the Chakmas and Hajongs to justify such treatment. The 1873 Act requires taking of prior permission before entering Arunachal Pradesh. However, the Chakmas who fled from what is now Bangladesh did not go to Arunachal Pradesh on their own. They were taken to NEFA (the present Arunachal Pradesh) by the Central Government with a view to permanent settlement there.

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Hajongs discussed earlier in this paper, it was the central government that decided to give them shelter in Arunachal Pradesh with a promise of permanent settlement.⁹⁷ Moreover, the grant of citizenship to these refugees was not only promised by the central government but also sanctioned by the Supreme Court in 1996.⁹⁸ Decades later, the process remains unfinished as the central and the state government have not come to an agreement regarding their citizenship.

The political discourses of Assam and Arunachal Pradesh around the question on citizenship to the refugees (in relation to the Citizenship Amendment Act or CAA) who have been staying in the states for decades, have remained antagonistic and polarising. Giving them their citizenship rights^x is a constitutional as well as moral duty for India. In this regard, the sentiments of local people in the concerned states may be a crucial concern, as the idea of legal citizenship is contingent upon the social sphere.

“India should nurture a more effective channel of communication with the home countries of the refugees, to facilitate their eventual safe return.”

x Under the 2019 Citizenship Amendment Act, one of the requirements for citizenship by naturalisation is that the applicant must have lived in India during the last 12 months, and for 11 of the previous 14 years. The bill reduces this 11-year requirement to 5 years for persons belonging to the specified class of illegal migrants belonging to six religions and three countries mentioned in the Act. Under the CAA it is expected that Chakmas and Hajongs will get Indian citizenship. See Citizenship (Amendment) Bill, 2019, <https://www.prsindia.org/theprsblog/explainer-citizenship-amendment-bill-2019>

Labour migration between countries in South Asia is an enduring phenomenon in the region. Poor people with little choice in their home countries are compelled to cross the borders to find income opportunities. What differentiates these economic migrants from the persecuted refugees and the stateless is often difficult to determine.⁹⁹ It is the nature of their movement—whether voluntary or forced—that largely shapes the discourse regarding how they are perceived and dealt with.¹⁰⁰

Given the fluid definition of ‘economic migration’ and the clandestine nature of the movement of the undocumented migrants, ascertaining the precise magnitude of the migration is difficult and the figures collated by different sources vary significantly. What is certain is that India receives the largest number of migrants, and they are mainly from Bangladesh and, to a lesser extent, from Myanmar.¹⁰¹

Economic migrants do not fall within the purview of the current international refugee protection regime that recognises the vulnerability of refugees.¹⁰² According to the Century Foundation, “The Office of the United Nations’ High Commissioner for Refugees (UNHCR) stipulates that while refugees are humanitarian subjects primarily seeking protection, migrants are economic subjects, seeking better lives.”¹⁰³ Therefore, the plight of economic migrants in their host country is often more difficult than that of refugees, who might at least be receiving sympathy due to their experience of violence in their home country.

In the case of economic migrants, absent any similarly palpable factor of violence or persecution attached to their cross-border displacement, their movement is often viewed as voluntary, routine and even “unnecessary” by the host country. States are not liable for failing to provide better living and working conditions to these migrants, who become indispensable to the ‘cheap’ labour market of the host countries’ unorganised sectors. Moreover, in the resource-scarce South Asian states, economic migrants are often seen as usurpers of the livelihood opportunities of the native population. As discussed briefly earlier in this paper, the most dominant factor behind the anti-foreigners’ movement in Assam in the late 1970s was the issue of scarce resources.¹⁰⁴

Formulating a Legal Framework

The International Labour Organization (ILO) has initiated a number of multilateral agreements that provide for rights-based regimes for migrant labourers across the world: the Migration for Employment Convention 1949, Migration for Employment Recommendation 1949, Migrant Workers (Supplementary Provision) Convention 1975, and Migrant Workers Recommendation 1975.¹⁰⁵ The various bodies under the UN system have also created mechanisms relevant to the protection of migrant workers, including the Special Procedures Mandates of the UN Human Rights Council, and most notably the UN Special Rapporteur on the human rights of migrants.

There are at least nine UN international human rights instruments that apply to all persons irrespective of their nationality: these are supposed to also protect migrant workers and their families. Among these core instruments is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which was adopted by the UN General Assembly in 1990 and entered into force in 2003.¹⁰⁶ Although India is a signatory to only some of these conventions,^{107,108} it can consider formulating a national strategy that will refer to these international legal frameworks.

Cross-border Registration and Issuance of Work Permits

Determining the magnitude of the economic migrant population has been a most daunting challenge for India. Any legal framework that will attempt to regulate economic migration into India must begin with a comprehension of its scale, and such can only be attained if the government formulates a sound registration mechanism for economic migrants. However, migrant workers will submit themselves for registration only if they find an incentive in doing so. Here, a limited regime of social security benefits and cross-border work permits can work as a push. Such benefits would not only facilitate a safe passage for the migrants but also make their lives more secure.

Economic Migration

In this regard, India can enter into a cross-border understanding with the two countries that are the sources of the highest number of economic migrants to India—Bangladesh and Myanmar. Lili Song¹⁰⁹ offers an interesting model: “The 1997 Chinese–Myanmar Agreement allows border residents to cross the border with an exit–entry pass (churujingtongxingzheng), exempting them from normal visa requirements. China and Myanmar should respectively issue the exit–entry pass to their own nationals who qualify as border residents under the Agreement for movement with all security measures.”¹¹⁰ Under this agreement, China issues ‘temporary residence’ permits to the ‘border residents’ of Myanmar to stay in the country for a period between three months to one year for the purpose of business, employment, medical treatment, and education. India can consider reaching such understanding with its eastern neighbours. Such attempts can help India achieve the social protection and employment requirements of the Decent Work Agenda developed and routinely updated by the ILO¹¹¹ for the undocumented cross-border economic migrants on its soil and thereby reduce the exploitative nature of cross-border trafficking.¹¹² In this context, the existing Free Movement Regime (FMR) at the India–Myanmar border, as mentioned earlier, is one of the successful models of border management that is open yet regulated.¹¹³

Some experts argue in favour of issuing “temporary work permits”¹¹⁴ to applicants for both organised and unorganised sectors on both sides of the border, keeping in mind the demand and supply of cheap labour. A scheme could be introduced to allow migrants to enter legally into the other side of the border on the basis of work permits issued by a Central Work Permit Authority in association with the Home Ministry as well as the Ministry for Law, Labour and External Affairs with the help of the relevant state government and approved by Parliament. For safe passage across borders and healthy economic cooperation, permits could be issued to small groups rather than to individuals, in areas such as “agricultural operations at harvest time; construction; boatbuilding; fishing and allied activities”. Before issuing permits, identity proofs and documents from employers on the other side of the border should be verified. The permit holders would have no voting or political rights, but will have access to courts. In terms of wages, they would be permitted to receive payment for services at the same level as local workers as well as remit their savings to their home country.¹¹⁵

Economic Migration

However, such an approach towards consolidation of a regulated yet open structure for cross-border economic migration would require considerable amount of political understanding on both sides of the border. This will require a conducive political scenario, where mutual suspicion is eliminated, and “isolationist” tendencies of nation-states that breed hyper-paranoid responses of hardening borders are minimised. A cross-border collaborative mechanism can help enhance commercial and economic interests for both the countries’ peripheral areas.¹¹⁶ Only such an approach would enable proper utilisation of common resources across borders and foster existing ethnic ties and community networks between India and its eastern neighbours.

“The plight of economic migrants in their host country is often more difficult than that of refugees, who might at least receive sympathy due to their experience of violence and persecution.”

Conclusion

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This paper has analysed how state security and human insecurity are intertwined with cross-border migration in South Asia, which thereby assumes ‘securitised’ connotations. The analysis sought to problematise migration against both state insecurity and the vulnerabilities of the displaced people due to contested territorial borders and ethno-national identities. In order for South Asian countries to move beyond the securitised concept of hard border and instead conceive “securitisation” of the process of migration in a humane manner, there is a need for a holistic framework that will harmonise concerns for national state security with more humane and secure living and working conditions for refugees, stateless people, and undocumented economic migrants.

There is a need for further research on the various dimensions of both violence-induced migration and economic migration. A more humane, yet regulated, cross-border migration policy will systematise the process of migration and possibly herald the beginning of the ‘desecuritisation’ of migration in South Asia. The road to such a humane approach towards migration would require an extraordinary amount of political understanding and goodwill between the governments across the borders.

Amidst the emerging patterns of hyper-nationalism in the region and the increasing economic insecurity and contestation over scarce resources, such congenial political condition should prevail in order to humanise cross-border interactions. Among the lessons that the world has learnt from the Covid-19 crisis is that the growing concerns for health security might only further reinforce the concept of hard borders; what the international community should strive for, instead, is to expand the dimensions of the rights regime for the displaced people of South Asia.¹¹⁷ 

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