MIGRATION AND MODERNITY: EXPERIENCES FROM INDIA[*]

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ABSTRACT

The main objective of this research note is to find out if Kant's theory of modernity helps us understand the nature of migration in present-day India. This note makes a plea for differentiating the two moments of modernity and deriving their varying implications for migration in India. In the existing literature on migration in South Asia in general and India in particular their difference is too easily overlooked. Kant, while representing its first moment, would have viewed migration as a patently modernist aspiration on the part of the people to come to States 'with a law-governed condition' from States that lack it. He would have expected that dispersal of 'a law-governed civil condition' uniformly across the globe would settle the population within the State territories in a stable way. As 'a law governed civil condition' (which he considered as the hallmark of modernity) could not be established uniformly across the globe and there seems to be no concerted global effort at settling the population in a stable way, Kantian mission today remains by and large abandoned. Modernity has entered its second moment when such stable settlement of population is considered impossible and it becomes imperative on a State's part to attempt at governing the migrants, rather than trying to do the impossible task of completely stopping their flow. Here, we refer to a few of these technologies that are deployed, among others, to govern the forced and undocumented migrants reportedly pouring in from the neighbouring States of South Asia. In an engagement with the current debate, the note makes a study of the updating of National Register of Citizens and Citizenship Amendment Act in India.

INTRODUCTION

Much of the literature on migration across the world in general and South Asia in particular continues to be informed by the writings of Immanuel Kant (1724-1804) – widely regarded as the father of European modernity. While his ideas played a key role in shaping Migration Studies – particularly of its forced and undocumented type - during the initial years and decades of decolonisation in South Asia, the Kantian project of settling the world's population on a stable basis has lost much of its relevance today in a rapidly globalizing world. The critique of the Kantian moment of modernity prompts us to appreciate how modernity enters its second moment with its varied implications for migration in India and elsewhere. In the first part, this research note makes a plea for differentiating these two moments for

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[*] Revised version of the note presented to the Plenary Session on 'Modernity, Aspirations, and the Culture of Migration in India' in The Migration Conference 2022 hosted by the Faculty of Law, Economic and Social Sciences Agdal of Mohammad V University, Rabat, Morocco and organized by AMERM (l'Association Marocaine d'Etudes et de Recherches sur les Migrations) and IBS (International Business School), UK, International Institute of Migration and Development (IMAD), Kerala (India) and Symbiosis School of Liberal Arts (Pune, India) on 9 September 2022 in Rabat, Morocco.
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developing an understanding of their implications for the present-day migration. The second part reflects on the intricacies of modernity's second moment and argues that forced and undocumented migration elicits a different kind of State*** response in our time. The second part draws on our recently conducted ethnographic studies on updating the National Register of Citizens and Citizenship Amendment Act in India. Insofar as the paper draws our attention to the break between the two moments of modernity, it follows the genealogical method as enunciated by Michel Foucault. The method sensitizes us to the breaks and fissures that the commonplace flat and linear historical methods fail to consider. The existing literature on migration in South Asia, as we will see below, continues to draw on such flat and linear historical methods.

Modernity's Two Moments

The first part, as noted above, is a brief exploration into Kant's theory of modernity and how it proposes to explain migration in modern times. We will eventually try to find out how it is brought to bear on contemporary Migration Studies in India and with what effects.

The First Moment

For Immanuel Kant – who represents modernity at its first moment - migration only reflects the inadequacies and incompleteness of modernity project. Kant in his famous statement on 'Idea for a Universal History from a Cosmopolitan Perspective' (Kant 1784) argued that States 'with unrestricted freedoms' cannot avoid 'the ills coming from other states that threaten individuals and compel them to enter into a law-governed civil condition' (Kant 1784:10). He would have viewed it as a patently modernist aspiration on the part of the people to come to States 'with a law-governed condition' from one that lacks it. While Kant by and large explains migration in modern times with reference to the uneven pace of modernity across different States, he looks upon 'war, excessive and ceaseless preparations of war' as 'the step that reason could have told the humankind to take' to 'a state of peace and security' (Kant 1784:10). Kant's modernity project is keyed to the objective of settling people in their respective States on a stable basis by evening up the pace of modernity and thus providing them with 'a law-governed civil condition' in their own State. The differential pace of modernity across nations and States only underlines the incompleteness of the modernity project on a global scale.

*** We use the term 'State' with 'S' in upper case to refer to the sovereign countries like India, Pakistan, or Bangladesh and so forth while the term 'state' with 's' in lower case refers to any of the constituent states within the Indian Union.

Modernity in a rapidly changing world seems to have hit an almost intractable paradox which – to say the least - is only internal to itself: On the one hand, it universalizes our aspiration to be modern, that it to say, to live a settled and stable life under a 'law-governed civil condition'. The advent of modernity, according to Kant, is necessarily accompanied by such an aspiration. On the other hand, modernity creates institutions (also including State institutions) that are slow in adapting to the ever-increasing pace of such aspiration. The lacuna and deficiencies in State institutions are more visible in an increasingly changing world in which the institutional ability to adapt, by all accounts, lags behind the ever-growing rate of migration. Contrary to Kant's high expectation, it would certainly be premature to say that the uneven pace of modernity will come to an end anytime soon.

Kant had little doubt about the institutional ability of the State and would have a twofold answer to the paradox mentioned above. On the one hand, modern States, according to him, have an abiding obligation of extending hospitality towards those who migrate from countries that are yet to become modern and lack a perfect 'law-governed civil condition' within them. Kant's writings in fact are marked by an expectancy that with the deepening of modernity uniformly across the world, the flow of migration would reduce significantly with the effect that the people will remain settled in their respective States and each of them will reach a state of perfect 'law-governed civil condition'.

On the other hand, Kant viewed war as a desperate answer to the said paradox. If he viewed war as the step – perhaps the final step – that makes this transition possible from the unsettled and constantly migrating people to a stable order of settled populations living within their respective territories, States with 'a law governed civil condition' existing within them, according to him, are also obliged to wage war on the States that do not have such a condition. Kant would have described it as a 'just war' knowing well that this would cause 'distress' to all.

The massive and predominantly undocumented migration from across India's borders is usually explained in the existing literature with reference to Kant's distinction between the receiving States with 'a law governed civil condition' and the sending States lacking it. The existing literature in this regard follows two interrelated trajectories: On the one hand, migration in the wake of Partition (1947) is explained with reference to such a high modernist argument. Thus, to cite an instance, we know that the Indian subcontinent was partitioned in 1947 giving birth to the two States of India and Pakistan. Partition refugees crossed the borders based on religion, although India – unlike Pakistan - never called herself a theocratic country. Studies

indicate that most people crossed borders on the apprehension that they would not have found themselves in 'a law governed civil condition', if they were reduced to a minority at home. The genocide in East Pakistan in 1971 led more than a million Bengali-speaking, mainly Hindu, Pakistanis to take shelter in India. Only a fraction of them returned after the dust storm had subsided. Much of the literature on Partition-induced migration views it through the Kantian prism of modernity. Even after several decades of Partition, a lot of human migration is believed to have been taking place in order to 'finish the unfinished task of Partition' by way of settling the population in their respective countries on a stable basis (Samaddar 1997).

States in South Asia too assigned to themselves the responsibility of extending hospitality to the displaced people although the responsibility was not always backed by their on-ground performance. Studies conducted on the Indo-Pakistan/Bangladesh relations, for instance, point out how a relaxed and relatively porous border gradually underwent a process of securitization since the 1990s sometimes with grotesque consequences (Samaddar 1999, Schendel 2005, Das 2011:39-65; Jones 2016). Similarly, India's war with Pakistan in 1971 is, as per the official version in India, was forced on the country when more than a million refugees took shelter in the country in the wake of the genocide unleashed in the then East Pakistan (Das 2004: 151-172).

Masses of people flee from Syria and Levant, from Maghreb Arab States to Türkiye (Turkey) and Europe, from Myanmar to the coasts of Indonesia, New Zealand and Australia and not the other way round. It is possible to explain it with reference to Kant's distinction between States with 'law-governed civil condition' and States that lack it. Like Kant, we might think of war as a permanent remedy; but needless to say, war is neither always possible nor a desirable step. Besides, wars in our age are known to have triggered further displacement of population.

Almost as a corollary to the massive securitization of borders, recently conducted studies following the second trajectory tend to show how the States in South Asia have been involved in deliberately interrupting and disturbing 'the law-governed civil condition' in India to suit their foreign policy interests (Bhaumik 1996; Mishra 2003; Saikia 2006).

As we have noted, Kant considers that one who enters from a State without 'a law-governed civil condition' into a State with such a condition enjoys her right to hospitality in the host country. He would have taken it as one of the preconditions of forming a 'World Republic' (Kant 2016: 18). So, Kant would have found the idea of securitizing the borders preposterous

and was albeit vociferously opposed to the state-of-the-art border technologies like barbed wire fencing, electronic surveillance and patrol, border forces, extraordinary legislations, detention in penal colonies, and so forth meant basically for controlling the entry of illegal immigrants. Since Kant was keen on dispersing the fruits of modernity across different States in the world, he would not have wanted Europe to be a 'fortress' closing its door on those who have been banging on it from the countries of West Asia or Africa. In simple terms, Kant's idea of reducing and eventually turning off the flow of migrants by dispersing and distributing the fruits of modernity would find only a few takers in our time. Given the present order of nation-states prevailing in the world, foreign policy interests are unlikely to coincide with the Kantian mission of widest and uniform circulation of the forces of modernity across the world. The prevailing order will leave the mission perpetually incomplete as long as it does not suit the interests of the nation-states.

Into the Second Moment

Nearly all States in today's world and particularly the States with 'law governed civil condition' are known to have become increasingly inhospitable to the immigrants. Border control, penal colonies outside the mainland, stricter systems of registering the citizens and legal reforms in the recipient countries etc are meant precisely for tightening the noose on the immigrants. Recent ethnographic works also show why the technologies deployed by the States prove only inadequate to stop the otherwise desperate migrants. The order of nation-states with their differential paces towards modernity, by all accounts, is here to stay.

As modernity enters its second phase, the nation-states find it impossible to put a complete stop to the crisis of mass migration the world has been facing today. The more they find it impossible, the more it becomes imperative on their part to govern the migrants, rather than trying to completely stop their flow or even endeavouring to work in that direction. The nation-states in the world are yet to take any effective and concerted step to turn off the flow. What they essentially do under the UN and other international aegis is to work towards evolving an effective refugee protection regime on the assumption that production of refugees is a given and unalterable reality as it belongs to the sovereign domain of a member State.

Modernity's second moment therefore is marked by the problem of governing migration and the migrants. The next part of the research note reflects on some of the tools and technologies of governing the moving population at a time when cross-border flow of migration, by all accounts, turns out to be unstoppable. As the migrants pour in, they threaten

to become part of a nation and pose a threat to its identity and existence. We propose to illustrate the above argument with reference to a recent debate that centres on the updating of the National Register of Citizens (NRC) in the Indian state of Assam located in the Northeast. The updating exercise eventually prompted the authorities to strike off a little over 1.9 million people from the NRC on the ground that they had migrated from the neighbouring States of South Asia and were unable to prove their Indian citizenship.

I describe them as modernity's 'excess' that cannot be subsumed under the Kantian framework. They prove to be an 'excess' because they exceed their right to hospitality in the host country that Kant would have given them. State's willingness or even its capacity to extend such hospitality is incomparably much less than what the massive flow of migrants demands. Kant, for instance, did not factor in the threat a recipient country might face to its own 'law governed civil condition' if it keeps extending hospitality to one and all without some form of discrimination and limit. In other words, there seems to be a threshold beyond which showing hospitality to the immigrants is likely to strike back at the very 'law governed civil condition' that, according to Kant, pulls the migrants towards them. In other words, modern States are interested in 'right-sizing' and 'right-peopling' their territories (O'Leary et al 2002) – in our case through the instrumentality of Partition - and this has become the hallmark of the second moment of a modern State. 'Right-sizing' and 'right-peopling' are vital to today's governance.

The 1.9 million people excluded from NRC threaten to become part of the body of Indian citizens and are likely to be rendered stateless as a result of this exercise and are confronted with a very limited set of options like select citizenization of certain groups and communities from amongst them (and the recent Citizenship Amendment Act, 2019 or CAA is an exercise in that direction), their prolonged, if necessary permanent, confinement in detention centres and finally deportation to the countries they have reportedly come from (presumably on some bilateral or multilateral basis) and so forth. While none of these, as we will see, appears to be a viable option for most of them or for India, their case as it were is caught in a limbo.

Governing Migration

While Kant envisages a world in which 'a law governed civil condition' will uniformly prevail across the world and people will not feel the necessity of having to migrate from one place to another, he sought to address the problem in terms of putting a stop to it by ensuring the widest circulation of the fruits of modernity. The realization of both the unstoppable nature of the population flow and the preponderance of foreign policy interests are issued from the

recognition that the continuing - albeit varying - flow of immigrants from across the borders is an inescapable reality today. They pose the threat of becoming part of the body politic by way of (a) wresting away land from the natives, (b) taking away the employment opportunities that could have gone to the sons-of-the-soil; (c) by turning into a numerical majority themselves and eventually bringing a government of their choice in the country and (d) threatening to wipe out the language and culture of the autochthonous people (Weiner 1978; Das 1992-1993:165-175). The problem as it is realized today is not so much to stop the migrants at the border, for they are already deep inside the country, but to govern them, if possible, by incorporating them into an army of productive labour.

Insofar as the States without 'law governed civil condition' continue to remain in the world under various names like 'failed states', 'para-states', 'contested sovereignties' and so forth and the entry of population from the one into the other seems unstoppable, government has become modernity's new technology of containing and controlling the 'excess' population of migrants.

As already noted, I will illustrate the point with reference to the updating of National Register of Citizens and Citizenship Amendment Act. The Indian state of Assam situated in the North-eastern part of the country also forms the critical cusp that historically connected South Asia with the countries of Southeast Asia and beyond. The state has a long history of peasant migration particularly from the floodplains of lower Gangetic delta to the upper reaches of the Ganga-Meghna-Brahmaputra (GMB) basin particularly in times of flood and other natural disasters. Historical records suggest that the Assamese middle-class elite started voicing its resentments against such migration only since the 1920s. The resentments reached a flashpoint during the anti-foreigners' upsurge between 1979 and 1985. The six-year long movement with the threefold objective of detecting, disenfranchising, and deporting the foreigners is usually cited as the longest ever popular movement in post-Independence India. One of the promises made in the Memorandum of Understanding (1985) that brought the movement to an end was that the National Register of Citizens prepared for Assam in 1951 after Independence would be updated so that the 'foreigners' living in Assam could be eventually detected, disenfranchised, and deported. After hearing a public interest litigation (PIL), the Supreme Court of India – the country's apex court - ordered in a verdict that the promise of updating the NRC be fulfilled within a specified time period. The exercise of updating the NRC was conducted under the supervision of the apex court and a little over 1.9 million names have been struck off from the Register. I propose to read NRC exercise as a technology of governing the undocumented

migrants. True to its accent on asserting the identity as a nation-state particularly since the early 1990s, India has started taking a very tough stand vis-a-vis the illegally settled foreigners often with grotesque consequences (Das 2011: 39-65).

Here, we will refer to two of these technologies that are deployed, among others, to govern the forced and undocumented migrants reportedly pouring in from the bordering States. The migrants, first of all, were subjected to the test of papers. They were required to prove before the semi-judicial foreigners' tribunals that they were eligible to become valid citizens of India. Unlike the normal criminal justice system in the country, the onus of proof rests with them. Their subjection the maze of papers, as we will see, was meant to serve the twin objective of raising their expectation and keeping them waiting. Secondly, the Indian State could gradually come to realize that their deportation to the countries they allegedly have come from will be difficult, if not impossible and there would remain people in the country who would qualify as neither citizens nor foreigners. These disenfranchised people would eventually man the informal sector of the economy that requires cheap and mainly unskilled labour in a region where organized, manufacturing sector has made only limited headway.

NRC preparations in Assam reflect above all else a paper maze in which one's existence as a citizen is made contingent on one's ability to prove it with a trail of documents. One's mere physical existence, personal and oral testimony etc are overridden by the NRC requirement that one must be in possession of documents listed by the apex court from time to time in order to establish one's citizenship. The possession of documents attests to the 'proprietorship' to what C. B. Macpherson would have called 'one's capacity and person' (Macpherson 1962: 3). Significantly, the onus of proof in case of proprietorship lies with the one who claims to possess the property. One's physical existence per se is not enough to necessarily entitle one to citizenship of the country; one's citizenship is dependent on the proprietorship of the trail of documents much in the same way as one owns a plot of land or any other property. The very idea that one *owns* citizenship creates a bizarre, Kafkaesque world in which the paper trail does not follow, but precedes – if not overshadows – one's physical existence. Drawing on the Lockean analogy made by Macpherson, one might say that citizenship turns into private property the moment it is mixed with one's labour – private to one's own mind and body - of having successfully retraced the paper trail. The skill of acquiring, storing, preserving, organizing, compiling and presenting the papers is considered as private to an applicant and is absolutely central to one's citizenship. Possessing citizenship resembles owning private property much in the same way as Locke would have us believe.

As one is called upon to prove one's citizenship in today's Assam as per the NRC requirements, one was required to produce two sets of documents: legacy and link. While legacy documents pertain to the ones as land deed, insurance policy, driving licence, bank account, voters' list etc. of a person before 24-5 August. 1971 – the midnight when genocide in the then East Pakistan reportedly began, link documents are the ones that establish one's relation to a person already in possession of such legacy documents. One is dragged as it were into an unending paper trail. Papers rapidly acquire and lose their validity with the changing administrative requirements. As one is faced with newer paper requirements of law and citizenship, one is also driven by the belief that one could potentially meet them – sometime, somehow. While law always promises to open a possible world – a world that is eminently possible, the list of documents never exhausts itself. Governance consists precisely in keeping alive the promises and possibilities of becoming a citizen as much as in perpetually encouraging one to navigate through the paper maze with the hope that one day one would become successful!

The logic of the paper world, in other words, is inescapably circular: One is not a citizen because one does not possess the documents to prove it; one does not possess the documents precisely because one is not a citizen. Derrida understood the problem brilliantly when he argued that law always foregrounds itself as it were without any history of its own, thereby asking everyone - regardless of one's unique history and context - to become 'intrinsic' to it, to be incorporated as citizens in this case, by constantly urging one to fulfil what appear as the general obligations in this journey to citizenship (cf. Derrida 1991: 191-2). Law inculcates in us the overpowering desire of becoming one of its 'intrinsic' parts - by way of making everyone believe in the possibility of fulfilling its ever-shifting and ever-newer obligations and requirements, constantly rededicate us to the task of collecting the required documents and never give up hope on the possibility of gaining our citizenship at the end of the day.

A section of lawyers and activists has chronicled both the frantic search for documents and the acute sense of desperation that marked the process of navigation. Thus, to cite an instance, persons born in, or tracing their linkages with those born in, other states of Indian Union found it extremely difficult to prove their citizenship status. While the NRC authorities sent their legacy data to other states for verification, the response from the other states, as Sanjib Baruah puts it, was 'tardy' (Baruah 2020: 35). More than 100,000 requests for legacy verification were sent to the Government of the neighbouring state of West Bengal and only 6.5 percent of these requests were reportedly responded. As a result, these cases remained pending

before the NRC authorities even after the final Register was put up. The more the search proved difficult, the greater was the sense of desperation. Aman Wadud, an advocate of Guwahati High Court (in the state of Assam) who offers pro bono legal advice to the people in need pointed to one case:

> [W]hen notices were served to thousands of people in the first week of August [2019], only 24-48 hours before their hearings at places 300-400 km. away, overnight people sold their cattle and ornaments to hire vehicles and attend it. Four people died in different accidents while travelling. In the midnight of 5 August [2019], a bus carrying 24 passengers from Kamrup to Golaghat (around 300 km away from each other) was hit by a truck carrying molten tar near Guwahati [the capital of the state of Assam]. The passengers sustained injuries. They were treated at Gauhati Medical College Hospital. When I reached the hospital past midnight, a woman was holding her 3-year-old daughter, both covered in molten tar. She was crying and asked what will happen to her NRC hearing scheduled next morning. Few incidents depict the urge for an NRC more than this (Wadud 2020: 84).

Secondly, while NRC essentially is a means of differentiating citizens from non-citizens, one cannot but notice that it simultaneously constitutes a terrain in which a wide variety of many other identities is enacted and played out in Assam. Much of its effectiveness as a technology of governance therefore depends on how it serves as a tool for leveraging interethnic and inter-communal relations in Assam to the imperatives of governance. NRC authorities, however, do not offer any disaggregated data on identities – whether of the included or of the excluded – along, say, Hindu/Muslim, Assamese/non-Assamese, tribal[†]/non-tribal, man/woman/transgender, Brahmaputra valley/Barak valley or Upper/Lower Assam and such other lines. In the absence of any such data, the unofficial estimates depend mostly on limited village or district-based surveys, small scale ethnographies and even simple, informed guess works – none of which can be considered as either authentic or reliable.

NRC seems to have blasted on the face of those who went to the court and asked for it. It is feared that out of these 1.9 million people close to 1.2 million could have been the majority Hindus. A section of leaders has been asking for 100 percent verification of the NRC data. It effectively means updating the Register all over again. It is possible that many of them are likely to be citizenized through the enactment of Citizenship Amendment Act that would confer citizenship status on Hindus, Sikhs, Jains, Christians, Parsis and Buddhists immigrating from Pakistan, Bangladesh and Afghanistan on or before 31 December 2014. The naming of

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[†] Such terms as 'tribe' and 'tribal' are freely used in official circles as well as in popular parlance in India without any of their necessarily pejorative meanings.

communities and countries speaks of certain preponderance of the principle of *jus sanguinis* or blood for both decitizenization and recitizenization.

By all accounts the textbook binary between citizens and foreigners gives way to a wide variety of groups and communities squeezed between them who are neither citizens nor foreigners and are forced to live in a state of perpetual detention and statelessness. Pending their deportation to the countries they allegedly came from – which is a long haul, if not, impossible, they will remain here as 'docile bodies' condemned to a state of permanent temporariness for they can be thrown out of the country at any time and kept as a vast army of labourers who are effectively stripped of their rights, but are desperately needed to meet the demands of cheap, informal and unskilled labour in a region which has not witnessed much of industrial development in the past few decades. It is estimated that about 1.5 million people out of the total of 1.9 million might already be employed in the informal sector without any security of jobs, decent work conditions and their right to form unions (Tripathi 2018: 5).

CONCLUDING OBSERVATIONS

Kant's paradox manifested through the differential pace of States in their journey towards modernity is addressed today – not so much through hospitality or war as Kant himself would have prescribed – but through what Foucault would call, the art of government. While they will not be entitled to any right to hospitality, war is not an option either. What does the Indian State propose to do with those who are unlikely to be recitizenized as per the CAA? They constitute the 'excess', for, they cannot be returned to wherever they have reportedly come from. It is unlikely that Bangladesh would take them back. Bangladesh maintains that NRC is India's 'internal problem'. Nor can they be kept indefinitely in the detention centres straining the State's exchequer. It is certainly not a viable option. The art of government demands that they be effectively mobilized for productive labour while keeping them at the same time in a state of permanent disenfranchisement. The art of government calls for more innovative technologies of productively using their labour without making them rights-bearing citizens.

Kant's modernity project at its first moment called upon the modern States to create the 'law-governed civil condition' within themselves. Once successfully created, the citizens enjoying such 'condition' would be 'gradually brought closer and closer to the constitution establishing world citizenship' (Kant 2016: 18). The modern State, according to Kant, is only incidental to mankind's journey to 'world citizenship'. Kant would look upon the modern State

as only an agent – not the end state of – modernity. A State that is unable to create the 'law-governed civil condition' within itself does not qualify as a modern State; but the other States with such a condition have a responsibility of making it modern – if necessary by waging war on it. In its second moment, a modern State becomes the end state of modernity. Modernity today stumbles as it were on the modern State. As a result, modernity ceases to remain a project. Today's modern State absolves itself of the responsibility towards those that are yet to become modern and lack any 'law-governed civil condition'. The latter are condemned to remain so without any possibility of becoming modern in future. Modernity now is trapped within the modern State.

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