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Politicizing Protection: India and Its 1971 Refugees

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POLITICIZING PROTECTION: INDIA AND ITS 1971 REFUGEES

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Editor's Note

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1 INTRODUCTION

Between April and December 1971, an estimated ten million refugees fled what was then East Pakistan for India in pursuit of refuge.¹ Their movement coincided with Pakistan's dangerous drift towards militarism, its bloody descent into civil war, and the gradual dismemberment of the eastern and western wings of the state.² These dramatic events gave rise to the largest single displacement of refugees in the second half of the twentieth century.³ As these millions of refugees streamed into India, their presence, according to Indian Prime Minister Indira Gandhi, posed a colossal burden on her country.⁴ Replying to a discussion in the *Rajya Sabha*,⁵ she described the burden this way: "We are trying to deal with nearly six million human beings who have fled from a region of terror, who have come wounded, with disease, with illness, hunger, and exhaustion."⁶ The refugees' presence strained the domestic capacities of the state by reducing the country's grain surplus, eliminating the government's budget allocations for development programs,⁷ and complicating the ruling Congress Party's approach towards the rising Naxalite movement in the border areas.⁸ Moreover, the refugees' arrival played out against a dramatically changing international backdrop dominated by Cold War politicking, rising tensions between regional states, and a revival of the historic animosity between India and Pakistan. Yet despite these significant challenges, Indira Gandhi remained resolute (at least publicly) in protecting the refugees. In a visit to a gathering of refugees at the Dwarivit camp in the Ilampur area of West Dinajpur, she stated that the refugees would "not be pushed back to their country unless conditions for their safe return were created there."⁹

Making sense of Indira Gandhi's comments requires situating her promise within a wider discourse of how the Indian State governs refugees. Two competing narratives structure this discourse – the first being a "contradictory logic of power and care" and the second being a "paradoxical injunction built on the heritage of rule."¹⁰ The first narrative pits citizen rights against human rights by not only telling the story of those who were "saved, cared, and rehabilitated" but also those refugees who were "left out, refused, and neglected in the same period in and by the same country."¹¹ Underlying this story is the fact that India has refused to sign the 1951 Convention Relating to the Status of Refugees ("1951 Convention") as well as the 1967 Protocol.¹² The second narrative sets the events of the past against those of the present. It acknowledges that the movement of refugees across India's many borders was an integral dimension of the country's post-colonial history¹³ yet questions the place of refugees in modern-day India.

If Indira Gandhi's promise of protection does indeed emerge from these tensions – past versus present, power versus care – what then is the nature of that protection, its sources, and its extension to the 1971 refugees? Specifically, in the absence of a codified international legal refugee protection regime, how did the Indian state demarcate and justify its responsibility to protect the 1971 refugees? In this paper, I argue that the absence of such a regime in the Indian context politicized the protection of the 1971 refugees such that their protection was not founded in a regime of rights but rather in the strategic interests and adaptable practices of the state.

LITERATURE REVIEW

The dramatic events of 1971 have yet to receive the critical engagement and theorization they deserve. As a result, the publication record on this topic remains limited. Jahan,¹⁴ Feldman,¹⁵ Sisson and Rose,¹⁶ Jacob,¹⁷ Bose and Jalal,¹⁸ and van Schendel¹⁹ have presented strong historical accounts of this topic. American diplomat Blood²⁰ and *New York Times* journalist Schanberg²¹ have written detailed chronologies of the events of that year. Their memoirs are contextualized well by Rao²² and Bass²³ whose works explore the United States of America's attitude and response towards the crisis. Works by Mascarenhas²⁴ and Mohaiemen²⁵ assess the role of the media throughout the 1971 conflict and refugee influx. Franck and Rodley²⁶ as well as Salehyan²⁷ have analyzed the security dimensions of 1971. The works of Luthra,²⁸ Kumar,²⁹ Chimni,^{30,31,32,33} Bose,³⁴ and Samaddar³⁵ are valuable in addressing the theme of state response and refugee experience however they tend to emphasize the Indian state's response to refugee influxes more generally. Notable exceptions that focus specifically on this theme within the context of the 1971 refugee influx include Mukherji,^{36,37,38} Saha,³⁹ and Datta⁴⁰.

METHODOLOGY

The mass influx of refugees in 1971 and the resultant state response remain controversial topics to research and study. The majority of archival documents from this period – including police files, security briefings, and state planning documents – are sealed and will remain so for several more years. Due to the sensitive nature of this topic, there is no guarantee that researchers will be able to access this data once the documents are eventually released. As a result of this significant challenge of access, I have articulated my argument and structured my response based on the availability of hundreds of public documents. These include domestic and foreign press reports, political memoirs, academic literature, political speeches (notably

those delivered by Indira Gandhi), records of parliamentary proceedings, and firsthand research reports produced by foreign aid workers stationed in various refugee camps. Where possible, I have corroborated the events from one source with other sources. I have also sought to balance the content of foreign sources with domestic ones while situating both within the existing academic discourse. Having Bengali press reports translated and being able to interview the refugees themselves would have avoided many of these limitations however both were practically unfeasible during the research process.

PAPER OUTLINE

This paper proceeds in three sections. In the first section, Theorizing Protection, I assess the nature of the protection afforded by the Indian state by evaluating the legal conditions of refugees. Focusing on both domestic and international law, I ask what the movement of refugees across an international border reveals about the protection of refugees, the nature of citizenship, and the rights inherent to being human. In the second section, Historicizing Protection, I examine the sources of this protection by considering how the Indian state has historically demarcated and justified its commitment to protecting refugee populations. I focus on the Partition refugees of 1947 and the Tibetan refugees of the 1950s. In analyzing both situations, I emphasize the role played by practice, and not law, as the source of the Indian state's decision to extend refugee protection. In the third section, Politicizing Protection, I analyze the politicization of protection as it was extended to the 1971 refugees. I focus on three dimensions of the 1971 refugee experience – counting the refugees, labelling refugee identity, and building spaces of protection. I conclude the paper by assessing the implications the state's protection policy towards the 1971 refugees has for the perception and operationalization of international legal frameworks, institutions, and principles.

2 THEORIZING PROTECTION

Having fled persecution in East Pakistan, the presence of the 1971 refugees on Indian soil was in and of itself a call for protection. At its most basic level, protection in this context meant being granted refuge from the persecution of the Pakistan state. As such, it was a claim on the part of the refugees to the Indian state for the recognition and respect of their life, liberty, and security.⁴¹ As refugees, it was also a claim on the Indian state to solve their irregular situation either by returning the refugees to East Pakistan in conditions of

security or by offering them a new life in the Indian national community.⁴² The Indian state chose the former, successfully repatriating the majority of the refugees by mid-1972. In this section, I discuss the nature of the protection afforded by the Indian state by evaluating the legal conditions of the refugees. I then analyze the implications these conditions have on the protection of refugees, the nature of citizenship, and the rights inherent to being human.

LAW AND REFUGE IN INDIA

The legal situation of refugees in India was and remains marked by the “absence of clearly defined statutory standards.”⁴³ India is neither party to the 1951 Convention nor to the Optional Protocol of 1967.⁴⁴ A status and rights-based instrument, the 1951 Convention defines the term ‘refugee’ and establishes the contours of the international refugee protection regime.⁴⁵ It does so by outlining the basic minimum standards for the treatment of refugees. Examples of this treatment include access to the courts (Article 16), to primary education (Article 22), to work (Article 24), and to documentation (Article 25).⁴⁶

The foundational concept of the 1951 Convention and international refugee protection more generally is the customary norm of non-refoulement. Non-refoulement is the right not to be forcibly returned to situations of persecution or serious danger.⁴⁷ It is codified in the negative terms of refoulement as per Article 33⁴⁸ and is so fundamental that states cannot make reservations to it or derogate from it.⁴⁹ Despite its status as a customary norm, the place of non-refoulement in the Indian legal context is contested. According to B.S. Chimni, Indian Courts are unable to enforce principles of customary international law if they conflict with the statutes of the state.⁵⁰ As per *Gramophone Co. of India v Birendra Bahadur Pandey* (1984), “Comity of Nations or no, Municipal Law must prevail in case of conflict.”⁵¹

Such reasoning proves problematic when interpreting the scope of the 1946 Foreigners Act, which governs foreigners, including refugees, in India. According to Chimni, the Act grants “absolute and unfettered rights to the Indian government to expel a foreigner” even when the principles of customary international law are invoked.⁵² As per *Louis de Raedt v Union of India* (1991), “The power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion ... the executive Government has unrestricted right to expel a foreigner.”⁵³

An appeal to other international covenants is just as limited. While India has acceded to the two 1966 Covenants on Civil and Political Rights and Economic, Social, and Cultural rights, the Covenants have not been enacted into Indian law.⁵⁴ As a result, they are unenforceable in Indian Courts.⁵⁵ Any legal rights a refugee may possess in India are contained in Article 21⁵⁶ (Protection of Life and Personal Liberty) of the Indian Constitution.

While this discussion focuses on the contemporary legal situation of refugees in India, the 1971 refugees fared no better. They were unable to exercise their rights under the 1951 Convention since it was a nonexistent piece of legislation in the Indian context. As a result, the state's use of the term 'refugee' was merely a convenient label that did not accord the legal rights that normally flow from the term under international law (the refugees were also labeled 'evacuees'). The two Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights proved useless to the refugees' situation since the refugees returned well after those Covenants were acceded to. Even had they been acceded to prior to the refugee influx, their applicability to the refugee's plight would not have been guaranteed. Finally, the 1971 refugees would have been unable to take advantage of Article 21 of the Indian Constitution since its expanded reading to encompass foreigners is a recent legal development.

NONACCESSION AND INCOMPLETE PROTECTION

Despite any clear legal justification to do so on the part of the Indian state, the 1971 refugees were extended protection. They were recognized as a distinct group that merited housing (in refugee camps), food, clothing, and medical treatment. In an interview with an Italian television team, Indira Gandhi described the state's efforts as a "super-human effort to provide food, shelter, and medicine to them (the refugees)."⁵⁷ When asked to justify the state's response, she maintained that the refugees were a "problem for humanity, a question of conscience and of the protection of people's lives and rights."⁵⁸ Yet, as per the discussion above, the Indian state had no legal duty to extend protection to the refugees since the refugees, in the eyes of the state, were merely foreigners and therefore lacked rights.

Instead, the extension of protection became an exercise of politics. Protection was demarcated according to the capacity and desires of the administrative levels of the state.⁵⁹ According to P.N. Luthra, the government official tasked with organizing the relief effort, "the principle underlying the provision of relief to

the refugees is that they will return to East Bengal at the earliest opportunity.”⁶⁰ Subjecting protection to politics rather than law carried two significant challenges for the 1971 refugee population. First, any arbitrary action or discrimination on the part of the administrative machinery of the state was not easily remedied and second, refugees became wholly dependent on the benevolence of the state rather than a guaranteed regime of rights.⁶¹

Consider these implications in the context of the state’s effort to repatriate the refugees at the end of 1971. Throughout the refugee influx, Indira Gandhi noted that the refugees would only be repatriated if they could “return to their homes in safety and dignity.”⁶² Such a statement conforms to the international legal principle of non-refoulement since refugees are “by definition unrepatriable.”⁶³ Yet unconstrained by the legal instrument that guarantees the principle of non-refoulement, the Indian state moved quickly to push the refugees back to Bangladesh following India’s victory over Pakistan in December 1971. Some refugees, particularly members of the Hindu minority population, feared their return would be marked by religious persecution.⁶⁴ More disturbing were the actions of the state, which, in many cases, clearly ignored the voluntary dimension of repatriation. Press reports described government officials withholding rations and future transport options in order to encourage repatriation.⁶⁵ Not only was this action carried out in an arbitrary manner, it distorted and even disregarded, in many instances, the refugee’s continued need for protection.⁶⁶

THE REFUGEE AS CITIZEN AND/OR HUMAN

Extending protection as politics rather than as law rendered the 1971 refugee a thing to be counted, fed, managed, and sheltered rather than a human being to be recognized as possessing rights and entitled to protection. Facing persecution from their own state (that was on the verge of collapsing) and finding themselves in a state that did not accord them any rights, the 1971 refugees were left with “no authority ... left to protect them and no institution ... willing to guarantee them.”⁶⁷ Their situation calls into question the relationship between the “political concept of citizenship” on the one hand and the “concepts of humanity and nationality in international law” on the other.⁶⁸

Writing against the backdrop of mass denationalizations and statelessness in the interwar period and the Second World War,⁶⁹ Hannah Arendt warned of the limits of human rights and the continued relevance of

citizenship.⁷⁰ For Arendt, human rights were the outcome of politics rather than its foundation such that the right to have rights was ultimately a function of citizenship.⁷¹ Lacking citizenship, the refugees' plight "is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them."⁷² To lack the legal status of nationality is to be left wandering the world in search of a place, subject to perilous exposure.⁷³ Physical place and legal place are intimately related since "how our physical presence is characterized turns on our legal status."⁷⁴ Lacking this legal status, the 1971 refugee's physical presence on Indian territory was always tenuous and any sense of security and stability they may have felt was merely temporary. Arendt characterizes such a situation this way:

The prolongation of their lives [wa]s due to charity and not to right, for no law exists which could force the nations to feed them; their freedom of movement, if they ha[d] it at all, g[a]ve them no right to residence which even the jailed criminal enjoy[ed] as a matter of course; and their freedom of opinion [wa]s a fool's freedom, for nothing they th[ought] matter[ed] anyhow.⁷⁵

Given that citizenship or incorporation into the Indian national community was never an option for the 1971 refugees, one must consider humanity as the source of the Indian state's extension of protection to the refugees. The challenge with rooting state responsibility merely in a humanity unguided by any regime of rights (such as the 1951 Convention) is that, as Arendt points out, humanity is a hollow concept that can be instrumentalized by the state to serve its strategic interests. In an editorial in *The Statesman*, the editorialist commented that humanity demanded that the Indian state receive, house, feed, and clothe the refugee.⁷⁶ However, the editorialist was quick to note that even humanity had limits and that it could not be used to justify dispersing the refugees to other states or arranging for permanent rehabilitation.⁷⁷

Resolving the tension between 'citizen' and 'human' extends beyond the confines of this paper however two pertinent lessons emerge from Arendt's discourse. First, citizenship continues to be a relevant construct since "the man without a state [i]s 'an anomaly for whom there is no appropriate niche in the framework of the general law.'"⁷⁸ Second, human rights are limited both conceptually and practically in their ability to guarantee rights. As Arendt warns, "A man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man."⁷⁹ After all, the "world found nothing sacred in the abstract nakedness of being human."⁸⁰

3 HISTORICIZING PROTECTION

At the height of the refugee influx, Indira Gandhi stood at the India Gate in New Delhi, looked out at the crowd gathered at a public rally, and asked those assembled: “How could we stop people from coming to us, knowing fully well that they would be certainly massacred in their homeland? This has not been our tradition. India has always kept its doors open for people in distress, whatever the cost, whatever the burden.”⁸¹ In addition to acknowledging India’s historical response to refugee influxes, Indira Gandhi invoked the notion of tradition. In so doing, she located the source of the state’s duty to refugees not only in historical fact but also in principled state policy informed by this history. In this section, I assess the accuracy of Indira Gandhi’s comments and argue that the source of the state’s commitments to refugees was not principle but rather practice. I situate this assessment within the wider South Asian context before examining India’s response to the Partition refugees of 1947 and the Tibetan refugees of the 1950s.

THE CHALLENGE OF SOUTH ASIA

India has indeed kept its doors open for refugee populations originating in different parts of South Asia – the Chakma refugees from Bangladesh, the Tamil refugees from Sri Lanka, and the Bangladeshis from East Pakistan to name but a few examples. Allowing these refugees access to Indian soil, however, was less a reflection of state policy and more a reality of the South Asian context. Since 1947, mass refugee flows have blurred the national boundaries between Bangladesh, India, Nepal, Pakistan, and Sri Lanka.⁸² Assessing Indira Gandhi’s comments thus requires examining the state response to the movement of refugees within this context. Three salient features characterize this context.

First, none of these South Asian states are capable of fully monitoring their borders and controlling population entry.⁸³ The border between India and Bangladesh, for example, stretches for some 2,800 kilometers and winds through aboriginal villages, jute fields, mountains, rivers, and swamps.⁸⁴ In 1971, 70 battalions (approximately 70,000 men) of the Border Security Force (BSF) were tasked with securing this border in addition to the more than 14,484 kilometers of border shared with India’s other territorial neighbours.⁸⁵ One press report described the arrival of the 1971 refugees at an isolated border post in Gede this way: lacking the personnel and resources, the BSF guard “turn[ed] a blind eye as streams of people cross[ed] back and forth over what ... appear[ed] to be a completely open frontier.”⁸⁶

Second, South Asian states perceive refugee movement as threats to their internal security and political stability.⁸⁷ The rise of political parties such as the CPM and radical movements such as the Naxalites in West Bengal alarmed the central government, which had been struggling against these movements for some time.⁸⁸ As these political entities terrorized cities and villages with pipe guns, bus bombs, stabbings, and brutal gang beatings,⁸⁹ the central government grew concerned that the refugee camps would prove fertile spaces for radicalization and further violence.⁹⁰

Third, South Asian states are concerned that refugee flows transform the religious and political composition of the receiving and sending areas.⁹¹ The arrival of the 1971 refugees made the Indian state wary of religious identity being instrumentalized to fuel “communal passions.”⁹² According to one press report, the martial law administration in Pakistan was depopulating East Bengal of its Hindus in order to “create communal tension in the border districts of West Bengal once Hindu refugees start narrating the tales of their persecution at the hands of Muslims.”⁹³ The fear, according to Schanberg, was that these tensions would “touch off a nationwide chain reaction in which India’s majority Hindus would take revenge on the country’s 60 million M[u]sl[i]ms.”⁹⁴ India was also concerned that the sheer number of refugees crossing the border was prompted by Pakistan’s desire to alter the demographic composition of the eastern wing of its state.⁹⁵ This thinking was predicated on the idea that as more refugees sought protection in India, Bengali nationalism would weaken in East Pakistan and mass support for autonomy would eventually wane.

PARTITION AND STATE PRACTICES

While the South Asian context is such that states are limited in their ability to prevent refugees from arriving on their territories, this context does not prevent states from articulating and enforcing policies towards refugees once they have crossed the border. The arrival of the Partition refugees in 1947, India’s first mass influx of refugees, demonstrates the nature and extent of this state power. At the same time, this episode highlights the far-reaching implications India’s policy decisions and approach towards refugee protection had on future refugee influxes.

Partition⁹⁶ was the division of the Indian subcontinent by the British in 1947.⁹⁷ Their carving up of the territory was informed largely by the colonial myth that the two indigenous populations dominating the subcontinent were in perpetual conflict.⁹⁸ This division resulted in the majority Hindu state of India and the

bifurcated (eastern and western wings), mainly Muslim state of Pakistan.⁹⁹ It also generated the largest single bilateral flow of refugees in South Asia (and possibly the world) as an estimated six to seven million Muslims moved from India to Pakistan and an estimated eight million Hindus and Sikhs moved from Pakistan to India.¹⁰⁰ This movement was far from peaceful and resulted in widespread destruction of life and property.¹⁰¹

In many respects, analyzing the 1971 refugee situation by focusing on the Partition episode seems odd, even misplaced. First, the flow of Partition refugees across the border arose from conflict among people rather than armed conflict between governments.¹⁰² Second, the refugees who moved to India were not considered to be aliens (foreigners) but rather members of the new Indian state.¹⁰³ Rejected by their home state, these refugees were “welcomed as co-religionists, as compatriots re-entering the fold ... integrated at once...”¹⁰⁴ Third, voluntary repatriation was never a possibility for the Partition refugees since they would never be allowed to return to the areas they had just departed.¹⁰⁵

Yet despite these differences, the Partition refugee situation is essential for understanding and approaching the situation of the 1971 refugees. First, the Partition episode reveals how the Indian state responded to an extraordinary situation at a time when it lacked both resources and experiences in dealing with a humanitarian emergency.¹⁰⁶ Like the Partition refugees, the 1971 refugees challenged the practical capacities of the state. The sheer size of the 1971 refugee influx tested the limits of India’s financial, political, and social resources. Second, the Partition episode demonstrates the ability of the state to respond to refugee influxes. While the Indian state may have lacked the power to prevent the arrival of refugees on its territory (as per the South Asian context), the state retained the power to determine how it would demarcate and justify any extension of protection to the refugees. In the Partition context, the Indian state made the policy decision of linking resettlement with development in order to encourage the full and permanent integration of the refugee population.¹⁰⁷ Third, and most importantly, the Partition situation highlights the role practices and not rights played in caring and administering for the refugees.¹⁰⁸ Practices of care, rehabilitation, and social security were institutionalized and served as the “durable tradition of hospitality”¹⁰⁹ that the state would draw upon to respond to future refugee influxes.

TIBET AND REGIONAL SECURITY

While articulating and enforcing refugee policies are inherent dimensions of state power, this process does not occur in isolation. It extends beyond state boundaries and affects regional relationships, especially with those states responsible for generating the refugee influx. The arrival of the Tibetan refugees in the 1950s, India's first regional influx of refugees,¹¹⁰ demonstrates how a refugee exodus can aggravate neighbourly states so as to threaten the security and stability of the sending state.¹¹¹

After facing political and religious persecution from the Chinese state,¹¹² less than 100,000 Tibetan refugees sought refuge in India with their spiritual leader, the Dalai Lama.¹¹³ Drawing on the practices it formulated during the Partition episode, the Indian state responded to the immediate and long-term needs of these refugees. Regarding their immediate needs, the state established transit camps¹¹⁴ and distributed food, clothing, and medical supplies.¹¹⁵ Addressing their long-term needs, the Indian state once again drew on its Partition practice of linking resettlement with development. The government crafted a threefold response that included resettlement through agriculture, the establishment of training centres to encourage the Tibetans to produce and sell handicrafts, and the promotion of small industries that were to be managed and operated by the Tibetans.¹¹⁶

Compared to the 1971 refugee population, the Tibetans were a much smaller refugee community¹¹⁷ and were culturally and historically distinct from the people of the Indian subcontinent.¹¹⁸ Despite these differences, both situations underscore the way refugees altered the regional security and stability. First, the Tibetan situation demonstrates how the Indian state sought to depoliticize refugee protection by appealing to humanity. Granting refuge to the Tibetans marked one of the first times the Indian state framed the protection of refugees in terms of human rights.¹¹⁹ Twenty years later, Indira Gandhi would adopt this appeal to human rights by stating that protecting the 1971 refugees was ultimately about the "problem of democracy, the problem of human rights, the problem of human dignity."¹²⁰ Second, the Tibetan situation reveals how refugee protection precipitated tension between the receiving and sending states. India's granting asylum to the Dalai Lama was but one motivating factor that contributed to the complete breakdown of already tense Sino-India relations and the declaration of war between the two countries in 1962.¹²¹

India's granting protection to the 1971 refugees proved to be such a strain on the Indian state that India disregarded Pakistan's declaration that its civil war was merely "an internal matter."¹²² In a statement given in the *Lok Sabha*,¹²³ Indira Gandhi warned that:

Relief cannot be perpetual, or permanent, and we do not wish it to be so. Conditions must be created to stop any further influx of refugees and to ensure their early return under credible guarantees for their future safety and well-being. I say with all sense of responsibility that unless this happens, there can be no lasting stability or peace on this sub-continent.¹²⁴

Her warning eventually came true as she sought to prevent further refugee movement and ensure the refugees' return by ultimately sending an invasion force into East Pakistan and declaring war against Pakistan.¹²⁵

While a rights regime for refugees is virtually nonexistent in the Indian context, the Indian state still committed itself to protecting refugees. The source of this protection was not based on principle but rather on practice informed by context and past experience. As India's response to the Partition refugees of 1947 and the Tibetan refugees of the 1950s demonstrate, the geopolitical forces of South Asia restricted the state's ability to manage its borders. Nevertheless, as highlighted by the Partition situation, the Indian state remained capable of articulating practices to protect refugees on its territory. The Indian state also remained resolute in responding to its regional neighbours in order to address refugee movement. As highlighted by the Tibetan situation, these responses took on different forms and never omitted the possibility of direct military confrontation.

4 POLITICIZING PROTECTION

India's extension of protection to the 1971 refugees never sat well with those in power in Pakistan. Before both nations plunged the region into war, India and Pakistan found themselves enmeshed in a bitter war of words with the battle lines drawn through the concept of protection and over the bodies of the refugees. In a background report on the refugee situation, the Pakistan government accused the Indian government of cynically exploiting the refugees in order to impose a political settlement in the region.¹²⁶

India's policies of protection, according to Pakistan, not only created "obstacles ... prevent[ing] the return of the refugees" but also transformed the refugees, those "unfortunate human beings [into] pawns in her game of power politics."¹²⁷ Maintaining that protection was not extended on humanitarian grounds, Pakistan asserted that protection had become politicized. I explore this process of politicization by focusing on three dimensions of the 1971 refugee experience – counting the refugees, labelling refugee identity, and building spaces of protection.

COUNTING THE PROTECTED

Counting refugees, either at the border or in the refugee camps, is an inherently political act. Referring to these numbers represents what Yash Tandon describes as the "diplomats of the numbers game" since it exposes the various vested interests involved.¹²⁸ For India, the number of refugees corresponded to Pakistan's assault on its own citizens. Initial domestic press reports noted the hundred of refugees crossing the border but this figure was quickly invalidated as the arrival of the refugees accelerated – the daily rate of influx as high as 102,000 persons per day in May.¹²⁹ Pakistan, however, was wary of India's figures and stated openly that they were both "highly exaggerated" and bore "no relationship with the realities of the situation."¹³⁰ In fact, the Pakistan government accused the Indian government of inflating their numbers by including the unemployed and homeless populations of West Bengal.¹³¹

Pakistan grew concerned that India was using the refugee numbers as justification to meddle with its internal political affairs.¹³² However Pakistan also referred to refugee numbers, albeit numbers it calculated itself, for its own purposes. First, Pakistan sought to challenge the humanitarian intentions of the Indian state and to expose India's hypocrisy. The Pakistan government accused the Indians of using the situation of the 1971 refugees to disregard the plight of the "millions of Indian Muslims who have been driven out of their homes and who have been compelled to seek refuge in Pakistan."¹³³ Second, Pakistan broadcast its own numbers to convey that the situation was, in fact, returning to a state of normalcy. A publication released by the Pakistan Department of Films and Publications highlighted that the 1,000 East Pakistanis who crossed back into Pakistan territory on 6 June 1971 was a sign that normalcy had been returned and Pakistan nationals were "start[ing] [to] return[] to their homes in large numbers."¹³⁴

India drew on its figures to build support for its rehabilitation efforts abroad while chastising the Pakistan government for its assault on its citizens. At the German Society for Foreign Policy, Indira Gandhi acknowledged that the refugee figures were not always accurate however she maintained that these inaccuracies did not alter the reality of so many refugees on Indian soil. She stated, “I do not think anybody can doubt that there are many millions of them.”¹³⁵ Her appeal to numbers became all the more important as foreign aid for the refugees stalled, largely due to the influence of the United States of America and its desire to not alienate the Pakistan Government.¹³⁶

The issue of counting refugees was fundamentally about the credibility of the states involved. Each state sought to be perceived as the more credible political actor in this situation and resorted to numbers to assert that claim. Throughout various interviews, Indira Gandhi, for example, was quick to invite her interviewer to visit the refugee camps and witness the magnitude of the problem. In one interview, she said, “As I say, anybody who wants to see them is free to see them.”¹³⁷ This conflict over credibility, however, was never about the quality of the protection extended by the state but rather about the motives underlying this extension. As a result, the focus shifted away from the needs of the refugees and towards the interests and motivations of the states involved.

PROTECTING THE GOOD REFUGEES FROM THE BAD

As much as the war of words was waged over the numbers of refugees, both nations also fought over the quality of the refugees themselves. In various broadcast messages, including a message offering amnesty to refugees, Pakistan was explicit about the types of refugees it was seeking for return. These refugees were to be “bonafide Pakistan citizens.”¹³⁸ No explanation, however, was offered as to how the genuine nature of Pakistan citizenship would be assessed. Instead, Pakistan’s President Yahya Khan maintained that all returning refugees would “be checked”¹³⁹ although once again, no explanation was offered as to what would be examined. Of note in Khan’s amnesty message was an explicit invitation to the minority populations encouraging them to return.¹⁴⁰ He described them as “equal citizens of Pakistan” and guaranteed that they would be extended “full protection.”¹⁴¹ Yet within weeks of extending this offer of protection, international press reports described continued attacks against minorities and even the Pakistan Army “putting white, brown, and red marks on houses in many towns and villages to denote which house belong[ed] to friends and which to enemies of the troops.”¹⁴² Khan rejected this reporting as “mischievous propaganda being conducted

from outside Pakistan”¹⁴³ although no further comments were made to address the protection of the minority populations.

While India had little control over the numbers of refugees arriving, it did draw on the distinction between ‘good’ and ‘bad’ refugees to further its strategic interests. First, the Indian government drew on the good/bad distinction to justify increasing resources for border control. The Indian state instituted a programme of screening and registration, adopted a policy of insulating the refugees, and supervised the refugee camps to “ensure that undesirable elements as well as agents provocateurs of Pakistan [would] not be in touch with refugees.”¹⁴⁴ The state also strengthened the urban police force, bolstered military presence along the borders, and assigned an additional 80 officers to the intelligence wing of the state government.¹⁴⁵ Second, the Indian government exploited the good/bad distinction to influence the domestic political scene. With the refugee situation generating significant controversy in West Bengal, the central government drew on the situation to justify its dismissal of the West Bengali coalition government and to assert its direct rule.¹⁴⁶ This direct rule ultimately allowed the central government to bolster its efforts against the rising leftist political organizations and radical movements in West Bengal.

In distinguishing the good refugee from the bad one, each state sought to test the limits of its powers by either consolidating or expanding its rule. The symbol of the refugee would play an important part in this process. Despite framing the extension of refugee protection as a humanitarian concern, each state subjected the refugee to a process in which their identities were ultimately “produced, consumed, regulated, sustained, and invalidated.”¹⁴⁷

SPATIALIZING PROTECTION

In addition to the refugees becoming sites of politicization, the physical spaces they inhabited were also subjected to a similar process. As India established hundreds of refugee camps along its border with East Pakistan, the Pakistani government created twenty reception centres to encourage the refugees to return and to facilitate their rehabilitation.¹⁴⁸ These reception centres served a number of strategic purposes for the Pakistan state. First, they were established to convey the idea that Pakistan was respecting international institutions and obligations. In a press release issued by the Pakistan Embassy in Washington, D.C., the

Pakistan government described the reception centres as proof Pakistan was fully cooperating with the “United Nations High Commissioner for Refugees in securing the return of the refugees to East Pakistan.”¹⁴⁹

Second, the reception centres were used by Pakistan as sites of contrast to India’s refugee camps and its protection efforts. A publication released by Pakistan’s Department of Films and Publications documented the experiences of returning Pakistani citizens who “had their own stories of Indian brutalities to tell.”¹⁵⁰ Mir Ayezuddin described being lured by “false and mischievous propaganda.”¹⁵¹ He portrayed the Indian refugees camps as “hell for the Pakistani Muslims.”¹⁵² Another refugee, Ram Boiragee, described being robbed of his possessions in the camp with only his dirty *dhoti*¹⁵³ to carry back with him on his return to Pakistan.¹⁵⁴ Including these descriptions is not to deny the truth behind their stories since much of what these refugees experienced may very well have been true.

Instead, these descriptions point to the way Pakistan drew on select details of their stories to not only challenge the protection offered by the Indian state but to also boast of Pakistan’s own extension of protection. However, the tale told by Pakistan was just that. *New York Times* journalist Malcolm Browne interviewed a foreign relief worker who testified that the reception centres were mere shams. The aid worker admitted he no longer visited the centres since “it’s obvious they (refugees) aren’t coming back in more than a tiny trickle – none in some areas.”¹⁵⁵ He described how in one reception centre, the aid workers “discovered [that] the [Pakistan] Government had a staff of professional refugees that they brought out whenever visitors came to show that something was going on.”¹⁵⁶

In a visit to a reception centre in Benapole, *The Statesman* journalist Murray Sayle interviewed one of the Pakistani captains. During their conversation, the captain pointed to the Bengali farmers planting rice in the fields. Turning to Sayle, he commented: “They all look the same to us. How can we tell the miscreants and rebels from the ordinary people.”¹⁵⁷ Underlying the captain’s basic observation is a more profound insight that raises the fundamental question of who belongs to which state and on what grounds. Counting refugees, labelling their identities, and relegating them to certain spaces were but three dimensions of the 1971 refugee experience. Yet they each highlight, in their own way, how the refugee became a site of controversy and how any protection offered was used to further the state’s strategic interests.

5 CONCLUSION

As the world watched the refugees cross the border from East Pakistan into India in an unending stream, many found nothing sacred in their abstract and physical nakedness.¹⁵⁸ Their lives were at the mercy of a state that maintained both the power and the discretion to do as it saw fit. Unconstrained by a codified international legal refugee protection regime, the protection India extended to the 1971 refugees emerged from strategic interests and adaptable state practices. As a result, protection became politicized. By situating this concept of protection in both theoretical and historical discussions, I have sought to explore the nature of that concept, its sources, and its extension to the 1971 refugees. In the process, I have highlighted the many tensions that emerge – tensions between the past and the present, power versus care, human rights against citizen rights, the domestic opposed to the international.

Yet amidst these tensions, there remained the refugee seeking protection. The 1971 refugee thus calls on all involved in protecting refugees to reflect on the capabilities but also the limits inherent in international legal frameworks, institutions, and principles. The words of the 1951 Convention are designed to guide state action. In many instances, they do. Yet as the world knows all too well, principles are not practices. They can be ignored, dismissed, and rejected. The world also knows that practices are not solutions. Even practices guided by principles can leave little room for dignity and justice.¹⁵⁹

Despite their many faults, there remains a place for these international frameworks, institutions, and principles. If anything, they remind the world that situations of rightlessness always lead to calamity.¹⁶⁰ This calamity certainly entails the denial of life, liberty, and security. However this denial is predicated on the more pressing plight of the refugee, that of no longer belonging to a community.¹⁶¹ Unclaimed by India, rejected by East Pakistan, and ignored by the international community, the 1971 refugee came to embody this calamity. Their situation was dangerous, their existence was fragile, and their plight was terrifying. Yet the world they inhabited was just as dangerous, just as fragile, and just as terrifying. After all, their expulsion from humanity altogether occurred within a system that had completely organized this humanity.¹⁶²

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² *Ibid.*

³ *Ibid.*

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- ⁴⁹ *Ibid*.
- ⁵⁰ *Supra* note 32 at 449.
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- ⁵² *Supra* note 12 at 380.
- ⁵³ *Supra* note 32 at 450.
- ⁵⁴ *Supra* note 12 at 379.
- ⁵⁵ *Ibid*.
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- ⁵⁹ *Supra* note 12 at 379.
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- ¹⁵⁰ *Ibid* at 376.
- ¹⁵¹ *Ibid* at 383.
- ¹⁵² *Ibid*.
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