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A Foreword from the Editor

Studio Nilima: Collaborative Network for Research and Capacity Building is a network of legal professionals, academician and social scientists in North East India. The vision of Studio Nilima is to extend the frontiers of law in creating an interdisciplinary practice of legal and policy research. It aims to do so by bringing together lawmakers, thinkers, learners, policy makers, academicians, and practitioners from across the arts to unfold new ways of learning, thinking, research and practice while engaging with contemporary concerns of law, culture, governance and society.

With a view to achieve the objective of its formation, Studio Nilima has organized various seminars and interactive sessions with eminent persons having deep interest in the development of the country, more particularly of the North Eastern Region. Law students, research scholars, legal professionals apart from others have actively participated in such seminars and interactive sessions, which have not only immensely benefited the participants but also Studio Nilima in achieving the objective for which it was formed.

In furtherance to its vision, Studio Nilima has awarded Research Fellowships to deserving candidates enabling them to undertake in depth study of research projects on contemporary concerns of Northeast India. This inaugural issue of *Nilima A Journal of Law and Policy*: a peer-refereed academic journal, is being published by Studio Nilima. It includes, amongst others, contribution of such Research Fellows covering various burning contemporary concerns of Northeast India. The mission of the journal is primarily to foster a wider understanding of conflicts and its interface with

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issues of law and governance. This issue places a particular emphasis on the problems of diverse groups in the North East, where various ethnic communities speak different languages and pursue independent goals, and to develop a roadmap to suggest credible solutions.

Uddipana Goswami, a Fulbright- Nehru Postdoctoral Fellow at the University of Pennsylvania, endeavors to trace some of the major reasons for the current ethno-nationalist conflicts in Assam in her article *Transcending Conflicts, Transforming Relations: Finding Peace in India's Northeast*.

Puspanjali Medhi makes an attempt to study the various issues of the Chakma-Hajong conflict in Arunachal Pradesh and analyze the viewpoints of the stakeholders and the potential affect of the proposed introduction of 'limited citizenship' in her article *The Indigenous v. The Alien: The Chakma & Hajong Issue of Arunachal Pradesh*.

Anubhab Atreya examines the consequences of delegatory provisions of the Plantations Labour Act, 1951 and suggests ways for reconsideration of certain provisions of the Act in his article *The Case of the Plantations Labour Act, 1951: Need for a Relook ?*

Shradhanjali Sarma examines the conflict arising out of the various demands of the 'indigenous' people of Assam related to the utmost need for recognition of identity and land through the concepts of game theory, primarily the Prisoner's Dilemma in her article *To Cooperate or To Defect ?*

On another vein, Abantee Dutta analyses the dynamics of an intercultural interaction that play out for a commuter within a confined space of the tram set off by her personal experience of contestation and conflict in her narrative article *At Home In The World ! Of Disruptions to Dialogues on the Trams of Melbourne*.

I would like to thank Springer for granting the publication rights of the research article *Transcending Conflicts, Transforming Relations: Finding Peace in India's Northeast* by Uddipana Goswami from "Reconciliation in Conflict-Affected Communities" where this article was originally published. This article is published here with their permission.

I am grateful to all who have contributed towards the publication of this inaugural issue of the journal. It has been a privilege and pleasure to work alongside so many committed team members of Studio Nilima. I hope the articles in the journal will enlighten all readers and stimulate new avenues of research.

Mr. Justice (Retd) Brojendra Prasad Katakey

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THE INDIGENOUS V. THE ALIEN: THE CHAKMA & HAJONG ISSUE OF ARUNACHAL PRADESH

Pushpanjali Medhi

Introduction

The phenomenon of migration has existed for the entire timeline that mankind has existed. It has been an intrinsic part of evolution, playing a significant part in influencing the dynamics of the demography of regions all over the world.¹ Not only does this phenomenon affect the demography, its consequences also invariably involve the conditions of the communities which are parties to it, be it the migrants or the hosting community. This ongoing phenomenon and its effects have over the years in various instances raised issues and concerns in the study of international law and policy.²

One such instance of migration is the mass exodus of the Chakma-Hajong refugees from the Chittagong Hill Tracts of Bangladesh (erstwhile East Pakistan), who have since then been an ethnic group in the search of an identity. They have gone from rejected people pushed into the periphery of a newly created nation-state to unwanted migrants in the edges of civilisation of the neighbouring nascent nation which was already struggling with its own issue of integration.

¹M. Amarjeet Singh, *A Study on Illegal Immigration into North-East India: The Case of Nagaland* (2009), (29 December 2016), Institute for Defence Studies and Analyses 7 <https://idsa.in/system/files/OccasionalPaper8_NagalandIllegalImmigrationl.pdf> .

²*Ibid.*

Therefore, this paper makes an in-depth study of the Chakma-Hajong refugee issue of Arunachal Pradesh, highlighting the developments that it has seen in the recent past. The analysis attempts to bring forth the various perspectives of the stakeholders. Although before probing into these viewpoints, the essay firstly, studies the issue of migration that has existed between India and Bangladesh which has been the point of inception of the Chakma-Hajong issue. Secondly, a comprehensive enquiry has been instituted into the events of the conflict itself which is followed with a discourse into the perspectives of the communities whose fates are at stake-the Chakma-Hajong refugees and the indigenous people of Arunachal Pradesh-which inherently lend a necessary perspective into the conflict. Lastly, the essay ends with an interrogation of the way forward into the tussle discussing the probability of the granting of a 'limited citizenship' and the various opinions that have been expressed on its repercussions.

The Refugee Struggle between India and Bangladesh

Before delving into the essentials of the broader picture of the Chakma-Hajong issue, it is imperative to understand the dynamics of the refugee affair that has existed between the two countries of India and Bangladesh for a long time; even preceding the period of Independence.

The erstwhile East Pakistan, while still a part of undivided Bengal Province, was an integral part of pre-independence India. Even during this time there was a flow of population that was seen from this part of the country to another for various reasons such as economic (trade), cultural, social and ethnic.³ This movement of people only became an issue of concern post partition in 1947, when this area was annexed into the territories of Pakistan and was termed East Bengal till 1956 and then as East Pakistan from 1956 to 1971.⁴

³Chirantan Kumar, 'Migration and Refugee Issue between India and Bangladesh', (2009) 1 Scholar's Voice: A New Way of Thinking 64, 64, 67.

For further reading: K.C. Majumdar, J.N. Chowdhury and G.C. Phukan, *The Land Laws of Assam*, (Assam Law House, 2nd ed 2015) vol 2.

⁴Ibid.

The problem of migration from Bengal to India was initially the creation of the British East India Company, who were the first to bring in Bengali Muslim peasant settlers from Bengal into the Brahmaputra Valley in the beginning of the 19th century.⁵ The policies that were brought in by the British in Assam for its 'development', due to its position as a frontier state to India, also attracted large number of settlers from all over the country.⁶ People in search of their own piece of land migrated from the densely populated East Bengal to the newly discovered world of Assam where land was abundant.⁷

The Partition of Bengal in 1905 showed itself as the epitome of the British's divide and rule policy and was one of the main events which gave rise to forced migration of a large number of people from East of Bengal to Assam.⁸ The division of Bengal into two communal halves: Hindu and Muslim Bengalis eventually gave rise to communal riots for and against the partition in various parts of province. The unfolding of these events left a deep sense of insecurity between the Hindu population in East Bengal, leading to the migration of this section of the population, particularly the elite class, into western part of Bengal and Assam.⁹

The partition of undivided India and the consequent birth of Pakistan cropped up as the next event which led to massive rise in migration from erstwhile East Pakistan into India. Although Jinnah, in his first speech in front of the constituent assembly of Pakistan, had assured that there would be no difference between the treatment of the Muslims and the Hindus and other minorities under the Pakistani governance, this policy was overthrown by the ruling elite after his death resulting in massive communal riots in East Pakistan in 1950.¹⁰

⁵E.N. Rammohan, 'Bangladesh- A Problem State', (2006) 7(2) Dialogue 33, 33.

⁶Kumar, above n 9. See also: Mayumi Murayama, 'Borders, Migration and sub-Regional Cooperation in Eastern South Asia', (2006) 41(14) Economic and Political Weekly, 1355

⁷Ibid.

⁸Dalem Ch. Barman, 'Forced Migration in South Asia: A Study of Bangladesh', in Omprakash Misra (ed.) *Forced Migration in the South Asian Region: Displacement, Human Rights and Conflict Resolution* (Centre for Refugee Studies, Jadavpur University in collaboration with Brookings Institution-SAIS Project on Internal Displacement, 2004) 161, 161.

⁹Ibid.

¹⁰Ibid, 162, 163. See also: Abul Barkat et al, *Political Economy of the Vested Property Act in Rural Bangladesh*, (Association of Land Reform and Development, 1997) 19.

Pakistan's emergence as a new nation marked the movement of a huge population into India under the tags of legality and illegality.¹¹ Even though the migration of people from Bengal was not a new phenomenon, it increased by several folds from 1947 to 1971 where over 4.7 million Hindus had made their way into Indian territories seeking refuge.¹² With the outbreak of the Bangladesh liberation war, millions of East Pakistanis sought refuge in India, with a large number of them setting base in Assam. Even after the liberation, a large section of these refugees did not return to Bangladesh and assimilated themselves as permanent settlers in the region. On the contrary, with the end of the war and the worsening economic and communal condition in Bangladesh, there was a continuous inflow of Bangladeshis in the 1970s.¹³

Even though the policies of the newly formed Bangladeshi government under the leadership of Sheikh Mujibur Rehman had shown streaks of secularism, the situation changed entirely after he was assassinated in 1975.¹⁴ The Islamic roots in the country deepened with the strict military regime and strategies adopted by the government which again sowed feelings of insecurity in the minds of the Hindu minority which were further intensified

Muhammad Ali Jinnah, in his first Presidential Address in front of Constituent Assembly of Pakistan, on Aug. 11, 1947 pledged the protection of all the majority and minority communities of that found themselves living within the territories of Pakistan post independence. His words, 'You are free; you are free to go to your temples, you are free to go to your mosques or to any other place or worship in this State of Pakistan. You may belong to any religion or caste or creed-that has nothing to do with the business of the State.' established his intention of building Pakistan as a secular nation, although, his vision was disregarded after his death.

For more information: Muhammad Ali Jinnah, 'First Presidential Address to the Constituent Assembly of Pakistan' (Speech delivered at the First Constituent Assembly 11 August, 1947) <http://www.columbia.edu/itc/mealac/pritchett/00islamlinks/txt_jinnah_assembly_1947.html>

See also: G. Allana, *Pakistan Movement Historical Documents*, (Dept. of International Relations, University of Karachi, 1967) 407-411.

¹¹Kumar, 'Migration and Refugee Issue between India and Bangladesh', above n 3, 69.

¹² Pranati Datta, 'Push-Pull Factors of Undocumented Migration from Bangladesh to West Bengal: A Perception Study', (2004) 9 (2) *The Qualitative Report*, 337.

¹³Partha S. Ghosh, *Migrant,s Refugees and the Stateless in South Asia* (Sage Publication India Pvt. Ltd., 2016) 92.

¹⁴Kumar, 'Migration and Refugee Issue between India and Bangladesh', above n 3, 69.

with the passing of legislations like The Enemy Property Act, which came into force in 1965, but had now become a powerful instrument that worked as a primary cause for persecution leading to migration.¹⁵

A United Nations Survey report which compared the census records of Bangladesh from 1971-81 and 1981-91 and the increased growth rate of population in the North-Eastern states of India, directed towards the concern of "missing people" of Bangladesh.¹⁶ This indicated towards the illegal infiltration of missing Bangladeshi citizens into the neighbouring countries, predominantly India. The minorities in Bangladesh, for reasons such as religious persecution and political pressure, have fled the country and tried to seek refuge in India; although there also has been an influx of majorities of Bangladesh (the Muslims) who for various economic reasons have entered illegally into India.¹⁷

The two countries share a boundary which stretches up to 4,096 kilometre.¹⁸ This border, drawn by Sir Cyril Radcliffe, divided the country in terms of religious lines which led to the formation of India and Pakistan giving birth to a perpetual state of disturbance along these man-made

¹⁵ Ibid.

The Enemy Property (Custody and Registration) Order II of 1965 (Pakistan), The Enemy Property Act, 1965, passed by the Government of Pakistan, was aimed at appropriation of land owned by the minorities of East Pakistan, the Hindus and other tribal communities, who were labelled as enemies by the State following the commencement of the Indo-Pak war of 1965. The effects of this oppressive law led to a 'drastic' decline in the population of these minorities in the country.

Samir Kalra and Arvind Chandrakantan, A Legal Analysis of the Enemy Property Act of Bangladesh, Hindu American Foundation, 1 <https://www.hafsite.org/sites/default/files/Legal_Analysis_Enemy_Property_Act_Bangladesh.pdf>.

See also: Amena A. Mohsin, Religion, Politics and Security: The Case of Bangladesh, (23 December 2017) Daniel K. Inouye Asia-Pacific Center for Security Studies, <<http://apcss.org/Publications/Edited%20Volumes/ReligiousRadicalism/PagesfromReligiousRadicalismandSecurityinSouthAsiach20.pdf>> .

¹⁶ Kumar, 'Migration and Refugee Issue between India and Bangladesh' above n 3, 68. See also: Archana Upadhyay, Cross-Border Illegal Migration and Conflicts in India's North-East: Emerging Challenges and Responses.

¹⁷ Bimal Pramanik, 'Illegal Migration from Bangladesh- A Case Study of West Bengal', (2005) 6(3) Dialogue 43, 43. <http://www.asthabharati.org/Dia_Jan%2005/bim.htm>.

¹⁸ Rizwana Shamshad, Bangladesh Migrants in India: Foreigners, Refugees or Infiltrators? (Oxford University Press, 2017) 1.

boundaries. The border passing through mountains, forests, islands and the Bay of Bengal remains highly porous and the consequences of movement of population have led to a death toll which exceeds the numbers that were killed during Cold War, while attempting to cross the borders of East and West Germany.¹⁹

Much like the Indo-Nepal open border, the border between India and Bangladesh is also virtually open at a number of points.²⁰ This continuous migration into the North-Eastern states of India has made large impacts on the local politics of the region, leading to landmark political events such as the Anti-Foreigners movement that swept through Assam in the late 1970s which also spread its after effects into the other neighbouring states.²¹ One of such incidents is the beginning of the movement against the Chakma and Hajong refugees in Arunachal Pradesh which catapulted in the early 1990s. The parallels of a movement spearheaded by Student Unions turning into a force to eliminate foreigners to protect the vulnerable indignity of the original indigenous people that was seen in the All Assam Students' Union (AASU) led Assam Movement also ran through the similar anti-refugee (anti-foreigner) movement started by the All Arunachal Pradesh Students' Union (AAPSU) in the state of Arunachal Pradesh, the events of which have been discussed in the following section.

The Chakma-Hajong Conflict: the Story so far

With the refugee crisis between India and Bangladesh spanning over several decades, numerous continuing unresolved issues remain; the question of the Chakmas and the Hajongs (the second community to have migrated from Bangladesh) being one of them.

The history of the Chakmas and Hajongs in India dates back to the 1960s, when thousands of people from these communities entered the Indian territories, following their flight from the Chittagong Hill Tracts and

¹⁹Ibid 2. See also: Willem van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia* 214 (Anthem Press, 2005) 210-255.

²⁰Ghosh, above n 13, 32.

²¹For more information: Basanta Deka, *The Design, the Betrayal, the Assam Movement*, (Orchid Publication, 2015)

Myemensingh district of erstwhile East Pakistan²². Following this, during the years of 1964-69 a total of 2,748 Chakma and Hajong families consisting of 14,888 persons were brought into the North-East Frontier Agency (NEFA, now Arunachal Pradesh) under the aegis of the Government of India.²³ These refugees had first arrived in Assam after which they were shifted to Bihar where settling them was a predicament and thereafter, they were finally brought into NEFA.²⁴

Although the mass exodus took place during the period of 1964-65, the conflict predominantly arose with the wake of the "Quit Arunachal Notice" that was served by the AAPSU on September 30, 1994 to the Chakma and Hajong refugees, who had been residing in Arunachal Pradesh.²⁵ The refugees who were settled in the areas near Kokila under Papum Pare and the erstwhile Lohit (now Namsai) districts were allegedly threatened by the AAPSU volunteers who had taken up the cause actively.²⁶

Following these developments, the issue has over the years gone through several litigations. With the worsening situation in 1994, the Committee for Citizenship Rights of the Chakmas in Arunachal Pradesh (CCRCHAP) appealed to the National Human Rights Commission (NHRC) to institute an inquiry into the situation.²⁷ A case was registered under the citation of Case No.: 5385/95-96/NHRC, wherein directions were issued towards the Arunachal Pradesh State Government by the NHRC and the Central Government which were not complied with.²⁸ Following this, the NHRC moved into the Supreme Court through a Writ Petition (Civil) No. 720 of 1995 seeking to protect the rights and liberties of the Chakmas and Hajongs

²²S.P. Talukdar, *The Chakmas: Life and Struggle*, (Gian Publishing House, 1988) 47. Government of Arunachal Pradesh, *White Paper on Chakma and Hajong Refugee Issue*, 1. (on file with author)

²³*Ibid.*

²⁴*Ibid.*

²⁵Committee for Citizenship Rights of the Chakmas and Hajongs of Arunachal Pradesh (CCRCHAP), 'CCRCHAP: Celebrating 25 years of Community Service', Diyun, Changlang District, Arunachal Pradesh. (on file with author)

²⁶*Ibid.*

²⁷*Ibid.*

²⁸*Ibid.*

in Arunachal Pradesh.²⁹ In November 1995, an interim order was passed by the Supreme Court, directing the State Government of Arunachal Pradesh to not evict any Chakma or Hajong in a method which did not comply with the law and also prevented the State Government from undertaking any forcible eviction of the refugees.³⁰ This was further upheld in the Apex Court's final order and judgment dating January 9, 1996 laying down that if a Chakma has an application pending consideration then the State Government shall not evict or remove the concerned person from his occupation on the grounds that he is not a citizen of India until the required competent authority has taken a decision in the matter.³¹

The 1996 decision of the Supreme Court was challenged by an organization named Arunachal Pradesh Indigenous and Tribal People's Organisation (APITRO) seeking its revision which was dismissed on August 6, 1996.³² Following this another review petition was filed by the APITRO and another individual named John Moyong which was also dismissed by the Apex Court on December 9, 1996.³³

With the failure of the State Government in complying with the 1996 Supreme Court order, the CCRCAP had filed a contempt petition in the Apex Court, against the State of Arunachal Pradesh and the Union of India for the "intentional non-compliance with the Supreme Court's judgment" which was later converted into a writ petition under W.P. (C) No. 510/2007.³⁴ The final order came from a bench consisting of Justice A.R. Dave and Justice A.K. Goel in 2015, directing the state of Arunachal Pradesh and the Union of India: 'to finalize the conferment of citizenship rights on eligible Chakmas and Hajongs and also to ensure compliance of directions in judicial decisions referred to in earlier part of this order for protection of their life and liberty and against their discrimination in any manner.'³⁵

²⁹Ibid.

³⁰National Human Rights Commission v. State of Arunachal Pradesh and Another, (1996) 1 SCC 742, para. 9.

³¹Ibid., para. 21 (4) & (5).

³²CCRCCHAP report, above n 25.

³³Ibid.

³⁴Ibid.

³⁵Committee For Citizenship Rights of Chakmas of Arunachal Pradesh & Or.s v. State Of Arunachal Pradesh & Ors., (2016) 15 SCC 540, para 21.

This CCRCAP judgement had been vehemently opposed by the AAPSU, with rallies held in both Arunachal Pradesh and New Delhi in protest.³⁶ Following this an Interlocutory Application [I.A. No. 3 in W.P. (C) No. 510/2007] had been filed by the Union of India in January 2016, with the request of seeking an extension of time for the implementation of the 2015 judgment of the Apex Court.³⁷ In the course of the hearing of the I.A. the bench headed by Justice Anil R. Dave had directed the State Government of Arunachal Pradesh to submit a status report on the implementation of the 2015 judgment. According to the two reports that were submitted by the state government, a total of 2025 (43.67%) of the total pending applications of the Chakmas have been processed whereas only 110 applications have been forwarded to the Ministry of Home Affairs (MHA).³⁸ These forwarded applications had been sent without further recommendations on the grounds that the applications did not meet the conditions as have been prescribed under the Sections 5(1) (a) of the Citizenship Act, 1955.³⁹ As these applications were sent without the required recommendation, therefore, the MHA had to send the applications back to the State government of Arunachal Pradesh without the further processing.⁴⁰

³⁶'Chakma-Hajong logjam: Arunachal students protest in Delhi', The Times of India (online), 16 October 2015 <<http://timesofindia.indiatimes.com/india/Chakma-Hajong-logjam-Arunachal-students-protest-in-Delhi/articleshow/49418366.cms>>.

³⁷CCRCAP report, above n 25.

³⁸CCRCAP report, above n 25.

³⁹The Citizenship Act, 1955 (India) s 5(1)(a).

⁴⁰The Citizenship Rules, 2009 (India) Rule 12 (2): states that: "The State Government or the Union territory Administration, as the case may be, shall forward the application along with its recommendation and the report of the Collector, to the Central Government within a period of thirty days from the date of receipt of the report of the Collector under sub-rule(1): Provided, that if for sufficient reasons, the Collector or the State Government or the Union territory Administration, as the case may be, is unable to forward the application within the period specified in sub-rule (1) or sub-rule (2), the same may be forwarded to the State Government or the Union territory Administration or the Central Government, as the case may be, after the expiry of the period so specified but not exceeding ninety days along with the reasons for delay." Therefore, the recommendation of the State Government is mandatory for the permit of citizenship by the Ministry of Home Affairs. < http://mha1.nic.in/pdfs/Citi_Rule-2009.pdf>.

On September 13, 2017 reports started flowing in that the Centre has decided to open the matter of the Chakma and Hajong Refugees where, the 2015 order of the Supreme Court will be deliberated upon.⁴¹ The consultations had started between the Centre and the State to find a 'working solution' with the anticipation that the proposal would bring a middle ground which would be acceptable to the stakeholders.⁴² Union Minister of State for Home, Kiren Rijiju post this announcement expressed that the Centre is hopeful of finding a middle ground so as the 2015 order can be honoured although care will be taken as to that the indigenous people's rights will not be diluted by the direction of granting citizenship to the Chakmas.⁴³ The Centre's take on a 'workable solution' has been proposed as version of 'limited citizenship' that will be granted to the Chakmas and the Hajongs where the special rights that have been bestowed upon the indigenous people of Arunachal Pradesh including the right to ownership of land will not be made available for the refugees.

The Centre's decision had been met with massive outrage with bandhs and protests being called by the AAPSU within the state.⁴⁴ Almost all tribal organisations and NGOs came out in their support where they expressed their dissent over the Centre's decision.⁴⁵ AAPSU General Secretary, Tobom Dai, in his correspondence with the Hindustan Times was quoted, *"The support for our agitation has sent out a loud and clear message that the indigenous people will not tolerate arbitrary decisions of the Centre that could change the state's demography"*.⁴⁶ His input voicing the concerns of the Arunachalis is also an indicator that the issue has reached a

⁴¹PTI, 'Government to grant citizenship to Chakmas', The Wire (online), 13 September 2017 <<https://thewire.in/176951/government-to-grant-citizenship-to-chakmas/>>.

⁴²Ibid.

⁴³ Special Correspondent, 'Chakma-Hajong issue still open', The Hindu (online), 13 September 2017, at New Delhi, <<http://www.thehindu.com/news/national/chakma-hajong-issue-still-open/article19678071.ece#>>

⁴⁴Rahul Karmakar, 'Arunachal shuts down over citizenship to Chakma-Hajong refugees', Hindustan Times (online), 19 September 2017, <<http://www.hindustantimes.com/india-news/arunachal-shuts-down-over-citizenship-to-chakma-hajong-refugees/story-5Zl1HYedOB2MkrhG85LEUK.html>>.

⁴⁵Ibid.

⁴⁶Ibid.

stage where the fear of being outnumbered by the refugees in their own state and their distaste over how the Centre has been handling the issue becomes apparent. Incidents of violence, especially in the areas where the population of the Chakmas and the Hajongs are concentrated, along with destruction of public transport had also been reported.⁴⁷

The Chief Minister of Arunachal, Pema Khandu, didn't refrain from voicing his concerns over the Centre's decision, and his statements also echo of the stance of the Arunachalis.⁴⁸ In his letter addressed to the Home Minister, Rajnath Singh, Khandu had reiterated his position that Arunachalis will not accept any orders from the Central Government if they feel that it is going to be detrimental to the rights that they have been guaranteed under the Indian Constitution as indigenous people.⁴⁹

Post the outrage and violence back in Arunachal Pradesh, Rijiju changed his position, blaming the media for misrepresenting his statements, saying that there is no way in which the Chakma and Hajong refugees can be guaranteed citizenship as this would disturb the demography of the state infringing the rights of the indigenous people.⁵⁰ These changes in opinions not only make the situation chaotic but also portrays that the State Government does not have settlement of the issue as its priority which has only aggravated the situation further.

The Chakma-Hajong issue has for long been criticised as being over politicised by the State Government.⁵¹ The BJP led Centre and State have not refrained from blaming the then Congress led government who were responsible for bringing the Chakma and the Hajong refugees into Arunachal Pradesh (then NEFA) initially. Rijiju has claimed that the Congress had

⁴⁷Ibid.

⁴⁸Samudra Gupta Kashyap, 'Arunachal not ready to accept Chakma citizenship, Pema Khandu tells Rajnath Singh', Indian Express (online), 18 September 2017, <<http://indianexpress.com/article/india/aranachal-not-ready-to-accept-chakma-citizenship-pema-khandu-tells-rajnath-singh-4849948/>>.

⁴⁹Ibid.

⁵⁰Vijaita Singh, 'Rijiju now says Chakmas can't be given citizenship', The Hindu (online), 19 September 2017, <<http://www.thehindu.com/news/national/centre-takes-a-u-turn-on-citizenship-to-chakma-hajong-refugees/article19715216.ece>>.

⁵¹Interview with Representatives of the Chakmas and Hajongs, Asian Centre of Human Rights, (New Delhi 5 January 2017).

relocated these refugees without taking prior permission of the local community, which is why the conflict has worsened at this time.⁵² Although their contention may have legitimate grounds, to what extent it is going expedite the process of providing a resolution when the matter has aggravated to such an extent remains a matter of inquisition.

With a view to ensure the protection of rights of the tribal population, the Arunachal Pradesh Legislative Assembly had passed a resolution on October 18, 2017 to urge the Central and State Government to *'take immediate steps to protect the territorial and other consequential rights of its tribal population as protected and guaranteed under the Constitution of India and other relevant laws enforced in the State with regard to granting of Citizenship to the Chakma and Hajong refugees.'*⁵³ The Assembly through this resolution had reiterated its position that under no circumstances the rights, privileges and protection that have been awarded to the indigenous population of the State should be compromised in pursuance of compliance of whether the Hon'ble Supreme Court's 2015 order or any other statutory laws already in force for granting of citizenship to the refugees.⁵⁴ The purpose of this resolution was to protect the unique social, demographic, cultural and economic structure of the society which belongs to the tribal community of Arunachal Pradesh.⁵⁵

This resolution that was floored by Bamang Felix, Minister of Parliamentary Affairs, was condemned by the groups advocating the rights of the Chakma and Hajong Refugees in Arunachal Pradesh.⁵⁶ Subimal Bikash Chakma, President of the Committee for Citizenship Rights of the Chakmas and Hajongs of Arunachal Pradesh (CCRCHAP), was of the opinion that

⁵²Neeta Sharma, 'Congress Mistake,' Says Kiren Rijiju, Chakma Refugees To Become Citizens', NDTV (online), 13 September 2017 <<https://www.ndtv.com/india-news/chakma-refugees-as-citizens-the-controversy-and-rajnath-singhs-big-meet-1749655>>.

⁵³Arunachal Pradesh Legislative Assembly, Resolution on Granting of Citizenship to Chakma & Hajong, from the Arunachal Pradesh Sixth Legislative Assembly, 13th Session, 18 October 2017 (on file with author).

⁵⁴Ibid.

⁵⁵Ibid.

⁵⁶EMN, 'Arunachal Pradesh orgs. deplore State Assembly resolution on Chakmas and Hajongs', Eastern Mirror (online), 19 October 2017 <<http://www.easternmirrornagaland.com/arunachal-pradesh-orgs-deplore-state-assembly-resolution-on-chakmas-and-hajongs/>>.

this measure was just an excuse on the part of the Assembly to further delay the compliance of the Supreme Court's order and also deteriorate the *'the atmosphere of peace, communal harmony and inter-community relationship established and strengthened in the past 53 years and continue the repression of the Chakmas and Hajongs.'*⁵⁷ This move by the Assembly had been criticized as a measure that would constitute a contempt of the Apex Court with a view to lower its authority.⁵⁸ Claims were made that the resolution is not just against the Chakmas and Hajongs but also contradicts the policy that was adopted by the Bharatiya Janata Party (BJP) for the protection of the Hindu, Sikh, Buddhist, Jain, Parsi and Christian minorities from Afghanistan, Bangladesh and Pakistan through the Citizenship (Amendment) Bill of 2016.⁵⁹

The passing of this resolution by the Assembly had given a renewed legitimacy to the cause of the Arunachalis and further strengthened the position of the stakeholders spearheading this cause of the indigenous.

On December 3, 2017 the All Papum Pare District Students' Union (APPDSU) had appealed to the Electoral Registration Officer of the Balijan Circle to refrain from including the names of the Chakma voters into the electoral rolls belonging to the Doimukh Assembly Constituency since the matter regarding the granting of citizenship to these refugees was still pending in the Supreme Court.⁶⁰ Therefore, according to their claims these refugees cannot be legally inducted into the fresh electoral rolls. Thus, the movement against the refugees, lead by the AAPSU, had also percolated down to the smaller organisations that had started taking hands-on steps in this measure.

⁵⁷Ibid.

⁵⁸Suhas Chakma, 'Resolution against Chakmas & Hajongs in Arunachal Pradesh Assembly: A slap on the face of RSS and BJP or much more?', The aPolitical (online), 22 October 2017 <<https://www.theapolitical.in/homenews/resolution-chakmas-hajongs-arunachal-pradesh-assembly-slap-face-rss-bjp-much>>.

⁵⁹Ibid.

The Citizenship (Amendment) Bill, (No 172) 2016 (India), s 2 <[http://www.prsindia.org/uploads/media/Citizenship/Citizenship%20\(A\)%20bill,%202016.pdf](http://www.prsindia.org/uploads/media/Citizenship/Citizenship%20(A)%20bill,%202016.pdf)>.

⁶⁰APPDSU opposes inclusion of Chakma and Hajong refugees in fresh electoral rolls', The Arunachal Times (online), 4 December 2017 <<https://arunachaltimes.in/index.php/2017/12/04/appdsu-opposes-inclusion-of-chakma-and-hajong-refugees-in-fresh-electoral-rolls/>>.

Following these developments, the situation in Arunachal Pradesh has become volatile. Although with the matter still pending in the Supreme Court, whether or not the solution proposed will follow through remains ambiguous.

Although a study of the events that have constituted the Chakma-Hajong conflict which has prolonged itself over two decades is mandatory, a comprehensive study of any conflict situation is only fulfilled if the perceptions of the communities who are engaged in the conflict are taken into consideration. Therefore, the following two sections have been dedicated to discuss the stance of the Chakma and Hajongs refugees while the one after that would continue with the study of the points of contention of the indigenous Arunachalis.

India's "Nowhere"⁶¹ People: The Chakmas & the Hajongs

The history of the Chakmas can be traced from a tribal group who had been inhabitants of the Chittagong Hill Tracts of Bangladesh for centuries.⁶² Even during the British rule, the government had maintained a non-interference policy while governing the Hill Tracts, although the governance intensified by some degrees as an aftermath of the great mutiny of 1857, with the Crown assuming direct control of India.⁶³

In 1900, the British Government introduced the Chittagong Hill Tracts Manual which divided the region into four circles each of which were put under the jurisdiction of a tribal chief who was responsible for the internal affairs of the circle and the collection of revenues.⁶⁴ The manual also prohibited the entry of any outsider into the tracts without prior permission of the Deputy Commissioner, only after due consultation with the local tribal chief.⁶⁵

⁶¹Deepak K. Singh, *Stateless in South Asia: The Chakmas between Bangladesh and India*, (Sage Publications India Pvt. Ltd., 2010) 3.

⁶²Talukdar, above n 22.

⁶³*Ibid.*

⁶⁴'Chakma Refugees, Emerging Issues and Questions of Resettlement, as read in Chakma Refugees, Emerging Issues and Questions of Resettlement', Shodhganga, 118 <http://shodhganga.inflibnet.ac.in/bitstream/10603/18992/10/10_chapter%203.pdf>.

See also: R.H. Sneyd Hutchinson, *Chittagong Hill Tracts* (Vivek Publishing House, 1978) 21.

⁶⁵*Ibid.*

The Manual went under an amendment in the year 1920, according to which a new administration was established in the Chittagong Hill Tracts. In the year 1935, the Government of India declared the Hill tracks as "totally excluded area" with a view to protect the Jumma people (original inhabitants of the Chittagong Hill Tracts) and their land and resources from being exploited in the hands of the people who were not indigenous to the Hill Tracts. It was to protect the indigenous people's traditional socio-cultural and political institutions which were based on their customary laws and communal land ownership.⁶⁶

With the independence of Pakistan and India, it was declared on August 16, 1947 by Sir Cyril Radcliffe that the Chittagong Hill Tracts will be annexed into the 'sovereign Islamic' nation of Pakistan.⁶⁷ This decision was met with a rebellion in the Hill Tracts headed by a committee of inhabitants of the area, consisting of mostly students which were silenced by the Pakistani government with a heavy hand.⁶⁸

Although the movement of the tribals from the Chittagong Hill Tracts started right after the independence in masses, the 'great exodus' began in the 1960s owing to the religious persecution that followed after the violation of the Chittagong Hill Tracts Manual post independence and primarily due to the construction of the Kaptai Dam.⁶⁹

The lives of the Chakmas and the other non-Bengali communities dwelling in the Chittagong Hill Tracts were devastated as a consequence of the partition of India in 1947 and the division of the continent based on the demography of religion, a policy that was adopted by the Boundary Commission lead by Radcliffe.⁷⁰ The Chakmas, based on religious and ethnic grounds, recognised themselves as Indians and the assurance given to them

⁶⁶'Chakma Refugees, Emerging Issues and Questions of Resettlement', above n 64.

⁶⁷Talukdar, above n 18.

⁶⁸Ibid.

⁶⁹ Jyoti Bikash Chakma, The Great Exodus of the Chakma, Academia (6 January 2017) < https://www.academia.edu/9785357/THE_GREAT_EXODUS_OF_THE_CHAKMAS_AND_ITS_AFTERMATH_AN_OVERVIEW>. (Paper presented at the International Seminar on Society, Polity and Economy of the Chakmas, Chakma Literary Academy, Mizoram. 12-13 December 2013).

⁷⁰ Ibid.

by the Indian officials that the Hill Tracts would remain in India even after the partition was disregarded by the Commission and consequently the region was relinquished to Pakistan.⁷¹

The new Pakistani government introduced several amendments into the Chittagong Hill Tracts Manual which permitted the influx of the Bengali speaking Muslims into the region leading to the abuse and expropriation of the land and resources and the oppression of the indigenous Jumma people.⁷² The difference between the tribal groups and the Bengali Bangladeshis in terms of their livelihood, belief and faith became apparent and there was no assimilation between the new occupants of Hill Tracts with the original dwellers, resulting in religious persecution of these indigenous people.

The primary reason for the mass exodus of the Chakmas and the Hajongs can be credited to the construction of USAID-sponsored Kaptai Hydro-Electric Dam in 1962, across the Kharnaphuli (Borgang) river located in the Chittagong Hill Tracts.⁷³ While the dam was intended to provide benefits such as hydropower, flood control, drainage and irrigation; the events that followed changed the course of the history of the Chakmas.⁷⁴ As a result of the construction of the dam, an area of about 655 square kilometres got flooded resulting in the displacement of 1,00,000 tribal indigenous people of which 70% were Chakmas.⁷⁵ These displaced persons were resettled into the higher banks of the rivers of Kasalong and Chengi; and the low-lying areas of Barkal, Langdu and Baghaichari which were also submerged by the end of 1962; rendering these people homeless for the second time.⁷⁶ The

⁷¹Ibid. See also: Chunnu Prasad, 'Between Nation and Nationality: Chakma refugees in Arunachal Pradesh', (2012) 13(3) *Dialogue* <http://www.asthabharati.org/Dia_Jan012/chun.htm>.

⁷²Ibid. See also: Deepak K. Singh, 'The Arunachal Tangle: Migration and Ethnicity', (1996a), 3 *Journal of Peace Studies* 54.

⁷³Charlotte-Anne Malichewski, 'Where the Exception is the Norm: the Production of Statelessness in India', (2 (8) IHRI Working Paper Series, Centre for Human Rights & Legal Pluralism, 2014) 29. <https://www.mcgill.ca/humanrights/files/humanrights/ihri_wps_v2n8-charlotte-anne_malischewski.pdf>.

⁷⁴Chakma, above n 69

⁷⁵Ibid.

⁷⁶Ibid. Also see: Saila Parveen and I.M. Faisal, 'People versus Power: The Geopolitics of Kaptai Dam in Bangladesh', (2002) 18(1) *International Journal of Water Resources Development* 197, 197-208.

rehabilitation and compensation measures taken up by the Pakistani government was inadequate, thus finding no other alternative most of these homeless people sought refuge into the Indian territories. By the middle of the month of July, 1964, around 1,40,000 people including Chakmas and Hajongs which consisted of 2,748 families (14,888 individuals) had migrated into Assam, seeking asylum.⁷⁷ Due to the inability of the Assam government to rehabilitate these displaced people, as according to the relocation initiatives, 2902 families were resettled into the erstwhile North-East Frontier Agency (now Arunachal Pradesh) in the three districts of Lohit, Tirap and Subansiri.⁷⁸ On arrival, these refugees were issued migration certificates by the Government of India indicating their legal entry into the country, which have been perceived by some as the Central government's willingness to grant these people citizenship.⁷⁹

With the signing of the Indira-Mujib agreement (Indo-Bangladeshi Treaty of Friendship, Cooperation and Peace) it was determined that the refugees who had entered into the Indian territories before March 25, 1971 would be taken under the protection of the Indian Government and their applications for Citizenship would be lawfully considered.⁸⁰ This implied that the newly formed and the consequent Bangladeshi governments did not consider them as Bangladeshi nationals; even then the promises made by the Indian Government of granting them citizenship did not materialise.⁸¹

The year 2004 saw the inclusion of 1497 Chakmas' names being included in the voters' list of the Election Commission of India while the rest were still kept out of the reach of voting rights. Although stakeholders and

⁷⁷Counter Affidavit of Union of India on the Chakmas and Hajongs of Arunachal Pradesh in the Supreme Court of India, (Civil Jurisdiction) WP(C) No. 720 Of 1995, para. 2. (on file with author). Government of Arunachal Pradesh, above n 22.

⁷⁸Malichewiski, above n 73.

⁷⁹South Asia Human Rights Documentation Centre (SAHRDC), 'The Stateless Chakmas and Hajongs of the Indian State of Arunachal Pradesh: A study of systemic repression', (Report, the SAHRDC Resource Centre, 1997) http://www.hrhc.net/sahrdc/resources/stateless_chakmas.htm.

⁸⁰Malichewiski, above n 73.

⁸¹Ibid.

representatives of the Chakmas have also claimed that there has been an increase in this figure and almost 3000 people's names have been included in the electoral rolls in the following years.⁸²

The plethora of the existing literature on the concept of refugees often depicts them as units who are devoid of any capacity to rebuild their lives; they are often reduced to helpless creatures strewn due to the events leading to their displacement. The depiction of Mahmood Mamdani's "totally malleable creatures"⁸³ has been painted over the texts depicting the narrative of the Chakmas.⁸⁴ Unlike others conventional refugees, the Chakmas, have not lived their lives in isolated refugee camps expecting the state or other government officials to come to their aid. Over the past decades the Chakmas and the Hajongs have built villages, developed the land they have been granted and integrated themselves into the social fabric of Arunachal Pradesh.⁸⁵ The Chakmas who have been allegedly denied basic aids such as education and proper health by the State Government, in their own capacity have built schools and hospitals in their areas of dwelling.

Although with these measures for survival, these refugees as has been alleged by the AAPSU and government officials have moved out of their demarcated camps and encroached into the reserved areas of Namdapha National Park destroying its fragile ecology. Furthermore, it has also been claimed that some of these refugees have been indulging in anti-social activities and organised themselves into militant groups, one of them being "Shanti Bahini".⁸⁶

Entangled between the Centre and the State: The voice of the Arunachalis

An in depth study of a conflict requires the perspectives of all the parties engaged in the conflict to be taken into consideration, which is rarely ever

⁸²See above n 51.

⁸³Singh, above n 61. See also: Mahmood Mamdani, *From Citizens to Refugees: Ugandan Asians come to Britain* (Frances Pinter, 1973).

⁸⁴Singh, above n 61, 20.

⁸⁵SAHRDC, above n 79.

⁸⁶Singh, above n 61, 125. See also: 'AAPSU revives refugee issue', *Shillong Times* (online), 2007.

seen in refugee studies. The self-perception of the hosting community, especially if they themselves have been marginalised into the edge of the society, the imperative need of seeking prior and well informed approval is more often overlooked.⁸⁷ Although, ironically such steps are not overlooked to move matters more rapidly for dealing with the more urgent issues of the refugees but only to reinstate the 'prerogative' of the state in settling these deracinated people from their homeland, as it was obvious that the hosting community with its highly demobilized civil society and evident lack of regional administration could hardly pose any threats to the 'exclusive' power of the Centre.⁸⁸ This is clearly demonstrated in the action of the Centre with the treatment of NEFA as a dumping ground for settling the new refugees, where the population of the indigenous people was thin and lacked the awareness and means to oppose the authority of the 'modern nation state'.⁸⁹

The literature on the Chakma issue portrays the apparent trend of steering away from the discourse of the narrative of the Arunachalis. The security centric debate that has been taken up by the state or the academic commentaries on the subject steers clear of the self perceptions of the issue from the standpoint of these indigenous people. The Chakma issue's character has evolved in a way that if the vantage points of the two parties are not evaluated, a realistic appreciation of the actual nature of the problem will be impractical and attaining a closure would not be feasible. There is a dire need of enquiry into the socio-anthropological dimensions of the Chakma conflict which has been overlooked by the scholars who have restricted their interpretation of the conflict only to a mere legalistic perspective surrounded by the various litigations that it has witnessed.⁹⁰ Any law or policy, no matter how ideal it may show on paper, will only serve its purpose if its implementation is adequate into the issue on the ground level and how effectively it is complied with. Furthermore, the compliance of a law will only be done smoothly if its intention runs parallel with the perceptions of the community on which it will be implemented.

⁸⁷Singh, above n 61, 180.

⁸⁸Ibid.

⁸⁹Ibid.

⁹⁰Singh, above n 61, 181.

The acceptance of the term 'indigenous' and its political connotations by the Arunachalis to describe themselves has served as one of the reasons attributing to Indian Government's unwillingness in acknowledging the special status of Arunachal Pradesh.⁹¹ The growth of the concept of 'indigenous' in India has only started with the concept getting internationalised.⁹² The growing consciousness of the international community with respect to the protection of the rights of the indigenous as against the increasing 'western and other forms of civilisation' and 'internal forms of majoritarian colonialism'⁹³ is only due to the efforts of international organisations like the International Labour Organisation (ILO) and other mechanisms such as the United Nations Declaration on the Rights of the Indigenous People (UNDRIP) where the rights of the indigenous people relating to land and resources, safeguarding traditional economic structures, indigenous laws and customs are given utmost priority.⁹⁴ There were no reservations from India on the use of the term in the 1957 ILO Convention⁹⁵

⁹¹Ibid.

⁹²Ibid 185. See also Virginius Xaxa, 'Tribes as Indigenous people of India', (1999) 34 (51) Economic and Political Weekly 3589, 3589-3595.

⁹³Ibid., 182. See also: Minority Rights Group Urgent Issues Paper, 'Indigenous and tribal Rights in Asia/Pacific Region, (Paper presented at the Workshop on Tribal and Indigenous People, 23-25 February 1996)

⁹⁴The ILO Convention No. 107, (See below n 95) brought about nascent changes into the discourse of the protection of indigenous rights, through which an 'assimilationist' approach was taken although with the Martinez Study coming up in the following and the discussions that took place in the Working Group on Indigenous Populations in 1982 which was a devoted United Nations mechanism towards the cause of indigenous right, the shortcomings of the 1957 Convention became apparent which called for the establishment of a better framework that would work for the protection of the rights of the indigenous people. This led to the drafting of the 1988 and 1989 ILO Conventions which provided with better developmental policies, under international law, for the protection of the indigenous people.

See more: The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions, Asia Pacific Forum of National Human Rights Institutions & the Office of the United Nations High Commissioner for Human Rights (August 2013) <<http://www.ohchr.org/Documents/Issues/IPeoples/UNDRIPManualForNHRI.pdf>>

United Nations Declaration on the Rights of the Indigenous People, GA Res A/RES/61/295, UN GAOR, 61st see, 107th plen mtg, (2 October 2007)

⁹⁵Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (ILO No. 107), 328 UNTS 247, (2 June 1959). See above n 94.

because back in time, the only concern of the Indian Government was the need for integrating the indigenous into the larger fabric of the term '*Indian*'.

With the coming of the ILO Convention in 1989 where the focus had shifted from the integration of the indigenous to the rights and empowerment of the people, India too changed its policy regarding the category. The thesis of 'historical continuity' was taken up to refrain from any discourse regarding individual and collective rights of the indigenous people and the protection of the natural resources in the areas where these originally inhabited.⁹⁶ It is from this position that has been portrayed by the Indian government over the years that shows the negligence towards the protection of the rights of the indigenous people.

It has always been a point of contention that the rights of the indigenous Arunachalis were violated with the advent of the settlement of the Chakmas and Hajongs into the areas of NEFA. The situation has turned such that there is a strong divide of 'us' and 'them' between the refugees and the indigenous. The self-perception of the Arunachalis is based on their assumption of being historically 'peace-loving', 'innocent' and 'ignorant' and the belief that the extent of their generosity has been far too stretched by the Indian Government where it has become a necessity for them to protect themselves from the encroaching 'foreigners' on their land.⁹⁷ This cause has been spearheaded by the AAPSU, who have over the years opposed the settlement of the refugees in Arunachal. It remains their contention that the Chakmas and the Hajongs are aliens in another country seeking 'temporary refuge' based on humanitarian grounds.⁹⁸

The claim of AAPSU stems from what they call an unprecedented and unchecked growth of the Chakma and Hajong population in Arunachal Pradesh over which the State Government had also shown their growing concerns. The number of families that came during the period of 1964-69

⁹⁶Singh above n 61, 183. See also: Benedict Kingsbury, 'Indigenous People: in International Law: a Constructivist Approach to the Asian Controversy', (1998) 92(3) American Journal of International Law 414, 414-57.

⁹⁷Interview with Representative of Government of Arunachal Pradesh (Itanagar, 21 January 2017).

⁹⁸Interview with Representatives of AAPSU, (Itanagar, 22 January 2017).

was 2748 which increased to the number of 3919 families according to a census carried out by the Government exclusively for Chakma and Hajong refugees in October 1979.⁹⁹ As per the local census their population of 14,888 in 1969 increased to 21,494 which then again added up to 30,064 according to the census of 1991.¹⁰⁰ As according to the 2011 census this figure stands at 9854 families and 52,657 persons. While as has been accorded by the refugees themselves, their number stands close to 65,000.¹⁰¹ It has been a contention of the Arunachali stakeholders that the number of refugees is not just limited to the census figures and the growth of their population has swelled unnaturally over the years; indicating towards the idea that there has been an illegal influx of non-settler Chakmas and Hajongs who have entered Arunachal Pradesh under the tag of being a 'refugee'. Therefore, the fear of being outnumbered runs deep within the Arunachali consciousness based on the impact that granting of citizenship and voting rights to these refugees would have upon the already fragile political scenario in Arunachal Pradesh. Although it has been a contention of the stakeholders on the side of the Chakma-Hajong refugees is that this fear of the Arunachalis has no legitimate grounds and that the growth of the population of the refugees have mostly been similar to that of the state and the other indigenous tribes.¹⁰²

| Census Years | 1981-1991 | 1991-2001 | 2001-2011 |
|--|-----------|-----------|-----------|
| Growth of Arunachal Pradesh Population | 37% | 27% | 26% |
| Growth of Indigenous Population | 25% | 28% | 35% |
| Growth of Refugee population | 26% | 24% | 19% |

Fig.: Comparison of the growth of population of the state of Arunachal Pradesh, the indigenous population and refugee population.¹⁰³

⁹⁹Government of Arunachal Pradesh, above n 22, 9.

¹⁰⁰Ibid.

¹⁰¹Ibid.

¹⁰²See above n 51.

¹⁰³G. Seetharaman, 'Government's flip-flops leaves Chakma and Hajong refugees on wings of hope', The Economic Times (online), 24 September 2017 <<https://economictimes.indiatimes.com/news/politics-and-nation/governments-flip-flop-leaves-chakma-and-hajong-refugees-on-wings-of-hope/articleshow/60810196.cms>>.

This comparison chart sourced from The Economic Times¹⁰⁴ portrays that the claims of the AAPSU may be unfounded and based on mere hearsay. Although they have also proclaimed that they would not consider the 2011 census record in case of these refugees and demanded that there needs to be a proper count of the refugees so as to figure out if there has been infiltration post the settlement in the late 1960s.¹⁰⁵

Claiming that the Chakmas and the Hajongs, on account of being Buddhists and Hindus, are made eligible for citizenship, even the illegal migrants who were not resettled under the direction of the Government of India, by virtue of the Citizenship (Amendment) Bill of 2016 can be criticised. The Bill makes illegal migrants belonging to the minority of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan entitled to apply for citizenship.¹⁰⁶ This provision of the Bill has been condemned on the basis that it violates Article 14 of the Constitution¹⁰⁷ which guarantees any person '*equality before the law and equal protection of the laws within the territory of India.*'¹⁰⁸ The 2016 Bill also reduces the required period of naturalisation for the illegal migrants belonging to these minority communities from the abovementioned countries to six years, which only highlights the contention against religion based discriminatory grounds inherent in the Bill; thus violating Article 14 of the Constitution and by implication Article 7 of the Universal Declaration of Human Right which declares that '*all are equal before the law and are entitled without any discrimination to equal protection of the law.*'¹⁰⁹

Over the years and several litigations later, the legal dimension of the conflict remains unforgiving towards the pleas of the Arunachalis, which

¹⁰⁴Ibid.

¹⁰⁵Sangeeta Barooah Pisharoty, 'Chakma Issue Roils Arunachal as Supreme Court Decrees End to Their Statelessness', The Wire (online), 12 December 2015 <<https://thewire.in/17017/chakma-issue-roils-arunachal-as-supreme-court-decrees-end-to-their-statelessness/>>.

¹⁰⁶See above n 59.

¹⁰⁷Anviti Chaturvedi, Legislative Brief: The Citizenship (Amendment) Bill, 2016, (27 September 2016) PRS Legislative Research <http://www.prsindia.org/uploads/media/Citizenship/Legislative%20Brief%20Citizenship%20Amendment%20Bill%202016.pdf>.

¹⁰⁸Indian Constitution Art. 14.

¹⁰⁹Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd sess, 183rd pln mtg, UN Doc A/810 (10 December 1948).

portrays itself as an indicator of the judiciary's nonchalance regarding the issues of the indigenous. The Supreme Court in the CCRCAP judgement has laid down that since the Chakma refugees have been residing in Arunachal Pradesh for the past five decades, they do not require an Inner Line Permit; this goes in clear violation of Section 2 and 7 of the Bengal Eastern Frontier Regulation of 1873.¹¹⁰ A similar stance was also taken up by the Gauhati High Court in its judgement of *AAPSU v. Election Commission*.¹¹¹ This opinion stands erroneous and also discounts the fact that such legislations still hold ground by the virtue of Article 372 of the Indian Constitution.¹¹²

Furthermore, the stance of the Arunachal Pradesh government, if not runs parallel with, echoes the demands of the AAPSU where the blame has been shifted to the central government for settling the refugees in this part of the country, without much premonition. The Arunachali contention claims the settlement to be unilateral, illegal and unjustified with complete disregard to the special status that has been awarded to the state of Arunachal Pradesh with respect to various legislations like the Bengal Eastern Frontier Regulation, 1873; the Assam Forest Regulation Act, 1891; the Chin Hills Act, 1896; and a multitude of local customary laws and conventions which are followed and upheld by the indigenous people.

Even though, the status of Arunachal Pradesh back in 1964 was that of a Frontier Agency under direct control of the Central Government through the Governor of Assam, the ignorance of gaining prior consent of the Arunachalis before settlement of the refugees has left a sense of resentment

¹¹⁰Committee For Citizenship Rights of Chakmas of Arunachal Pradesh & Ors v. State of Arunachal Pradesh & Ors, (2016) 15 SCC 540, para. 15.

The Bengal Eastern Frontier Regulation, 1873, (Arunachal Pradesh) s 2 & 7. <http://mdoner.gov.in/sites/default/files/silo4_content/entry%20restrictions%20in%20NER/Bengal%20Eastern%20Frontier%20Regulation,%201873.pdf>.

¹¹¹The All Arunachal Pradesh Students Union (AAPSU) & Ors. v. The Election Commission of India & Ors., P.I.L. No. 52 of 2010, in the Gauhati High Court. <<http://164.100.149.229/casestatus/ShowOrders.asp>>.

¹¹²Indian Constitution Art 372(1) states that: '...all the laws in force in the territory of India immediately before the commencement of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.'

into the consciousness of the indigenous people. The attitude of the Centre and their inaction towards the demands of the indigenous population has led to a state of resentment that lies within the mindset of the Arunachalis with a bitter sense of betrayal and the feeling of victimization in the hands of a majoritarian democracy.

The Way Forward

The Chakma-Hajong issue as over-politicised as it has been has reached a point where if a permanent solution is not brought in soon, the situation in Arunachal Pradesh will aggravate as has already been portrayed in the protests against Centre's decision to grant the refugees citizenship in September, 2017.¹¹³ The solution of 'Limited Citizenship' remains halfbaked as the contours of the concept still remains ambiguous; consequently bringing in fear of the unknown both in the minds of the indigenous people and the refugees. Furthermore, the Centre's assurance of protecting the rights of the indigenous still falls flat if it is to unilaterally uphold the decision of the Supreme Court in the 2015 order; this makes it especially important on the part of the Government of India to decide upon the ambit of the 'limited citizenship' so as the privileges and interests of the Arunachalis are not infringed.

The handling of the issue of Chakma-Hajong refugees from the advent of their influx back in the 1960s and the attitude of the Government towards this brewing concern is an aspect that has been criticised over the discourse that has developed on the issue. The integrationist policy of the Government taking control of a newly formed state with far flung areas which act as its frontiers, quite ironically managed to overlook Nehru's own Panchasheel policy in which protection and administration of the tribal areas was dealt with. The lack of concern of taking prior approval of the local community before settling these refugees into the areas of NEFA which were already protected under a plethora of laws, showed the nonchalance that the Central administration had towards these areas which did not merge into their nationalistic perspective of 'mainland India'.

¹¹³Karmakar, see above n 44.

On the other hand, The Chakmas and Hajongs have been living in a constant state of being 'stateless' in Arunachal Pradesh. The issue which has its roots into the historical backgrounds beginning with the British policies and continuing with the consequent Indian and Pakistani regimes have led to the cause of migration ultimately rendering these refugees homeless. They have been torn from their source of citizenship, their home country and placed into an area which over the years they have started to call 'home'. Even after numerous litigations, over the decades, the conflict still hasn't reached a position where a solution shows itself in the horizon. The numerous stakeholders in their own right have represented their views where their perceptions clash as loggerheads and a resolution seems impossible without the parties giving an opportunity to its opponent to communicate their viewpoints regarding the matter. Their futures are at stake as this new kind of citizenship has been assured to them which again apply with a list of conditions.

Furthermore, granting of citizenship to the Chakma-Hajong refugees will have repercussions that will portray themselves in the political scenarios the other North-Eastern states. Particularly in the state of Assam, where tension has already started brewing with regards to the much anticipated National Register of Citizens; therefore the decision of whether or not the refugees are to be granted citizenship has the potential of aggravating the already critical situation in Assam. In this regard Upamanyu Hazarika, Senior Advocate of the Hon'ble Supreme Court and Convenor of Prabajan Virodhi Mancha, had expressed his concern stating that if the Chakmas and the Hajongs are granted with the 'limited citizenship' as the Central Government has envisaged, these citizens who have not been given land rights in Arunachal Pradesh would make their way into the other North-Eastern states.¹¹⁴ Hazarika further claimed that most of these refugees would come down to settle in Assam as this would be a favourable destination for them.¹¹⁵

¹¹⁴'More Than 1 lakh Chakmas-Hajongs might enter Assam, claims Upamanyu Hazarika', The Eclectic North-East (online), 18 September 2017 < <https://eclecticnortheast.in/senior-advocate-upamanyu-hazarika-claims-that-more-than-1-lakh-chakma-hajongs-might-enter-assam/>>.

¹¹⁵Ibid.

Most conflicts in the North-East are centred on land, a resource that has been given massive importance by the tribal communities residing in this region who source their identity through their ownership of land.¹¹⁶ If the Chakmas and Hajongs do become eligible as deemed citizens, they will be given the right to move and reside freely within the territory of India by virtue of Article 19 of the Constitution.¹¹⁷ The concept of 'limited citizenship' as has been proposed by the Centre contains land owning rights of these refugees only in the state of Arunachal Pradesh, failing to protect the rights and privileges of the indigenous communities in the rest of the states of North-East. Land being the most contested resource, with numerous stakeholders already claiming their right over it, especially in Assam, movement of these 'deemed citizens' would not only add another complication but also magnify the already existing conflicts over land. This anti-refugee discourse that has already started brewing concern in Assam will not just limit itself there and has the potential to spill into the political climate of the other neighbouring states of the North-East leading to an aggravated scenario in this region.

Conclusion

Land is considered the most invaluable resource for the indigenous communities in the Northeast as they claim their identity through it. Therefore, endangering this right that they are entitled to, governed by the Indian Constitution and plethora of other statutes in force and their own customary law, would not only be unconstitutional but also a setback on the development that the rights of indigenous has seen in the discourse of domestic and customary international law. Although, in the particular issue of the Chakma-Hajong conflict provides with a paradox where if the protection of the rights of the indigenous people of Arunachal Pradesh is given precedence over the rights of the stateless refugees, the latter will be deemed victims of the law which showed its shortcomings in not only to

¹¹⁶Walter Fernandes & Sanjay Barbora, 'Tribal Land Alienation in the North-East: An Introduction', in Walter Fernandes and Sanjay Barbora (eds) *Land People and Politics: Contest Over Tribal Land in North-East India*, (North Eastern Social Research Centre and IWGIA, 2009) 1, 1.

¹¹⁷Indian Constitution Art. 19(d).

protect them but also provide them with an identity.

This conflict comprises of two such communities where both have been victims of an unjust partition, leading to a majoritarian democracy, where the voices of the people have somehow subdued by the more comprehensive articulation of their representatives. Spanning over several decades, at this point this issue demands a resolution that would be acceptable to the all the parties at stake. The issue of Inner Line Permit for instance, in which the Hon'ble Supreme Court through its judgment has allowed the Chakmas and Hajong refugees to continue residing in the state of Arunachal Pradesh, without issuing Inner Line Permits, in spite of the fact that the Bengal Eastern Frontier Regulation of 1873 only extends its protection to the indigenous inhabitants of the state. Although the refugees maybe allowed to reside in the state but also conceding to the idea that they would not be requiring Inner Line Permits is an argument that is faulty and erodes the constitutional safeguards allowed to the Arunachalis. In such conditions, the indigenous communities and their representatives feel the necessity to forcefully oppose such measures, which only further destabilises the scenario of the conflict. The only manoeuvre that would possibly succeed in such a situation is to arrive at a resolution that does not undermine the rights of any of the stakeholders involved. Furthermore, these measures have to be tactful considering the geographical location of Arunachal Pradesh and its vulnerability as a frontier state. Care must also be taken that formulating a resolution in haste, without taking into account all the critical nuances that are attached to the conflict, must be avoided because imposing a design into a structure that is not capable of accepting it would only result in further deterioration of the situation.

The Chakma-Hajong conflict resultant of a neglected aspect of Partition, nonchalance of a Government who overlooked the consequences of its actions under the flag of its integrationist policy has tagged on for too long and even now a solution still falls short of its resolution. The current ruling parties handling the government, rather than picking bones at the mistakes of the then government and keeping aside its political inclinations, for once, must work with the judiciary in concocting a solution that is not ambiguous and respects the ordeal of all stakes involved.

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THE CASE OF THE PLANTATIONS LABOUR ACT, 1951: NEED FOR A RELOOK?

Anubhab Atreya

Assam's tea industry is much more than a mere component of the state's economy. Over the years, the populace of the state has developed an ownership if not a sense of identity with its flagship tea industry. However, all is not well with the industry and its various stakeholders. There exists issues on several fronts ranging from production to labour, all of them inextricably interconnected. This article examines the Plantations Labour Act, 1951, the primary legislation for the purpose of 'providing for the welfare of labour and regulating the conditions of work' in the context of its delegation of social security measures in the tea gardens.

The ecosystem of the tea gardens today and its related problems, labour or otherwise is essentially the result of the Act along with certain other factors. This article argues that the delegatory provisions of the Act are not in consonance with the present conditions of the industry. The crux of the argument is that the important social security provisions which have been foisted upon the tea gardens has caused a two fold problem, both for the plantation managements and also the worker's community. Firstly, the article examines the present situation with relation to the conditions in the tea gardens. Subsequently, the article examines the manner of delegated legislation in the Act and the issues it has given rise to in the industry. Finally, the ramifications of the Act on the social security of the workers and their lives is examined.

The Workers of the Tea Industry: Its Backbone

In the nineteenth century, as the first generation of tea planters in Assam finally began settling into an industry that already seemed to be a potential goldmine, an acute labour shortage developed.¹ By ensuring the increase of land revenue in the neighbouring villages the colonial government sought to flush out the peasants into the tea gardens so as to ensure a steady flow of labour supply. Along with Jenkins's scheme of colonization this mechanism succeeded in creating a gradient of labour towards the gardens and thereby mitigating the labour shortage to an extent.² However, this flow of labour proved insufficient for the fast expanding acreage of many of these tea gardens.

To counter this deficiency, a gradient of human labour developed as labourers from thousands of miles away from the Chota Nagpur region, the Santhal Parganas and even as far away as Mirzapur and Jaunpur moved to Assam.³ Often at the insistence of arkatis (recruitment agents) who resorted to base chicanery to lure these labourers in the hope of a better life in the tea gardens, most of the labourers left the homes of their forefathers behind.⁴

However, the presence of draconian and inequitable legislations like the Workmen's Breach of Contract Act, 1859 put these labourers at the mercy of the Estate Managers, who did not have knowledge of the language, customs or the way of life of these labourers.⁵ The Assam Labour and Emigration Act, 1901 and 1915 also ensured that much of the power remained in the hands of the management.⁶ In these early days, the absence of any form of

¹Amalendu Guha, *Planter Raj to Swaraj: Freedom Struggle and Electoral Politics in Assam 1826-1947*, (People's Publishing House, 2014) 7

²Ibid

³V.B Karnik, *Strikes in India: Vol.I*, (Bombay Publishing House, 1962) at 80

⁴V.B Karnik, *Strikes in India: Vol.I*, (Bombay Publishing House, 1962) at 81; Amalendu Guha, *Planter Raj to Swaraj: Freedom Struggle and Electoral Politics in Assam 1826-1947*, (People's Publishing House, 2014) at 7

⁵Amalendu Guha, *Planter Raj to Swaraj: Freedom Struggle and Electoral Politics in Assam 1826-1947*, (People's Publishing House, 2014)

⁶Through the provisions of this Act abolished the previous 'Free Contractor' system of recruitment of labour through arkatis it brought in the system of recruitment by the sardari system which was closely controlled by the industry stakeholders.

bargaining power of the labourers due to the lack of any trade unions ensured that their resources were exploited to the hilt.⁷

The labour disturbances that are a relatively common occurrence in the modern era were not completely unheard of even during the Raj.⁸ The Browning revolvers and the deeply entrenched connections with the European magistracy did not necessarily mean that the British era planters of yore were completely immune to labour uprisings. As the distinguished politician and small tea grower, Nabin Chandra Bardoloi observed, '*...when the manager's cruelty surpasses all bounds it is then that the labourers set upon him and assault him.*'⁹ However, these events were a rarity and the British influence ensured that the labourers did not raise their voice at frequent intervals.

From 1896, when the eminent parliamentarian J.C Ghose first highlighted the deplorable conditions of the tea garden labourers in Assam in the Annual Session of the Indian National Congress to the present day when the government is still ruminating on amending the 'in kind' benefit component of labourer's wages present in the Plantation Labour Act, 1951 (hereinafter referred to as 'the Act'); social security and basic amenities for tea garden labourers (hereinafter referred to as 'TGL') have remained a game of tennis between garden management and the government.

What is notable in the present state of affairs is that the TGL community does not remain the voiceless, marginalised community it once was.¹⁰ Neither does the government remain a colonial power. In any event, most of the garden owners today are entrepreneurs or corporate entities intent on running a successful business, a long shot from the revolver wielding sahibs of yore. What has however remained constant in the tea gardens of Assam is the condition of the 'labour lines' (a garden term for worker's quarters) and the social security available to the average TGL. While there has been marginal

⁷Ibid 2

⁸Sudhendu Narayan Mukhopadhyay, Labour Unrest in Tea Plantations, (1946) IJSSW Vol.7(3), 186-196

⁹Quoted in V.B Karnik, Strikes in India: Vol.I, (Bombay Publishing House, 1962)

¹⁰For a substantiation of the argument that the TGL community inspite of remaining deprived socio-economically is playing an increasing role as a 'constituent' of politics in the state see, Udayon Mishra, India's North East: Identity Movements, State and Civil Society, The Adivasi Question, (Oxford University Press, 2006) 259

improvement in keeping with the changing times, several labour lines across Assam till today remain without proper housing, drinking water or proper crèche facilities.¹¹ In such a scenario, it is no wonder that labour disturbances are a frequent occurrence in some gardens.

Political Organisation among the Workers :

The political status of the TGL and the ex TGL community (who have moved away from the gardens and remain as independent cultivators in bastis) becomes important for this analysis. The 'tea tribes' as a whole by a conservative estimate number around 40 lakh which makes them a formidable force in electoral politics.¹² But this seeming power as a political 'votebank' has not translated into any tangible economic and social benefits. Added to this is the presence of the various trade unions who negotiate with the garden management on labour issues and also function as a pressure group for the government.

Trade Unionism in India was given a statutory form through the Trade Unions Act, 1926 in an attempt to organise labour negotiations and ensure efficiency of production.¹³ The statute ensured that with the dawn of independence some of the labour organisations in the gardens registered as trade unions to ensure bargaining power for the community. The pioneering TGL trade unions like the Assam Chah Mazdoor Sangha (ACMS) which is based on the principles of the Indian National Trade Union Congress (INTUC) and the Communist Party of India (CPI) backed Centre of Indian Trade Unions (CITU) still remain the major trade unions.¹⁴ However, several

¹¹Labour Department, Government of Assam, Tea Gardens of Assam: A Report on Plantations Labour Act, 1951 under 100 Days Plantation Plan, available at <<http://labour.assam.gov.in/sites/.../Report%20on%20Plantation%20Labour%20Pla.docx>>

¹²Mridusmita Duara, "Non Inclusive Trade Unionism in the Tea Estates of Assam", Working Paper/2017/04, Krishna Kanta Handiqui State Open University, available at <http://www.kkhsou.in/web/student_corner/workingpapers/2017/Main04.pdf>

¹³Trade Unions Act, 1926, available at <<http://www.ilo.org/dyn/natlex/docs/WBTEXT/32075/64876/E26IND01.htm>>

¹⁴Jyotika Medok et al, "A Study of the Factors Influencing Industrial Disputes in Tea Industry of Assam: With Special Reference to Jorhat District of Assam", International Journal of Scientific Engineering and Applied Science, Vol. 1, Issue 4, July (2015)

For a detailed account of objectives and activities of ACMS and CITU see <<http://www.assamchahmazdoorsangha.org/>> and <<http://www.citucentre.org/>> respectively

student organisations have also begun playing an important role in the present negotiations and discourse, namely the Assam Tea Tribes Student's Association (ATTSA) and the Assam Adivasi Student's Association (ASSA).

But the presence of these trade unions while having reinforced the position of the TGL at the negotiation table and easing the ascent of the office bearers into electoral politics has not translated to material gains for the workers. There have been several violent incidents in the last two decades where due to the presumable failure or absence of any negotiation or dispute resolution by the trade unions, owners and executives of tea estates have been killed by angry labourers.¹⁵ Often in the aftermath of such incidents, tea estates remain closed for years thus spelling ruin for most of these workers.

The present government has taken a progressive step which may address some of the perennial issues raised by these trade unions by eliminating the 'in kind' component of worker's wages from the Union Budget 2017.¹⁶ An allocation of Rs. 767 crores has been made under the Scheduled Castes Sub Plan and an allocation Rs. 4.10 crores under the Tribal Sub Plan.¹⁷ Most of these funds would be dedicated towards providing social security measures to the plantation workers of Assam. A proposed amendment to the Act is also under the anvil.

The Plantations Labour Act, 1951

The tea industry is regarded as an organised industry. In spite of possessing seemingly progressive attributes, the conditions of the workers and the conditions in which they live remain appalling. It is an oft repeated proposition that the Plantations Labour Act has not been implemented in its entirety or in the right spirit.¹⁸ But there is no denying the fact that the Act in question determines the unique nature of the industry. Under the ambit of the Act, within the bounds of the garden, it is the duty of the management to ensure

¹⁵For an example of reportage of such incidents in international media see, Associated Press, "Assam tea estate boss and wife killed in fire started by workers", (The Guardian, 27 December, 2017) <<https://www.theguardian.com/world/2012/dec/27/assam-tea-estate-boss-fire>>

¹⁶Union Budget of India, 2017-18, available at <<http://indiabudget.nic.in/budget.asp>>

¹⁷Ibid

¹⁸Sanjay Barbor, "Struggles in the Tea Plantations of Assam: Then and Now", *Revolutionary Democracy* 5, No. 1 (April 1999), 41-46

that residential houses are provided to the labourers which is mandated by Section 15.¹⁹ Sanitation and provision of water to the labourers within the garden by the management is stipulated by Section 9 and Section 8 of the Act respectively.²⁰ In the same vein, a function as essential as provision of healthcare is mandated to the management under Section 10.²¹ Even crèches for children of the workers have to be provided by the registered tea gardens under Section 12.²² The Rules to

¹⁹Section 15 states:

"15. Housing facilities.-It shall be the duty of every employer to provide and maintain necessary housing accommodation-

(a) for every worker (including his family) residing in the plantation;

(b) for every worker (including his family) residing outside the plantation, who has put in six months of continuous service in such plantation and who has expressed a desire in writing to reside in the plantation:

Provided that the requirement of continuous service of six months under this clause shall not apply to a worker who is a member of the family of a deceased worker who, immediately before his death, was residing in the plantation."

²⁰ Section 9 states:

"9. Conservancy.-(1) There shall be provided separately for males and females in every plantation a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed therein.

(2) All latrines and urinals provided under sub-section (1) shall be maintained in a clean and sanitary condition."

Section 8 states:

"8. Drinking water.-In every plantation effective arrangements shall be made by the employer to provide and maintain at convenient places in the plantation a sufficient supply of wholesome drinking water for all workers."

²¹Section 10 states:

"10. Medical facilities.-(1) In every plantation there shall be provided and maintained so as to be readily available such medical facilities for the workers 2[and their families] as may be prescribed by the State Government.

(2) If in any plantation medical facilities are not provided and maintained as required by sub-section (1) the 1[State Government upon a request by the chief inspector] may cause to be provided and maintained therein such medical facilities, and recover the cost thereof from the defaulting employer.

(3) For the purposes of such recovery the chief inspector may certify the costs to be recovered to the collector, who may recover the amount as an arrear of land-revenue."

²²Section 12 states:

"12. Crèches.-2[(1) In every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where the number of children of women workers (including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women workers."

the Act provide more detailed stipulations regarding the provision of these basic amenities.

What this entails is that workers are extremely dependent on the management for the most basic facilities. Starvation deaths among workers are not unheard of in plantations which have been abandoned by the management due to one or the other reason. On the other hand, it imposes a magnanimous responsibility on the management of the gardens to provide for these amenities. While it is true that since the earliest times of tea cultivation, tea garden managements have traditionally assumed responsibility for the upkeep and welfare of the labourers, it has become difficult in the present competitive economic scenario.²³ While wages continue to be dismally low and the 'in kind' component is not adequate according to most trade unions, it still creates a burden on the tea garden management.²⁴ In fact the 102nd Report on Performance of Plantation Sector-Tea and Coffee Industry of the Parliamentary Standing Committee on Commerce highlighted the fact that prices for tea have remained constant while the cost price has steadily increased.²⁵

A large component of the increase in the cost price of tea is due to the social security responsibilities of the tea garden managements. While the bigger players in the industry who are essentially subsidiaries of large multi national companies can adjust to these responsibilities, it becomes difficult for the smaller stand-alone gardens and small tea growers.

Compliance: Throwback to the License Permit Raj?

It is important to keep in mind that the compliance of the Plantations

²³Pratim Ranjan Bose, "Why Plantations are no ones cup of tea", (The Hindu BusinessLine, February 16, 2017) <<http://www.thehindubusinessline.com/economy/agri-business/why-plantations-are-no-ones-cup-of-tea/article9547240.ece>>

²⁴Traditionally, tea gardens only pay a portion of the wage as cash while another portion is paid 'in kind' in the form of certain services. However, the government has dropped the 'in kind' component of worker's wages from the Union Budget 2017-18 and is mulling an Amendment to the Plantation Labour Act, 1951 to that effect.

²⁵102nd Report on Performance of Plantation Sector-Tea and Coffee Industry of the Parliamentary Standing Committee on Commerce, para 18, available at <<http://www.teaboard.gov.in/pdf/notice/Parliamentary%20Standing%20Committee%20Report.pdf>>

Labour Act which is enforced by the Labour Department of the State is not the only compliance requirement in the industry. A tea garden is enmeshed by multiple layers of regulation and inspection by authorities ranging from the Inspector of Factories to the Tea Board. A planter will have to generally renew a minimum of five licenses in a year and also subject himself to inspections by a bewildering gamut of departments.²⁶ In spite of such seemingly heavy regulation the rates of compliance remain abysmal according to reports of the Labour Department, Government of Assam.²⁷ To cite an example, of the 829 registered tea gardens in Assam only 644 filed returns under the Act in 2009.²⁸

For the gardens which did file returns under the Act, the statistics are nothing to write home about. According to a report of the Labour Department, Government of Assam, there is a shortfall of 42,453 houses for labourers in the tea gardens of Assam.²⁹ A shortfall of 80,231 latrines and 6521 water points also exists in the labour lines.³⁰ Similarly, there exists a shortfall of 63 hospitals across the 800 odd registered tea gardens in the state.³¹ What must be kept in mind is that these are not mere statistics. These shortfalls have a direct correlation on the day to day quality of the life of these workers.

One of the prime reasons for the lackadaisical attitude in complying with the Act is due to the paltry fines often amounting to only a few thousand rupees which are imposed on the managements violating the provisions of the Act. Secondly, the Labour Department of the Government of Assam under the ambit of which the Office of the Chief Inspector of Plantations functions is understaffed. According to some counts, it had 68 labour

²⁶Ibid 21

²⁷Report on the Working of the Plantations Labour Act, 1951 during the year 2009, Ministry of Labour and Employment, Government of India, available at <http://labourbureaunew.gov.in/UserContent/Rep_WPL_2009.pdf>

²⁸Ibid 4

²⁹Ibid 13

³⁰Labour Department, Government of Assam, Tea Gardens of Assam: A Report on Plantations Labour Act, 1951 under 100 Days Plantation Plan, available at <labour.assam.gov.in/sites/.../Report%20on%20Plantation%20Labour%20Pla.docx>

³¹Ibid

inspectors and 28 labour officers in 2016.³² Certainly, a work force of this size will not suffice to undertake compliance in such a large industry.

Exclusion

One of the most important issues with the Act from the legal standpoint is that of 'instrumental exclusion'.³³ The Act despite its rather strong mandates has not been implemented to expected levels over the years. This has been described as a form of 'illusive inclusion' by which the Act is not being applied in 'spirit' but seemingly in letter.³⁴ In addition to this the language of the Act has left several loopholes which has emerged over the years.

To cite an example, S.1(4) of the Act applies to any land which 'admeasures 5 hectares or more', thus bringing only such tea gardens within its ambit. In the present day where more than 26 per cent of tea is produced by small tea growers, it means that a large section of such gardens are excluded from within the provisions of the Act.³⁵

³²Devjyot Ghoshal, "Young mothers are dying in Assam's tea gardens-at a rate higher than anywhere in India", (Scroll.in, July 23, 2016) <<https://scroll.in/pulse/812175/young-mothers-are-dying-in-assams-tea-gardens-at-a-rate-higher-than-anywhere-in-india>>

³³J. John et al, " Plantation Labour Act, 1951 and Social Cost- The Case of Tea Industry", Discussion Paper No. 26, National Research Programme on Plantation Development, Centre for Development Studies, Thiruvananthapuram, available at <<http://cds.edu/wp-content/uploads/2014/07/NRPPD26.pdf>>

³⁴Joseph K.J , "Towards a New Paradigm for Plantation Development in India: An Analysis of the System of Production and Innovation from an Inclusive Growth Perspective," Discussion Paper No. 1, National Research Programme on Plantation Development, Centre for Development Studies, Thiruvananthapuram, available at <<http://cds.edu/wp-content/uploads/2014/07/NRPPD1.pdf>>

³⁵S. 1(4) of the Act states:

"[(4) It applies to the following plantations, that is to say,-

(a) to any land used or intended to be used for growing tea, coffee, rubber [, cinchona or cardamom] which admeasures [5 hectares] or more and in which 6[fifteen] or more persons are employed or were employed on any day of the preceding twelve months;

(b) to any land used or intended to be used for growing any other plant, which admeasures [5 hectares] or more and in which [fifteen] or more persons are employed or were employed on any day of the preceding twelve months, if, after obtaining the approval of the Central Government, the State Government, by notification in the Official Gazette, so directs.

7[Explanation.-Where any piece of land used for growing any plant referred to in clause (a) or clause (b) of this sub-section admeasures less than 5 hectares and is contiguous to any

Similarly, the definition of worker in the Act read through its definition and wage provisions effectively excludes the temporary and casual worker from within its ambit. This means that a large cross section of workers are effectively eliminated from any protection they might have had recourse to under the Act. The recent 2010 amendment has expanded its ambit to 'a person employed on contract for more than sixty days in a year'.³⁶ However, the nature of the provision is such that it cannot be easily enforced.

There exists certain other impediments in the instrumentality of the Act like daily rating of wages, conception of 'family labour' and devaluation of women workers which have contributed to several of the present issues being faced by the tea industry.³⁷ Therefore, non-compliance must sought to be seen in relation to the inherent flaws in the Act itself. The non compliance by large sections of the industry must also be seen in the light of economic constraints and attitudinal inertia. An one dimensional analysis of this situation has the potential to give rise to a explanation which may be in the nature of oversimplification

The Case of Maternal Health

The present problem is however much deeper than mere non compliance with laws. There are certain endemic issues in tea gardens which require close involvement of the state machinery. Such a scenario is not surprising considering that the tea industry is the biggest employer in the state employing a mammoth workforce of 1,89,421 male workers and

other piece of land not being so used, but capable of being so used, and both such pieces of land are under the management of the same employer, then, for the purposes of this subsection, the piece of land first mentioned shall be deemed to be a plantation, if the total area of both such pieces of land admeasures 5 hectares or more.]

³⁶Plantations Labour (Amendment) Act, 2010, available at <[http://www.prsindia.org/uploads/media/Acts/The%20Plantations%20Labour%20\(Amendment\)%20Act,%202010.pdf](http://www.prsindia.org/uploads/media/Acts/The%20Plantations%20Labour%20(Amendment)%20Act,%202010.pdf)>

³⁷For an exposition of the concept of 'family labour' and devaluation of women workers, see J. John et al, "Plantation Labour Act, 1951 and Social Cost- The Case of Tea Industry," Discussion Paper No. 26, National Research Programme on Plantation Development, Centre for Development Studies, Thiruvananthapuram, available at <<http://cds.edu/wp-content/uploads/2014/07/NRPPD26.pdf>>

1,96,191 female workers who are permanent and 1,08,360 males and 1,82,863 females workers who are temporary.³⁸

The need for more sizeable government intervention in the tea gardens has been deliberated upon for a long time. In fact the British planters had made sizeable inroads into understanding the need for specific models of healthcare delivery in the plantations. Griffith, an ICS officer who was also associated with the ITA (Indian Planter's Association) quotes Jones's Standards of Medical Care where he advocated a three tier mechanism of hospitals in the plantations and the need for these hospitals to focus on preventive health. In his words,

*'...the fact remains that the vast bulk of the mortality, and even more of the morbidity of the tea gardens...is the result of conditions arising from poor diet, inefficient sanitation, contaminated and insufficient drinking water, the ignorance of the workers, which are easy to recognise, and do not ordinarily require elaborate facilities for diagnosis, or highly specialized treatment.'*³⁹

Ironically, due to the lack of evolving policy interventions, the state of affairs remains much the same today, more than fifty years later. The unique lifestyle, working conditions and diet of the workers in the tea gardens ensure that the need for more personalized attention arises in almost all areas of welfare and social security, healthcare not being the most important. The example of maternal health is particularly powerful and it comes as no surprise that it has gained substantial traction both in academia and the international media.

It is common knowledge that one of the primary challenges in maternal healthcare atleast in the tea gardens of Assam is high incidences of traditional childbirths away from medical supervision which endangers the life of both the mother and the child. Coupled with a diet which has been traditionally rich in salt and low in essentials like iron, it is a recipe for disaster. It is conjectured that the TGL community forms a large component of Assam's

³⁸Labour Department, Government of Assam, Tea Gardens of Assam: A Report on Plantations Labour Act, 1951 under 100 Days Plantation Plan, available at <labour.assam.gov.in/sites/.../Report%20on%20Plantation%20Labour%20Pla.docx > 2

³⁹Nandini Bhattacharya, Contagion and Enclaves: Tropical Medicine in India, (Liverpool University Press, 2012)

maternal mortality rate which had the misfortune of being the highest in the country in 2013.⁴⁰

It is therefore evident that there are some fundamental deficiencies in the implementation of the Act. In the face of the delegation of healthcare functions to the management of the garden through the Act, the industry found itself working in isolation for quite a few years.⁴¹ In 2008, the National Rural Health Mission or NRHM (now rechristened as the National Health Mission) signed an Memorandum of Understanding (hereinafter MoU) with 23 gardens across the state. This partly answered a sizeable body of opinion among the planters who had been advocating a larger role for the government in healthcare. Through a Public Private Partnership arrangement the NRHM would pump funds into the tea gardens which would then be utilized through the existing infrastructure in the form of the garden hospitals.⁴² However, the outcomes were not favourable as several bottlenecks came to light. Often the funds and medicine stock would not be available on time. The other perennial problem of finding qualified medical personnel to provide services in the tea gardens reared its head. As such the delivery of the scheme was not too effective.⁴³

⁴⁰The World Health Organisation defines maternal death as,

'Maternal death is the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management but not from accidental or incidental causes. To facilitate the identification of maternal deaths in circumstances in which cause of death attribution is inadequate, a new category has been introduced: Pregnancy-related death is defined as the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the cause of death.', available at <http://www.who.int/healthinfo/statistics/indmaternalmortality/en/>

MMR or the Maternal Mortality Rate is the number of maternal deaths per 100,000 live births. See <http://www.who.int/healthinfo/statistics/indmaternalmortality/en/>

⁴¹Devjyot Ghoshal, "Young mothers are dying in Assam's tea gardens-at a rate higher than anywhere in India", (Scroll.in, July 23, 2016) <<https://scroll.in/pulse/812175/young-mothers-are-dying-in-assams-tea-gardens-at-a-rate-higher-than-anywhere-in-india>>

⁴²For details of the arrangement, see <https://nhm.assam.gov.in/schemes/ppp-with-tea-garden-hospitals>

⁴³Sushanta Talukdar, "Move for better health care to Assam tea workers", (The Hindu, October 10, 2016) <<http://www.thehindu.com/todays-paper/tp-national/Move-for-better-health-care-to-Assam-tea-workers/article15364922.ece>>

Delegation: To what extent?

It is evident that the unique circumstances of the tea industry was what prompted the delegation in the Act in the first place. However, the flexibility afforded by such a scheme should have been reconsidered on a periodic basis. The provision of delegated legislation exists for the primary purpose that the legislature cannot afford to micromanage affairs of every sector. The executive possessing domain knowledge is in a better position to make provisions on more specific affairs. To that effect, the Assam Plantations Labour Rules, 1956 has served its purpose. However, the excessive delegation of functions has created more problems than solutions in the tea industry. Tea industry experts have gone on record to state that more government intervention is urgently required especially in cases of sick tea gardens which are on the brink of ceasing operations.⁴⁴

The position of the judiciary on the point of delegated legislation has undergone substantial evolution over the years.⁴⁵ The Supreme Court adopted the American rule of non-delegation in 1951 in *In re Delhi Laws Act*⁴⁶ case which essentially meant that the Parliament was required to regulate delegated legislation by ensuring that the limits or the policy was clearly identified for the delegate authority. But the position of the Supreme Court on delegated legislation has undergone substantial change subsequently and it has liberally interpreted the extent of delegated

⁴⁴Interviews with Mr. Raju Phukan, on 13th August, 2017, Ex-Tea Planter, Assam Tea Company Ltd., Apeejay Tea and Mr. Kalyan Phukan, Director, Paramount Tea Marketing Pvt. Ltd. on 19th August, 2017

⁴⁵The current position on delegated legislation which maintains that essential powers of legislation cannot be delegated and the legislature must declare the policy and the rules of standard which will determine any future case finds expression in *re Delhi Laws Act* case and *Gwalior Rayon Mills v. Asst. Commissioner of Sales Tax* (1974) 4 SCC 98. Judicial control over delegated legislation is generally exercised through the doctrine of *ultra vires* as in the case of *Kunj Behari Lal v. State of Himachal Pradesh* (2000) 3 SCC 40. However, it is in relatively few cases where a statutory provision has been declared invalid by the courts as in the case of *Harakchand v. Union of India* (1969) 2 SCC 166.

The Supreme Court has generally adopted a liberal approach when determining over delegation by the legislature. In some cases as in *Bhatnagars & Co. v. Union of India* 1957 SCR 701, where the 'policy' concern behind the impugned Act was not discernible initially, the Court has 'supplied' and interpreted the policy while examining the Act for over delegation.

⁴⁶1951 S.C.J 527

legislation.⁴⁷ The principle of delegated legislation has been succinctly referred to by Justice Mukherjea:

*'It is open to the legislature to formulate the policy as broadly and with as little or as much detail as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of that policy.'*⁴⁸

The parliamentary control over delegated or subordinate legislation like the Plantations Labour Act has also substantially increased over the years. Firstly, within the House, every legislation or Bill which contains some delegation related provisions can be debated upon in the House. Secondly, a MP can move a statutory motion seeking for a modification or even complete annulment of the rules, once the rules have been tabled in the House.⁴⁹

The rules of such a delegated legislation may also be discussed in Question Hour. There is also a Standing Committee of Parliament on Subordinate Legislation which is mandated with scrutinizing such legislation.⁵⁰ The Rules of Procedure of both Houses define the Committee's role as examining:

- a. Whether the rules are in accordance with the provisions of the Constitution and the parent Act under which they have been drafted;
- b. Whether there has been inordinate delay in the publication of the rules;
- c. Whether there is any retrospective application of the rules;
- d. Whether the rules purport to bar the jurisdiction of courts;
- e. Whether any expenditure from the Consolidated Fund of India is being considered.

The Committee's report has to be responded to by the Government subsequent to which the Committee prepares an Action Taken Report. The discussion of these provisions is essential here to highlight the dichotomy presented by such an elaborate mechanism of scrutiny of delegated legislation

⁴⁷Ibid

⁴⁸Ibid

⁴⁹Most Acts containing delegation provisions generally provide that the rules framed on its basis also have to be tabled in the House for a period of 30 sitting days.

⁵⁰Parliamentary Scrutiny of Executive Rule Making: Background Note for the Conference on Effective Legislatures, PRS Legislative Research, available at, <http://www.prsindia.org/administrator/uploads/general/1370586704_Parliamentary%20Scrutiny%20of%20Executive%20Rule%20Making.pdf>

on the one hand and the problems in industry being caused by over delegation of the functions of the state. The provisions of the Plantations Labour Act till today continue to escape the glare of this institutionalized mechanism of scrutiny for all effective measures.

The Neoliberal Effect

The lesser involvement of the State in social security and the increasing delegation is in fact much in tune with the neoliberal approach to the labour market.⁵¹ Thus this phenomenon need not be only seen through the legalistic approach discussed above. The State in such a approach withdraws itself from intervention in the labour market and only limits itself to the setting up of basic norms.

However, this increasing withdrawal of the state from social security in labour markets has been criticized on the economic front too. It has been argued that this measure has the potential and in some cases has already made the economic system unstable.⁵² It also defers from the conception of rights based approach to labour where such social security measures are seen as 'rights' and not state largesse. The same author goes on to point to the fact that the rights based approach to labour markets can go a long way in addressing inequalities in the economic systems. That is, only if the state plays an more active role in social security measures in the labour market can the inequalities between labour and capital be addressed.⁵³

As has been discussed before, the approach of the Act in delegating what can be termed as 'social cost' to the managements is becoming increasingly unviable for the industry on the economic front.⁵⁴ Infact the Tea Board of India in its Outcome Budget of 2012-13 submitted to the

⁵¹Guy Standing, "Labour Market Policies, Poverty and Insecurity", *International Journal of Social Welfare*, Vol. 20, Issue 3, 260-269 (2011)

⁵²Joseph Stiglitz, "The Global Crises, Social Protection and Jobs", *International Labour Review*, Vol. 148, No. 1-2, 9-30 (2009)

⁵³Ibid

⁵⁴J. John et al, "Plantation Labour Act, 1951 and Social Cost- The Case of Tea Industry", Discussion Paper No. 26, National Research Programme on Plantation Development, Department of Commerce, Ministry of Commerce and Industry, Government of India, available at <<http://cds.edu/wp-content/uploads/2014/07/NRPPD26.pdf>>

Department of Commerce has gone on record to state that it has become financially unviable for the tea gardens to continue bearing the social costs in their estates.⁵⁵ To remedy this it suggested the creation of a trust/agency under the authority of the Tea Board which would coordinate such activities as housing under the Indira Awas Yojana⁵⁶, safe drinking water, health facilities and education facilities. The trust or the agency in essence would ensure that the provision of these 'social cost' facilities would revert back to the state in more ways than one.

The argument that this form of the Act has burdened the industry thereby impeding its ability to compete in the world market is not new. Infact planter's associations across India have voiced the opinion that the statutory and non-statutory benefits that they have been traditionally mandated to fulfill has taken a toll on the health of the industry.⁵⁷

The Kailash Joshi Committee of 2003 appointed by the Government of India pointed out that Indian tea in general in the Indian market is getting 'priced out' due to the high production costs which were a natural result of the social cost burden that the gardens had to bear in the form of social security measures and amenities. As has been discussed before, the 102nd Report of the Parliamentary Standing Committee on Commerce, 2012 highlighted the fact the cost of production of tea in India was highest compared to other tea producing countries due to the delegation resulting from the provisions of the Act. The O.P Arya Committee which was constituted in March 2007 'in order to streamline, rationalize and harmonize the applicable laws with the objective of giving fillip to the faster development of the tea industry'. The Report dealt with the various facets of 'social cost' and also with the Act. It however concluded that the social security measures provided in the Act must be retained.

Conclusion

⁵⁵Tea Board of India, Outcome Budget of 2012-13, available at <<http://www.teaboard.gov.in/pdf/bulletin/Final%20Outcome%20Budget%202012-13.pdf>>

⁵⁶Now rechristened as the Pradhan Mantri Gramin Awas Yojana, it is a social welfare programme of the Government of India to provide housing to the rural poor.

⁵⁷Food and Agriculture Organisation, The State of Agricultural Commodity Markets 2006, Rome(2007)

Most field reports seem to reinforce the argument that the mechanism of delegation envisaged by the Act is crumbling slowly but surely. Most tea gardens which are not financially well off seem to struggle with wage, health and education issues.⁵⁸ The Assam Tea Planter's Association has also gone on record to state that social costs must be shared between the governments and managements of gardens if the tea industry is to survive in the international market.⁵⁹

To ensure that the deplorable living conditions and quality of life of the TGL community is alleviated, piecemeal reforms will not fit the bill. The issue concerning social security and the Act is multi dimensional and will therefore require strong political will coupled with cohesiveness between the industry bodies and the trade unions. A reconsideration of certain provisions of the Act has the scope of significantly decreasing the cost and production price too apart from decreasing labour-management conflicts. What is of relevance here is that inspite of such an institutionalized mechanism of examination and scrutiny of delegated legislation, the Act and its accompanying rules have managed to avoid any all round scrutiny.

For a researcher, it is evident after delving into some preliminary research that the issues surrounding the tea industry has already been identified and crystallized, it is only policy intervention that has been lacking. It is time the Act is reconsidered with an aim to make a paradigm shift and not mere piecemeal changes.

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TO COOPERATE OR TO DEFECT?

Shradhanjali Sarma

"When two rational individuals fail to cooperate, when it is at their best interest to cooperate"

Conflicts in Assam and the Demand for ST Status

According to Thomas C. Schelling, conflicts are either studied as a pathological object or are taken for granted.¹ In case of a pathological conflict, we study it as a disease and try to find its cure. In the second type of conflict, the study is confined to its behavior.² The latter was termed as 'strategy of conflict' by Schelling, since it requires the study of rationality, irrationality, conscious, unconscious, motivations, calculations etc. In applying 'strategy of conflict', there is an assumption that rational behavior is closest to the truth and is the most productive one.³ The popular discourse under game theory is the existence of two rational individuals who fail to cooperate even though it is at their best interests to cooperate. In case of conflicts, particularly identity conflicts, the situation flares up due to lack of cooperation among individuals in conflict and the government. The government's inability to meet the demands of the people, or due to pressure from the opponent groups, the conflict often escalates.

¹Thomas C.Schelling, Strategy of Conflict (Harvard University Press 1960)

²Ibid 13

³Ibid 14

Assam has been dealing with the problem of multiple conflicts pertaining to identity, land and livelihood since a long period of time. Most of the demands of the people in the State are related to the utmost need for recognition of identity and land, both being the significant concern for the people.⁴ According to Walter Fernandes and Bhaswati Borgohain, in North-East India there exist three kinds of conflict, first being the outright demand for secession, second being the one by minority communities for their rights also termed as sub-nationalism and third being the fight against transformation of demography.⁵ The first category includes the demand for Bodoland and Kamatapur, where a demand for separate state is being made by both the leaders and the militant groups. Secondly, the struggle for minority rights is witnessed in the demand for reservations in the State primarily in the form of Scheduled Tribe quota. The third issue of change in demography due to conflicts can be witnessed through the border disputes in Assam, and can also be credited to the issue of immigration to some extent. The influx of migrants in Assam has not only raised serious concerns but has also changed the demographic outline of the state.

The inability of the Government to initiate developmental policies and the scanty attention towards minority rights are weaved together. Another reason behind minority rights' movement and sense of marginalization felt by one community due to the benefits offered to other communities in the State. An important consideration in this kind of conflicts is that of inter-community conflict, where an underdeveloped community tries to attain the same level as that of a developed community. The struggle for bringing an end to marginalization serves as the initiation point for minority-rights dominant conflicts.⁶

⁴Walter Fernandes and Bhaswati Borgohain, *Journals of Dispute:Media Coverage of Conflicts in North-East* (NESRC 2017)

⁵Ibid 56

⁶One such example was visible during the field trip to a Koch-Rajbongshi village of Supariguri in Bongaigaon, where the Koch-Rajbongshis considered the inter-community imposed marginalization to be the obstacle in the growth of their community. In the Bodo Territorial Autonomous District (BTAD), the Koch-Rajbongshis are the marginalized community and are being dominated by the Bodos in the social, economic and political platforms. They cited this to be one of the reasons for their demand for ST status.

The concept of 'Scheduled Tribes' (ST) was introduced to safeguard the rights of the tribal population in India. The term 'Scheduled Tribes' was initially used by G.S Ghurye, who related people who practiced animism with the term 'Scheduled Tribes'.⁷ Later, the term was introduced as an administrative term in order to encourage the development of the tribal population in India. A method which was introduced in order to bring development in India, led to a series of conflicts for identity assertion, recent one being the claim for ST status for six communities in Assam. The continuous struggle for attaining the status of ST has led to conflicts almost in every part of India, most notable being that of the 'Jats' in Northern India. Every incident of identity assertion raises the question of 'who is an indigenous' as put down precisely by Meena Radhakrishnan in her book 'First Citizens', where the continuous debate on this term is being analyzed.⁸ The basic premise of such conflicts lies in defining the term 'indigenous' as such conflicts obtain the role of a labyrinth, without any channel of a positive circumvention from it.

Six communities in Assam, namely Morans, Mattaks, Ahoms, Koch-Rajbongshis, Chutiyas, Tea-Tribes are demanding for ST status from decades, with the demand becoming more profound after 2014 General Elections. Initially, it was believed that the issue arose as a response to oust the illegal immigrants from Assam, and to protect the identity of these communities. But as one delves deeper, the issues of concerns are greater than ousting the migrants for protection of identity of these communities. The existing tribal communities have been protesting for this particular demand, as they believe such a demand will corner the privileges available to them.⁹ In 2016, the Singla Committee was constituted under Mahesh Kumar Singla in order to decide on the issue. The Ministry of Tribal Affairs has listed down five

⁷GS Ghurye, 'The Aborigines-So-Called and their Future', (1949) 92 American Journal of Sociology 1 2017

⁸Meena Radhakrishnan, 'Introduction' in Meena Radhakrishnan (ed), *First Citizens: Studies on Adivasis, Tribals and Indigenous Peoples in India* (Oxford University Press 2016) 3

⁹Samudra Gupta Kashyap, 'As 6 Assam Groups Wait to Become STs, Other Tribes Worry', Indian Express (online), 11 October, 2016 <<http://indianexpress.com/article/india/india-news-india/assam-quota-reservations-scheduled-tribe-caste-obc-other-tribes-worry-3076108/>>

criteria for ascribing the status of ST to different communities demanding for ST status. The criteria are listed down as under-

- ♦ primitive traits
- ♦ distinctive culture
- ♦ geographical isolation
- ♦ shyness of contact with the community at large
- ♦ backwardness

The conflict arose between the communities and the Government, when the latter did not fulfill the demand within the stipulated period of time, which kept on changing with the last deadline for the demand fulfillment being 30 June, 2017. The Government is of the view that the six communities do not conform to the five criteria provided by the Ministry of Tribal Affairs. Therefore, providing them with the ST status would create further conflict. This would in turn allow various other communities to demand ST status. On the other hand, the communities believe that they fulfill all the criteria mentioned by Ministry of Tribal Affairs.¹⁰ The fact that the six communities do not fulfill the five criteria has been used to drag the issue for a very long time. While the Government believes that these six communities do not conform to these criteria, the existing tribal groups under the umbrella body of All Assam Tribal Sangha (CCTOA) oppose the very demand for ST demand.¹¹ They believe that the demand would corner the rights of the existing tribals, as the six communities constitute 59 per cent of the total population in Assam.¹²

The failure of the Singla Committee to come up with a report on the stipulated deadline of June 30, 2017 led to strikes, road and rail blockades in Assam in July.¹³ The Tai Ahom Yuva Parishad blocked the movement of oil tankers in Upper Assam, thus affecting the functioning of Oil India Limited and that of Oil and Natural Gas Limited (ONGC).

¹⁰Interview with the Student Leader of Xodoi Assam Moran Chatro Xontha and Xodoi Assam All Assam Mattak Sanmillan

¹¹Interview with Aditya Khaklary (Guwahati 23 August 2017)

¹²Census 2011

¹³Rishu Kalntri, 'Protest over ST Status', The Telegraph (online), 28 October, 2017, <https://www.telegraphindia.com/1170702/jsp/northeast/story_159719.jsp

Similar protests were witnessed in the Kokrajhar and Bongaigaon where All Koch Rajbongshi Students Union (AKRASU) led strikes and blockades following Government's failure to meet the demands within 100 days.¹⁴ The strikes and blockades did not end in June and a recent strike was organized on 25 October, 2017 by the Adivasi community leaders in Kokrajhar and Bongaigaon, to pressurize the Government to take steps as soon as possible.

The issue encompasses within it many layers, and cannot be confined solely to the protection of identity in relation to the immigrants. The demands of the six communities under the umbrella term of ST status include several related demands, which they believe will be solved once they are conferred the particular status. The main demands of the six communities are land rights, political representation and reservations pertaining to education.¹⁵

The present conflict is locked in a Prisoner's Dilemma, where two rational individuals might not co-operate even though it is at their best interest to cooperate. In game-theoretical model, the Pareto-optimal solution brings about peace through collective rationality. The collective rationality of the players and the dynamics of the conflict will be explained by the two and three players game in the following sections.

Preliminaries and Definitions in Game-Theory

Game Theory is a theory of conflict and cooperation, which normally involves players ranging from two to many.¹⁶ It is a strategic interaction among multiple players, where each player choose among multiple alternatives, in order to minimize or maximize *utility/benefits*.¹⁷ The theory was first propounded in the form of a duopoly by Antonie Cournot in 1838. In

¹⁴The Government promised the communities that ST status will be provided within a period of 100 days through their Manifesto.

¹⁵Interview with Pranjal Rajkhowa (11 September 2017); Interview with Kajol Gohain (12 September, 2017); Interview with Tarun Moran (11 September 2017); Interview with Pradip Roy (18 October 2017)

¹⁶Theodore L. Turocy and Bernhard Von Stagel, 'Game Theory', (2001) LSE-CDAM Research Report 4

¹⁷Ghurye above n 7

1928 John von Neumann developed the theory further and laid the foundation of zero-sum game.¹⁸ Von Neumann's work culminated in a fundamental book on game theory written in collaboration with Oskar Morgenstern entitled *Theory of Games and Economic Behavior*, 1944.¹⁹ It was John Nash who in 1950 further developed this theory to explain non-cooperative games.²⁰ The game-theoretical model consists of the zero sum game and non-zero sum game. In a zero-sum game, one player's gain is equivalent to another player's loss thus making the wealth or benefit to be zero. On the other hand, non-zero game model each player gains through a particular strategy and the net benefit doesn't amount to zero. Game theory thus is classified under two important heads, i.e. cooperative game theory and non-cooperative game theory.

- ♦ **Cooperative Game Theory:** It is based on the element of complete coalition in decision making, where players take the decisions collectively and with full trust to attain the maximum benefits possible.

- ♦ **Non-Cooperative Game Theory:** In this kind of game theoretical model, the objective decision of one player depends on the decision of another player, thereby curbing the independence in decision making in such a model.²¹ These kinds of models are popularly used in conflict situations, and are more common in economics than cooperative game theory.

Game-theoretical model consists of the following important elements-

- ♦ *Players* are the multiple individuals or the entities involved in the game
- ♦ *Payoff* is the ultimate benefit or utility derived from the strategic interaction.

- ♦ *Game* is a formal description of a strategic situation.

- ♦ *Game Theory* is a formal study of decision-making, where players have to make a choice which potentially affects the other players.

- ♦ *Pareto-Optimal Solution* is the situation where a player cannot obtain a higher payoff without hurting the other player,

¹⁸Thomas S. Ferguson, 'Game Theory', (UCLA 2014)

¹⁹Id at 4

²⁰Finite games have always had an equilibrium point, at which all players choose actions which are best for them given their opponents' choices.

²¹Supra at 7

◆ *Nash Equilibrium* is the point of equilibrium in a game where a player cannot deviate from.

◆ *Extensive Game* depicts the order in which each player make a move, and the information associated with the player at every decision point.

◆ *Zero-Sum Game* where the outcome of the game is zero.

◆ *Prisoner's Dilemma* is a standard example, where two rational individuals do not co-operate even if it is at their best interest to co-operate.

◆ *Strategy* is one of the given possible actions of a player.

◆ *Dominating strategy* is one where strategy of one player dominates the strategy of another.

Non-cooperative game theory branches out into two forms, one being the strategic game theory and the other being the extensive. The strategic form of game theory lists each player's strategies, and the outcomes that results from each other choices.²² In the extensive form of game theory model in non-cooperative game theory, the strategies are more detailed with more information on actions.²³ One of the most popular forms of strategic game is Prisoner's Dilemma, which derives its name from the famous example of two prisoners who strategically decides on their punishment. Citing the example-

Prisoner A and B are put into separate cells of a prison and have committed an offence where very little evidence is available against them. If both of them stay silent, then they would be convicted for a minor offence with one year sentence in the prison. If one of them reveals the truth, the other will be imprisoned for a term of four years and if they both speak up then they will be imprisoned for a term of three years. We use payoff of a, b, c, d where $a < b < c < d$

| | | Prisoner B | |
|-------------------|--------------|-------------------|-----------|
| | | Stays Silent | Speaks Up |
| Prisoner A | Stays Silent | (b,b) | (d,a) |
| | Speaks Up | (a,d) | (b,b) |

Fig1.1- Prisoner's Dilemma

²²Theodore L. Turocy and Bernhard Von Stagel, Game Theory <www.cdam.lse.ac.uk/Reports/Files/cdam-2001-09.pdf>

²³Ibid at p.7

Another significant part of Game Theory is the Nash Equilibrium. According to Nash Equilibrium every single two-person game, non-zero sum game and zero sum game consist of an equilibrium point, which can be achieved through pure or mixed strategies. It was developed by John Nash in 1950, while developing his theory of non-cooperative games. In Nash Equilibrium, the players know each other strategy, and no player has anything to gain by changing their strategies unilaterally. In summation, each player bases their strategy on another to arrive at a best decision.

Prisoner's Dilemma Approach to Conflict-Resolution

♦ Demand for Scheduled Tribes Status and the Conflict for Identity

Rapport and Guyer (1966) have demonstrated the existence of 78 non-equivalent games in the logical structure of two-persons, two choice non-zero sum games.²⁴ Prisoner's Dilemma is one such part of the game-theory where each player has a dominating strategy, where one player has a better strategy than the other and where a point for negotiation exist for both the players known as the Pareto-optimal solution. It is the Pareto-optimal solution which has been applied in conflict models in order to reach a structure for peace. The application of Prisoner's Dilemma has been attempted at conflicts due to the strategic and logical outcome of such a theory. In majority of conflicts, the existence of more than two players makes it difficult to apply prisoner's dilemma for a feasible solution. In such conflict the evolutionary game theory is used to understand the strategic interactions between the multiple agents of the game. In the present conflict, only three most important players are taken into consideration i.e. the government, the six communities demanding for ST status and the existing tribal groups opposing the demand, and hence the conflict is examined through the conventional game theoretical model.

The conflict is explained with the help of 2*2 game theoretical model, 3*3 game theoretical model and critical risk theory. Every model used is an attempt to provide an alternative solution to the conflict in a situation where

²⁴Malvern Lumsden, 'The Cyprus Conflict as a Prisoner's Dilemma Game', (1973) 17 Journal of Conflict Resolution 1

a particular model does not work. The 2*2 model is used to arrive at a probable peace solution, while 3*3 models is used to understand the existence of an irrational player in the game. The application of the critical risk factor explains the reason behind conflicts continuing in a deadlock.

In the matrices mentioned below, the payoffs will be assigned as a,b,c,d and e and the order of it will be $a < b < c < d < e$ for the rest of the examples in the paper.

♦ The Demand or ST Status being a Non-Negotiable Game

Assuming that the situation is non-negotiable, we try to bring about a modification in the matrix. Marvel Lumdsen in his game-theoretical model of Cyprus conflict explained several variables which can be applied in order to alter the matrix in a non-negotiable model of conflict.²⁵ In case of the Cyprus conflict, Marvel Lumdsen used variables such as time, decreasing the value of war, third-party intervention and in nullifying the prospect of a war.²⁶

In case of the demand for ST status, which we assume to be non-negotiable game, we assume two variables in order to alter the matrix, namely-time and intervention.

We assume in the present case that with time the values associated with the conflict will change, and new values will supersede the old ones.²⁷ The change in values of the conflict will lead to more cooperative behavior over a period of time. In this present conflict, it might happen that with time the government introduces schemes to socially integrate these communities in the mainstream Assamese society by providing them an equitable platform. The main demands of the six communities are political representation, educational reservations and land rights, for which the six communities demand ST status.²⁸ ST status is therefore considered as the most crucial step towards the fulfillment of their needs. With time this might change,

²⁵Ibid 18

²⁶Ibid 20

²⁷Lumdsen above n 26

²⁸Interview with Pranjal Rajkhowa (11 September 2017); Interview with Kajol Gohain (12 September, 2017); Interview with Tarun Moran (11 September 2017); Interview with Pradip Roy (18 October 2017)

and the communities might find an alternative to satisfy their social and economic needs, thus superseding the value attached with the demand for ST status. Another time-specific variable which might change the dynamics of the conflict is through the escalation of another conflict which might suppress this conflict for a period of time, allowing a cooling off period to bring about a resolution. A conflict of greater intensity might change the dynamics within the communities, where solidarity might increase for the new conflict rather than the one associated with the demand for ST status. This will alter the non-negotiable matrix, thus breaking the deadlock.

The second strategy in altering the matrix would be to allow third-party intervention in the issue, through an interlocutor or a mediator. Intervention can also be through an armed rebellion, but this would escalate the conflict, instead of arriving at a peaceful settlement. Lumdsen (1970) have mentioned that the 'stick' and 'carrot' approach by third parties are of no utility to parties in conflict. There are chances of the parties rebelling to third party interventions, rather than cooperating with it.²⁹ Deadlocks in conflicts are common and most of the time it is not mutual.³⁰ One party might associate itself with Prisoner's dilemma while the other with the deadlock structure. In such a case it would mean cooperation only for a single party, but if we look at the scenario as a whole it reflects a deadlock.³¹

Some games do not offer any kind of solutions and thus remain in a state of stalemate, and the player remains deadlocked until the game evolves.³² This happens when a deadlock occurs and the game becomes non-negotiable as discussed above, and gradually within a period of time the game evolves, i.e. the conflict evolves due to the 'time' variable. An illustration in this regard can be explained by giving an example of imposed party and imposing party.³³ A deadlock is imposed by one party which has

²⁹Lumdsen above n 26

³⁰Marc A. Levy, 'Mediation of Prisoners' Dilemma Conflicts and the Importance of the Cooperation Threshold: The Case of Namibia', (1985)29, *The Journal of Conflict Resolution* 4

³¹Ibid 583

³²Levy above n 32

³³Ibid 34

nothing to gain from this negotiation and uses negotiation as a delaying tactic in a conflict. Therefore, time acts as a valuable asset for the imposer. The use of negotiation as a delaying tactic in conflicts can be explained through an example of the six communities where the Government has sat down for several round of talks with an aim to negotiate.³⁴ The third party intervention in the form of mediator or an interlocutor is important in such a situation, which has been explained as an intervention for a non-negotiable game in the paper. In a classic prisoner's dilemma formulation we use four variables i.e. T, R, P, S which indicates temptation to compete, reward for cooperation, punishment for deadlock and sucker's payoff for cooperation respectively.³⁵ A situation of bully or prisoner's dilemma would occur in a conflict when a mediator intervenes. The party which imposes (imposer) the deadlock might change its strategy and reverse the P and R value, thus allowing the establishment of a prisoner's dilemma. On the other hand the party upon whom it has been imposed might try to change the P and S value, thus converting it into a bully, unable to afford the deadlock.³⁶

a. The Demand or ST Status being a Negotiable Game

One of the significant reasons behind the issue not reaching a feasible solution is the political parties' tendency to use it as a political agenda to thrive the conflict. The erstwhile as well as the present Government in Assam has used the grant of ST status in their election campaign to influence votes.³⁷ In 2014, Parliamentary elections and in 2016 Assam elections, the main agenda in the BJP campaign was to provide these communities with ST status.³⁸

In the present conflict, the order of preferences in a game-theoretical model would be to fulfill the demand for ST, secondly to fight over it and

³⁴This was expressed by almost all the leaders of the six communities who have set down on a series of negotiations with the Government both pre-elections and post-elections.

³⁵Levy above n 32

³⁶Ibid 583

³⁷Interview with Pranjal Rajkhowa (11 September 2017); Interview with Kajol Gohain (12 September, 2017); Interview with Tarun Moran (11 September 2017); Interview with Pradip Roi (18 October 2017)

³⁸Ibid

thirdly to suggest alternatives and come to a peaceful negotiation. In the first scenario, there are multiple layers which will prevent the communities from procuring the status that they are demanding. Firstly, according to evidences gathered from primary sources, one of the reasons behind not fulfilling the demand is political benefits attached to it. The Government, especially the political parties might want to continue the conflict in order to delay negotiations. In such a case, the Government will defect from a peaceful negotiation and thus decrease the payoff. If we consider this situation in a game theoretical model, we reach at the following Nash Equilibrium-

| | | | |
|------------|--------|---------------|-------|
| | | 6 COMMUNITIES | |
| | | THRIVE | SOLVE |
| GOVERNMENT | THRIVE | (c,c) | (c,e) |
| | SOLVE | (e,c) | (e,e) |

In the above case we have three Nash-Equilibrium i.e. (e,c), (c,e) and (e,e). In this particular situation it would be best for both the parties to negotiate and come to a peaceful settlement, which will generate a pay-off of (e,e). In this case, the best possible strategy for both the players would be to solve the conflict, instead of defecting or continuing the conflict for their own vested interests. Here, thriving the conflict proves more beneficial than arriving at a negotiated settlement. In order to propose peace in such a situation, we need to reach a strategy where the conflict can no longer be used to gain benefits out of it by the government or party in power through delaying tactics.

The demand for ST status for the six communities is met with oppositions from the other tribal groups, which makes the fulfillment of the demand difficult. The existing tribal groups are of the opinion that these six communities, if given the status of ST status would lead to a conflict, as such a step would corner the benefits of the existing groups. In support of such an opinion, they cite the example of the 1996 Ordinance, which conferred the status of ST upon the Koch-Rajbongshis, who have been demanding for ST status since 1967.³⁹ The Ordinance was effective for a

period of nine months and during that period the Koch Rajbongshis were able to garner majority seats in medical and engineering institutes in Assam, thus cornering the other tribal communities.⁴⁰ The second contention regarding such a demand is that the six communities do not fulfill any of the criteria mentioned by the Ministry of Tribal Affairs, and hence any step by the Government would require necessary precision in order to prevent the sabotage of the rights of the other groups. Thirdly, the contention against such a demand is based on wider discourse that if these communities receive ST status under the listed criteria, even though they fulfill none of them, this would encourage communities all over India to demand for ST status. In such a scenario the best possible strategy for the communities and the Government would be to agree that ST status demand is not feasible as it will affect the other communities both in Assam and whole of India. In order to bring the communities in conformity with the modalities, a new set of modalities was supposed to be released by the Singla Committee which was constituted by the Ministry of Home Affairs. The new set of modalities was supposed to be released by June 30, 2017, which did not reach any conclusion, as no such report was released.

In order to understand the best outcome, we depict the three situations in the form of 2*2 matrixes. The basic argument that is used in the matrices is that the political party in power benefits by delaying the conflict, and a Pareto-optimal solution is possible when they decide to agree with the stakeholder's demands. In the first situation we try to analyze the impact of fulfillment of the ST demand for both the Government and the six communities.

| | | | | |
|------------|---|-----------------|--------|-------|
| | | SIX COMMUNITIES | | |
| | | FULFIL | IGNORE | |
| GOVERNMENT | ↑ | FULFILL | (e,e) | (d,c) |
| | ↑ | IGNORE | (c,d) | (c,c) |

³⁹Interview with Pradip Roy (18 October 2017)

⁴⁰'Tribal bodies oppose ST status to 6 groups', The Assam Tribune (online), 21 October, 2017 <<http://www.assamtribune.com/scripts/detailsnew.asp?id=aug0115/at052>>

In the figure above, the best strategy would be to fulfill the ST demand in order to bring the communities at peace. The best strategy here would be to agree on the fulfillment of the ST demand by both the parties. In case both the parties decide to defect, the pay-off comes down to (c,c) which would be the worst strategy in this conflict. In case the government defects, the pay-off comes down to (c,d) as the Government will not be able to benefit from such a strategy in a conflict. In the situation at the field, the delay in Government response has escalated the conflict in the form of strikes, and road blockades.⁴¹ The repeated promises and non-fulfillment of this demand has created ripples of dissatisfaction among the communities in Assam. Citing a recent example, the surrendered militant organizations of the Adivasi community organized a road blockade on 25 October, 2017 in the districts of Bongaigaon and Kokrajhar in order to reiterate their demand for ST status.⁴² A similar consequence was observed in July, when the Singla Committee could not decide on the issue within the stipulated deadline of June 30, 2017. Protests, strikes, rail and road blockades were observed all over Upper Assam and Lower Assam (particularly in Kokrajhara and Bongaigaon) as a consequence of the failure on the part of the Government to arrive at any concrete decision.

In an ideal situation, where the communities' demands get fulfilled, the next conflict that would arise as a consequence would be that by the existing tribal communities. The existing tribal communities under the banner of All Assam Tribal Sangha (CCTOA) have been opposing the demand by these six communities, as they believe that fulfillment of such a demand would tread upon the rights of the existing communities.⁴³ According to the Constitution of India, the reservation quota in India is fifty (50) per cent. In Assam the number of tribal communities stands at 23 with 14 hills tribes and 9 plain tribes. The percentage reserved for the hill tribes is 10 percent and for the plain tribes 5 percent. In case any new tribe is introduced in the existing ratio, the result of it would be an imbalance and quota dilution. In

⁴¹Rishu Kalantri, Protest over ST Status, The Telegraph (online), 30 October, 2017 <https://www.telegraphindia.com/1170702/jsp/northeast/story_159719.jsp>

⁴²Interview with Xabrias Khakha (18 October 2017)

⁴³Interview with Aditya Khaklary (28 August 2017)

such a situation, we use a matrix to understand the situation and to arrive at the optimal payoff

| | | | | | |
|---------------------------|--------|-----------------|--------|--------|-------|
| | | SIX COMMUNITIES | | | |
| | | COOPERATE | DEFECT | | |
| EXISTING TRIBAL GROUPS | ↑ | COOPERATE | (e,e) | DEFECT | (d,c) |
| | DEFECT | (c,d) | (c,c) | | |

In the figure above, the Nash Equilibrium of (e,e) is the ideal situation and the best strategy. But in a conflict where one party is in total opposition to the fulfillment of the demand, such a situation will not be feasible.

Even though the two matrices present the best strategies to bring the conflict to an end, it would not be possible in reality to apply these strategies. This is because of the dynamics involved in the conflict, which prevents it from arriving at a logical conclusion.

The third strategy that we can apply is to nullify the demand for ST status and to introduce an alternative for the communities to identify with. The alternative should be such that it accommodates the rights of both the existing tribal communities who are opposing this demand and the six communities. One such alternative would be to suggest a model of conflict resolution which would agglomerate multiple identities into one. Through the data collected from the field it was observed that one of the significant needs of the people was to arrive at definition of indigenous. The term indigenous has been debated from a long time, with different scholars providing different definitions for it. Under the international platform of United Nations, Special Rapporteur to United Nations Working Group on Indigenous People (UNWIP) Martinez Cobo presented a working definition for the term 'indigenous' ⁴⁴-

"Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that

⁴⁴Asia Pacific Forum, The United Nations Declaration on the Rights of Indigenous Peoples A Manual for National Human Rights Institutions, (2013)

developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system."

Due to the lack of a concrete definition of 'indigenous', different communities in India as well as in the other part of the world are struggling for identity assertion. In a situation where we provide the definition of indigenous and introduce development packages based on it, it might become easier to control the domino effect of conflict to some extent. Given a situation where we arrive at a definition of 'indigenous' for the people in Assam, and the definition encompasses almost all the existing, classes and communities in the region, the only need in such a situation would be provide the communities with developmental packages which addresses their needs. In such a situation where we place all the communities at a platform of equitable rights we will be able to control the inter-communities conflict to some extent. Representing this strategy in a matrix-

| | | SIX COMMUNITIES | |
|------------|-----------|-----------------|----------|
| | | AGREES | DISAGREE |
| GOVERNMENT | AGREES | (e,e) | (d,c) |
| | DISAGREES | (c,d) | (c,c) |

In a situation where the inter-community conflict comes to a point of stagnation due to the similar benefits given to all, the conflict with the Government will also come to a standstill. The basic argument of the paper that ruling party in power thrives a conflict for their own interests will stand vitiated once the it is unable to instigate communities against each other. A situation of Pareto-optimal will be reached when on one hand the party in power is unable to profit from conflicts and in the other when the

communities end their conflicts with each other on the popular discourse of marginalization. We can thus resolve by i. Agreeing on the definition of 'indigenous' which will cater to all the communities in Assam; ii. Providing developmental packages based on the definition i.e. catering to their needs of education, political representation and land rights; iii. By decreasing inter-communities conflicts as a consequence of it and reducing the level of marginalization, by blocking the Government from utilizing issues of conflicts as a medium of fulfilling their interests.

♦ **Non-Cooperative Game-Theory and Three-Player Game**

In the above mentioned games, an effort was made to understand the conflicts through the interaction between two players, first between the six communities and government and second being the six communities and the existing ST groups. In the negotiable game, we tried to obtain a Pareto-optimal through the interaction, in order to arrive at a peaceful resolution with a higher payoff.

In case we apply a three-person prisoner's dilemma to this conflict we see that the payoff changes. This happens because two players gang up against the other player and thus resulting in a different payoff.

| 3*3 MATRIX | | GOVERNMENT | | | |
|-----------------|-----------|-------------------------|-----------|-------------------------|-----------|
| | | Agrees | | Disagrees | |
| | | EXISTING ST COMMUNITIES | | EXISTING ST COMMUNITIES | |
| | | Agrees | Disagrees | Agrees | Disagrees |
| SIX COMMUNITIES | Agrees | (e,e,b) | (e,a,b) | (e,e,d) | (e,d,d) |
| | Disagrees | (b,e,e) | (b,d,d) | (e,e,d) | (c,c,d) |

The non-cooperative game theory with three players brings out different outcomes compared to the two player game. In the two player game we explained the conflict through 2*2 matrices interaction i.e. the interaction between the Government and six communities and another interaction between the Government and the existing tribal communities.

The three player non-cooperative game would take all the three players together to understand the dynamics of the conflicts. We assume at the

outset that one of the players will be irrational, and they will obtain the maximum payoff by escalating the conflict. In such a situation, we will try to analyze the conflict in terms of a solution which will cater to the interests of all the three players.

In the first box, we accord a payoff of (e,e,-b) for the three players respectively. In this case we assume a negative payoff for the Government because if it agrees on the demand for ST status along with the other communities it might lead to another conflict. This is because of the introduction of the new six communities in the ST quota will dilute the reservation ratio. In the ideal scenario, an agreement between all the parties should have been the best outcome as it would have led to a Pareto-optimal solution, as explained in the 2*2 player game, but in this case this will escalate the conflict. In such a case, where one player gains less by assenting to a solution, the best possible solution would be to disagree, as the player is not earning a higher pay off by agreeing to the resolution structure.

Therefore, in the above matrix we see that the interaction between all the three players leads to a situation where one player will act irrationally, thus leading either to a low payoff or a negative payoff. In such a case we try to find a solution, even though it is difficult to find one due to the existence of dominant solutions in each box. The best way to find out a solution would be to arrive at a Nash Equilibrium for this simultaneous game, where all the three players are moving at the same time. In this case we hold everyone's payoff as constant and try to find out whether the players would like to change their positions. In case the answer is in negative, then we can arrive at a pure strategy Nash equilibrium.

| 3*3 MATRIX | | GOVERNMENT | | | |
|-----------------|-----------|-------------------------|-----------|-------------------------|-----------|
| | | Agrees | | Disagrees | |
| | | EXISTING ST COMMUNITIES | | EXISTING ST COMMUNITIES | |
| | | Agrees | Disagrees | Agrees | Disagrees |
| SIX COMMUNITIES | Agrees | (e,e,-b) | (e,a,b) | (e,e,d) | (e,d,d) |
| | Disagrees | (b,e,e) | (b,d,d) | (e,e,d) | (d,d,d) |

In the highlighted box (in red), we will try to understand whether the six communities will be better off in agreeing to the question of ST demand or in disagreeing. In the second box the ST communities receives a payoff of (-b) and in the first box it receives a payoff of (e). Therefore, we try to answer the question of whether the six communities would like to change their position for a better payoff. The answer is certainly in affirmative, as the player would try to obtain the maximum utility through their strategy. Similarly, we try to find out the payoff for the existing tribal communities, holding the actions of the other players constant. In this case, the existing tribal communities will receive a payoff of (e) on agreeing and (-a) on disagreeing in the first box. Therefore, they would prefer to change their position rather than remaining constant. Therefore, we cannot establish a pure strategy Nash equilibrium in this case. The next step would be to establish the payoffs for the Government, holding the actions of the other players constant. In the box (in green), we see that the Government would not want to decrease its payoff of (1) to (-1) and would therefore resort to a situation of pure strategy Nash equilibrium. But a pure strategy Nash equilibrium can be established only when all the players are satisfied with their payoffs and decides to remain at their constant positions.

Now we try to analyze the highlighted box (in blue). In this case, we see that the six communities would be better off in agreeing than disagreeing, as the utility derived would be more in former than the latter. Therefore, even in this case we are not able to arrive at a pure strategy Nash equilibrium.

Therefore, the possibility of arriving at a pure strategy Nash equilibrium is not possible in this case. In such a case where Pareto-optimal solution is not possible, we try to provide a solution which will help in ending the conflict to some extent.

As explained in the 2*2 matrix game theoretical model, the identification of every individual under the umbrella term of 'indigenous' would be the optimal solution in obtaining a pure strategy Nash Equilibrium, as it would provide all the three parties the reason of equitable benefits. Moreover, the Government's inability to solve the conflict due to supervening difficulty will be reduced to some extent if the other two players are put on the same level. Moreover, the political parties' ability to derive economic benefits out

of a conflict will be reduced once the inter-community marginalization ends, and the two communities in conflict agree to a solution from which they would be unwilling to deviate, thus establishing a pure strategy Nash equilibrium.

Critical Risk Factor

In case we apply the non-cooperative three-players game theory to the conflict, we see that one player fails to be rational, and gain more payoffs by escalating the conflict. In the above cited example of the non-cooperative three player game, the existing communities gain more by defecting i.e. in escalating the conflict. In such cases, a Pareto-optimal solution cannot be arrived at as one of the player refuse to agree with a peaceful resolution. Therefore, another method of looking at the conflict would be to analyze it through the lens of Chicken's Game and Critical Risk Factor. These two concepts were introduced by Snyder and Diesing (1970), where critical risk was defined as the amount of unfavorable outcome that the parties will endure.⁴⁵ The critical risk factor places the party in a situation, where they would try to obtain a favorable outcome beyond the critical risk threshold. This was explained by Sydnor and Diesing through the formula of

$Critical Risk = (T-S)/(T-P)$, where we use the blackmail illustration to explain the formula. Here, more a blackmailer threatens punishment (P) greater than the ransom (S), there are greater chances that the victim will prevent itself from going against the opponent.⁴⁶ This kind of a game is called either bully or chicken game. There is a greater probability of such a game taking place if the threat exceeds the critical risk, where one party has to give in due to the threat posed by another. As explained by Marc A. Levy, if the risk of standing firm falls below the critical risk, there are higher chances of the parties standing firm and continuing the conflict. While on the other hand, if the risk is above the critical risk, the parties will prefer to give in.⁴⁷ such as situation can be observed in the conflict

⁴⁵Levy above n 32

⁴⁶P and S are cardinal numbers explained by Sydnor and Diesing

⁴⁷Supra at 34

discussed in this paper. In a situation of prisoner's dilemma, the critical risk i.e. the endurance of the parties towards an unfavourable situation will be more than 100 percent, and hence the parties will prefer not submitting to the threat.

Even though Prisoner's Dilemma presents a solution to the deadlock in the present conflict, we might face a situation where the payoffs for competing is more than cooperating as explained by Ellsberg (1975), where⁴⁸ -

Critical Risk= $(T-R)/(T-P)$, where we take P the payoff for standing firm and S as the cost of not resisting the opponent i.e. the yield. According to Ellsberg, the cooperative payoff the player wish to achieve must exceed the value of the outcome that they wish to achieve. If the payoff of cooperation is lesser than their expectation, there are chances of the players remaining firm in their stand of non-cooperation.⁴⁹

Therefore, in conflicts the critical risk factor can be applied in strategically understanding the dynamics of conflict. While a classical Prisoner's Dilemma provides resolution with a space for peace, the critical risk factor provides an area where the varied dynamics of conflict can be analyzed to understand why conflicts continue in a deadlock, the primary reason being the weighing of options on defection and cooperation.

Conclusion

In the conflict analyzed in the paper, both the parties seem to be in a situation of Prisoner's Dilemma. The Pareto-optimal solution in the form of a widely accepted definition of 'indigenous' is being presented as a viable resolution in the present conflict. As discussed above, the base argument for the conflict rests upon the benefits that the Government gains by being a stakeholder in the conflict and in delaying it. Basing the strategies on this argument, a resolution can be arrived at through a proper negotiation, where each party agrees to come to a mutual understanding. Here, the Pareto-optimal is explained through three situations-

1. In the first situation the deadlock can end if both parties agree to sit down and solve the problem

⁴⁸Id 584

⁴⁹Id 585

2. The second situation would demand cooperation from both the Government and existing communities, who are important stakeholders in the conflict

3. In the last situation, the Pareto-optimal solution is achieved by agreeing to a unified definition of 'indigenous' in order to bring about inclusive developmental packages for the equitable upliftment of the communities in Assam.

The third strategy of resolution provides a feasible solution as this will bring down the demands from communities in future for ST status due to Government's negligence and inter-community marginalization.

The only way out of a conflict is to allow the cooperative payoff to be greater than the payoff that the parties will receive by standing firm. Thus, in case of conflicts in Assam, which are intertwined with the issues of land and identity, scattered developmental packages will not be feasible, as the cooperative payoff would be less than expected. Thus, a solution has to be reached where either the unfavourable outcome for the communities to endure is greater than the threat posed or where the payoff through cooperation is higher than the outcome that they expect.⁵⁰ The three player game provides us with a conclusion that such a game will always consist of a player who will be irrational, and therefore, the game will never reach a logical conclusion. The critical risk factor comes into play in such a case, not in providing a solution but in explaining the reason behind deadlocks in conflict, and in understanding dynamic interactions between players.

Keeping aside the theoretical perspective of game-theory, an attempt is being made towards bringing about constitutional safeguards for the people in the state. The task of etching out the constitutional safeguards is arduous, thus leaving the great legal minds to ponder about it. The consequences and the maximum utility of such an effort can only be examined, once the safeguards are being announced. Moreover, deviating from the theoretical model also help us to arrive at the same conclusion of ascribing a tangible definition of term 'indigenous' and the distribution of developmental packages related to it.

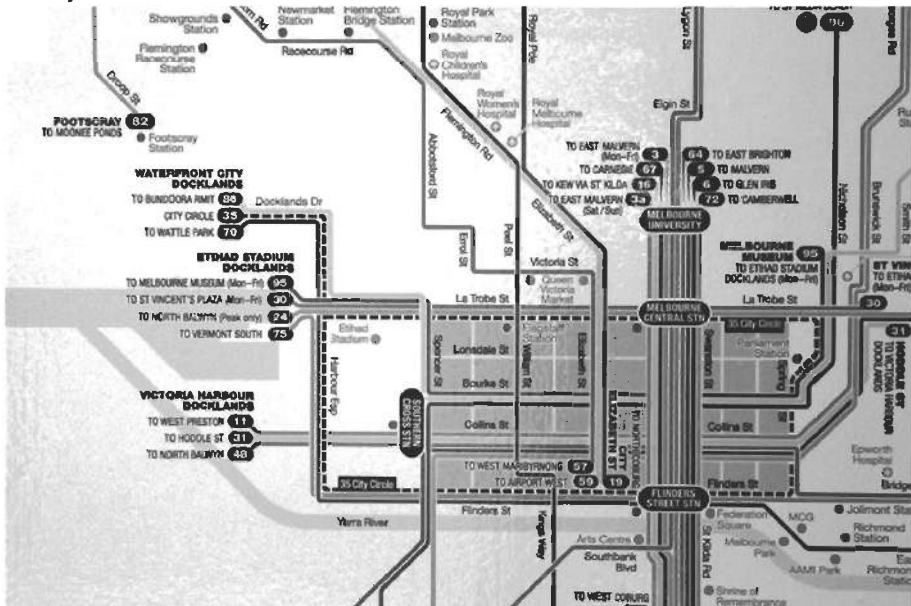
⁵⁰Levy above n 32

AT HOME IN THE WORLD! OF DISRUPTIONS TO DIALOGUES ON THE TRAMS OF MELBOURNE

Abantee Dutta

TRAM INSTRUCTIONS/ ROUTE MAP

Safety First!



Source: (https://railgallery.wongm.com/melbourne-tram-stops/F105_2764.jpg.html)

AT HOME IN THE WORLD! OF DISRUPTIONS TO DIALOGUES ON THE TRAMS OF MELBOURNE

I. A CAVEAT

Dear Reader,

I had intended to study the tram spaces of Melbourne as a site of dynamic intersection between culture and conflict as part of a coursework on Intercultural Dispute Resolution while pursuing my Master of Laws from the University of Melbourne, Australia. This desire to study spatial negotiations within the trams was triggered by a personal experience of the space as one of contestation and conflict. Intercultural differences, as I had encountered and experienced on the tram were at best tolerated, and at worse, discriminated and abused. I was therefore interested in studying the everyday lived urban experience of such an intercultural dialogue authentically, without any personal bias. The intention was to clarify the ruptures, if they existed and find ways to address them and in doing so contribute to intercultural scholarship.

As I embarked on this journey, I realized very early on in the process that there was no one linear narrative of intercultural dialogues that are encountered, experienced and lived within the tram space. There are multiple interpretations running parallel, converging and diverging, at times, depending particularly on the observer's cultural context and their starting points. Each perspective is partisan as much as it contributes to the truth of such spatial negotiations. I kept analyzing and abstracting the ideas of the research findings to build up a theoretically sound research argument. However, I never felt at home with the content. I realized that the abstraction of the observations and findings, in effect, had eroded the nuances, emotions and the lived experience of the conflict and as a result the analysis didn't seem authentic. I had to pause.

The pause was valuable. It clarified a fundamental understanding for me that intercultural conflicts cannot be analysed. They are complex, nuanced and layered with multiple perspectives, which needs to be unearthed and voiced. I

also realised that the process of writing the research paper itself had become a means to learn, unlearn and relearn the conflict, find ways to engage with the nuances and change tracks of the conversation. This process enabled a deeper understanding of intercultural conflicts and of their resolutions. The essay is therefore a sharing of journey itself, a ride through a conflict and the lessons that I derived from it.

Through a weaving of multiple narratives, the essay makes an exploration of the voices of disruptions and dialogues witnessed and experienced within the tram space. It is descriptive more than analytical giving a choice to the reader to derive his or her own interpretations and evaluations from the reading. In the description of the conflict, however, the paper illustrates and reaffirms three key learning's about intercultural conflicts that I derived from the process. Firstly, conflicts are complex and may not be resolved. However, the act of telling or voicing the conflict can be very empowering and enables 'a re-humanisation of the conflict facilitating a lessening of the violence and allowing the continuation of the conflict, but with lesser intensity'. I experienced it while undertaking this research on the tram. Secondly, metaphors, story telling, writing letters and pausing are effective in engaging with the conflict and exploring the terrain of others, which are otherwise inaccessible to grasp and/ or difficult to understand. The essay relies on these methodologies while exploring the disruptions and dialogues within the tram space. Thirdly, all intercultural conflicts like John Paul Lederach observed are relational. Therefore dismantling such conflicts through policies and the law are effective only when associated symbolic and relational interventions are made. Intercultural conflict resolution requires for facilitating engagement and mutual discovery. Such processes allow for the humanizing the other and enable the development of mutual understanding, empathy and trust. The dynamics of the tram space illustrates the silences on the symbolic and relational dimension of the existing Australian Government's policy on multiculturalism.

Authenticity comes from a single faithfulness: that to the ambiguity of experience. Its energy is to be found in how one event leads to another. Its mystery is not in the words but on the page.

-John Berger

Seeing comes before words...

But, there is also another sense in which seeing comes before words. It is seeing which establishes our place in the surrounding world; we explain that world with words, but words can never undo the fact that we are surrounded by it. The relation between what we see and what we know is never settled.

-John Berger

I trust you would understand the radical departures that the essay makes from a traditional format, both in content and in style. These detours were felt essential and necessary, in order keep the experience authentic and be true to the non-linearity of the research findings.

I have used the routes of the trams and the tracks as a metaphor in laying out the text for the essay. Travelling on the tram through the routes and tracks at different hours in the day facilitate a different experience of the city. Similarly, the routes and multiple tracks in the essay have been created to facilitate multiple ways of experiencing the dialogues and disruptions under study. Certain contents, thoughts and ideas are repeated like the repetitive passages on the tracks of the tram. The parallel narratives also resonate the parallel lives contained within the tram space, intersecting at times but predominantly occupying space independent, indifferent and in difference.

The essay will be presented in two main parallel tracks: Route No 1 (Towards a Research Paper) and 8 (Towards a Letter). As we tram through the reading, there will be other tracks that intersect, merge and split the narrative to unravel the nuances of the dialogues and the disruptions. There will be certain 'tram instructions' as you ride along. Do follow the instructions, as they are part of the text. The paper also offers some pauses and silences at designated traffic intersections.

Hope you enjoy the ride!

Regards,

Abantee

2. METHODOLOGY

Authenticity comes from a single faithfulness: that to the ambiguity of experience. Its energy is to be found in how one event leads to another. Its mystery is not in the words but on the page.

John Berger

The essay has drawn from my personal views and observations of living and commuting daily on the trams from July 2014 to August 2015. I have also relied upon the views and observations of few of my colleagues from the Law Masters Program, University of Melbourne. The observations, which includes both Australian and International perspectives have been valuable in framing the intercultural world of the trams. The comments and field notes that have been incorporated into the text have been done with the consent and approval of the individuals.

I have reflected on each of the comments made here and am mindful of the fact that each of our ways of seeing, perceiving and experiencing the trams is influenced to a large extent by our personal identities, our cultural backgrounds and experiences with the city of Melbourne and trams. However, this awareness itself has enabled a more reflective and critical approach of observing the dynamics of the tram space to offer some authentic and lived insights into intercultural dialogue and disruptions of trams.

PAUSE

A Tram Ritual

Stop No: 126
8:00 AM

Hail the tram
Doors Open
Board tram
Doors close
Tap on the Myki card
Hold on! Sudden brakes are
sometimes essential.

Enjoy your R(eading)IDE

PAUSE
Stop No. 5
Door Open.
Door Close.

INTRODUCTION

*Tracks running parallel.
Going forward.*

Home is where one starts from;
As we grow older the world
becomes stranger; the pattern more
complicated
Of dead and living.

T.S. Eliot

My country is the place where I can
cut a spear or make a spear thrower
without asking anyone.
A western desert man

*Place is security, space is freedom: we are
attached to the one and long for the other.
There is no place like home.
Yi Fu Tuan*

*Man does not relate to the world as
subject to object, as eye to painting; not
even as actor to stage set. Man and the
world are bound together like the snail
to its shell.*

Milan Kundera

Route 1

Towards a Research Paper

Many perceive home as a place of security and warmth.¹ It gives us a sense of belonging, defining our identities.² Academic literature on home has traditionally viewed home as an enclosed geographical space or a place infused with notions of ownership and family.³ However, scholars particularly anthropologists, have often contested such definitions, which limit the understanding of home to a fixed place.⁴ Anthropologists like Mary Douglas

¹Yi Tu Fuan, 'Space and Place' (University of Minnesota Press, 1977).

²Norman B. Tindale, 'Aboriginal Tribes of Australia' (University of California Press, 1974).

³Michael Jackson, 'At Home in the World' (Duke University Press, 1995); Joseph A Amato, 'Rethinking Homes: A Case for writing Local History' (University of California Press, 2002) <<http://www.jstor.org.ezp.lib.unimelb.edu.au/stable/10.1525/j.ctt1pn83r>>; Michael Dorris, 'Home' (Threepenny Review, 1993) <<http://www.jstor.org.ezp.lib.unimelb.edu.au/stable/4384210>>

⁴Michael Jackson, 'At Home in the World' (Duke University Press, 1995).

remind us thus that home is located in space, but not necessarily a fixed space.⁵ For her, home starts by bringing some space under control.⁶ Law recognizes and institutionalizes such private control of space through a framework, which enables individuals to call parts of space their private property.⁷ Home, evidently connotes different things to different people. Scholars have however unanimously observed that it is one of the most important and least recognized need of the human soul.⁸

Ours is an era of uprootedness.⁹ The emerging world order is witnessing an ever-increasing flow of people both within nations and internationally.¹⁰ Globalization has also shrunk the world into a global village facilitated by communication processes, which cut across national, political, linguistic, religious and economic boundaries.¹¹ While existing political and economic structures appear to conform to the new emerging world social order, cultural differences do not.¹² Such a world order characterized by diverse cultures manifests themselves in ongoing processes of interactions and encounters, modifying, challenging and shaping culture in every situation.¹³ The question of 'being at home' and 'of belonging' is therefore of greater urgency, than any other time in the history.¹⁴

Melbourne epitomizes a super diversified city inhabited by a broad range of culturally varied groups, differentiated by age, ethnicity, gender, residential

⁵Ibid.

⁶Ibid.

⁷Australian Government, Australian Law reform Commission, 'Property rights' <<https://www.alrc.gov.au/publications/common-law-right-3>>

⁸Ibid.

⁹Ibid.

¹⁰Amin Ash, 'Ethnicity and the multicultural city: living with diversity' (2002) *Environment and Planning*, 34, 959-980 ; Dirksmeier Peter, Ilse Helbrecht and Ulricke Mackrodt, 'Situational Places: Rethinking Geographies of Intercultural Interaction in Super Diverse Space' (2014) *Swedish Society for Anthropology and Geography*; Hopkins Liza, 'I feel myself to be a world citizen: negotiating Turkish and Alevi identity in Melbourne' (2011) *Journal of Study of Race, Nation and Culture*, 17:3, 443-456 <<http://dx.doi.org/10.1080/13504630.2011.558381> >

¹¹Ibid.

¹²Ibid.

¹³Ibid.

¹⁴See above n 4.

status and so forth.¹⁵ For this reason, Australia, particularly Melbourne, prides itself as being the multicultural capital of the world.¹⁶ The trams of Melbourne have stood witness to the evolution of the public and cultural life of Melbourne that has shaped its present day cosmopolitanism.¹⁷ It has therefore enjoyed a distinct presence in the cultural and public life of the city and is a microcosm of the urban experience of Melbourne.

This paper reflects on tram as a site where culture and conflict intersect to analyse the experiences of being at home in this world. How are these intercultural differences negotiated? What are the negotiations that create the sense of home and what are the disruptions that unsettle a sense of home? Using the metaphor of home, the paper analyses the strategies of action that people rely upon when brought into such a close, intimate encounter with the culturally diverse other.¹⁸ The central thesis of the paper is to discern authentically such multiple ways of seeing dialogues and disruptions. The notion of 'being at home in the world' is helpful for framing and thinking through some of the complexities posed by such dynamic and fluctuating

¹⁵Dirksmeier Peter, Ilse Helbrecht and Ulricke Mackrodt, 'Situational Places: Rethinking Geographies of Intercultural Interaction in Super Diverse Space' (2014) Swedish Society for Anthropology and Geography

¹⁶ABC News, 'Melbourne named world's most liveable city for the fourth year running, beating Adelaide, Sydney and Perth' (19 August 2014) <<http://www.abc.net.au/news/2014-08-19/melbourne-worlds-most-liveable-city-for-the-fourth-year-running/5681014>>; Also see, Traveller, 'Tokyo named world's most liveable city in Monocle 2015 Quality of Life Survey' (2 July 2015)<<http://www.traveller.com.au/tokyo-named-worlds-most-liveable-city-in-monocle-2015-quality-of-life-survey-gi3e4d>>

¹⁷For a history on the evolution of tram space, please see Culture Victoria, <<http://www.cv.vic.gov.au/stories/built-environment/melbourne-trams-step-aboard/reminiscences-of-cable-trams-in-melbourne/> <http://www.yarratrams.com.au/about-us/our-history/historic-documents/>> Hawthorne Tram Depot, <<http://www.hawthorntramdepot.org.au/about.htm>> Yarra Trams, <<http://yarratrams.com.au/media-centre/news/articles/2014/flashback-friday-the-early-years-of-tramway-football/>>; Culture Victoria, 'Introduction to Melbourne Trams' <<http://www.cv.vic.gov.au/stories/built-environment/melbourne-trams-step-aboard/introduction-to-melbourne-trams-step-aboard>>

¹⁸On metaphors, please see LeBaron Michelle and Venashri Pillay (Ed) *Conflict Across Cultures: A Unique Experience of Bridging Differences* (Intercultural Press, 2006), 111-135; LeBaron Michelle, *Bridging Troubled Waters* (Jossey Bass, 2002, First Edition) 218-249; LeBaron Michelle, *Bridging Cultural Conflicts: A New Approach For A Changing World* (Jossey Bass, 2003, First Edition), 184-186.

spaces. In doing so, however, the paper posits a process of self-reflection, curious observation, ongoing reflection and dialogue with others to create a vocabulary to fluently navigate through cultures and conflicts in action.¹⁹

Route 8

Towards a Letter

July 22, 2015

Law Library, Law Students Area

University of Melbourne

Dear Reader,

I have been preoccupied with the notion of home lately. Where is home, for someone like me, who is constantly moving across and returning to the boundaries of the familiar? In my conversations with my colleagues at the Law School, friends and family, I have made inquiries and collected a diverse understanding of definitions of home. These have varied across students, cultures, gender and age groups. Some of them talk of the Maoris and the Aboriginals, for whom home represents the land. My friend from Nigeria relates his experience of home to his ancestral village. For my parents, home is Guwahati, a place where they have lived and built a life together. Another friend says it's her room, her bed! For yet another, home is a space, which is quiet and calm, which require no false pretences.

As I have reflected on these many notions of home and the more I have thought of it, the more ambiguous the idea of home has become for me. Gaston Bachelard, in his book the 'Poetics of Space' notes that all really inhabited space bears the essence of the notion of home. With this understanding, I have come to observe that home, in the past 12 months for me, has been lived as a relationship, a harmonious tension. This notion of home has enacted itself, most significantly in the lived moments of encounter and relationship with the world, in the trams of Melbourne.

¹⁹On cultural fluency, LeBaron Michelle and Venashri Pillay (Ed) Conflict Across Cultures: A Unique Experience of Bridging Differences (Intercultural Press, 2006), 57-79.

There have been moments of shared sparks (dialogues) and skraps (disruptions) along the way. Both have contributed to initiate me towards a journey of cultural understanding, one that is reflective and in dialogue with others to arrive at an understanding of intercultural dynamics at play. I do realize that all our perceptions are partisan and influenced by our own cultural starting points. The letters will perhaps demonstrate and reflect some of these biases. In terms of the language itself, some choices have been deliberate, either to emphasise the tension, or stir certain emotions. Others may have been unconscious. For those unconscious lapses, I request for a 'soft landing'! This is an offering of my reflections. Do lend me your ears!

*Regards,
Abantee*

PAUSE.

Parallel Tracks intersecting around a bend to run parallel again.

Going forward.

Route 8 crossing over Route 1.

TRAM ENCOUNTERS

He departed with thoughts of home,

He departed with thoughts of home,

He departed towards another place.

-Honey Ant Men's Song

Route 8

Towards a Letter

July 23, 2015

Law Building

Law student Study Area

Dear Reader,

In my last letter, I mentioned that my understanding of home, as a lived harmonious tension had enacted itself most significantly within the tram space. Through this letter, I want to share with you the tram space itself, a few observations of an everyday commute, some shared sparks of lived, experienced and encountered moments in the tram.

I had never used trams as a mode of everyday transport before my arrival in Melbourne. I could have never imagined how significant and defining they would be for my time in Melbourne. These tram rides I have now come to treasure. They have taught me to be mindful of the present, relax while tensed and appreciate the nuances of bodies in space; the tapping of the anxious thumbs, the distance between palms holding onto to the rail and the gaze; inward or outward!

For the past 12 months, I have been taking either Route 1 or 8, everyday to transport myself to and from the University. Even otherwise, trams have been the most convenient way for me to access the city. Unlike some of my

friends, I have enjoyed the steady and slow pace of the tram. This has been a complete contrast to fast moving, relentless pace of Delhi traffic that I was so accustomed to. It almost felt like a necessary pause. The trams truly represent what is quintessential Melbourne: a charming contradiction, traditional yet contemporary, artsy yet cosmopolitan.

The tram rides have been interesting, to say the least! Day in and day out, I have seen life rush in and rush out, with every opening and closing of the doors. The tram sets a particular rhythm deliberately punctuating the pace of the urban city life. Each journey brings with it an enactment of simple narratives weaving together urban stories, departing from different points and arriving at different stops with infinite spaces of time between the two. The city becomes somewhat vulnerable to the gaze of the tram goer, as the moving tram facilitates a pace where every facet of life is noticed, absorbed and read as seen from the moving tram.

The tracks have left their trace on my imagination. They symbolize to me traces and repetitive refrains of the monotony of life, familiar paths and routes of connection and divergence weaved together by a network of human interactions and encounters.

I don't know if I could call the tram space formal. There is almost a ritualistic mode of operation and a meditative presence to the space. The tram usually offers a quiet space facilitating the transition from home to work. It also provides space for reflection for what lies ahead or what has passed. The silence itself can be of varying quality, depending on the hour of the day or night. Usually the atmosphere is one of contained silence in the morning, ripe with energy and possibilities. The morning images of the people on the tram are generally ones reading a book, a newspaper, checking emails or simply being reflective. Towards the evening, the mood bears a distinct character. It is usually when people are returning home either in groups or alone. The space embodies a relaxed and more informal tone. I hear people make casual conversations about the day, cracking a joke, discussing a game of footy that they must have just watched or simply resting with eyes closed! In the last few months, I have learnt to avoid taking trams between 8:45- 9:00 AM and 5:00PM. They are peak hours, on my route and people are packed in like sardines in a can! It is very uncomfortable, almost impossible to navigate through the tram space

without hurting anyone. The best time according to some and worse time for others are the afternoon hours when the school kids return home. The energy in the tram is palpable, the silence shattered!

I can definitely say that there is a certain culture, etiquette, of being on a tram. Its almost like there are rituals of communication and recognition that take place within this semi private public space. Such cues are more of an acquired culture rather than taught. It requires keen observation but not obvious staring, because that may be offensive to some! Now, after 12 months of tramping, I can almost predict accurately a novice from a regular. It difficult to discern what marks the difference. It is perhaps body language, a level of confidence acquired due to the familiarity of the space, the manner they tap on, how they occupy space and/ or the tentative gaze.

Trams are usually uneventful. However, they sometimes bring moments of surprises too! The other day, just a stop before I usually get off to get to Law school, I heard a sweet uttering saying 'Bye Bye!' It was a small baby saying goodbye from within the tram, to someone who I guessed was his father. He muttered once again, an innocent 'Bye bye'. The rupture caused to the solemn silence of the tram space by those sweet utterings was palpable. Almost instinctively and spontaneously it brought a smile on every face. Traces of the smile lingered on long after, atleast for me, as I got off the tram at the next stop and made my way to law school! I rarely chance upon such moments, but whenever I do (and thankfully at definite intervals) is life affirming!

Regards,
Abantee

*PAUSE: Traffic Intersection
Route 64
Towards Field Notes*

*Different route
A Different Perspective*

To read Route 64, refer to Appendix I

Tracks running parallel.

Going Forward

Route 1

Route 1

Towards a Research Paper

Postulating the trams as a site of intercultural conflict, this section will focus on few interactions within the tram space; identify the individual as one with different cultural starting points and frame the interactions between such individuals.

Arguably trams are primarily intended to transport people and designed as *people movers*. However, with their unique presence in the public and cultural life of Melbourne, the trams also create an abstract contemporary public space as a site of exchange where the public comes alive.²⁰ This space of the public is a discursive realm experienced through intercultural negotiations, often temporary and transient, repeatedly re-created with each new encounter.²¹

Such encounters involve bodily practices and interact with variables such as structures, positions, perceptions and practices of the interacting individuals creating distinctive individual and interpersonal experiences.²² At best, everyday interactions between strangers shape a domestic cosmopolitanism, and at worse, snowballs into disrespect, or even intolerance that may arise as a result of such interactions.²³ The contained environment of the tram bears witness to many such interactions and some instances of these are discussed in the following section.

A. Who are the Tram Goers?

An accurate appraisal of the nature of interactions necessitates an understanding of the nature of the tram goer. This research paper frames the urban tram goer as an individual with different cultural starting

²⁰See above n 17.

²¹For Tram Tracks as a Metaphor, please see Michael Douglas, 'Tracking a tram way of knowing: poetic search and speculative design' < http://www.mickdouglas.net/TrackingTramwayKnowing_MickDouglas.pdf >; also see Mike Douglas, 'Tracking Vehicle', < <http://www.tramtactic.net/archives/ROUTE%201.pdf> >

²²see above n 15.

²³Ibid.

points.²⁴ This premise has provided the foundation for understanding the intercultural interactions within the tram space, which are produced, reproduced, represented, contested and humanized.

Identity formation within racial and ethnic lines are reinforced by terms such as Asians, Third World Looking People, Whites, Blacks, Hispanics and within the tram space operate as a way of identifying and categorizing individuals.²⁵ Arguably, mapping based on ethnic and racial groups are inherently problematic. The present day world order characterized by an increasing international interaction both at the individual and organizational level for example, to the increasing international mobility of students, internet, tourism, world trade,

media images or non-governmental organizations facilitate the creation of cross cultural, multiple and shifting identities of individuals, which cannot be reduced to a monochromatic racial frame of belonging.²⁶ Racial framing of identities undermine the inherent complex cultural hybridity of such individuals stereotyping them into eastern and western markers of identity through language, bodily expression, habits, racial and ethnic labeling.²⁷ As such for this paper, the primary source of cultural diversity in the tram space is the individual.

According to Foucault, individuals function as 'vehicles of power' that negotiate status, culture and power.²⁸ Within the tram space, every intercultural urban encounter is an interaction with such a Foucauldian individual, negotiating

²⁴For cultural starting points, please see LeBaron Michelle and Venashri Pillay (Ed) *Conflict Across Cultures: A Unique Experience of Bridging Differences* (Intercultural Press, 2006), 25-55,

²⁵Ibid. Also see Schorch Phillip, 'Experiencing Differences and negotiating prejudices at the Immigration Museum Melbourne' (2015) *International Journal of Heritage Studies* 21:1, 46-64 <<http://dx.doi.org/10.1080/13527258.2013.877955>> Schorch Phillip, Jessica Walton, Naomi Priest & Yin Paradies, 'Encountering the 'Other': Interpreting Student Experiences of a Multi Sensory Museum Experience' (2015) *Journal of Intercultural Studies*, 36:2, 221-240 <<http://dx.doi.org.10.1080/07256868.2015.1008432>>

²⁶See above n 15.

²⁷Amin Ash, 'Ethnicity and the multicultural city: living with diversity' (2002) *Environment and Planning*, 34, 959-980

²⁸See above n 15.

power and culture.²⁹ Such individuals also have unique cultural starting points, which are difficult to discern within the silent space of the tram, which challenges interactions and a default mapping of individuals based on racial and ethnic frames.

PAUSE.

²⁹Ibid.

B. Tram Encounters

Trams exist as networks in the public transportation system in Melbourne in a network of routes facilitating passages through the city. The field visits, personal observations and discussions uncover the tram space as a dynamic, constant flow of encounters between individual strangers and situations that emerge momentarily and change in accordance with the interactions of the strangers.³⁰ In that sense, the tram space can be conceptualized as an unstable space where the dynamics of the encounter is dependent upon the variables affecting the change.³¹ For instance, the tram experience immediately after a close of a footy match draws in a cross section of population facilitating an urban informality transforming the otherwise solemn, formal space into an intense, engaging and interactive area.³²

Tram interactions and dynamics also vary depending on the geographical location and neighbourhood that the tram passes through. For instance, tram dynamics around the university where the constituency of tram goers is largely students offer an informal and relaxed travel with the possibility of increased interactions between individuals, as opposed to the route that goes through the Parliament, where the ambience is strictly formal and interaction is reduced to polite and measured exchanges.

It is important to emphasise that behavioural interpretations of spatial negotiations of tram spaces between individuals are subject to the interpretations by those observing it. Such observations being personal are empirically difficult to verify. I view the daily encounter of individuals within the tram space as a ritualistic encounter, which is not an exception, but a daily occurrence. Such interactions with strangers take place within frames, in which the respective range of possible reactions is limited.³³ An encounter with a specific stranger is predominantly a single occurrence.³⁴ Social obligations between the individuals encountering each other are minimal.³⁵

³⁰See above n 15.

³¹Ibid.

³²Hackenbroch Kirsten, 'Urban Informality and Negotiated Space' (2011) *The Planning Review*, 47:187, 59-69 <<http://dx.doi.org/10.1080/02513625.2011.10654019>>

³³See above n 15

³⁴Ibid.

³⁵Ibid.

Viewing from the outside, routines from the perspectives of the individuals in the way they inhabit space and mark personal space link their experiences to the notion of being at home within a tram space.³⁶ It involves a ritualized strategy of routinely marking territory. Some individuals lay bags in empty seats, while others use laptops, coffee cups, books, iphones to demarcate the space immediately surrounding them.³⁷ Some view such acts as strategies for disengagement, from home or from the immediate surroundings.³⁸ Arguably, such actions never have the impact of home as one located in space, but create notions of home by bringing some space under one's control, as claiming your own space and right to privacy by the use of headphones, or by reading a book.³⁹ Such practices of creating boundaries or marking territory may be small, inconspicuous and even trivial but they are significant as they enable individuals to warm the otherwise cold and sterile space.⁴⁰ Such claiming of public space and to personalize may be seen as an affective act - a ritualized practice that emotionally connects the individual to the newly acquired space of the tram seat.⁴¹ In creating these boundaries, however, such acts also implicitly define everyone and everything else in relation to the immediate surrounding of incidental or peripheral interest.⁴² Such symbolic boundaries creating a notion of home by default ensures exclusive access to space only for known individuals.⁴³ Scholars have demonstrated empirically that in the encounter of strangers determining who is a stranger and who is not in a contact situation such as the tram space constitutes an important part of the negotiations.⁴⁴ The argument gets further reinforced through the metaphor of home, where strangers interact only with those individuals who seem familiar and with

³⁶Corvellec Herve & Tom O' Dell, 'Demanding Hosts and Ungrateful Guests- the everyday drama of public transportation in three acts and academic prose' (2012) *Culture and Organisation*, 18:3, 231-249 <<http://dx.doi.org/10.1080/14759551.2011.634195>>

³⁷Ibid.

³⁸See Appendix I

³⁹Ibid.

⁴⁰Ibid.

⁴¹Ibid.

⁴²Ibid.

⁴³Ali Madanipour, 'Public and Private Spaces of the City' (Routledge, 2003)

⁴⁴See above n 15.

whom they feel at home. Arguably, while the notion of home creates a sense of belonging, it also provokes territorial behavior, giving power to the individual to control the space for his personal use and in keeping others out.⁴⁵ Negotiations with someone perceived as the outsider may appear to be an invasion of privacy. Such assertions manifest as disruptions within the tram space, as will be demonstrated in the following section. Such disruptions cause chaotic, uncertain and alienating experiences for the individuals concerned, unsettling and disturbing a sense of home, as will be demonstrated in the following sections.

SERVICE DISRUPTION caused due to an accident.

⁴⁵See above n 43.

DISRUPTIONS

Tracks running parallel.

Going forward.

Route 1 continuing.

Most serious thought in our times *Ubi bene, ibi patria*
struggles with the feeling of *Your home is where they treat you well*
homelessness. *Latin proverb*

Susan Sontag

Route 1

Towards a Research Paper

Disruption, defined in the Oxford Dictionary, means an interruption of an event, activity or process causing a disturbance or problem.⁴⁶ The term disruption, in tram parlance refers to service interruptions caused predominantly due to tram improvement work, political rallies, accidents to mention a few.⁴⁷ Within the context of this paper, the term is used to refer to relational conflicts arising out of encountering difference within and between others, which challenge issues of identity, acceptance and belonging, rights and liberties thus becoming a subject of intercultural conflict.⁴⁸

PAUSE

⁴⁶Oxford Dictionary, 'Disruption' < <http://www.oxforddictionaries.com/definition/english/disruption>>

⁴⁷Yarra Trams, 'Latest Service Changes' < <http://www.yarratrams.com.au/using-trams/service-changes/latest-service-changes/>>

⁴⁸LeBaron Michelle and Venashri Pillay (Ed) Conflict Across Cultures: A Unique Experience of Bridging Differences (Intercultural Press, 2006), 12.

DISRUPTION DUE TO RELATIONAL CONFLICT

TRAM INSTRUCTION

PLEASE CLICK on the link below and **VIEW** the tram **DISRUPTION** from each perspective as provided.

<http://museumvictoria.com.au/immigrationmuseum/discoverycentre/identity/people-like-them/whos-next-door/>

Merging of tracks.

Route No. 8
Towards a Letter

July 24, 2015

Dear Reader,

The video link gives you an understanding of a kind of disruption that exist within the tram space. The first time I experienced disruption, I was in a state of shock. It caught me unawares. The fact that I could be judged and subject to attack based on the colour of my skin seemed improbable. I had dismissed and disregarded the concerns of my well-wishers, while applying to the University of Melbourne as irrelevant. Melbourne was after all the multicultural capital of the world and has been consistently recognized so by the international media!

The wound of the insult and humiliation took a long time to heal. The memory of the experience has however insidiously settled itself in the toes of my feet. I am aware now that my toes, since then are always tensed. I need to consciously stretch them to breathe, but their default position is being crunched up.

Metaphorically speaking, I was colour blind till I had this overt racial encounter. Since then, I have become

hyper conscious and aware of my colour! Within the tram space, I started feeling as though I was drowning in a sea of whiteness. Every gaze, immediately after the incident and reinforced the fact that I was different. I know that not all gazes are differential. Some are welcoming too. I have learnt to tell the difference. Such a distinction can only be felt and not articulated in words. I also started noticing other colours around me. They invariably stand out! I have unconsciously started acknowledging their presence within the tram space. It is almost a subtle acknowledgement of assurance and solidarity, exchanged in the locking of eyes or a simple smile.

I have learnt from the disruptions. I am much more present now than I was in my initial days. I note the tram number, my phone is always fully charged before hopping on to the tram, I record the time of travel, I mostly sit upfront close to the driver and avoid spaces

which may invite trouble. I never take a tram after 11:30PM, even though it means taking a cab back home. I am on guard! I feel a harmonious tension with my surroundings. I am at home.

Tracks Intersecting.

Route 8 intersects Route 70.

Route 70

Towards a Journal Entry

I looked up the law today. Australia has obligations to implement protections against racial hatred under the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In furtherance of its obligations, Section 18C and 18D of the Racial Discrimination Act 1975 (Cth) makes it explicitly unlawful for someone to commit an act that is reasonably likely to offend, insult, humiliate or intimidate because of their race or ethnicity. Such provisions against racial violence were introduced in response to recommendations of major inquiries including the National Inquiry into Racial Violence and the Royal Commission into Aboriginal Deaths in Custody, which found that racial hatred and vilification can cause emotional and psychological harm to their targets, and reinforce other forms of discrimination and exclusion.

In hindsight now, I can reasonably say that the action of the other, seeking to intimidate me while I was speaking on the phone in my vernacular language, naming me a 'slut' in seeing me in my traditional dress, obviously qualify as breaches under the law. This was an extreme act that had happened on the tram, I was told. I should have captured it on my mobile, some said. 'It would go viral on youtube/ facebook and the bogan would be brought to task!' At that moment, I was too scared, numb and shocked to act, react and respond. I stopped thinking on my feet. My housemates advised me to report. I didn't. The realization sunk in. I realized for the first time in my life that I was different. I am brown and a minority in Melbourne.

Since then, I have spoken to many friends and colleagues, both yellow, brown, black and white! My white counterparts, invariably, have never experienced any such breaches. Infact, some of them empathetically acknowledge the so-called white privilege, which enables their seamless and smooth integration into the cultural and social fabric of Melbourne. They actually feel quite at home! My fellow browns are another story! Some of them, who are here to get a permanent residency, have bigger battles to fight. Racial vilification is therefore tolerated. In fact, it is not considered a topic of conversation or even something that needs to be addressed. Such discussions appear to interfere with their need to assimilate with the multicultural fabric of Melbourne. They are here to build a home! Others on transit, like me, discuss such concerns only to make peace with such violence and move on. This is not our home anyways! My black friends are exceptional. They have studied the tram network in so much detail that they can actually point out the routes where such discrimination is rampant, others, which are completely sanitized (of racial violence) and the rest where such instances occur intermittently. When one of our white friends commented of never having encountered or witnessed any such act, he was advised to travel on route 109. Oh you will meet and be entertained by a lot of bogans there! For my black counterparts, home is anywhere but here. My friends from the Latin America noted that they don't experience such perceived acts of violence explicitly. As one of them innocently pointed out, maybe because I don't quite look like an immigrant! The feel discriminated and excluded only because of the linguistic barrier. So on the tram they are oblivious to the undercurrents.

Route 8 continues.***Towards a Letter***

Letter contd.

The disruptions are quite frequent. I have witnessed it often enough and reported once to the tram driver. The tram driver heard me patiently and asked me to write a complaint. I never did. However, being witness to such events, I unconsciously transported this viewing into all other spaces that I inhabited, such as the University, cafes, restaurants. I started witnessing the world through a coloured lens. I had fallen into the trap of automatic ethnocentricity. I am aware now.

However, having that awareness all such experiences has stirred a great deal of confusion. The overt acts of someone yelling at a perceived immigrant on the tram space asking them to 'go back to where you came from' are obvious to recognize. But few expressions of racism are difficult to discern as they are subtle and lend

themselves to multiple interpretations and explanations, depending on the observer's cultural starting points. Instances such as why a seat next to an Asian or a coloured person stays vacant for long intervals? In our discussions, a very honest disclosure made by my Australian colleague was that they would never notice such subtleties, but the same appear to be very obvious to my Nigerian friend. To others these are matters of personal preference and tend to be dismissed as trivial. Which interpretation is legitimate? When and how do I attribute any meaning into such an omission? Behind what is said and done are deliberate boundaries being created to define who belongs and who doesn't? Are these not conflicts? Conflicts, which record a clash of culture and perceptions?

*Tracks splitting into Route 1 and 8.
Route 1 running parallel to Route 8.*

Route 1 Towards a Research Paper

Scholars suggest that when whiteness becomes the line of demarcation, an exclusive marker and a cause of disruption for others stirring feelings of exclusion, the others intuitively transform into strategies for handling such otherness and a reason to create ethnic enclaves or enclaves of support.⁴⁹ Within the tram space such identity enclaves are seen to emerge, even though temporarily, when immigrants from similar or different backgrounds group together to create some kind of counterbalance to whiteness.⁵⁰ Are such coalitions/enclaves necessary and desirable for intercultural dispute resolution?

Route 8 Towards a Letter

The metaphor of home becomes quite instrumental in understanding the behavior of the other. Like me or any other perceived outsider, we are perhaps seen as trespassing a part of his/ her life, a space that is perceived as a private under personal control. Viewed thus, the space offers a sense of belonging and freedom of choice for individuals to exclude ones not perceived as insiders. This in turn then manifests itself into aggressive and territorial behavior, which the law recognizes as racial discrimination. Viewed thus, is it enough to criminalise such behavior? Is the law adequate to effectively meet the needs of all and reconcile differences or does it instigate more disruptions and backlash?

Further, when the perceived outsiders, who through the force of others, are unable to exert their levels of control over their 'home', it becomes

⁴⁹Ibid. Also see Schorch Phillip, 'Experiencing Differences and negotiating prejudices at the Immigration Museum Melbourne' (2015) *International Journal of Heritage Studies* 21:1, 46-64 <<http://dx.doi.org/10.1080/13527258.2013.877955>>

⁵⁰Ibid.

a site of conflict; making a few homeless, deprived of exclusive access to space as opposed to others who contest over the control of space, which is limited anyways. The tram situation reinforces that intercultural conflicts are relational and the nuances

complex. The law by itself is inadequate, what symbolic interventions are to be made along with the legislations to account for the mutual needs of the perceived insiders and outsiders?

*Regards,
Abantee*

RE-IMAGINING THE CONFLICT

*I don't really know what happened.
If one wished to be solemn, it could be said that I had found my landscape,
my real home.
-Ingmar Bergman*

Route 1

Towards a Research Paper

The aforesaid section illustrates that the tram space is a public space choreographed by society, where the rules of engagement are negotiated among users and symbolic and cultural meanings are expressed in the constitution of that space.⁵¹ Does the constitution of the tram space reflect the way the larger society is organized? How are these urban everyday lived experiences reflect on the commit of the Australian Government to multiculturalism?

⁵¹See above n 32.

Route 1 intersects Route 12

Route No 12

Towards Research Notes on Policy

Australia has an official policy on multiculturalism. The policy affirms an unwavering commitment of the Government of Australia to enhance respect and support for cultural, religious and linguistic diversity. The policy acknowledges the benefits and potential that cultural diversity serves and endorses that government services and programs to be responsive to the needs of the culturally diverse communities. The policy reaffirms and declares as

'that the Australian Government will act to promote understanding and acceptance while responding to expressions of intolerance and discrimination with strength and where necessary with the force of law.'

Scholars such as Ghassan Hage, have been critical of the Australian model of multiculturalism. For him, those who position themselves as 'multicultural' and 'anti-racists' are merely arraying a more sophisticated fiction of white supremacy, because suppressed under the language of tolerance and positive action for immigrants, according to him, is a benign white government. He argues that the (non-White) immigrants despite their Australian nationality are placed in a space that is not naturally theirs and others determine their status as citizens. Infact, Hage suggests that the nationalist practice of inclusion are a mere rhetoric and manifests itself in the White backlash against state multi-culturalism and immigration.

It has been acknowledged by members of the Government, law enforcement and human rights officials that racism and conduct motivated by racial or religious hatred is a daily experience for too many Victorians and can manifests itself from low level incidents, such as offensive gestures to name calling to physical assaults. A research of the Human Rights Commission into the Victorian experiences of racism however informs that reporting on casual or overt acts of racism are usually low in number and only few progress to becoming actual complaints. Failure to respond to incidents of racism therefore facilitates an environment where such behavior gets tolerated, replicated and escalated. A perusal of the website of the Human Rights Commission website on recent complaints of any incident of racial conduct within the tram space displayed no result.

*Tracks Splitting***Route No 1****Towards a Research Paper**

The narrative nevertheless reminds us through the disruptions witnessed that there are multiple ways of seeing, being and doing in the world.⁵² Intercultural disruptions within the tram space may be perceived as simple misunderstandings about the blank gaze of the other or as complex as dehumanizing of others as in cases of a racial abuse. If so, what might be the routes to improving relationships and productively addressing such disruptions? How can we re imagine of conflicts as sites of connection?

Intercultural scholars offer a four-way framework of understanding and navigating through intercultural conflict such as the present one.⁵³ The map is

centered in a relational view of the conflict.⁵⁴ By creating ways to understand and address personal, cultural and social norms and expectations, the map shows ways to re imagine conflicting relationships.⁵⁵ Depicted as circles to symbolize its continuous, non-linear nature, the map includes four parts such as preparation, discovery, creation and rejuvenation.⁵⁶ Preparation involves understanding the webs of relationships and considering ways of bringing people together across differences.⁵⁷ Discovery deepens this inquiry as we come to see how the past, present and future leave their traces on our relationships.⁵⁸ Creating involves coming together to strengthen relationships and sustaining

⁵²Berger John, 'Ways of Seeing' (Penguin,)

⁵³LeBaron Michelle and Venashri Pillay (Ed) *Conflict Across Cultures: A Unique Experience of Bridging Differences* (Intercultural Press, 2006), 137-181.

⁵⁴Ibid.

⁵⁵Ibid.

⁵⁶Ibid.

⁵⁷Ibid.

⁵⁸Ibid.

relationships through ongoing constructive engagement.⁵⁹ At the centre of the circle is relationship.⁶⁰

The history of trams and the evolution of its culture suggest a tradition where trams created a vibrant public social space, where relationships were at the heart of every interaction.⁶¹ When analysed through the four-way framework, it is not difficult to discern that the trams of the past employed a creative engagement of the people to navigate their way through the public space of Melbourne. They were not simply people movers. This was evident in the design of the open tram space, the size of the cars, the seating design and the role played by the conductors and tram drivers.⁶² With relationships at the centre of their philosophy and

values, the tram space was prepared, discovered, created and rejuvenated to address differences.⁶³

Some scholars attribute the perceived decline of the public space to the processes such as privatization, regulation and surveillance.⁶⁴ Such arguments can be transported to within the tram space where increased privatization has by default created abstract contested spaces where opposition, confrontation, resistance and subversion are played out over 'the right to space.'⁶⁵ Such interactions between the management and the individuals; and within themselves are seeped with power relations where particular social groups can be tolerated, regulated, encouraged and sometimes excluded from such spaces depending on the degree to which they are considered to belong to the space.⁶⁶

⁵⁹Ibid.

⁶⁰Ibid.

⁶¹See above n 17.

⁶²Ibid, Also see Wilson Randall and Dale Budd, *The Melbourne Tram Book* (University of New South Wales Press Ltd, 2014, Third Edition)

⁶³Ibid.

⁶⁴See above n 36.

⁶⁵Ibid.

⁶⁶Ibid.

*Intersection**Route 1 merges with Route 96***Towards Route 96**

To
The Management
Public Transport Victoria
Date: July 26, 2015

Subject: Feedback as part of the 'Help plan your future tram services'

My name is Abantee Dutta. I am a student at the University of Melbourne and have been travelling on Route No 1 and/or 8 everyday, for the last 12 months. I noticed one of the green pamphlets on the tram inviting feedback and information from tram travellers to improve future tram services.

The trams have been my sole mode of transport in Melbourne and I have mostly enjoyed my rides on the trams. I understand there is a promise for better frequencies during peak hours and improved accessibility with low floor access trams. Such changes will be surely be appreciated by the travellers in my routes, especially introducing low floor access tramcars as our regular ones which run on Route No. 1 are difficult to access by parents with prams and completely exclude travellers who are differently abled, physically.

In India, the Australian democracy is appreciated as a democracy of manners! Large part of this can be attributed to cricketers such as Sir Don Bradman, Steve Waugh to name a few. But my recent experiences here have unfortunately testified that these are ideals that are believed by some and embodied by even fewer, at least on the tram. You seem to share the same understanding, which is perhaps the main motivation behind introducing a product, in the form of an app, to promote tram etiquette. It has caused quite a stir amongst tram goers. My concerns however are a little different. You must be aware of the recent Anti Immigration rallies that disrupted

service lines around the Parliament. I regret to inform you that such rallies occur, at frequent intervals, within the tram space.

Within this background, I invite you to view the tram etiquette app. The app shows an Indian woman talking on the phone, an Asian student with a backpack as illustrative of the behaviours that the app is trying to regulate. There is perhaps a need to reinforce the tram culture that does not disrupt or disturb the commute of the other and the new comers may need to be inducted into the tram culture. However, there is another behavior that is completely absent from this narrative. It is that of a white man/ woman engaging in a verbal assault with so called immigrants as well as indulging in acts of casual racism, which are frequent on routes such as 1, 8 and 109. If tram etiquette is what is sought to being promoted, such behavior needs to be highlighted and condemned as others in the narrative.

The Australian government has pledged and endorsed an unwavering commitment towards supporting cultural and linguistic diversity. In promoting an app of this nature, sends out conflicting cultural signals and reinforces existing stereotypes and strengthens faultlines that exist within the tram space. Further, by not explicitly regulating the white racist attacks on perceived immigrants, the app in effect, legitimizes, tolerates and encourages such etiquette, which runs contrary to basic civic etiquette as well as the policy and law of the country.

From your perspective, I reckon, the app is trying to abstract and promote behavior that does not offend or disturb the average tramgoer. I understand that it must be viewed impersonally. The app will perhaps attain its desired objective of promoting tram etiquette. In doing so, should such an initiative exclude behavior and hence legitimize actions, which undermine the official State policy of Australia on multiculturalism and a breach under the law? I would hope not.

Infact, I would imagine the tram, with its history and tradition to rather set an example through its policies and practices to promote behavior, which facilitate intercultural dialogues and reaffirms the commitment of Australia to multiculturalism. Small symbolic gestures travel a long way in building relations and dispelling mistrust and miscommunication. It is therefore my urge to reconsider the narrative of the app and create a product which balances

the need for maintaining 'civility' within the tram space without reinforcing stereotypes about a particular tram constituency, stifling minority identity and a fair narrative of all such behavior that needs to be avoided. My belief is that this will facilitate the improvement of relational quality between diverse social groups, promote better attitude amongst individuals without becoming a case of minority cultural assimilation, white hegemony and conformity.

Regards,
Abantee

Route I contd. Towards a Research Paper

Arguably, the tram spaces have transformed into segregated, hierarchically structured spaces as evident from their design that enable encounters with difference between individuals of diverse culture groups; at the same time diminish the possibility of encounters due to the increasing privatization of the formerly public spaces.⁶⁷ Perceived through the lens of home, the privatized tram space reflects the modern day home, detached houses and flats, nuclear family separated from the overall society with

hierarchical stratification created through separation of servants from masters, children from parents, women from men and visitors from family.⁶⁸ The discomfort of law and policy to interfere within the tram space is akin to hesitations similar to regulating private spaces such as home.⁶⁹ This however, is no excuse for not managing the racial encounters or failing to recognize the equal rights of individuals repressing minority cultures to their right to space.

⁶⁷Ibid.

⁶⁸See above n 43.

⁶⁹Ibid.

Intersection

Route No. 70

Dear Tram Drivers,

I recently picked up a pamphlet on the tram, which called for suggestions from tram goers on the future of the tram services. I reckon you were witness to the rallies that erupted in the city last weekend. The trams were the ones, which were badly disrupted due to the rallies. The rally was a march to the Parliament by two lobby groups, one for an Anti Immigration position and the other For Immigration. I don't know the situation before, but since my arrival in July 2014, such clashes have been escalating and now it seems to have reached a breaking point for the Immigrations who were otherwise tolerant.

I see the tram space facilitate a daily encounter between differences. Such encounters because of their personal and intimate nature create opportunities for humanizing the other and stir an empathy that is fundamental to addressing an intercultural conflict of this nature. I see you as an important stakeholder in this facilitation. Reading your testimonials and the history of the tram culture, I understand that the tram space is home for you and the extended community your family. I have noticed such camaraderie between the tram drivers, the inspectors where values of cohesion, harmony, brotherhood tie you together.

It is for these values that you embody that reinforced my belief that you are an important stakeholder and interlocutor in the ensuing conflict, both within and outside the tram space. Do you see the tram as a possible site of connection, empathy and humanized encounters: traces of which remind us of a not so distant past? In routes such as I or 8, where the old trams still ply, occasionally there is a return of that urban informality by a smart witty comment on the part of the tram driver, which cuts through the formal ambience and gets everyone talking and laughing! But that has only happened to me once in 12 months of travelling everyday! Tram rides perhaps would feel more at home for me if there were more such good days!

*Regards,
Abantee*

PAUSE.

CONCLUSION

*And the end of all our exploring
Will be to arrive where we started
And know the place for the first time.
T.S. Eliot*

Route No 1 Towards Research Paper

The analysis suggests that the disruptions and intercultural conflict and their resolution are fundamentally linked to the how the conflict, like the tram space is imagined, conceived, designed, constituted and perceived.⁷⁰ The research also reiterates that the tram space is not merely a transportative space but also facilitates an abstract space in which differences are formed, reproduced and contested.⁷¹ The daily encounters with difference

evidently do not by themselves facilitate cultural dialogue and exchange.⁷² Infact, it can strengthen group animosities and identities, reinforce cultural stereotypes and ethnic practices that can influence the world outside the tram space and vice versa.⁷³ Such a framing, however, also opens the possibility where tram by themselves can be reimaged as transformative spaces, where values such as mutuality, respect and humaneness can be reinforced, through design and practice that transports such experiences to the world outside the tram and create meaningful dialogues between individuals.⁷⁴ In doing so, stakeholders such as tram drivers, tram management need to be part of

⁷⁰See above n 53; Also see above n 49; Schorch Phillip, Jessica Walton, Naomi Priest & Yin Paradies, 'Encountering the 'Other': Interpreting Student Experiences of a Multi Sensory Museum Experience' (2015) *Journal of Intercultural Studies*, 36:2, 221-240 <<http://dx.doi.org.10.1080/07256868.2015.1008432>>

⁷¹Ibid.

⁷²Ibid.

⁷³Ibid.

⁷⁴An instance of curating a transformative space is reflected in the Immigration Museum, where visitors are given an experiential viewing of the other. Please see Schorch Phillip, Jessica Walton, Naomi Priest & Yin Paradies, 'Encountering the 'Other': Interpreting Student Experiences of a Multi Sensory Museum Experience' (2015) *Journal of Intercultural Studies*, 36:2, 221-240 <<http://dx.doi.org.10.1080/07256868.2015.1008432>>; Also above n 49.

the dialogue apart from those in conflict and triggers behind the conflict and those encouraging it need to be addressed.⁷⁵ In re-imagining a resolution for an intercultural conflict such as one of the tram space, emphasis needs to be placed in facilitating encounters, which question understandings of empowerment, rights, ownership, property, citizenships and belonging. Such re-imagination would arguably shape identities, disrupt fixed cultural assumptions through exchange and enable living with diversity through constant negotiations.⁷⁶ Such a reimagining is felt urgent for the tram space for them to reconstruct an authentic integrated intercultural fabric of the public cultural life.

-END OF LINE-

PAUSE

⁷⁵Ibid.

⁷⁶Ibid.

*Route 8
Towards a Letter*

Dear Reader,

The letters have been necessarily descriptive of a conflict, more an exploration of a journey of tramping in and around the city of Melbourne than contributing to a research question on intercultural conflicts. On reflecting back, however, the tram space has been transformative, an abstract space for me, which has provoked and challenged me to reflect on how I observe, perceive and engage with intercultural dynamics.

I read that the Tewa tribe in New Mexico uses the same word for 'breathing' as for 'learning'. I think I can say the same about the tram. To keep on tramping, I had to keep breathing and keep on learning. The dynamics of the tram space are shifting constantly, and in such changing landscapes, I have learnt to calmly attend and stay focus and integrate new information. Something struck me was that the intercultural exchanges on the tram are not just bodily encounters. The dialogues bring joy, happiness and inspiration but the disruptions incite high emotions such as discomfort, irritability, anger,

homesickness and sadness. Each positive dialogue and negative disruptions has had a psychological variable. Do we then need some kind of 'emotional passport', a certain kind of resilience and reflexivity to navigate through intercultural spaces? The kind of practices such as the ability sit with discomfort, pause and reflect on multiple perspectives have been useful for me in navigating the tram space. How can such skills, the passport, be given to individuals within the tram space, who are at best, normally tolerant of ambiguity? How can processes of learning be structured within the tram space, which is primarily a transportive space, to enable individuals to be together, in harmony and in difference? I only have these questions for the time being. What I can state clearly is that the tram space holds the possibility of becoming a transformative site, a site, which is inclusive and can be collectively inhabited, in all acts of representation. As the tracks leave a trace, trams through its design and constitution can reshape the culture of being ambiguously tolerant to one of connection and of silent harmonious

cohesion.

I am aware that the reflections of the tram space have been insufficient to synthesise ideas for bridging tram disruptions or abstract principles for intercultural negotiation. However, it informs my ongoing reflections and observations within the tram space and leaves me with valuable lessons about negotiating intercultural spaces. The simple act of telling the story of the tram space and describing the dialogues and disruptions that I noticed, has enabled a better understanding and appreciation of the tram context and intercultural conflicts, in general. How do we imagine different choices, invent new paths and gain momentum in the journey of cultural fluency? One of my most fundamental learning has been with the use of metaphors. By naming the conflict through a metaphor of home, it opened up possibilities for me to engage in what I had perceived as a contentious and hostile site to discover the dialogues of home that I would have otherwise ignored, overlooked or even dismissed. The home metaphor opened up the conflict terrain of the other, where their views of the conflict began to seem reasonable and legitimate. However, the process requires to engage conscientiously with

the conflict and to be mindful of habits, patterns and personal cultural starting points, while reflecting on the views of the other.

The other significant learning has been that intercultural conflicts are complex and not easy to resolve. However, I found that the path towards reconciliation, in my case, started with telling the story of the conflict. I discovered that in telling the story there is a certain healing, which lessens the intensity of the conflict and enables a peaceful coexistence with it. It has reaffirmed that the first step towards resolution lies in acknowledging a conflict, of enabling the space for stories of conflict to be told and heard. The analysis also restates that emotions are an integral element of the conflict and need to be addressed to begin a process of re-imagining the conflict. I found the technique of writing letters informative in unknitting the various emotional loops that the disruptions had caused within me. Pausing to reflect and often simply pausing has led to significant breakthroughs in the process of researching and negotiating these complex dynamics.

Another learning that been significant is the process of

intercultural conflict resolution is diffused. Symbolic interventions are as essential as material intervention. The research demonstrated this clearly that despite having a policy on multiculturalism at the material level, tensions were visible within the urban lived public spaces of the trams. This reinforce the learning that policies, such as multiculturalism and the law needs to be built on the needs people have and the experiences and insights they hold. The research will hopefully make a beginning in this journey.

To conclude my letters, I get reminded of the words of T.S. Eliot. It says,

*And the end of all our exploring
Will be to arrive where we started
And know the place for the first time.*

The research leaves many unanswered questions. However, for me it reiterates the fundamental truth that conflict is characterized by vast differences. In order to address it effectively, relations need to be build while recognizing individual differences. It is only in embracing this diversity, can I be truly at home in this world!

*Regards,
Abantee*

-END OF LINE-

Endnotes

Structure

1. Title

The title of the book has been inspired by Janet O Shea, 'At Home in the World: Bharatnatyam on the Global Stage' (Westleyan University Press, 2007);

Also, Michael Jackson, 'At Home in the World' (Duke University Press, 1995).

2. Structure

Quotes from Poems

Designing the structure through quotes have been inspired from Michael Jackson, 'At Home in the World' (Duke University Press, 1995), where the quotes are presented at the beginning of each chapter.

Methodology

Berger John, 'Keeping a Rendezvous' (Pantheon, 1991)

Berger John, 'Ways of Seeing' ()

Introduction

T. S. Eliot, 'East Coker' (Faber, 1959).

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Tram Encounters

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Disruptions

Susan Sontag, 'Against Interpretation' (New York: Dell, 1961)

Michael Jackson, 'At Home in the World' (Duke University Press, 1995), 9.

Re-Imagining the Space

Ingmar Bergman, 'The Magic Lantern' (Penguin books, 1998)

Conclusion

T.S. Eliot, 'Little Gidding' (Faber, 1959).

3. Format

Design of Parallel Narratives

Mark Z. Danielewski, *House of Leaves* (Pantheon Books, 2000, Second Edition)

Julio Cortazar, *Rayuela* (Hopscotch) (Random House Inc. 1966)

Content

Letter Writing

LeBaron Michelle, *Bridging Cultural Conflicts: A New Approach For A Changing World* (Jossey Bass, 2003, First Edition), 184-186

Metaphors, Story telling, Ritual, Creative Engagement, Pausing

LeBaron Michelle and Venashri Pillay (Ed) *Conflict Across Cultures: A Unique Experience of Bridging Differences* (Intercultural Press, 2006), 111-135.

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Michael Dorris, 'Home' (Threepenny Review, 1993) <<http://www.jstor.org.ezp.lib.unimelb.edu.au/stable/4384210>>

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1.3 Tram Encounters

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< <http://www.humanrightscommission.vic.gov.au/index.php/types-of-discrimination/race>>

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< <http://wongm.com/2014/03/telling-a-racist-where-to-go/>>

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is one of the most inspiring things to have happened to her. She is also a part of the Centre for Disability Studies and Health Laws, NLU Assam, as a student volunteer.

Anubhab Atreya is a third year law student at the National Law University, Assam with diverse interests ranging from literature to criminology. His main predilection however, lies in the area of legal research, which he intends to develop further. He has been a part of Studio Nilima, a research based public policy organisation based in Guwahati where he has had the opportunity to be part of a research project on land reforms. During the course of his involvement with Studio Nilima he has had multiple opportunities to hone his research skills systematically. It has also provided him exposure to the exciting public policy space through its regular discussions and addas. He is a volunteer at IDIA (Increasing Diversity by Increasing Access), a pan India non-profit focused on increasing access to legal education among the economically and socially underprivileged.

Shradhanjali Sarma has completed her B.A LLB (Hons.) from National Law University and Judicial Academy, Assam, with specialization in International Law and Business Law. She has earlier worked in Studio Nilima as a student researcher in the project titled 'Land Reforms in Assam', where she concentrated primarily on the land reforms of Barak-Surma Valley. Presently, she is working as a Research Associate in Studio Nilima in the project titled 'Conflict Mapping in Assam'. She is interested in international law and dispute resolution, and has experience in these particular fields through internships and moot court competitions.

Abantee Dutta is the co founder of Studio Nilima: Collaborative Network for Research and Capacity Building. She is a lawyer by training and holds a Master of Laws degree from the University of Melbourne, Australia. Her research and litigation practice encompass areas in constitutional, criminal, customary, heritage, arts and election laws. Since 2010, Abantee has been consulting and working with multiple national and bilateral organisations in designing legal and strategic interventions and developing institutional policy frameworks in the areas of governance and culture particularly for dance and heritage conservation. She was awarded the Art Think South Asia Fellowship in 2011.

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About Studio Nilima

Studio Nilima is a not for profit research collective based in Guwahati. It seeks to be at the forefront of engaging and initiating dialogues on the contemporary public policy concerns of the northeast of India. It brings together lawmakers, thinkers, learners, policy makers, academicians, and practitioners from across the arts to unfold new ways of learning, thinking, research and practice.