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the Postcolonial World :
Protection Discourses for
Refugees & Migrants in
South Asia**


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**Transition without Justice in the Postcolonial World:
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Refugees and Migrants in South Asia**

Sabyasachi Basu Ray Chaudhury

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Transition without Justice in the Postcolonial World: Protection Discourses for Refugees and Migrants in South Asia

Sabyasachi Basu Ray Chaudhury*

This is an essay about the inadequacies and inefficacies of the contemporary global protection regimes for refugees and stateless persons in South Asia. This is also an essay on two transitions without justice in the region.

One was a transition from colonial states to postcolonial ones. The other one took place when these postcolonial states embraced neoliberal economies. Since the decolonization of the Indian subcontinent and its adjoining areas, immediately after the end of the Second World War, South Asia has been witness to multiple instances of displacement of people as well as the expulsions from the newly carved-out states.

In this context, whenever we talk about the rightlessness and precarity of refugees and stateless people in this region, we readily refer to the 1951 UN Convention Relating to the Status of Refugees (henceforth 1951 Convention) and the Protocol Relating to the Status of Refugees (henceforth 1967 Protocol), or the UN Conventions on Statelessness, viz., the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness of 1954 and 1961 respectively (henceforth 1954 and 1961 Convention). We anticipate that the reasonable protection mechanisms can be established and be operational and, therefore, can provide relief to these displaced people in South Asia on the basis of the international legal instruments, which were devised primarily to deal with the situations emerging in Europe in the context of the devastating war between 1939 and 1945, and events prior to that, mainly in Germany. In fact, most of the protection mechanisms that we have today evolved in the context of the post-war realities and complexities, and have largely been effective in the Global North till the onset of neoliberal economy and simultaneous mixed and massive flows of population comprising refugees and asylum-seekers on the one hand, and regular and undocumented migrants, on the other. However, our concern in this essay is not the Global North.

In the immediate post-war era, these mechanisms started assuming global importance in view of the rise in the number of conflict-induced displacement in the newly decolonized countries of Asia and Africa. But, these international mechanisms clearly missed the intricate process of decolonization, shambolic partition of the erstwhile colonies, and redrawing of state boundaries in the Global South. Therefore, the Organization of African Unity (OAU) Convention Governing the

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Specific Aspects of Refugee Problems in Africa 1969 and the Cartagena Declaration on Refugees 1984 came into being to deal with the specific regional situations.

The e-commerce, ride-hailing and the gig economy, quite widespread in recent times, may seem to be convenient but these are based very much on underpaid workers, exacerbating inequality. The new technologies, expected to dominate the coming decades, also seem to cast a dark shadow. It is apprehended that despite their original contributions, new technologies like Artificial Intelligence (AI) may well entrench existing bias and prejudice, threaten more and more jobs and support more and more authoritarian rulers across the globe. There are also growing doubts about human society's ability to restrain the seemingly roaring forces of the latest technologies. Perhaps new technologies always unleash fresh forces of creative destruction and therefore, it may only be natural that may lead to anxiety, leading to a wider 'sense of techno-pessimism'.¹

Be that as it may, neoliberal economy has led to a depoliticization and dehumanization of the world. In this context, the successive transition of these postcolonial societies from a somewhat welfare or state-controlled economy to a neoliberal one over the last three decades has further problematized the entitlements of even the citizens of these states. This has been revealed unmistakably in the neoliberal era, probably in a more flagrant manner in 2020, in the times of the COVID-19 pandemic, as the pandemic has confined many workers to home, and stranded many more in their adopted land setting millions to the line of unemployment. The question, therefore, also arises, whether there has been an abdication of responsibility on behalf of the State with a betrayal of the future.

So far as the literature on refugees and stateless persons in South Asia is concerned, it very often highlights three issues in relation to the treatment of refugees and stateless persons. First, it indicates the major role of the host societies in largely accepting and accommodating millions of refugees, who had to leave their *desh* or *mulke*, their traditional homeland that was partitioned along with its decolonization in 1947, giving rise to two different states of India and Pakistan. This was in spite of the absence of any international organization, like the United Nations High Commission for Refugees (UNHCR), or any major international legal instrument, like the 1951 Convention or the 1967 Protocol. Second, it underscores the absence of any national refugee law or refugee policy in most of the countries in South Asia. Third, it also points out that even when these global mechanisms came into being and the postcolonial states in South Asia became members and partners of the UNHCR, most of them have refrained from signing or ratifying these international refugee laws although these countries are signatories to many international human rights and international humanitarian legal instruments.² Some of the proponents of the last view quite often tend to argue that despite not being parties to the UN Refugee Conventions, the South Asian states are bound to ensure the basic rights and entitlements of the displaced persons on account of their being parties to international human rights and humanitarian laws, like UDHR (Universal Declaration of Human Rights), 1948, ICCPR (International Covenant on Civil and Political Rights), 1966 and ICESCR (International Covenant on Economic, Social and Cultural Rights), 1966.

In this context, our submission in this essay is twofold. One, in the contemporary context of mixed and massive flows of population, even within Global South, as in South Asia, we need to revisit the existing global legal mechanisms from the perspective of critical jurisprudence and legal geographies. Therefore, we shall briefly look back at the process of postcolonial state formation, the process of making of citizens in South Asia, and how postcolonial citizenship laws have not only excluded, but also expelled certain ethnic communities from these states, giving rise to more and more irreconcilable conflicts, thereby generating more and more refugees and stateless persons. For this purpose, we shall examine the expulsion of the Rohingya from Burma (present name Myanmar)³,

in particular. Two, we shall show the extent of the precarity of migrant labour in neoliberal times, primarily that of internal migrants, who happen to be the citizens of these states. For this, we shall primarily focus on the perils of migrant labour in India in the context of a sudden announcement of 'lockdown' in the country to contain the spread of the COVID-19 pandemic which, in fact, laid down a system of legal codes comprising a binary division between the permitted and the prohibited perhaps because the politics of mobility is intertwined with "a specific biopolitics of migration," which is a series of technologies, knowledges and policies aimed at regulating and acting upon life.⁴

Measured Expulsion

The idea of citizenship is strongly associated with the European intellectual tradition, and modern citizenship leads us to an idea of membership within a nation-state with its consequent inclusions and exclusions.⁵ To be precise, the beginning of modern citizenship as an institution is primarily based on exclusion. After vehemently opposing the European colonial powers, most of the postcolonial countries of the Global South began adopting the same institution of modern citizenship after their decolonization.

Therefore, it is not at all surprising that the Rohingya were excluded from the new Burmese nation almost at the very moment of formal decolonization of Burma in 1948. To understand this, we need to briefly revisit the Constitution of the Union of Burma, 1947. In this Constitution, the question of citizenship has been dealt with in sections 10, 11 and 12. Let us peruse section 11 of the Constitution in particular. Section 11 says:

- Every person, both of whose parents belong or belonged to 'any of the indigenous races of Burma' (emphasis mine)
- Every person born in any of the territories included within the Union, at least one of whose grandparents belong or belonged to 'any of the indigenous races of Burma' (emphasis mine)
- Every person born in any of the territories included within the Union, of parents both of whom are, or if they had been alive at the commencement of this Constitution would have been citizens of the Union
- Every person who was born in any of the territories which at the time of his birth was included within the Britannic Majesty's dominions and who has resided in any of the territories included within the Union for a period of not less than eight years in the ten years immediately preceding January 1, 1942, and who intends to reside permanently therein and who signifies his election of citizenship of the Union in the manner and within the time prescribed by law shall be a citizen of the Union.

In other words, the question of indigeneity differentiated the Rohingya from the other ethnic groups in Burma. In spite of their existence in Burma for quite some time, the Rohingya were not considered to be economy. Further, section 12 of the Constitution says:

Nothing contained in section 11 shall derogate from the power of the Parliament to make such laws as it thinks fit in respect of citizenship and alienage and any such law may provide for the admission of new classes of citizens or for the termination of the citizenship of any existing classes.

The military coup d'état in 1962 further worsened the condition of the Rohingya. Following this coup, General Ne Win made the concept of *taingyntha* ('national races') the foundation of Burma during his Union Day speech on February 12, 1964.⁶

At the time of constituting the new Rakhine State from the former Arakan Division in 1974, the Emergency Immigration Act of Burma allowed the Rohingya to possess only 'foreign registration cards' and not 'national registration certificates', which would have subsequently been required to prove their citizenship in the country.⁷ In fact, through the 1974 constitution and the 1982 citizenship laws, the Rohingya were given the burden of proving that they were not Bengali migrants. In practice, most Rohingya were disqualified from citizenship as few could provide documentation indicating that their families had lived in Burma prior to 1823.⁸

A few years later, in 1978, the military junta of Burma forced almost all residents of the country to register as citizens, perhaps to exclude foreigners, prior to a national census in 1983.⁹ This operation resulted in widespread violence,¹⁰ and the exodus of about 200,000 Rohingya to Bangladesh. Dhaka subsequently sought assistance from the UNHCR, and had to establish thirteen camps along the Burma–Bangladesh border to provide shelter to the Rohingya refugees.¹¹ However, subsequently, the imposition of restrictions on food supply and the withdrawal of basic amenities from the camps in Bangladesh compelled nearly all these refugees to return to Burma in spite of inhospitable conditions in their own country.¹²

In 1982, when Burma amended its Citizenship Act, the Rohingya were completely excluded from the list of 135 'national ethnic groups'. The new Act made the Rohingya completely helpless. As they did not have any evidence to prove their citizenship, or even to apply for citizenship, the Rohingya soon became stateless,¹³ which apparently made them people without rights and entitlements at the national level. It is not coincidental that even before the Burmese Citizenship Act came into force when, in 1978, there was a huge exodus of the Rohingya from Burma to Bangladesh, the military-led government of Burma denied that these refugees taking shelter in Bangladesh were Burmese citizens. It said: "... the 'refugees' are in fact illegal immigrants or fugitives from law. The so-called refugees, it is contended, are Bangladesh nationals, who had illegally settled along the border inside Burma."¹⁴

In the early 1990s, following the controversial multi-party elections won by the National League for Democracy (NLD), the Myanmar military junta started a campaign called *Pyi Thaya* (prosperous country), which began with a build-up of military forces and formation of a border task force called Nay-Sat Kut-kwey Ye (or NaSaKa) that was a combination of police, military intelligence and immigration/customs and other officials.¹⁵ Military operations in 1978 initiated under the guise of deporting illegals led to the exodus of over 200,000 Rohingya into Bangladesh. Moreover, the military junta's relocation schemes in 1991 and 1997 severely restricted the movement of the Rohingya within the Rakhine State, charging locals hefty fees to move from one village to the next.¹⁶ This led to a fresh exodus of the Rohingya to neighbouring Bangladesh. Some 250,000 Rohingya crossed over to Bangladesh, while another 15,000 somehow made their way to Malaysia.¹⁷ Since then, a steady flow of the Rohingya has continued to both Bangladesh and Malaysia to escape persecution in Myanmar.

In 1994, Myanmar reportedly stopped issuing birth certificates to the Rohingya children. In fact, the government officials in Myanmar refused and still refuse to use the term 'Rohingya,' preferring instead to call members of the community 'Bengali', a derogatory (and inaccurate) term, implying that they are outsiders and unwelcome interlopers. Subsequently, the Rohingya were excluded from an April 2014 census unless they registered as 'Bengali'.¹⁸

In Bangladesh, the majority of the 250,000 Rohingya, who fled in 1991–1992, were initially sheltered in some twenty camps around Cox's Bazar District. The Government of Bangladesh recognized them as refugees. However, afterwards, Bangladesh and Myanmar signed a bilateral agreement on April 28, 1992, to repatriate the refugees to Myanmar, followed by a somewhat

controversial repatriation programme. Many of these refugees were repatriated, but had to come back to Bangladesh quite soon. In September 2012, shortly before the outbreak of another round of violence in Rakhine State, '969' (a movement of nationalist Buddhist monastic organization) held a rally in Mandalay where its prominent leader, U. Wirathu, labelled the Rohingya as a 'threat to the Burmese motherland'.¹⁹ Ma Ba Tha (meaning the Organization for the Protection of Race and Religion) superseded the '969' in 2013. Ma Ba Tha constitutes a larger group of politically aligned monks who hold a position of high respect among certain Buddhists within Myanmar. When Ma Ba Tha also started facing the flak of the Government of Myanmar due to external international pressures, it reorganized itself in 2017 under the name the Buddha Dhamma Paramita Foundation.²⁰

In other words, following the systematic persecution in Myanmar in 2017, hundreds and thousands of Rohingya have repeatedly sought refuge in Bangladesh. However, recent developments were driven to such intolerable levels, with wider global implications that the Rohingya crisis was even discussed at the UN Security Council. Most of these refugees were afraid of 'threats' from the NaSaKa, military and the Rakhines in Arakan, due to persistent physical torture of the Rohingya men and women. Many Rohingya also experienced forced labour, eviction from their land and villages, insufficient and expensive medical treatment, forced relocation to 'model' villages, denial of education and destruction of religious sites in Burma that forced them to flee to Bangladesh or other neighbouring countries. In fact, when the Arakan Rohingya Salvation Army (ARSA) insurgents killed nine members of the national border police, the Tatmadaw (Myanmar military) allegedly retaliated with extrajudicial killings, rapes and the burning of hundreds of villages.²¹ Incidentally, the ARSA, formerly known as Harakah al-Yaqin, emerged in 2016. The group allegedly claimed responsibility for several attacks against police stations and border crossings in Rakhine State.²²

According to one estimate, about 745,000 Rohingya fled following the Tatmadaw's "clearance operation" in August 2017, leading to a fresh round of protracted refugee problem.²³ By October 20, 2017, approximately 600,000 Rohingya had fled to Bangladesh.²⁴ In an address to the UN Human Rights Council in Geneva, Zeid Ra'ad Al Hussein, the UN High Commissioner for Human Rights, denounced the "brutal security operation" against the Rohingya in Rakhine state, which he identified as a "textbook example of ethnic cleansing".²⁵ According to one estimate of the Government of Bangladesh (as per the Census results of Bangladesh Bureau of Statistics, which was conducted in six districts), already there were 303,070 Rohingya in Bangladesh before August 25, 2017. The refugees were concentrated within the congested areas of Ukhia and Teknaf *Upazilas* of Cox's Bazar District. The pre-existing camps and settlements have expanded with the new influx of refugees from Myanmar. Therefore, in February 2018, there were ten camps and settlements, from 9,900 refugees in Shamlapur, to more than 602,400 refugees in the Kutupalong–Balukhali Expansion Site. Jamtoli, Hakimpura and Potibonia, located further south of this Expansion Site, are almost inseparable. They accommodate 101,400 refugees. Around Nayapara Refugee Camp and Leda in Teknaf, a third sprawling camp having a concentration of more than 88,300 refugees has come up, which continues to expand and spread into surrounding villages.²⁶ About 4,800 acres of undeveloped forestland, allocated for a new camp by the Government of Bangladesh in September 2017, is now very densely populated. More than 602,400 refugees live there —making it the largest refugee camp in the world, which is increasingly untenable.

The Making and Unmaking of Citizens

Jacques Rancière once argued that the essential task of politics is the configuration of its own space, that is, the delineation of terms of political discourse in the sense that who can participate and who is

excluded, which forms of speech and expression are understood as legitimate and which are dismissed.²⁷ Such processes of inclusion and exclusion are quite often also mapped onto physical territory. In other words, the territorial relations of power reflect the ways in which one group of people is included while another is excluded from a territorial space. After all, citizenship cannot only be understood in terms of abstract categories of membership and rights, but also in terms of the historical narratives that frame its initial conceptualizations. These narratives may not be ‘unambiguous’.²⁸ But the historical inclusion of some groups within citizenship has often been associated with the active exclusion of other groups.²⁹ There is already a growing literature on this exclusive nature of citizenship.³⁰ There is also a relatively large body of work exploring citizenship as an inherently exclusive mode of political subjectivity.³¹

A nation, as it originated primarily in Western Europe, usually consists of a collection of people who tend to believe that they have been conditioned by a common past and are destined to share a common future. That belief is usually nurtured by some common cultural characteristics, like language and custom, a well-defined geographic territory, the belief in a common heritage and history. This belief also nurtures a sense of difference from other groups. Sometimes there is a shared hostility towards the other communities. The nationalist ideology helps to self-define a distinct group of people or nation.³² In any nation-state, there will be people who, regardless of how long their families have been there, would always be seen as perpetual foreigners to the nationalists—people who do not really belong, like the Rohingya in Myanmar.

Borders appear or get modified through geo and sociopolitical circumstances. A few borders of the colonial period were legitimized during decolonization in accordance with the legal principle of *uti possidetis* (a principle of customary international law that serves to preserve the boundaries of colonies emerged as states), which dictates that colonial borders must be respected. The other borders were redrawn on the basis of the whims of colonial rulers, who were in a hurry to exit. The Burma–Bangladesh border (then East Pakistan) was a combination of the two.

Just on the eve of decolonization of Burma in 1948, on February 12, 1947, the Burmese government, represented by the nationalist icon Aung San, father of Daw Aung San Suu Kyi, met Shan, Kachin, and Chin leaders to draft and sign the Panglong Agreement,³³ an outcome of a larger meeting known as the Panglong Conference, held in Panglong of Shan State in Burma. The apparent purpose of the Panglong Conference was to formalize the participation of ethnic minorities in the postcolonial Burmese government. The later postcolonial state of Burma or today’s Myanmar has used this Conference and Agreement as something of a major symbol for its engagement with ethnic minorities although Rohingya were excluded from this process.³⁴ But, as commonly perceived, this exclusion was not simply on the basis of making citizens. Nick Cheesman³⁵ in a recent article has explained this systematic expulsion from Burma/Myanmar on the basis of the changing meaning of *taingyintha*.

Taingyintha, according to him, was not a politically significant term in anti-colonial politics of Burma as the nationalist political leaders did not address their audiences as “national races”. In his view, the writers and speakers in the 1910s and 1920s used *taingyintha* and its synonyms not in order to address a political community or refer to a particular linguistic or cultural group, as is the case in the contemporary Myanmar, but primarily to recognize native handicrafts, medicines and trades. Through his research, he claims that the term entered the political language much later.³⁶ To be precise, the 1974 Constitution of Burma affirmed the centrality of *taingyintha* to the national project, as Article 21(a) of the Constitution mentioned that the state would be responsible “for constantly developing and promoting unity, mutual assistance, amity and mutual respect among *taingyintha*”.³⁷

History as Exclusion

Most of the Rohingya are likely to have a mixed ancestry owing to Arakan's trade linkages with the West, South and Southeast Asia. They are a predominantly Sunni Muslim minority that has been living in Burma for centuries. The partition of British Indian territories carved a line between what is now the Rakhine state (formerly Arakan), and what was then East Pakistan. As we have indicated earlier, the Rohingya have been living in western Burma's Rakhine state. The community is mostly concentrated in the northern part of the state, bordering Bangladesh. Therefore, there is a linguistic resemblance between the language spoken by Rohingya and that of the Chittagonians or Chatganiyas in the Chittagong region of today's Bangladesh.³⁸ These two communities on two sides of the border also have kinship ties in some cases.³⁹ As Rakhine state of Myanmar is geographically separated from the rest of the country by the Arakan mountain range, Rakhine has historically been connected to its western neighbour, what now is known as Bangladesh. Prior to the British colonial rule in Arakan and Burma, and even during the colonial times, Arakan was a vibrant, plural and syncretic space where various cultures and religions interacted.⁴⁰ As a consequence of such an interface, a Muslim majority enclave in north Arakan region could emerge under the royal patronage in the late sixteenth century.

The Saffron Revolution, which began as a response to about 500 percent increase in the price of diesel by the military junta in 2007, refers to marches by monks during which they turned their alms bowls upside-down. In Burma/Myanmar, if a monk refuses to accept donations from someone, it is viewed as a huge affront and shortcoming to the potential donor who cannot complete the transaction of having value from monks. Therefore, by turning their alms-bowls upside down during the unrest in 2007, the monks underscored their position as providers of refuge and indicated their refusal to receive offerings from the Burmese junta thereby denying the military their efforts to buy salvation.⁴¹

A few emboldened and influential Buddhist monks very soon started attacking the Rohingya with vituperative comments, thereby turning the latter into softer targets of the dominant ethnic communities and military junta at the drop of a hat. For instance, an extremist Buddhist monk U. Wirathu claimed that the Rohingya Muslims have a "master plan" to turn Myanmar into an Islamic state.⁴² When allegations of torture of Rohingya women were widely reported, he apparently went to the extent of saying that the rape of Rohingya women was out of the question because "their bodies are too disgusting".⁴³ On the other hand, since 2012, Daw Aung San Suu Kyi started embracing the Tatmadaw as "her father's army" and declared that she was "very fond" of the army.⁴⁴ Therefore, the Rohingya has been facing structural violence as a result of state-sanctioned marginalization, and became statelessness as a consequence of discriminatory nationality laws.

Under the circumstances, the Rohingya in Myanmar, who were unable to have any political and/or cultural space within the country, were finally pushed either beyond the boundaries of the state, or to death. From the situation faced by the Rohingya in Myanmar, it once again becomes evident that whereas sovereignty works on the juridical level, through laws and the state, biopolitics works through extra-state organisms and mechanisms, working at the intersection of norms and mores, reorganizing institutions such as schools and military and those that work on the population as a whole. In other words, power works over life, over the life of the population. Foucault observed that "the ancient right to *take* life or *let* live was replaced by a power to *foster* life or *disallow* it to the point of death".⁴⁵ Much later, he pointed out that, "in terms of his relationship with the sovereign, the subject is, by rights, neither dead nor alive".⁴⁶ Therefore, "the lives and deaths of subjects become rights only as a result of the will of the sovereign".⁴⁷ According to Foucault, the very essence

of the right of life and death is actually “the right to kill,” at the moment “when the sovereign can kill that he exercises his right over life”. After all, it is essentially “the right of the sword” that allows to “make live or let die”.⁴⁸

The process of securitization of Islam following the attacks of 9/11 profoundly changed the global security discourse for the years to come. The new utterances following 9/11 started evoking ‘Islamic exceptionalism,’⁴⁹ i.e., the problem of Islam’s ‘inassimilable difference’ contributed to writing security in a completely different way. The new utterances did not simply mark a shift from politics to security. Yet they were part of and contributed to an epistemic framework, which makes the securitization of Islam. The Rohingya have all along been vulnerable in postcolonial Burma. But the global securitization of Islam perhaps has changed their lives forever. In such circumstances, they became both stateless and refugees at the same time.

The Pandemic and Migrant Workers

The capitalist globalization over the last three decades has enabled the mobility of capital and technology but not that of labour. Therefore, the condition of migrant labour within the country and outside has in no way been better than that of the refugees, asylum-seekers or stateless persons. The COVID-19 pandemic has once again foregrounded this precarity, unfreedom and dispossession of the migrant labour across the globe. It is evident from the condition faced by migrant labour in India in 2020.

In India, the ‘total lockdown’ was enforced within a few hours of its announcement, to prevent the spread of the deadly virus in the country. But, that came as a double shock for hundreds and thousands of migrant labour from Uttar Pradesh, Bihar, West Bengal, Odisha and other states of India, living in slums and small rented accommodation in Delhi, different parts of Maharashtra or Gujarat, where thousands of families huddle together.⁵⁰

In early 2020, when the COVID-19 virus first hit India, within a short span of time, shortages of testing kits, masks, respirators, hospital-grade personal protective equipment (PPE) and other related supplies soon hit the headlines of pandemic reporting in India. Curiously enough, all over the world, the term ‘social distancing’ was coined for the practice of maintaining enough physical distance between human bodies to make viral transmission difficult. Moreover, once the State elites became alarmed, a term from the world of prisons became more prevalent: ‘lockdown’. China first used police methods to control the normal mobility of people, and India and many more countries in the world soon followed this.

It should be remembered that migrant workers were never among the privileged in India. There have always been invisible ways of dehumanizing and dispossessing them. There has always been a precarization of their lives in spite of their immense contribution to the growth of the Indian economy. They appear to be under the sign of permanent exception and exposure to rightlessness as they have constantly been dispossessed by all means possible.⁵¹ “Belonging to no one” points to the transient and deterritorialized identities often associated with migration.⁵²

Under the circumstances, a disaster immediately followed the sudden announcement of a national ‘lockdown’ in late March 2020 as millions of migrant workers in different parts of India were left without wages, food or transport to return home.⁵³ In cities like Mumbai or Delhi, where there are huge informal settlements, like Dharavi (where more than half of Mumbai’s total population reside), and Majnu ka Teela, Uttam Nagar, Sultanpuri or Kirti Nagar in Delhi, ‘social distancing’ was impossible, let alone the frequent hand-washing or use of sanitizers recommended by the medical practitioners. Most of these recommendations rather appeared to be a cruel joke for the migrant

labour sheltered in crammed slums of the big cities and towns. It has rightly been pointed out that, “the sirens of closure of the liberal world were calling for some time. Denial and dithering combined with pseudo-Darwinian theories of herd immunity to escape the closure —closure meaning literally closure of families, neighbourhoods, schools, cities, provinces, states, modes of transportation, and closure of the system”.⁵⁴ He has further been argued that, “these closing lines are drawing inwards like concentric circles to the extent that the migrant labour returning home after closure of work is unwelcome, s/he is a migrant to his/her own home —simply unwelcome”.⁵⁵

Therefore, when the lockdown was slightly relaxed in the month of May, hundreds of thousands of migrants were hell bent to return home somehow, by bus, train, bicycle, or even on foot with their small belongings, in absence of any livelihood and money, facing more tragedies, as initially there was hardly any proper arrangement of buses or trains to bring them back to their villages. They gathered in large numbers at the Bandra Railway Station in Mumbai, or at the ISBT (Inter-State Bus Terminus) in Delhi, thereby without being able to maintain stipulated ‘social distance’ from each other, only to know that the adequate transportation facilities were unlikely to be available in the near future. However, the images of such gatherings in the electronic, print and new media scared the Indian elite more as they apprehended that, the return of these migrants could spread the virus all over the country. As a consequence, newer stigmatization of migrants was to follow.

As the world dealt with the COVID-19 pandemic, a picture of extreme anxiety was unfolding in India over the next few months. Ever since the ‘lockdown’ was enforced, there has been an ever-increasing uncertainty about the basic survival of the hundreds and thousands of migrant labour, many of whom depend on daily wages for their sustenance. This hurriedly imposed ‘lockdown’ left the migrants with no other option but to stay back where they were in connection with their livelihood. Many of them did not even receive their last few days’ wages or salary. As indicated earlier, the daily or weekly wage earners did not have any option to earn. Their paltry savings started dwindling as the price of essential commodities started skyrocketing. There was also hardly any assistance from the concerned State governments in the form of supply of food and other essential items, where these migrant labour have been contributing to the construction, manufacturing or service sector. Undoubtedly, the sudden imposition and improper execution of lockdown measures brought additional misery for the migrant workers across India.

Tales of Woes

Four months after he lost his brother and sister-in-law to a tragic accident, Ram Kumar Sahu recalls how the couple had been compelled to attempt the perilous 700-kilometre journey back home to Chhattisgarh’s Behmetara. Set out on a bicycle, Krishna and Pramila Sahu were crushed to death by a vehicle on the outskirts of Lucknow in May. Their two children, Chandni and Nikhil, had miraculously survived. Like thousands of migrant workers across the country, the Sahus were stranded, without work, money and transportation, during the lockdown, when desperation forced them to return to their village, where they somehow sensed a better chance at sustenance. Ram and his wife, Kaushalya, have three kids of their own to take care of besides the additional responsibility of Chandni and Nikhil. This forced Kaushalya from going to work at a brick kiln. Ram, a labourer himself, earns Rs300–400 per day, making it a challenge to feed the entire family.⁵⁶ India witnessed more similar tragedies, say when sixteen migrants, part of a group of twenty, headed towards their villages in Madhya Pradesh, and who were hoping to board an especially arranged “Shramik Special”

train, chose to take rest on the rail tracks. They were run over by a goods train in Maharashtra's Aurangabad district.⁵⁷

In brief, a significant number of migrant workers have experienced an abrupt breakdown of cash flows. Job losses, pay cuts have been commonplace, while basic expenses, as indicated earlier, have remained, at best, unchanged. All of a sudden, a large number of migrant workers who worked hard, and were trying their best to meet their basic needs, and also managing to send remittances to their families back home, started facing abject economic deprivation. Their cry for the basics of life was considered an unlawful act during the 'lockdown'. It soon turned out to be a battle between life and livelihood. In some places, the migrants have been at the receiving end of police action for violation of newly issued orders to ensure curfew-like situation. Their dignity as self-reliant workers and breadwinners for the families back home was severely compromised. They realized that they had moved long distances for a job in which they have neither security of employment nor proper housing. Losing a job in an adopted city or town, even temporarily, means starvation.⁵⁸ The migrants suddenly started realizing that the city is no longer their home. Home is only where their intimate relations are. Home is where their small patch of land, the only semblance of an asset, remains. Home is the only address that the Public Distribution System (PDS) of the country recognizes. This city is just a workspace —opaque, cruel and now, diseased.⁵⁹

In fact, the government has been facing constant criticism from the opposition parties and civil society on account of the migrants' plight caused by an unplanned 'lockdown' impacting millions of poor. On its part, after facing flak for not maintaining data on the number of migrants, who died during the lockdown period, the Union Railway Minister informed Rajya Sabha on September 18, 2020, in a written response to a question posed by an opposition MP that, "Based on the data provided by State Police, 97 persons have been reported dead till 09.09.2020 while travelling on board Shramik Special Trains during current Covid-19 situation/crisis." Sharing the statistics, the Minister also mentioned that of the 97 cases of death, the state police had sent dead bodies for postmortem in 87 cases and, according to the autopsy report of 51 cases, cardiac arrest/heart disease/brain hemorrhage/pre-existing chronic disease/chronic lung disease/chronic liver disease etc., are the reason for deaths.⁶⁰ Another Union Minister informed the Lok Sabha on September 21, 2020, through written replies to several members' questions, that the Ministry of Labour and Employment did not have any data of the migrant workers, who lost their jobs and their lives during the lockdown. According to him, a total of 1,04,66,152 workers had returned home.

Ironically, after a treacherous trek back home following the COVID-19 'lockdown,' defying hostile employers in Maharashtra and Gujarat, migrant labourers from UP, Bihar, Jharkhand and West Bengal were again lured back with advance salaries, paid travel in buses and sometimes even with sponsored COVID tests. The buses, for instance, started carrying migrant labourers, like jewellery artisans from West Bengal districts, to Rajkot in Gujarat. The cleaner of one such buses disclosed to the journalists that his owner had sent a bus with sleeper coaches to Kolkata paying the entire cost of the journey to bring the labourers without charging any fare from them.

Migration in Neoliberal Times

Labour migration is a central phenomenon in South Asia, where a large number of citizens of various countries in the region are continuously on the move, essentially in search of a living. In recent decades, intensified poverty and widening inequalities have been propelling large-scale urban-bound migration from rural areas. For instance, landlessness, debt-bondages and farmer suicides have increased in India considerably.⁶¹ It may be recalled that more than a quarter of a million farmers in

India have taken their own lives in India between 1995 and 2009.⁶² In 2015 alone, the number of farmers taking their own lives was 8,007. Leading the farmer suicide records in that year was Maharashtra, which accounted for almost 40 percent of farmer suicides.⁶³ The farmer suicides in India have lately started to become a focal point of debates on various topics of late capitalism, from globalization and trade liberalization to the use of fertilizers, pesticides and genetically modified seeds.

Be that as it may, the precarity of migrant labour during the period of 'lockdown' and its immediate aftermath encouraged many to suggest that the migrants have been betrayed, as if for the first time. But, even a bare glimpse at the treatment meted out to the migrants in the recent past shows that this is how they have always been treated in India. In this connection, one can look at a survey, carried out by Centre for Study of Developing Societies (CSDS) and Common Cause, entitled the "Status of Policing in India Report (SPIR) 2018", with respondents from across 22 Indian states, 16 percent of these respondents said that the police discriminate against people from another state. On the other hand, the SPIR 2019, which was a survey of the police personnel across 21 Indian states, found that nearly 60 percent of the police personnel believed that the migrants are naturally prone to committing crimes, in other words, they are "born criminals".⁶⁴

In fact, "millennial capitalism", where wealth is generated "purely through exchange...as if entirely independent of human manufacture," has pushed the migrant labour further into precarity.⁶⁵ It has been argued that one of the most important characteristics of "postcolonial" capitalist development consists in the continual reproduction of the conditions of 'primitive accumulation'.⁶⁶ The capitalist accumulation of land, exploitation of labour and appropriation of resources characterize this millennial capitalism,⁶⁷ and the State plays a crucial role to maintain the health of global capitalism. It has been identified as "accumulation by dispossession" while describing this new imperial moment where primitive accumulation (forced extraction and privatization of the commons) has become a more dominant feature of neoliberal globalization. "Primitive accumulation" and its new guise, "accumulation by dispossession", is contingent on the state-sanctioned use of force with the effect of reconstituting the power of global elites against the diminished capacity of organized labour worldwide.⁶⁸ In this situation, some lost lives of migrant labour may not qualify as "grievable"; there seems to be a "hierarchy of grief"⁶⁹ in society.

That is why Achilles Mbembe has named this form of governance as necropolitics, drawing on Michel Foucault's notion of biopolitics, identifying this as "the power and the capacity to dictate who may live and who will die".⁷⁰ For Foucault, biopolitics designates the emergence of a new form of power that is concerned with governing populations in a way that maximizes their life potentials and economic productivity. Foucault introduced the notion of biopolitics as a form of power that complements and partly supersedes the sovereign power to 'let live and make die'.⁷¹ However, he was not the first to use the concept of biopolitics. Its first use is attributed to the conservative thinker Rudolf Kjellen, who used the term 'biopolitics' as early as 1905 and elaborated it further in his 1916 book entitled *The State as a Life Form*. Achille Mbembe has highlighted this destructive dimension of biopolitics with his concept of necropolitics.

In fact, critical scholarship on the governance of migration has interrogated the specific politics of life and death underpinning the technologies, which sort populations into lives worth saving and those left to die.⁷² They have productively built on the critiques of biopolitics, particularly with arguments that biopolitics needs to be supplemented either by necropolitics, conceived by Achille Mbembe as the "contemporary forms of subjugation of life to the power of death"⁷³, or thanatopolitics, defined by Giorgio Agamben as the moment when "the decision on life becomes a decision on death".⁷⁴ This supplementation exposes the co-constitution of life-and death-impulses in

the contemporary government of life and the constitution of the 'living dead,' a term which denotes forms of existence characterized by social, political and physical death.⁷⁵ The biopolitical, thanatopolitical and necropolitical are particularly intensified in the governance of migration, as death becomes a 'routine or normalized dimension of contemporary bordering practices'.⁷⁶ What characterizes these biopolitical spaces in which life is administered, monitored and surveyed is the drawing of boundaries, the hierarchization of life, and the proliferation and intensification of violence. Nick Vaughan-Williams has pushed further this critical engagement with the notion of biopolitics, arguing for an analysis that moves beyond the opposition between affirmative biopolitics—which centres on the power of life rather than power over life. Similarly, Katharyne Mitchell and Matthew Sparke interestingly called for "adapt[ing] Foucauldian arguments about 'making live' and 'rejecting into death' in modern biopolitics in order to come to terms with a wide range of intermediate experiences of 'subcitizenship' between the poles of biopolitical enfranchisement and necropolitical rejection".⁷⁷ The precarity of migrant labour is due to their commodification and therefore, migrant life is probably subsumed to a bio-economic rationality.⁷⁸ After all, in this century, ever-mutating surveillance technologies visualize, immobilize and contain surplus people displaced by late capitalism.

"As a rule, such death" of the migrants mentioned earlier "is something to which nobody feels any obligation to respond. Nobody even bears the slightest feelings of responsibility or justice toward this sort of life, or rather death. Necropolitical power proceeds by a sort of inversion between life and death, as if life was merely death's medium."⁷⁹ Underwritten by the law of the sword, the political, according to Carl Schmitt, is the antagonism "whereby men could be required to sacrifice [their] life" ("to die for others").⁸⁰ The contemporary "security state thrives on a 'state of insecurity,' which it participates in fomenting and to which it claims to be the solution. If the security state is a structure, the state of insecurity is a kind of passion, or rather an affect, a condition, or even a force of desire".⁸¹

We are now going through the unremitting digitalization of facts and things, and the relative generalizing of what might be called 'electronic life and its double' or 'robotically adjusted life'. A new and unprecedented phase in the history of humanity has effectively begun, in which it will become increasingly difficult, if not impossible, to distinguish human organisms from electronic flows, the life of humans from that of microprocessors. This phase is made possible by accumulated know-how concerning the storage of enormous data flows, by the extreme power and speed of their processing, and by advances in algorithmic computation. To some extent, Matteo Pasquinelli's "metadata society"⁸² of the contemporary period is characterized by the "accumulation of information about information".

In this age, life is an object that is captured and redistributed asymmetrically in the name of life itself, whether it is the life of a nation, a people, a population, or a group of persons. For Agamben, and later Mbembe, there is a clear division between qualified, worthy, politically included, and legally recognized life ('bíos' or proper life) and unqualified, unworthy, excluded, and simple or bare life ('zoe' or improper life). In short, privileged or proper life is nourished by the degradation and the death of other lives. Movements of migration underscore "the tensions, subjective claims and conflictual dynamics that criss-cross the field of precarity, contrasting the tendency" to provide "neutral sociological descriptions of the 'neoliberal' flexibilization of labour markets and the disarticulation of citizenship".⁸³ In these neoliberal times, when labour laws are also being modified, thereby shrinking the entitlements of workers in the name of a seamless production system, there are more and more instances of differential inclusion in the postcolonial nation-states leading to hierarchization of citizens. Migrants, in this scenario, are deprived of spaces of livability and

infrastructures of support.⁸⁴ It seems that in these changing dynamics, there is an increasing number of citizens, mainly migrant labour, who do not belong.⁸⁵ 'Lockdown' in India hindered the mobility of the migrant labour by blocking them, thereby forcing them to undertake tortuous movements.

Postcolonial State in Neoliberal Times

The fact remains that, in view of the securitarian governmentality and new modes of dispossession, the existing protection discourses in the Global South are practically meaningless. Perhaps, necropolitics understates these everyday dispossessions or structural violence prefiguring the killer relations of the postcolonial societies. The postcolonial intervention is to theorize such phenomena not as new, or as contra to liberal western values, but as the logical contemporary expression of historically embedded colonial/modern, racially hierarchical worldviews, which have their roots in the colonial enterprise.⁸⁶ Colonial projects were close to the production of hierarchies and dangerous dichotomies that worked to classify individuals and manufacture 'cultural imaginaries'.⁸⁷ Even after the decolonization of the erstwhile colonies of the Global South, the legacies of ideas of human hierarchy, which made the exclusion of millions of people from the rights discourse during the late colonial era, live on.⁸⁸ This is a manifestation of "neoliberal sovereignty", meaning the configuration sovereignty takes under conditions of neoliberal political rationality.⁸⁹ As political rationality, it also means reorganizing citizenship along market norms, constructing citizens as customers and/or as independent entrepreneurs.⁹⁰

The international legal framework on statelessness includes the 1954 Convention, 1961 Convention and the UDHR. The related Conventions that are relevant to stateless individuals include the 1999 African Charter on the Rights and Welfare of the Child, the 1966 ICCPR, the 1989 Convention on the Rights of the Child, the 1957 Convention on the Nationality of Married Women, the 1965 Convention on the Elimination of all Forms of Racial Discrimination, the 1979 Convention on the Elimination of all Forms of Discrimination against Women.

Over and above, the recent two separate Global Compacts, namely, Global Compact on Refugees (GCR), and Global Compact for Safe, Orderly and Regular Migration (GCM) initially appeared to be a timely and much-needed push to re-energize the local strategies aimed at filling these normative legal gaps through regional, rather than international, agreements. As a consequence, both these Global Compacts stimulated a chain of high-level conferences, declarations, and commitments. The GCR rightly observed that addressing the root causes is the responsibility of the countries at the origin of refugee movements. However, these have not been able to address the conditions of the refugees and migrants in postcolonial South Asia. Protracted problems of refugees or problems relating to statelessness remain largely unaddressed in GCR and GCM, as has been indicated by the Kolkata Declaration adopted in an international conference organized by Calcutta Research Group (CRG) in 2018. It was clearly stated in the Kolkata Declaration that, in the context of widespread forced migration and statelessness in Asia, a regime of protection along the lines of the African Charter of Human and People's Rights involving "specific provisions of human rights, including labour rights, of migrants, refugees, asylum-seekers and stateless persons to ensure and rights for all" would be urgently required.⁹¹ The COVID-19 pandemic has once again shown how even the migrant workers within a country, already in a situation of precarity, can face further stigmatization from the society that has been benefitting from their sweat and service. Does it also indicate that some lives are dispensable?

Therefore, social justice has not always accompanied the two transitions in South Asia, in particular, and the Global South, in general, which we have briefly discussed in this essay. National or

international protection mechanisms that could safeguard the rights and entitlements of the refugees, asylum-seekers and cross-border or internal migrants have rather been confined to hair-splitting debates about the definitions, categorizations, legality and illegality of the people on the move. The laws, rules and regulations have, on many occasions, gone above the human beings whom they were supposed to look after. Over and above, in this neoliberal age of surveillance capitalism⁹² which is a fresh assault on human autonomy, a situation where data, based on algorithmic computations, are becoming essential components of migration-related, refugee-related or pandemic-related governmentality bordering within the postcolonial states and outside, seem to sustain and intensify the precarity and un-freedom of the refugees,⁹³ stateless and migrants who have been going through multiple transitions without having justice.

Notes

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⁵See Bryan S. Turner, *Citizenship and Social Theory* (Sage: Thousand Oaks, CA, 1993).

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⁸Azeem Ibrahim, *The Rohingyas: Inside Myanmar’s Hidden Genocide* (London: Hurst Publishers, 2016), 51.

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¹⁰*The Rohingya Muslims: Ending a Cycle of Exodus?* 8, no. 9, Human Rights Watch, 1996.

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²⁰Christina Fink, “Myanmar: Religious Minorities and Constitutional Questions”, *Asian Affairs* 49:2 (2018), 259.

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