LOK SAMVAD

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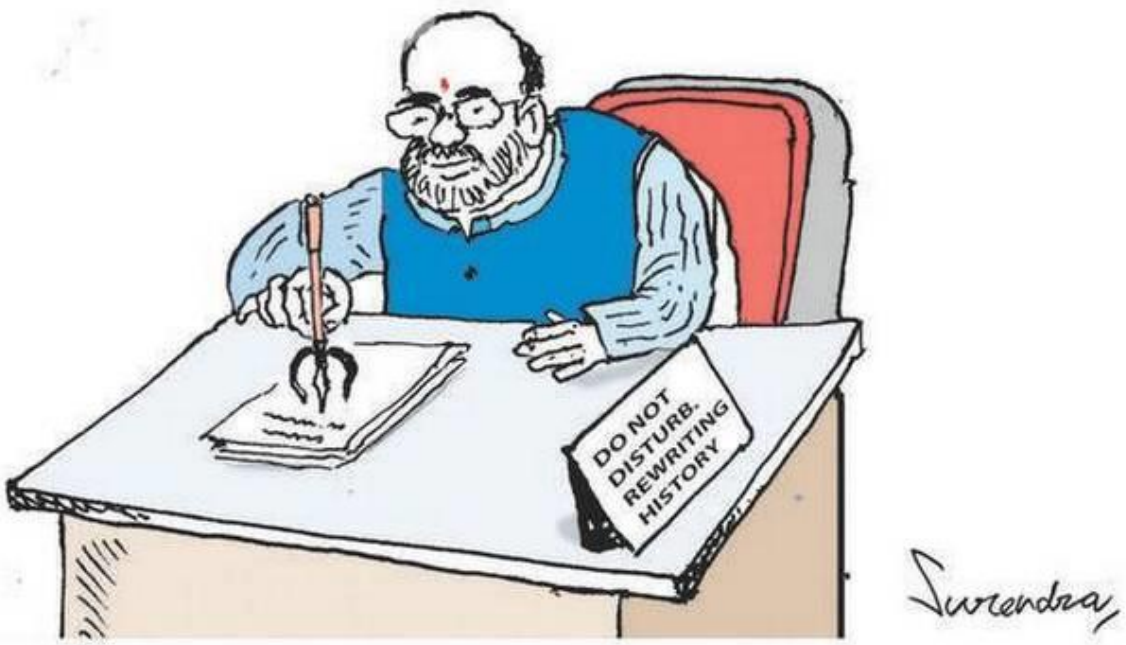

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THE GLOBAL

ONE NATION, ONE FLAG, ONE CONSTITUTION?

An Essential Guide to Dismantling Kashmir's "Special Status"

SHRIMOYEE NANDINI GHOSH I RAIOT

The tortuous thicket of laws, constitutional provisions, presidential orders, political history and legal mystifications surrounding Article 370 and Article 35A make it difficult to navigate through recent debates about its abrogation in an informed way. This series of three essays by Shrimoyee Nandini Ghosh, lawyer and legal researcher, aims to be a somewhat eclectic guidebook— at times proffering a no frills step-by-step road map, at others traversing some rather more unfrequented and adventurous legal diversions.

The journey is signposted by some simple questions.

What is/was Article 370 and Article 35A?

What just happened to them?

What does it mean in terms of International Law, Constitutional Law, and rights relating to equality, land and liberties of the people of Jammu and Kashmiri?

Do these changes matter? To whom do they matter? And why?

Shrimoyee will deal with the question of legal implications and consequences, by disaggregating what's at stake into three jurisdictional scales. The three scales are (i) International, (ii) Domestic (or Constitutional) and (iii) Everyday legality—particularly in areas that are directly effected by the dissolution of Jammu and Kashmir state. In this first essay, Shrimoyee provides a legal-historical guide to terms like 370, 35(a) and the tricks which were played to make these history. In two subsequent essays this series will look at the meanings of these changes and whether these changes matter.

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The dismantling of Jammu and Kashmir's special status has been heralded as a kind of constitutional surgical strike—the clearing of an unruly and hopelessly overgrown legal tangle, in one brilliant and blinding swoop. This, we are told is our other, long delayed tryst with destiny—that of one nation united at last under one constitution and one flag. But is it really?

To arrive at an answer, we must circumnavigate through the first two of our simple questions, whose answers I'm afraid are anything but. First, what was this tangled forest of Article 370 and Article 35A? And second, what exactly has been done to them?

The Tangled Forest

What is Article 370?

Article 370 is one of the provisions under Part XXI of the Indian Constitution that deals with Temporary, Transitional and Special Provisions. The Articles in this Part deal with different constitutional rights and protections for citizens of various states in the Indian Union (including, for example, Gujarat, Maharashtra, Andhra Pradesh, Sikkim and Nagaland), and about the adaptation and continuance of pre-constitutional laws and institutions such as the judiciary in post-independence India. Article 370 has been repealed almost in its entirety by the Constitutional Orders of 5 August 2019 (C.O. 272) and 6 August 2019 (C.O 273), and replaced with text that effectively dismantles the limited protection it afforded to Jammu and Kashmir in self governance, territorial integrity and collective rights to land and livelihood.

United Nations map of Kashmir Region The United Nations map of the 'Republic of India and Border areas' does not include the disputed Jammu and Kashmir Territory. Jammu and Kashmir was officially "integrated"into the Union through its own Constitution in 1957.The Indian state censors the publication of any map that does not show the entirety of Jammu and Kashmir as Indian territory

The original Article 370 incorporated into the Indian Constitution a modified form of the terms of the Instrument of Accession signed between Maharaja Hari Singh, ruler of the independent kingdom of Jammu and Kashmir, and the Dominion of India in October 1947, at the commencement of the First Kashmir War. While the Instrument itself is identical to those signed by the rulers of the 140 other princely states that acceded to India, Jammu and Kashmir was unique in being the only princely state that attempted to negotiate the terms of its accession and the protection of its sovereignty. It did so by participation in the Indian Constitutional drafting process, and thereafter through an agreement, ratified by Indian parliament, between the Indian state and representatives of Jammu and Kashmiri state called the Delhi Agreement of 1952. While the Maharaja had signed an Instrument of Accession temporarily giving over certain of his law making powers to India, unlike the rulers of the other princely states he had not signed (and never did sign) an Instrument of Merger, territorially integrating his kingdom with India. In future essays, we will return to some of the spectacular political events that accompanied this moment — massacre, insurrection, more massacres, war, truce, international diplomacy, abdication, commandeered elections, conspiracy and coup-d'etat (to name only a few) —which form the mise –en-scene of a legal history bookended by the signing of the Instrument of Accession and the promulgation of the Jammu and Kashmir Constitution (1948-1957). But for now let us turn back to Article 370.

From the Constituent Assembly Debates about the inclusion of Kashmiri representatives in the Indian Constituent Assembly and the drafting of Article 370, as well as the marginal notes to it, it becomes clear that the article was presented as a transitional measure to manage the relationship between India and Jammu and Kashmir until a final determination of the latter's legal status. At the time of its drafting in October 1949, the United Nations was still actively intervening in the Kashmir dispute, which had first been taken to the international body by India in January 1948, in the wake of the First Kashmir War. N. Gopalswami Ayyangar, a member of the Constitutional Drafting Committee and later Minister for Kashmir Affairs, said before the Constituent Assembly: "[The Government of India has] committed themselves to the position that an opportunity would be given to the people of the State [of Jammu and Kashmir] to decide for themselves whether they will remain with the Republic or wish to go out of it. They are also committed to ascertaining this will of the people by means of a plebiscite provided that peaceful and normal conditions are restored and the impartiality of the plebiscite could be guaranteed. We have also agreed that the will of the people, through the instrument of a constituent assembly, will determine the constitution of the State as well as the sphere of Union jurisdiction over the State."

Sheikh Abdullah takes his oath in the Constituent Assembly, 1949 The induction of Jammu and Kashmir delegation to the Indian Constituent Assembly in July 1949, only a few months before its proceedings drew to a close in November. The delegation's participation was controversial, not least because it took place in the immediate aftermath of the abdication of Maharaja Hari Singh on 20 June, 1949. Source: The Hindu

The contradiction in this statement, that should the people of the State indeed "wish to go out" of the Indian Republic in a plebiscite, the future Constitution of Jammu and Kashmir, its drafting process, and the "sphere of Union jurisdiction" over the state (if any) would be no business of at all of the Indian republic, was not pointed out. This is unsurprising given the widespread belief that the "entanglement" (in Ayyanger's words) with the United Nations was a mistake, and the express desire of a large number of members of the Indian Constituent Assembly, including its President, Dr. Rajendra Prasad that the Accession be treated as "unconditional and complete."

The final wording of Article 370 as incorporated in the 1950 Indian Constitution makes no mention of the UN processes, or Jammu and Kashmir's divided and disputed status, where two–fifth of the territory was held by Pakistan and hence neither in India's nor in the Maharaja's sovereign control. Instead, it only refers to a Constituent Assembly for Jammu and Kashmir, which would be empowered to decide on the terms of its relationship to India, including the ratification of all the temporary presidential orders passed under the Article, and the future revocation of the Article itself. (In the next essay In the World I will return to the question of the legal status of the Instrument of Accession and the Jammu and Kashmir Constituent Assembly.)

Without acknowledging the dispute, Article 370 set out that Jammu and Kashmir is a constituent unit of the territory of the Indian Union of states (Under Article 1, and the First Schedule of the Indian Constitution). In accordance with the terms of the Instrument of Accession, nothing else in the Indian Constitution would apply to Jammu and Kashmir except Article 370 itself, which was understood as the constitutional incorporation of the Instrument of Accession. The insertion of this provision in the constitutional text if only to exclude its own operation, nonetheless drew a legal instrument signed by the two sovereign powers—India and Jammu and Kashmir, inexorably into the domesticating force field of Indian constitutionalism. In doing so it founded the normative framing that continues to dominate understandings of the legal position of Kashmir in the Indian public sphere today across all political lines.

Article 370 also laid down the procedures through which (i) Indian law making powers (other than on the three specified subjects of foreign affairs, defence, and communications) and (ii) Indian constitutional provisions could temporarily be applied to Jammu and Kashmir, as well as (iii) how the Article itself could partially or fully cease to operate. The procedure for doing these three things was by Presidential Declarations or Orders, that is executive decrees issued by the President, giving him/her and therefore the Union executive, extraordinary albeit temporary law making and constituent (constitution making) powers over a state. This was in violation of core Indian constitutional values of the separation of powers and federalism.

The Article stated that:

The authority of Indian Parliament to make laws could be extended to Jammu and Kashmir by enacting a Presidential Declaration. In relation to the three specified subjects in the Instrument of Accession, the President could pass this declaration after consulting the State Government, and in all other legislative subjects after obtaining the consent ("concurrence") of the State Government.

Indian constitutional provisions (other than Article 1 and Article 370 which were applied by the Article itself) along with exceptions and modifications could be applied to Jammu and Kashmir by Presidential Orders, again with the consultation of the State Government in relation to the three specified subjects, and their consent in all other cases.

Article 370 itself could be revoked in whole or part, or modified only by Presidential notification based on a recommendation of the Jammu and Kashmir Constituent Assembly.

Article 370 further stated that all such temporary expansions of the Indian parliament's law making powers, and the application of Indian constitutional provisions to Jammu and Kashmir passed with concurrence of the State Government before the coming into being of the Jammu and Kashmir Constituent Assembly (i.e. presidential orders pertaining to subjects not specified

in the Instrument of Accession), would require the ratification of the Jammu and Kashmir Constituent Assembly, once it commenced its operations. Article 370 was silent as to what would happen once the Jammu and Kashmir Constituent Assembly was dissolved, since it presumably assumed that the terms of the future relationship (including the possible abrogation of the Article) would be fully laid out in the future Constitution of Jammu and Kashmir, and no further such transitional, extra-ordinary executive power would need to be exercised by the Indian executive.

The 'temporary' nature of the Article was upheld by the Indian Supreme Court in its ruling in the Premnath Kaul case, which involved a challenge to the far reaching land reforms brought about by the interim administration led by Sheikh Abdullah, and enacted by proclamation of the Yuvraj Karan Singh in October 1950. The petitioner a landed zamindar who had lost his estates, contended amongst other arguments, that the royal edict promulgating the land reform law was invalid, as Article 370 of the Indian Constitution had extinguished the Maharaja's legal status as a sovereign with powers to make laws in Jammu and Kashmir. The Court held that the final determination of the relationship of Jammu and Kashmir and India would rest with the Jammu and Kashmir Constituent Assembly, and until such time, the Maharaja (and through him the Yuvraj) continued to be a sovereign monarch with plenary powers under the old Jammu and Kashmir Constitution of 1939. Subsequent judgments of the Supreme Court, passed after the dissolution of the Constituent Assembly however depart from this view, holding that since the Jammu and Kashmiri Constituent Assembly had dissolved itself in 1957, without passing any recommendation as to the modification or abrogation of Article 370, and no other body is contemplated in the text of the Article as having this constituent power, the Article has become a permanent feature of the India-Kashmir constitutional scheme. This view has legalised the continuous use of constitutional orders to dramatically alter and undermine the nature of the sovereign constitutional relationship, rendering Jammu and Kashmir far less autonomous than other states when it comes to key areas of Centre-State relations such as the promulgation of emergencies, or the Union's powers of legislation.

What is Article 35A?

Article 35A was a special provision applicable only to Jammu and Kashmir, inserted into the Indian Constitution using the procedure for Constitutional Amendment under Article 370, via a Presidential order passed in 1954 (The Constitution (Application to Jammu and Kashmir) Order, 1954). Besides Article 35A, this far reaching constitutional order, which is often called the Basic Order, extended a large portion of the Indian Constitution, including the citizenship provisions, the jurisdiction of the Indian Supreme Court, and the Indian Constitution's Fundamental Rights Chapter (Part III) to Jammu and Kashmir (albeit with some significant modifications). This order was absolutely crucial to establishing the legal regime between Jammu and Kashmir and India. While it was putatively enacted to give legal form to the Delhi Agreement of 1952, it far exceeded those terms. It was passed within six months of Sheikh Abullah's 1953 arrest, and his removal from the position of the first Prime Minister of Kashmir. All subsequent presidential

orders (until the 2019 orders) have been crafted as amendments to this Basic Order, possibly to preemptively save them from a constitutional challenge, since they were passed after the Jammu and Kashmir Constituent Assembly ceased to exist in 1956, a situation that the original text of Article 370 did not contemplate. Nor did the Article lay out any procedure for the amendment of a presidential order. This Basic Order and all its subsequent amendments have been revoked in its entirety by the 2019 Constitutional Order (C.O. 272) and therefore the protection of laws relating to Permanent Residents under Article 35A too stands entirely repealed.

Article 35A was the constitutional recognition of a form of proto-citizenship rights for 'Permanent Residents' of Jammu and Kashmir. It stated that laws on certain subjects made by the Jammu and Kashmir State Legislature could not be challenged under Indian constitutional provisions, on the grounds that they abridged the rights (for example the right to equality, or the right to move freely) of other Indian citizens. The Jammu and Kashmir State legislature was therefore exclusively empowered to pass laws and regulations in relation to certain subjects without judicial review by the Indian Supreme Court. These matters were:

(i) the definition of 'Permanent Residents',

(ii) rights to acquire immoveable property in Jammu and Kashmir,

(iii) rights to settle in Jammu and Kashmir,

(iv) rights to employment in the State Government,

(v) right to scholarships and government aid for education.

The concept of Permanent Resident, incorporated in Article 35A and the Jammu and Kashmir Constitution, 1957, draws from a long history of State Subject rules and notifications enacted by the Dogra Maharajas, passed in the first three decades of the 20th Century. This was a response to agitations by his subjects for citizenship rights and protection of their lands, educational opportunities and livelihoods against foreigners from the Punjab and elsewhere. The Jammu and Kashmir Constitution, 1957 defines a Permanent Resident of the state as an Indian Citizen who was a state subject on May 14, 1954, or who has been a resident of the state for 10 years, and has "lawfully acquired immovable property in the state." The qualification of Indian citizenship was necessary since the state subject law otherwise applied to all residents of Jammu and Kashmir including those in Azad Kashmir, Gilgit and Baltistan. The Constitution has several other provisions pertaining to Permanent Residents, including sections, which preserve pre-constitutional service conditions and posts, and disallow non Permanent Residents from becoming members of the state legislature, or being appointed to government employment.

The state legislature and executive has over the years passed many laws, bye-laws and government orders, protecting Permanent Residents' exclusive rights to buy, sell and own property, preventing alienation of lands to non Permanent Residents and in matters of state employment, healthcare, higher education, state compensation schemes, voting and standing for elections. The Jammu and Kashmir state legislature also has the ability to alter the definition of Permanent Residents or modify the privileges applicable to them through a law passed with two-thirds majority. Neither Article 35A, nor the Jammu and Kashmir Constitution, 1957 contain any reference to the gender of Permanent Residents, or legal disabilities of women Permanent Residents who marry non Permanent Residents, though this has been widely cited as a reason for the removal of Article 35A, and was also one of the grounds of its challenge in the Supreme Court. I will discuss the 'equality' justifications put forward by supporters of the amendments including gender and caste discrimination in the last essay in this series. For now, suffice to say that the constitutional protection accorded to these laws under Article 35A has been removed with the abrogation.

Nehru had taken the Kashmir dispute to the UN to mediate a ceasefire in 1948, in the expectation that the body would endorse India's position recognizing the Accession as legal and final, returning the territory under Pakistan control to India , and condemning Pakistani "aggression". By mid 1948, with the appointment of UN Commission on Indian and Pakistan however it was clear that the UN was inclined towards a mediated solution including a plebiscite administered by a third party, and was unwilling to toe India's line in accepting the Sheikh Abdullah's emergency government as the only legitimate authority over the entire territory. The first of these cartoons 'UNO-pathic treatment' published in Shankar's Weekly (11 July 1948), shows a beleaguered India taking its baby Kashmir to the UN, only to be held down and forcibly plied with bitter medicine. In the second cartoon (25 July 1948)' Noosing the shadow' Kashmir is not a babe in arms, but a bull on the loose which Members of the UN Commission on India and Pakistan (UNCIP) are trying to lasso in vain, as Nehru, the helpless cowherd looks on. The cowboy is possibly Chester Nimitz, a former US naval commander and UN appointed Plebiscite Administrator.

The Lightning Strike

Since the in-built procedural protections with regard to Article 370 made it fairly robust and difficult to directly amend or repeal, the Indian government devised a circuitous, three–step route to achieve its ends. Constitutional experts have suggested that the Parliament should have adopted the ordinary amendment procedure laid down in Article 368 of the Indian Constitution, instead of this "back door" method. However, this view does not take into account the fact that the Basic Order of 1954 provided that Constitutional Amendments to the Indian Constitution would not apply to Jammu and Kashmir, unless extended by Presidential Order. It would not have been legally sound to have directly repealed Article 370 altogether, as it is the basis through which Jammu and Kashmir is incorporated into Indian Union in the first place. Abrogating it completely, without instituting a new basis of the relationship through the

substituted wording would mean dissolving the relationship itself. The new language of the Article, dismantles the protections and procedures of the Article, and enacts the application of the entirety of Indian Constitution to Jammu and Kashmir.

Step 1

The Union Government used Article 370(1)(d) relating to Presidential orders for Constitutional Application/Amendment to enact C.O. 272, on 5 August 2019, applying provisions of the Indian Constitution to Jammu and Kashmir. Since Jammu and Kashmir was under President's Rule and there was no popularly elected government or Council of Ministers in place, the concurrence of the State Government required under Article 370 was read to mean the concurrence of the Governor alone. This had been done several times in the past as well to apply constitutional provisions to Jammu and Kashmir, most recently in March 2019 to promulgate an ordinance relating to reservations in government jobs for border residents. The first C.O. does three things:

It over-rules the Constitutional Order of 1954 (The Basic Order) and all its amendments;
It applies all the provisions of the Indian Constitution to Jammu and Kashmir;
It amends Article 367, which is the Interpretation provision of the Indian Constitution, designed to help resolve ambiguities in meaning. A newly inserted clause, Article 367(4), states that as applied to Jammu and Kashmir (a) The words "this constitution" will mean "this constitution as applied to Jammu and Kashmir"
(b) The words "Sadr i Riyasat" (The indirectly elected Constitutional Head under the Jammu and Kashmir Constitution, also recognized in the Indian Constitution, will mean the Governor), and that references to Government will mean Governor acting on the advice of his Council of Ministers. These changes had already been amended through Constitutional Orders in 1965, but since the Basic Order and all its amendments had been repealed, the language had gone back to the original text

(c) Most crucially that in Article 370(3) relating to the procedure for cessation of operation of Article 370, "Constituent Assembly" will mean the "State Legislative Assembly."

Step 2

The Union Government then used the new meaning of "Constituent Assembly" in the procedure under Article 370(3) for abrogation of Article 370 to pass a Statutory Parliamentary Resolution recommending that the President make a public notification replacing the existing Article 370, with text that stated that the entirety of the Indian Constitution would apply to Jammu and Kashmir, notwithstanding any "law, document, judgment, ordinance, order, bye-law, rule, regulation, notification, custom or usage […] or any other instrument, treaty or agreement," thus effectively eviscerating the Article. In his speech to the Rajya Sabha, Home

Minister Amit Shah explained that since President's Rule under Article 356 (as modified and applied to Jammu and Kashmir by Constitutional Orders) was in place, all powers of the State Legislative Assembly was now vested in the Indian Parliament. In these circumstances and since the Constituent Assembly, which was the only body empowered to abrogate or amend Article 370 had been replaced by the State Legislature (through C.O. 272), the Union Parliament could pass such a resolution.

Along with this Statutory Resolution, the Home Minister also tabled Jammu and Kashmir (Reorganisation) Bill, 2019 making Jammu & Kashmir a Union territory with a Legislative Assembly and Ladakh a Union Territory without a Legislative Assembly, effective from 31 October 2019. This law would have earlier run afoul of the Basic Order, which disbarred the operation of Article 3 of the Indian Constitution, which allows the Union Government to modify the boundaries of any state, in Jammu and Kashmir, thus preserving its territorial integrity.

The Home Minister also tabled the Jammu & Kashmir Reservation (2nd Amendment) Bill, 2019 amending the Jammu & Kashmir Reservation Act 2004 to allow for reservations for people from border areas, based on an earlier ordinance promulgated by the Governor of Jammu and Kashmir in March 2019. Both bills were unanimously passed in both houses.

Step 3

The Union Government then passed another Constitutional Order (C.O. 273) dated 6 August 2019, which was a public notification formally effectuating the changes set out in the Parliamentary Resolution, ceasing the operation of the original Article 370 and the Basic Order. It decreed that notwithstanding all other laws, treaties and instruments to the contrary, Jammu and Kashmir would be henceforth governed by the provisions of the Indian Constitution. And with that, the deed was done.

What Remains of the Day

The full implications of this up-ending of the India-Kashmir constitutional regime will only be revealed as events unfold, and hitherto uncharted legal waters are navigated. For instance, though the change has rendered the existing laws and the Constitution of Jammu and Kashmir, 1957 vulnerable to repeal and judicial challenge on the grounds of violation of the Indian Constitution, until they are explicitly revoked, substituted by the legislature or struck down by courts, they continue to remain in force. Two flags still flew over the State Secretariat until recently, as Caravan magazine reported, and as the Jammu and Kashmir High Court upheld in 2015, a judgment that continues to be the law in force. Though the existence of the two flags caused much alarm, and the eventual lowering of the Jammu and Kashmir state flag was crowed over on television, this is without legal mandate. The Jammu and Kashmir Constitution, 1957 which instituted the separate flag (Section 144), while it may have been rendered

meaningless by the constitutional legislative changes is yet to be formally struck down or invalidated in part or whole by a court of law or act of parliament. The parliament or court's power to exercise such a constituent power, on the basis of the new Article 370, when the Constituent Assembly of Jammu and Kashmir has dissolved itself, is a matter of grave constitutional doubt, and open to further challenge.

This however does not mean nothing has changed. Under Schedule Five of the Jammu and Kashmir (Reorganisation) Act, 106 Central laws will be extended to the two new Union Territories. Out of the total 330 State laws and Governor's Acts, 164 will continue to operate, 166 will be repealed and seven (mainly land related legislations) will be amended. The Jammu and Kashmir Constitution, 1957 has not been repealed and continues to be valid law. Police and Public order will also now become a Union subject, under the new dispensation. The Jammu and Kashmir Armed Forces Special Powers Act, 1990 and the Public Safety Act, 1978 are both included in the schedule of laws that will continue to operate. In addition, the National Security Act 1980 will also now apply to Jammu and Kashmir, perhaps adding a further weapon to the state's arsenal of preventive detention legislations. Bars on transfer of land to non permanent residents, under the Jammu and Kashmir Transfer of Property Act, 1920 and the Jammu and Kashmir Land Alienation Act, 1938, have been removed. Ceiling on land transfers of state lands to non-permanent residents under the Jammu and Kashmir Land Grants Act, 1960 and private lands under the Jammu and Kashmir Big Landed Estates Abolition Act, 2007 have been dismantled. The Jammu and Kashmir Land Acquisition Act, 1935 has been repealed and replaced by the central land acquisition legislation. While the J&K Industrial Policy of 2004, already allowed for leaseholds on industrial property for 90 years, the changes will allow for outright ownership and free hold of lands by private and public entities. The central Enemy Properties Act, 1968 will also now apply allowing for large-scale alienation of lands vested in the Jammu and Kashmir Custodian of Properties, lands which belong to state subjects displaced by the incomplete and unending partition of Kashmir, extinguishing further their rights to return. Elections to local bodies, already an important site of "people centric" policies of militarized governance and development that lie at the heart of India's counter-insurgency war, are likely to become further instrumentalised. All of this is likely to usher in profound changes in land ownership and use, demography and in the nature, command structures and intensity of policing and surveillance.

It is true, as is frequently asserted, that the constitutional guarantee of legislative autonomy under Article 370 had been almost entirely hollowed out over the years by Constitutional Orders. The Jammu and Kashmiri Constitution, 1957 that in the Indian state's view embodies the popular will of the Kashmiri people, obliterating the need for a plebiscite, is a document without its own charter of rights, something that renowned constitutional scholar A. G Noorani calls, "an utter nullity" and non est (those are some of the kinder terms). Drafted by a Constituent Assembly whose elections were rigged, whose validity was disputed by the United Nations Security Council, whose leader Sheikh Abdullah was deposed and imprisoned mid-way

through the drafting process, and whose safeguards against incursions by Indian judicial, legislative and executive authorities, have been systematically disemboweled through Presidential orders, Constitutional Amendments and judgments, frequently passed in the wake of political coups, it gives little that is unique to the Jammu and Kashmiri people by way of rights, with one important exception: the rights and protections it affords Permanent Residents. The revolutionary ideals of Sheikh Abdullah's Naya Kashmir manifesto including gender equality, right to work, and the right to education are relegated to the category of unenforceable Directive Principles of State policy.

Instead, the Jammu and Kashmir Constitution articulates through its Preamble and Section 3 the position that Jammu and Kashmir is and shall be an integral part of India. It defines this territory as "all the territories which on the fifteenth day of August 1947, were under the sovereignty or suzerainty of the Ruler of the State" thus retrospectively getting around the problem of the fact that the Maharaja was not really in control of the entirety of his kingdom when he signed the Instrument of Accession in October 1947, and enacting an integration in perpetuity, envisaged neither by the terms of Accession, nor even the Indian Constitution. Under various Jammu and Kashmir Extension of Laws Acts, scores of central laws and the jurisdiction of central agencies like the Central Bureau of Investigation (CBI) and National Investigative Agency (NIA) have been extended to Jammu and Kashmir. Besides this, the enactment of near identical laws on almost every subject, ranging from the Right to Information, to reservations to the prevention of child sexual abuse by the State Legislature had already flattened the differences between the legal terrain of Jammu and Kashmir and other states, except when they carved out an extraordinary jurisdiction for the application of special laws allowing for use of force, and impunity by police and armed forces.

Celebrations over the abrogation of Article 370

Despite this hollowing and flattening, Article 370 and Article 35A have nonetheless provided shade for a lush undergrowth of laws, bye-laws, judgments and executive orders relating to higher education, administrative services, electricity laws, agricultural property, evacuee property, land revenue, tenancy, government schemes, compassionate appointments, compensation for militancy related deaths, etc. Overturning each of these through legislative or judicial action and replacing them will be no easy task, and is likely to take years, if indeed it ever happens, until which time Jammu and Kashmir will continue to be governed through the Jammu and Kashmiri constitutional provisions and laws that are, on the face of it, unconstitutional under the new regime. Over the years the state judiciary has played a crucial role in normalising impunity for human rights abuses by Indian state forces in Kashmir, yet it has been quite a fierce protector of the state's constitution and rights of permanent residency, holding for instance, that Indian Constitutional amendments unilaterally modifying Jammu and Kashmir's constitutional structures are illegitimate, and observing that the Jammu and Kashmir Constitution enacts a form of sovereignty with respect to property rights of Permanent

Residents constituted through its own constitutional history. The change is likely to produce some unique and unresolvable legal conundrums, inconsistencies and conflicts of laws especially as the Jammu and Kashmir Constitution's definition of its territorial boundaries is now bifurcated over two Union Territories— one with a legislature, and one without, both directly governed by the Centre, and yet with their own (unified) Constitution. Indeed the political inexpediency of entirely dismantling the land rights regime and domiciliary protections of employment, in other words the very rights guaranteed under the Jammu and Kashmir Constitution's definition of Permanent residents and Article 35 A, are becoming increasingly obvious even to the government. An unnamed senior Indian official recently stated that the elected government of Jammu and Kashmir would decide on future land policy, including classifications and land tenures. Already Nirmal Singh of the Jammu and Kashmir BJP has said that the party will propose domiciliary protections for rights to employment. In short, while the constitutional changes are cataclysmic and seem irreversible, in the domain of the everyday, the legal conquest of Jammu and Kashmir is neither as complete nor unquestionable as celebrating members of the ladoo-distributing public would like to believe.

INTERNAL? BILATERAL? INTERNATIONAL?

The tortuous thicket of laws, constitutional provisions, presidential orders, political history and legal mystifications surrounding Article 370 and Article 35A make it difficult to navigate through recent debates about its abrogation in an informed way. This series of three essays by Shrimoyee Nandini Ghosh, lawyer and legal researcher, aims to be a somewhat eclectic guidebook— at times proffering a no frills step-by-step road map, at others traversing some rather more unfrequented and adventurous legal diversions.
In the first of these essays, Shrimoyee looked at:

What is/was Article 370 and Article 35A?What just happened to them?

In this second essay, Shrimoyee deals with international legal questions. What have the changes to the legal status of Kashmir meant in terms of Internationally recognised rights of the Kashmiri people?

SHRIMOYEE NANDINI GHOSH I RAIOT

In this essay, we look at what the dismantling of Kashmir's "special status" means in the realm of the international order: the laws of nations, wars and our shared humanity. The question of Kashmir's international legal status has been an extremely contentious one, and one on which there has been very little serious academic engagement. In India, most legal experts and opinion makers have seemed content to echo, either by their words or their silences, the position of the Indian state that Kashmir is primarily a constitutional question, in other words an "internal matter". But in the midst of the legal upheaval wrought by the neutering of Article 370, several previously verboten terms – 'Occupation', 'Annexation', 'Colonialism', 'Right to Self Determination', drawn from the realms of international law and politics, are now being used in the Indian public sphere to describe, debate, or decry the events of 5 August, 2019. In this essay, I will try to unpack some of these terms and address the question of the implications of the constitutional changes for Kashmir's disputed legal status in International Law.

Kashmir is personified as a ravaged and helpless young woman, as the turbaned Pashtun invader gloats over his conquest, and a UN official carrying a file full of resolutions wags his finger at her. India viewed the UN's intervention, treating Kashmir as disputed territory instead of Pakistan as an aggressor, as misguided. Shankar's Weekly, 22 Aug 1948
Questions about Kashmir's international legal status inevitably lead to a cascade of further arguments over the nature and meaning of the Instrument of Accession, signed in October 1947 between Maharaja Hari Singh of Jammu and Kashmir and Governor General Mountbatten of the Dominion of India. Was this document a treaty, that is, an international agreement

creating a binding legal obligation between two sovereigns? Did the Maharaja, as the sovereign head of a princely state formerly under British suzerainty have the legal capacity to enter into such an agreement at the moment of decolonization? What effect did the Instrument have on the legal status of Kashmir, and its sovereignty? What did the UN peace processes that began in 1948 mean, and what did they do to Kashmir's legal status? What effect did the incorporation of the terms of the Instrument of Accession into the Indian Constitution have on Kashmir's legal status in International Law? What about other wars fought over the region, and other treaties and agreements over the years? And finally, what has the latest move done to Kashmir's status?

The imperium of International Law

Before we tackle this torrent, let us embark on a brief detour, taking in the imperial and colonial origins of International Law, and the implications they may have for our understanding of Kashmiri sovereignty in particular, and for claims to sovereignty in the post colonial world in general. Westphalian models of International Law imagine 'sovereignty', 'territory' and 'population' (or power, land, and people) as neatly coinciding attributes so as to form independent, well defined, bounded, and "natural" nation states, entitled to govern themselves and exert a monopoly of force within their boundaries without external interference. Anomalies or departures from this model were seen as terra nullius, empty, unoccupied lands without sovereigns, legally available like other things without owners—wild beasts, lost slaves and abandoned buildings—for conquest through seizure, by civilized and self governing (i.e. White, European) men and nations. In alignment with this legal tradition, and without any appearance of apparent irony, the boundaries of the post-colonies, through the long century of decolonization (beginning with the decolonization of Spanish America in the early nineteenth century and stretching into the liberation of Asia and Africa in the 1960s), were largely determined by the principle of Uti possidetis juris (you may keep what you posses by law) drawn from the medieval laws of conquest of territory in International Law. Under this principle, upon becoming self-governing territories, postcolonial successor states inherit the boundaries, dependencies, and often the governing frameworks of their colonial predecessors. It was felt by former colonisers and colonies alike that once the self-determination claims of the former colonial possessions were realized, and sovereign, independent nationhood attained, their boundaries solidified in perpetuity, and no further legitimate claims to self determination persisted in order to guard against the instability and contentions to sovereignty that may be wrought by colonial withdrawal and transfers of power. This explains the marked reluctance in International Law and international relations to apply the Right to Self-determination "within" the inherited boundaries of post-colonial nations, as instantiated by India's reservations to Article 1 of the International Covenant on Civil and Political Rights, 1966 as well as the International Covenant on Economic Social and Cultural Rights, 1966 on the Right to Self-determination. In its reservation, India states that the Right to Self–determination applies "only to the peoples under foreign domination and that these words do not apply to sovereign

independent States or to a section of a people or nation–which is the essence of national integrity."

"Accession"

The Accession is seen as a swayamvara marriage freely entered into by the demurely sari-clad Kashmiri bride, who choses to garland Indian Home Minister Vallabh bhai Patel, as the priestly N. Gopalaswami Ayyanger smiles on approvingly, and the international community including British PM Clement Atlee, and Stalin, as well as Pakistani Prime Minister Liaquat Ali, and other Pakistani politicians look on in shock. Shankar's Weekly, 24 Oct 1948

The princely states of British India, which covered 40% of the area of the Indian sub-continent, contained 23% of its population, and exercised vastly differentiated, unequal and splintered modes of sovereignty and statehood under the suzerainty of the British Indian government, posed a challenge to the Westphalian model before, during and after partition and the transfer of power. For instance, in the inter-war years when debates relating to the international trafficking of women and children raged in the League of Nations (in which British India was itself an anomaly as the only non-governing state admitted as member), princely states were treated at certain times as sovereign, 'foreign' territories with international borders and at others as part of British India, on par with the provinces. In the precipitate prelude to the Partition of British India and the making of India and Pakistan, the intractability of such contradictions became more apparent. The British exit strategy in 1947 attempted a clumsy rapprochement between the principle of Uti possidetis juris, or the inherited boundaries of successor states, with recognition of the sovereignty of the princely states.

While "accession" in International Law signifies the assent by a state to an already existing treaty, the Instrument of Accession was a sui generis (unlike any other) legal contract, devised and codified under the Government of India Act, 1935 to enable princely states to broadly continue the treaty relationship that formerly existed with the British Indian government, as constituent units within the framework of the new Federation of India, set up under the 1935 Act. The Instrument provided the rulers of the princely states a sphere of sovereign autonomy over the internal affairs of their kingdoms while the federal government retained certain legislative subjects specified in a separate schedule (such as foreign relations and military affairs).

The official British position under the Indian Independence Act, 1947 was that British suzerainty over the princely states would lapse with the transfer of power, and all sovereign powers would be restored to princely states, who then would be free to negotiate the terms of their future relations with either of the successor states—the dominions of India or Pakistan—or choose to remain independent. However, in his dealings with them Governor -General Lord Mountbatten cajoled state after state into signing "Instruments of Accession" as provided for under the Government of India Act, 1935, threatening them with ostracism from the international

community, including being excluded from the British Commonwealth, should they chose to remain independent. This was in keeping with the ruling establishment of Indian National Congress, including future Indian Prime Minister Jawharalal Nehru, who adopted the classic terra nullius position of seeing princely states as anomalous, feudal, autocracies without popular sovereignty that were carved out of the territory of the greater Indian nation into which they should be re-incorporated. Going a step further, Nehru declared at a meeting of the All India States Peoples' Conference in April 1947 that any princely state that refused to join the Indian Constituent Assembly would be treated as a "hostile state". British, Indian, and Pakistani state actions, including diplomatic communications and policy documents at the time of decolonization showed an acceptance of the belief that the Instruments of Accession were binding sovereign agreements, and thus would form opinio juris (opinions of law), an element of customary International Law that binds nations.

Jammu and Kashmir, the largest of the Princely Kingdoms with a Hindu ruler and a majority Muslim population, which had its own Constitution, a partially-elected legislature, an independent judiciary, and laws that provided its subjects quasi-citizenship rights to domicile, livelihood and property, remained a holdout against the pressures to conform and accede, with the Maharaja Hari Singh and his Prime Minister Ram Chandra Kak favouring further negotiations before making a choice. The Maharaja entered into a Standstill Agreement with the Dominion of Pakistan in August 1947, whereby Pakistan as the successor state would continue with certain contractual obligations, and administer the continued operation of postal, telegraph and railroad services in Kashmir.

However, in late October 1947, faced with an armed rebellion and insurrection in the Western quarter of his kingdom in Poonch, presentiments of genocidal violence against Muslims in the South, stirrings of mutiny in the far North, and an invasion by Pashtun tribesmen from the North-West that had almost reached the city gates, the Maharaja fled from his summer capital Srinagar, and hurriedly signed an Instrument of Accession with India, as a pre-condition to India airlifting troops and coming to the defense of his kingdom. The date of this signing is however disputed, with several historians contending that the Instrument was in fact signed after the landing of Indian troops, on 27 October 1947, or never signed at all, thus making it an entirely illegitimate invasion, with no consent of the reigning sovereign. Pakistan questions the capacity of the Maharaja to enter into such an agreement on behalf of his people having signed a prior Standstill Agreement with Pakistan, and whilst two-fifth of his kingdom (Azad Kashmir and the Northern Areas of Gilgit and Baltistan) was no longer under his effective control.

The presence of Indian boots on Kashmiri ground, whether immediately prior to or immediately after the signing of the Instrument of Accession, even if for the protection of the Maharaja's land and people, also lays open questions of the threat of use of force, and the voluntariness of the Maharaja's conditional assent to the Instrument of Accession. The Maharaja's letter of 26 October 1947, viewing the agreement as a condition precedent to receiving military assistance

to save his kingdom, adds heft to this argument. Art. 52 of the Vienna Convention on the Law of Treaties (1969) states that a treaty is void 'if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations' and, thus, rejects the validity of even a treaty-based annexation, though of course given the (Westphalian) state-centric model of International Law, the 'anomalous' 'quasi sovereignty' of Jammu and Kashmir, as a not quite (and perhaps never to be) sovereign state, makes the Vienna Convention at best a guiding rather than a binding axiom applicable to the situation.

"Annexation"

This view that there is no valid legally binding document that governs the India-Kashmir relationship, which is shored up by considerable historical evidence, would mean that the Indian control over Jammu and Kashmir was in effect an illegitimate seizure, or an annexation—a unilateral act of assertion of sovereignty by forcible territorial occupation or conquest (whether or not it is met with actual resistance), accompanied by the permanent administrative takeover of a state, or disputed territory, by another. Annexations are seen as acts of aggression violating the UN Charter's rules on the legitimate use of force, and thus are an outlawed act of war, prohibited under International Law. The unilateral actions of the Indian state in changing the status of Jammu and Kashmir from a federal unit to directly-administered Union Territories, destroying the last residues of its territorial integrity and legal autonomy, arguably only further consolidates and perpetuates the initial illegal act of aggression.

India has however always maintained that the Instrument of Accession is a valid and binding legal instrument, in the nature of a sovereign contract (in other words a treaty) entered into between India and the Maharaja, in his capacity as the absolute ruler of (the entire territory) of the former princely state of Jammu and Kashmir. This position was not only articulated by India in the UN debates about the Kashmir dispute, but also by the Indian Supreme Court in the Premnath Kaul case, which involved a constitutional challenge to Kashmiri land reforms, where the Court held that even after the lapse of British paramountcy on the passing of the Independence Act, 1947, "the Maharaja continued to be the same absolute monarch of the state […] and in the eyes of international law he might conceivably have claimed the status of a sovereign and independent State."

What did the Instrument of Accession say?

If we accept that the Maharaja was sovereign, and validly entered into a legally binding agreement, we must first wade through the deep waters of the Instrument of Accession, and its accompanying documents, which together are considered a part of the instrument under the laws governing international contracts and agreements. Following this, we must venture further and deeper into the processes through which the United Nations and the Indian and Jammu

and Kashmiri Constitutions affected the legal position the Instrument sets out. We then arrive at the clearing of what this might all mean for Kashmir's legal status. The Instrument of Accession sets out the terms upon which the Maharaja accepted or acceded to the jurisdiction of the Dominion of India. Like in Instruments signed by several of the other larger princely states with 'internal autonomy', the ruler consented to give up some of his lawmaking powers—in the domains of foreign affairs, communications and defence to the Dominion of India—while preserving his sovereign and territorial authority. The eminent domain over all land in the State vested in the Maharaja exclusively, and land could only be acquired by India if transferred by him. Under Clause 5, the agreement states that its terms could only be modified by consent of the ruler of the state. Further, it was quite categorical on the continuance of the rights of the Maharaja as a sovereign ruler, and of the constitutional autonomy of Jammu and Kashmir itself, except in the specified spheres listed in the schedule to the Instrument. Clause 7 of the Instrument states, "Nothing in this Instrument shall be deemed to be a commitment in any way as to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangement with the Governments of India under any such future Constitution." Clause 8 reiterates, "Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State." In his letter accompanying the Instrument dated 26 October 1947, the Maharaja wrote that Indian military aid was sought in return for the Accession. He also stated that that it was his intention to immediately set up Interim Government. On 30 October 1947 he appointed Sheikh Abdullah, the leader of the National Conference, to head the government as Emergency Administrator alongside his own representative, the then Prime Minister Meher Chand Mahajan.

Governor General Mountbatten in his letter dated 27 October 1947, accompanying his formal acceptance of the Accession, acknowledged the Right to Self-determination, and popular sovereignty of the Kashmiri peoples. He wrote: "[M]y Government has decided to accept the accession of Kashmir State to the Dominion of India. Consistently with their policy that, in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State. It is my Government's wish that as soon as law and order have been restored in Kashmir and its soil cleared of the invader, the question of the question of State's accession should be settled by a reference to the people."

The Instrument and its associated documents therefore do not lay out a final and complete arrangement in perpetuity, but are rather in the nature of a provisional and conditional agreement, providing for the continuance of the Maharaja's sovereign title aided by an emergency administration, and contingent upon the provision of Indian military aid in the immediate future as well as the occurrence of a plebiscite once "law and order had been restored."

War, and (not quite) Peace

In the immediate aftermath of the signing of the Instrument, war was declared between India and Pakistan. The Indian Cabinet referred the Kashmir dispute to the UN Security Council on 1 January 1948 in order to reach a peaceful settlement, with Pakistan also raising its own issues two weeks later. The UN Security Council through Resolution 39 established the United Nations Commission on India and Pakistan (UNCIP) on 20 January 1948 to investigate the claims and counter-claims about the illegal use of force and occupation of territory made by both Pakistan and India. The Security Council adopted Resolution 47 on 21 April 1948 asking that Indian troops and Pakistani tribesmen withdraw from Jammu and Kashmiri territory, that an interim local authority be established to represent the major Kashmiri political groups from both sides of the cease-fire line, and that a five-member UNCIP delegation go to Kashmir to help restore peace and conduct a plebiscite.

A ceasefire was finally negotiated through the UNCIP and a UN mediated Ceasefire Line demarcated and agreed to by both parties in July 1949 through the Karachi Agreement, to be monitored by a peacekeeping force called the UN Military Observers Group in India and Pakistan (UNMOGIP). However, owing to intractable disagreements between India and Pakistan, the truce, demilitarization, and plebiscite stages of the contemplated peace process never took place, despite 17 UN resolutions, and various plans, missions and proposals attempting to bring about a negotiated settlement between 1948 and 1971. Pakistan maintained that any demilitarization on its part needed to be simultaneously reciprocated by India, owing to the fear of Indian aggression in taking over the vacated territory in Azad Kashmir given India's previous annexation of the princely states of Junagadh and Hyderabad. While Pakistan initially withdrew some its tribesmen and nationals, the reciprocal withdrawal of regular troops became mired in controversy when India refused to match the Pakistani offer for withdrawal of an initial tranche of soldiers instead stating that it would only withdraw its air force. India continued to insist the Pakistan be treated as an aggressor, while the UN tended to treat both states with parity, prioritizing Kashmiri self-determination and imposing conditionalities on both. On March 5, 1948 the Maharaja dissolved the increasingly fractious emergency administration (which had been headed by an Emergency Administrator and a Prime Minister) and Sheikh Abdullah was appointed as Prime Minister, the single head of the Interim Government. Controversy about this also soon arose in the UN as India adopted the position that the Interim Government must be recognized as the sole local authority for the entire territory after demilitarization, including the Northern and Western parts (Gilgit and Baltistan and Poonch) of the region, which had declared their "liberation" and established their own provisional government allied to Pakistan, and over which the Maharaja had lost territorial control prior to the outbreak of war.

To this day India maintains that the UN peace process was scuttled by Pakistan's refusal to comply with UN resolutions asking it to withdraw its troops first as a pre-condition to plebiscite. However, numerous contemporaneous accounts, including by Owen Dixon, the UN appointed mediator after the failure of the UNCIP, blame the failure of the negotiations on India's obduracy against allowing a plebiscite under a neutral authority and international supervision. Dixon, who was also scathing about Sheikh Abdullah's "police state," wrote in in his report at the end of failed talks in Delhi July 1950, "None of the suggestions [about the several options for partition and/or plebiscite that he had proposed] commended themselves to the Prime Minster of India […] In the end I became convinced that India's agreement was never to be obtained to demilitarization in any such form or to provisions governing the period of plebiscite of any such character, as would, in my opinion, permit of the plebiscite being conducted in conditions sufficiently against intimidation and other forms of influence and abuse by which the freedom and fairness of the plebiscite might be imperiled."

The Delhi Conference, 20-25 July 1950. According to Dixon's report of the talks, Nehru monopolized the conversation, speaking for almost 10 hours, while Ali spoke for barely half an hour. In a contemporaneous cartoon, The UN mediator Owen Dixon is eager to officiate at a wedding. The groom, Pakistan Prime Minister Liaquat Ali looks pleased with himself, while Nehru looks alarmed and befuddled at the proceedings. Kashmir, the bride tries to draw Nehru away. Shankar's Weekly, 3 Sept 1950

Constitution making

Even as the UN negotiations were ongoing through 1949 and 1950, the Constituent Assembly was engaged in drafting the Constitution of India. By mid 1949, it had become increasingly clear that the UN was unprepared to accept India's position on the finality of the accession, or the legitimacy of the Maharaja-appointed National Conference government as the sole political authority over the entire territory of the erstwhile state of Jammu and Kashmir. Though referred to as a "popular government" Abdullah's administration was appointed in the immediate aftermath of the signing of Instrument of Accession, as an interim, emergency wartime measure, and at the insistence of Prime Minister Nehru. Sheikh Abdullah's National Conference which had been at the forefront of the anti–colonial and anti-monarchial movement since 1946, had boycotted the previous two elections to the Jammu and Kashmir State Assembly. Abdullah himself had only been recently released from prison in September 1947, again at the insistence of Nehru and Gandhi.

On 16 June 1949, four days before the Maharaja announced his abdication, and five months before the Constitutional drafting process came to an end, a four member delegation from Kashmir, headed by the Prime Minister of the Interim Government, Sheikh Abdullah, joined the Indian Constitution drafting process. N. Gopalaswami Ayyangar, member of the drafting committee, and later Minister of State for Kashmir Affairs, had proposed their induction three

weeks earlier, stating on the floor of the Constituent Assembly that it would be “unfair to the Government and the People of the State of Jammu & Kashmir to deny them the opportunity of participating in the discussions” on the new Constitution of India. The non-representative character of Prime Minister Abdullah’s (unelected) delegation was opposed by some members, mainly on communal grounds, but it was argued by the Indian government that the partly-elected legislative assembly and the pre-war cabinet had fallen into disarray through the winter of accession, war and partition. (What was left unsaid: many opposition figures and prominent voices opposed to Accession, including former Prime Minister Ram Chandra Kak, had been exiled or externed by the emergency administration, using wartime legislation such as the Enemy Agents Ordinance). On 20 June of 1949, after two months of stormy closed door meetings and agonised bargaining with Indian Home Minister Vallabhbhai Patel, the Maharaja made a sudden declaration that he was “temporarily” vacating his throne in favour of his eighteen-year-old son, the Prince Regent Karan Singh, entrusting to him legislative, judicial and executive powers. The Maharaja and his wife Tara Devi were never permitted to return to Kashmir and the Maharaja died in Bombay in 1961. Shortly after his abdication and exile, in October of 1949, Article 306-A, which later took final form as Article 370, was debated in the Constituent Assembly and drafted into the Constitution of India.

The Article violated the terms of the Instrument of Accession, which had explicitly stated that the Instrument would not be deemed to be a commitment to the acceptance of a future constitution of India and any other future agreement must be entered into at the Ruler’s sole and unfettered discretion, conditional upon a reference to the popular will once the war-time emergency had passed. Article 370 incorporated the “Indian State of Jammu and Kashmir” as one of the constituent states in the territory of Indian Union, thus over riding the (by then) deposed Maharaja’s sovereign right and title to his lands. It allowed for the negation of the legislative autonomy and sovereignty of Jammu and Kashmir State and its ruler, beyond that which was contemplated by the instrument through the medium of Presidential Orders passed by the Union executive. On 25 November 1949, the day before the Indian Constitution was adopted, the Prince Regent Yuvraj Karan Singh issued a proclamation declaring that the Constitution of India shall govern the constitutional relationship between the State and the Union of India, and will be enforced in the State by him, his heirs and successors. He also declared that the provisions of the Indian Constitution would supersede and abrogate all other constitutional provisions inconsistent with it, which were then in force in the State (under the old Dogra era Jammu and Kashmir Constitution Act, 1939).

In October 1951, India convened a Constituent Assembly to formulate a Constitution for Jammu & Kashmir—in a thoroughly compromised, violent and widely boycotted electoral process in which National Conference candidates stood with the slogan “One Leader, One Party, One Programme” and were elected unopposed in all seventy five seats. In response, the Security Council passed Resolution 91 of 1951 affirming that the convening of the Constituent Assembly and any action it might attempt to take to determine the “future shape or affiliation of the

entire state or part thereof" of Kashmir "would not constitute a disposition of the State in accordance with the principle of a free and impartial plebiscite conducted by the UN." The Constituent Assembly was formally dissolved by resolution in January 1957 after framing a separate Constitution for Jammu and Kashmir, in defiance of the Security Council Resolutions, declaring that the whole of the former princely State "is and shall be integral part of the Union of India". Even the Indian Constitution arguably only refers to the territory under Indian control, by referring to the "Indian State of Jammu and Kashmir" (the only state whose description is prefixed by its national allegiance). The Jammu and Kashmir Constitution on the other hand explicitly asserts India's territorial and political claim to the entire territory of the erstwhile kingdom stating that "[U]ntil the area of the State under the occupation of Pakistan ceases to so occupied and the people residing in that area elect their representatives twenty-five seats in the Legislative Assembly shall remain vacant and shall not be taken into account for reckoning the total member-ship of the Assembly". UN Security Council in Resolution 122 of 1957 reiterated the action taken by the Constituent Assembly would not satisfy its earlier resolutions calling for a plebiscite.

Over two sessions on 23rd and 24th January 1957, V.K Krishnan Menon, India's Represenative at the UN, made an unprecedented 8 hour long speech to the Security Council collapsing from exhaustion at the end In a now familiar defence of Indian rule, he asked: "With what voice can either the Security Council or anyone coming before it demand a plebiscite for a people on our side who exercise franchise, who have freedom of speech, who function under a hundred local bodies?" The UNSC remained unconvinced passing a resolution 122 (10 votes in favour, USSR abstaining) which declares that the Jammu and Kashmir Constituent Assembly could not be a substitute plebiscite.

But isn't Kashmir a bilateral dispute?

While the UN continued to pass resolutions urging the peaceful settlement of Kashmir, over the next decade, including after the seventeen day Second Kashmir war in 1965, the resolution of the Kashmir dispute saw little real progress as the UN became embroiled in Cold War-era veto politics. The next major development occurred at the end of the Bangladesh War, with the signing of the Shimla Agreement in 1972. The Agreement converted the cease-fire line in Jammu and Kashmir (as of the cessation of hostilities in December 1971) into the Line of Control (LOC) between India and Pakistan and it was agreed that "That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation."

Since the signing of the Shimla Agreement, India vociferously maintains that the Kashmir dispute is exclusively a bilateral issue, and dismisses all international debate or interventions, including by the United Nations, as being legally ruled out by the terms of this agreement. India

also claims that the demarcation of the Line of Control has overruled the earlier Karachi Agreement (1949) on the UN-mandated Ceasefire Line and therefore prevents access to the UN Military Observers Group from the LoC on the Indian side, despite the continuously occurring ceasefire violations that have claimed hundreds of Kashmiri lives from both sides of the bloodied dividing line. However, no treaty or agreement can overrule the application of all international laws. No issue is purely domestic—the laws of international custom create obligations on nations to abide by a peremptory and universal honour code. For instance no bilateral or multilateral agreement, or domestic law, court or constitution can permit or legalise colonialism, apartheid, slavery, torture, genocide or acts of unilateral aggression or unlawful use of force. The text of the Shimla Agreement itself acknowledges this when it states "That the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries," and further that "in accordance with the Charter of the United Nations, they will refrain from the threat or use of force against the territorial integrity or political independence of each other." The purposes of the UN Charter as laid out in Article 1 includes "[T]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."

"Occupation"

We have taken this rather long historical journey to uncover the terrain of the relationship between India and Kashmir, as set out in the Instrument of Accession and as modified by subsequent events and documents. It is clear that at the time of signing the Instrument of Accession, the Maharaja viewed it as a temporary and provisional arrangement entered into with India in order to protect his kingdom preserve and his own power. Through it the Maharaja asserted his sovereignty and control over his separate and independent territory to the exclusion of any other authority. India was granted law-making powers in three spheres, until the final determination of the political and cartographic shape of the region through a reference to the will of the people. The unilateral change in this treaty, effected in the first instance by deposing and exiling the Maharaja and installing his barely-adult son as the Regent, will be very familiar to any student of British colonial policy towards "native" Indian states through the long nineteenth century. The Prince Regent was never officially recognized as the Ruler of the State, as sovereign powers were only "temporarily" delegated to him by his father prior to his unofficial but eventually permanent abdication and exile. The subsequent involvement of the non-representative Jammu and Kashmir delegation in the drafting process of the Indian Constitution, further violated the terms and conditionalities of Instrument of accession, and granted India sovereign rights over Jammu and Kashmir. The Prince Regent's declaration on 25 November 1949, that the Constitution of India would henceforth govern the India-Kashmir relationship formally incorporated Jammu and Kashmir into the Indian polity. Finally, the Jammu and Kashmir Constitution, 1957 declared a unilateral territorial integration of the region. Taken as a whole these maneouvres granted India effective political, legal and

territorial control over Jammu and Kashmir, in violation of the International Law recognition of its disputed status.

International Humanitarian laws define Occupation as the effective control of a foreign territory by hostile armed forces. In my view, when India breached the Instrument of Accession and effected the coercive albeit "temporary" integration of Kashmir into its constitutional framework superseding the holding of a plebiscite, its military forces lost the right to remain on Kashmiri soil and became hostile to the sovereign will and the right of the people of Jammu and Kashmir to determining their own political future. In effect and in that moment India legally became an occupying power. In this regard it is important to emphasize that pinpointing the exact temporal beginning of an Occupation is not necessary under the Laws of Occupation, as an occupation can begin through a series of events and hostilities that effectuate a gradual transition from invasion to effective administrative control. This is exemplified by the difficulties that experts have experienced in identifying the precise date at which the occupation of Iraq began in 2003.

Under International Law, an occupation is a question of fact. International Humanitarian law (IHL), the body of laws which deals with the humane regulation of wars, armed conflicts and occupations, is described as jus in bello (laws in war) as opposed to jus ad bellum (laws of war). IHL, of which the four Geneva Conventions form the core, is not concerned with the justness, lawfulness or causes of belligerency—who started it, or why—but only that wars be waged as humanely as possible, with the least possible suffering and devastation to civilian lives, land, and infrastructure. It specifically protects the most vulnerable—prisoners, the ship wrecked, the war wounded, the sick, and the civilian population of an occupied territory, amongst others—and lays down the principles of proportionality, military necessity and distinction (between combatants and non combatants) to help soldiers and their generals decipher what is and what is not a legitimate target.

This being the case, under the laws of occupation it does not matter if the occupying power denies the nature of its relationship to the territories it administers and controls, or sees them as an "integral part." The existence of an occupation does not depend on a declaration by the occupying power that it is in occupation or any recognition of the occupation. The intention of the occupying power also does not matter, that is, whether it aims to exploit the occupied territory or liberate the population by its actions does not have any effect on the classification of the situation. Article 47 of the Fourth Geneva Convention expressly states that persons in the occupied area shall not be deprived of the benefits of the convention by any agreement between the authorities of the occupied territory and the occupying authority. Nor does it matter whether the occupying power meets with any armed resistance. Occupation differs from annexation in that it is a temporary sovereign takeover of a territory, where the inherent sovereignty of the occupied territories is not erased but is held in suspension until the occupation ends and the area is liberated or otherwise returned to its sovereign status. The

only legal test to determine if a territory is occupied is that the prevailing situation meets the defined factual criteria set out under the laws of occupation. It bears repeating that the IHL regime is not concerned with the moral rightness or wrongness of the acts of invading and establishing temporary political authority over a foreign territory; what it is concerned with is the conduct of the occupying power thereafter to best protect the sovereignty, the population and the continued territorial existence of the occupied territory. It is a breach of these rules of conduct that renders an occupation unlawful, rather than the existence of a set of facts (however reprehensible) that meet the requirements of an occupation.

The definition and obligations under the law of occupation are found in two main international humanitarian instruments: The 1907 Hague Regulations 'Respecting the Laws and Customs of War on Land' and the Fourth Geneva Convention, 1949 'Relative to the Protection of Civilian Persons in Time of War'. India is not a party to the Fourth Hague Convention, 1907 to which the Hague Regulations are annexed. However, the International Court of Justice (ICJ) in its advisory opinion, Concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, held that the rules laid down in the Hague Regulations are part of international custom, which means that they apply to all states irrespective of whether they are party to a specific treaty or not. Article 42 of the 1907 Hague Regulations states that a "[T]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." The definition therefore requires three things to exist (i) a territory, (ii) a hostile army, (iii) and actual establishment and exercise of authority. Let us disentangle each of these strands to discover if the factual situation in Jammu and Kashmir can help determine whether it is an occupation.

Territory

While the Hague Regulations do not mention that the occupied territory must necessarily be a state or a part of a state, Common Article 2 of the four Geneva Conventions of 1949 (which India acceded to in 1950) states that the Geneva Conventions "shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance." Israel and other occupying powers have argued that this means that the article, and therefore the Geneva Conventions, apply only when the occupied territory belongs to a High Contracting Party, i.e. another state that has signed on to the Conventions. Under such an interpretation the Indian control over Jammu and Kashmir would not be an occupation, since prior to the Accession the independent kingdom of Jammu and Kashmir was neither itself a High Contracting Party nor did its territory belong to one. However, the International Court of Justice has categorically ruled that the Geneva Conventions will apply even when the status of the territory is contested. The Eritrea-Ethiopia Claims Commission award, another International Law ruling, also supports the view that the law of occupation must be applied to contested territory. The Commission stated, referring to the

Fourth Geneva Convention and the Hague Regulations 1907, that “neither text suggests that only territory the title to which is clear and uncontested can be occupied territory.” The International Red Cross whose commentaries and interpretations of IHL are considered authoritative, states that “Occupation exists as soon as a territory is under the effective control of a State that is not the recognized sovereign of the territory. It does not matter who the territory was taken from. The occupied population may not be denied the protection afforded to it because of disputes between belligerents regarding sovereignty over the territory concerned.” It goes on to explain why this is necessarily the case: “Any other interpretation would lead to a result that is unreasonable as the applicability of the law of occupation would depend on the invading State’s subjective considerations. It would suffice for that State to invoke the controversial international status of the territory in question in order to deny that the areas in question are occupied territory and thus evade its responsibilities under the law of occupation.” This is precisely what India seeks to do when it simultaneously invokes the Maharaja’s right as a sovereign to sign the Instrument of Accession, but denies Jammu and Kashmir’s disputed legal status as recognized in International Law.

Hostile army

The second requirement of occupations, that of belligerency, or outright enmity and war or invasion between the occupying power and the occupied territory, has undergone a broadening in light of the changing character and technologies of twenty–first century wars and the foreign administration of territories. Scholars and lawyers have argued for the applicability of the law of occupations to a range of situations which do not fit into the classical definition of an enemy territory being physically occupied for a temporary period through war and invasion. Situations where effective control was exercised through proxies (for instance in parts of former Yugoslavia in the 1990s), through multinational agencies (the United Nations administration set up post war Iraq in 2003) in post-conflict circumstances for “humanitarian” reasons, or which are so prolonged as to be almost permanent, are now seen as falling within the ambit of occupation law. Several states, for instance Nazi Germany in the case of Quisling’s Norway administration, or Vichy France, or Japan in the case of Manchukuo, have historically invoked or even celebrated the consent of the sovereign and the local administrative surrogate to deny the applicability of occupation law, as India does through its reliance upon the finality of the Maharaja’s signing of the Instrument of Accession and the constitutional creation of the Jammu and Kashmir state administration. However, as the International Court of Justice ruled in the case of the Namibia, after the UN General Assembly renounced the South African mandate over it, consent may be withdrawn at any time, transforming a continuing foreign military presence into an occupation. Even if the coercive abdication and exile of the Maharaja of Jammu and Kashmir did not vitiate his consent to Indian military presence and to the establishment of the Sheikh Abdullah-led emergency administration, the continuing failure to carry out the promised plebiscite, the outbreak of an armed resistance movement against Indian rule in 1989, and the ever escalating deployment of Indian armed forceson counter–insurgency duties against the

civilian population, will undoubtedly weigh against India in any objective factual evaluation of the nature of its relationship with Jammu and Kashmir.

Legal scholar Eyal Benvenesti notes that there are “ample reasons” to apply the law of occupation to situations not encompassed by the “foreignness” or “enmity” of rival sovereign of states, arguing instead that the modern standard is one based on relationships and conflicts of interest between the administrations and the populations subject to their rule. Thus he argues any “exceptional regime” where one territory is subject to the control of another, no matter how “friendly” or “consensual,” creates a potential hostile environment and a vulnerable population, because it involves a departure from the universal human right of self-determination. Such a situation therefore warrants international scrutiny and is subject to the basic constraints of occupation law.

Effective Control

The idea of effective control or actual exercise of authority is at the heart of occupation law. The International Criminal Tribunal of Yugoslavia provided a useful checklist of the factual circumstances to determine the existence of ‘authority’ in the case of Naletilić & Martinović. According to the Court, (i) The occupying power must be in a position to substitute its own authority for that of the occupied authorities, which must have been rendered incapable of functioning publicly; (ii) The enemy’s forces have surrendered, been defeated or withdrawn. In this respect, battle areas may not be considered as occupied territory. However, sporadic local resistance, even successful, does not affect the reality of occupation; (iii) The occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt; (iv) A temporary administration has been established over the territory; (v) The occupying power has issued and enforced directions to the civilian population.

The Jammu and Kashmir Prince Regent Karan Singh’s royal declaration on 25 November 1949 that the Indian Constitution would henceforth govern the relationship between Jammu and Kashmir and India, was a public substitution of the authority of the lawful sovereign of Jammu and Kashmir with that of the Dominion of India. From the terms of the Instrument of Accession, which handed over legislative power over military affairs to India; to Article 370, that expanded the reach of the Indian state in breach of the terms of Instrument of Accession; to the subsequent tranche of Constitutional Orders that virtually overturned the original relationship enshrined in Article 370, and the Jammu and Kashmir Constitution, 1957 that accepted India’s territorial and political authority; it is clear that the India-Kashmir relationship is governed by a legal regime where effective control over Jammu and Kashmir—military, political and administrative—vests in New Delhi. All of the other elements, except (ii) (since the Maharaja’s forces were eventually subsumed within that of the Indian Army), have been quite clearly satisfied in the Jammu and Kashmir case.

Consequences

As I have suggested above all occupations are not unlawful. The purpose of occupation law is to ensure that the temporary authority of the occupying power is exercised in a way so as to protect the interests and rights of the ousted authority, and the people who live in the occupied territories. The law of occupation thus recognises that the occupying power is the temporary administrator or "trustee" of a territory and establishes a series of positive obligations towards the occupied population, its resources, and its institutions to ensure their survival for whenever sovereignty is eventually returned to them. The duties of the occupying power are spelled out primarily in the 1907 Hague Regulations (Articles 42-56) and the Fourth Geneva Convention (Articles 27-34 and 47-78)

Besides the usual prohibitions under the Geneva Conventions against torture, collective punishment, extra–judicial killings and other war crimes, these rules state that the occupying power must respect, as far as possible, the existing laws and institutions of the occupied territory. It is however authorized to make changes where necessary to ensure its own security and to uphold the obligation to restore and maintain public order and safety and to ensure orderly government. The occupying power cannot annex the occupied territory or change its political status; instead it must respect and maintain the political, legal and other institutions which exist in that territory for the entirety of the occupation. Through the years, India has been in violation of occupation law with regard to Kashmir in many respects. To name just a few: it has instituted fundamental legal and political changes in the region's governing structures, it has acquired vast swathes of land through militarization and permanently altered such lands and other natural resources, and it has carried out widespread and systemic human rights abuses, including torture enforced disappearances, extra–judicial killings, collective punishment, and sexual violence which are absolutely prohibited under international law and which amount to war crimes when they occur in the context of an armed conflict.

What do the new changes mean?

A wise Kashmiri journalist once quipped to me that when it is before the UN and international forums, India claims Kashmir is a "bilateral dispute", when it is speaking to Pakistan it says Kashmir is an "internal matter," and when it talks to Indians it claims Kashmir is not a dispute at all. The growing "internationalisation" of Kashmir, in the wake of the humanitarian and human rights crisis in the region since 5 August 2019, has been noted with shrill alarm from all quarters of the Indian political and media establishment. In the Public Interest Litigation (PIL) hearing on the constitutionality of the abrogation of Article 370 both judge and petitioner agreed that it was the internationalisation of Kashmir that was the real problem, rather than the suspension of civil liberties. But as this history demonstrates Jammu and Kashmir was and continues to be a matter of international law—a challenge to the laws of war, of nations, and our shared

humanity. The permanent war and illegal ceasefire violations across the Line of Control that enacts an unending and unresolved Partition of the region, is not separable from the histories of coercive state formation and constitutionalism that deny the Jammu and Kashmiri people the right to self determination and/ or unification, and the brutal 'internal' repression of this sentiment over the last seven decades.

The territorial dissolution of Jammu and Kashmir state and the dismantling of the legal scaffolding of the India–Kashmir relationship is the attempted defacement of a stubborn legal trace of Kashmir's refusal to remain domesticated. By its very existence and in its tenuous provisionality, Article 370 archived other histories, and foretold of other political possibilities, even as it foreclosed them. The changes in Jammu and Kashmir's constitutional status and the annihilation of its territorial integrity through the J&K Reorganisation Act of 2019, have transformed the occupation, characterized by the de jure (in law) "temporary" suspension of Kashmiri sovereignty, into a permanent and irreversible annexation of its territory in law and fact. The legal fiction of special status is now legal history. While the nuts and bolts of everyday legalities may take time to work out, in the palaces of justice and the corridors of power, where the law lives out its sovereign lives, where peace and war are brokered and broken, there can be no mistaking the immanent violence of this unilateral change.

THE LOCAL

THE SPECTRE OF CITIZENSHIP : HISTORY & POLITICS OF NRC IN ASSAM

Debarshi Das I RAIOT

On the night of 31st December, 2017 the first draft of the National Register of Citizens (NRC) was released in Assam. This has set off a mini-storm in the political scene of Assam, Bangladesh and West Bengal. What is the NRC, why is it being updated and what politics is being played behind the curtain? These are some of the questions this article will address.

Why update the NRC?

The process of detection of foreigners has been going on for quite some time in Assam. The Illegal Migrants (Detection by Tribunal) Act and Foreigners Tribunals have been the instruments to identify and deport foreigners. The NRC updating is a more ambitious plan in this regard. The NRC stands for the National Register of Citizens of India. In 1951 the newly-independent India had its first population census. The data collected in the census were kept with the National Register of Citizens (NRC). The NRC has not been updated since then.

On the other hand, Assam has been recurrently rocked by agitations against infiltrators. The Assam Movement of the 1980s was the strongest expression of these sentiments. It demanded detection and deportation of foreigners. The Movement wound up with the signing of the Assam Accord in 1985. The Accord mandated that foreigners who entered the state after 24th March 1971 would be identified and deported. In reality, few people got deported. It's estimated that 2442 people were deported till 2012. The number of people declared as foreigners was about 54,000. Contrast this with the Minister of State, Home Affairs declaration that 5 million illegal Bangladeshis were staying in Assam in 2001 (1.2 crore in India). It is unclear how the figure was arrived at.

The Spectre of the Illegal Bangladeshi

Could it be that not many were declared foreigners because the foreigners, as defined in the Assam Accord, were not present in large number? Definitive conclusions are difficult. That would require extensive ground level data on a very sensitive subject. One can make rough guesses by comparing the growth rate of population of Assam and India. The assumption is,

without mass infiltration population of Assam and India would grow at similar rates, if not the same rate.

Figure 1: Decadal population growth of India and Assam (in %) [Data Source: Census of India]

If we rely on such a method, it's doubtful if substantial infiltration took place since 1970s (see figure 1). In the decades preceding 1971 population growth in Assam exceeded the national average by a big margin. This is true for all censuses since 1901. The reason could be mass influx of population from East Bengal (later East Pakistan), and other parts of the mainland. The growth gap between Assam and India persisted after independence. But since 1971 population growth of Assam fell. From 1971 to 2011 Assam's population growth rate was below the national average. Perhaps instilling of political stability after the birth of Bangladesh stemmed the flow. There can be quibbles that no census took place in Assam in 1981 due to agitation; the 1981 population figure is only a projection. If we compare 1991 to 1971, ignoring 1981, population growth of Assam is still less than the national average. There is not a strong case for massive infiltration after 1971.

One can argue that Assam's social and economic characteristics do not match with the all-India characteristics. Hence there is no reason to believe that without infiltration population of Assam and India will grow at similar rates. It is possible that given its special characteristics Assam population grows at a slower rate than Indian population. The fact that the growths are converging indicates presence of infiltration in Assam.

It is impossible of rule out low intensity infiltration. We are not arguing that there is no infiltration at all. But the objection above can be addressed by comparing Assam's population with a state of similar nature. This will ensure that apples are compared with apples, and not oranges. We take Jharkhand. Jharkhand and Assam had about the same per capita income in 2010. Their population size is similar. Both are East Indian states. There is no indication that infiltration is taking place in Jharkhand. If Assam is experiencing mass infiltration then Assam's population would grow at a faster rate than Jharkhand.

In figure 2 the decadal population growth data of India, Assam and Jharkhand are provided

We find that the population of Assam and Jharkhand has been growing at similar rates since 1971. In fact Jharkhand's growth is a bit higher. Growth rate of India, Assam and Jharkhand have been close to each other since 1971. This indicates a kind of normalization of Assam's demography with the all-India pattern. A comparison with Odisha will yield a similar picture.

Figure 2: Decadal population growth of India, Assam, Jharkhand (in %) [Data Source: Census of India]

We can also compare Assam with West Bengal. West Bengal is a bigger state, and has a higher per capital income. On these parameters the two states are different. But these are neighbouring states hence their social mores are similar, and both were subjected to the influx of refugees after partition. The comparison can provide interesting clues concerning infiltration. The comparison is provided in table 3.

Figure 3: Decadal population growth of India, Assam, West Bengal (in %) [Data Source: Census of India]

From figure 3 it's clear that population growth of West Bengal has been lower than Assam in most decades. This trend is present since 1901. This perhaps indicates that in a relative sense Assam has been the recipient of more migrants than West Bengal. It's possible that West Bengal received more number of migrants than Assam. But since West Bengal's population is about three times bigger than Assam, the absolute increase of population did not register in terms of high percentage growth of population in Bengal.

Both Assam and Bengal had population growth higher than the national average from 1951 to 1971, indicating possible infiltration in these two states. After 1971 the population growth of Assam, Bengal and India have become similar (like figure 2). Assam and Bengal's population grew at a slower rate than India's population in the 40 years since 1971 (113%, 106% and 121% respectively).

In short, there is reason to believe that since 1971 the abnormal growth of population in Assam has subsided. Since 1971 Assam's population growth has been consistent with India, if not a bit lower. Assam's population growth has also been similar to its East Indian neighbours. All this indicates that migration from East Pakistan/Bangladesh has been checked. But, political rhetoric deployed to whip up nationalistic sentiments is often blind to cold facts. The issue lived on.

The NRC updation

After prolonged litigations, in 2014 the Supreme Court came out with the judgment that the NRC should be updated. Foreigners who came to the state before 25th March 1971 and their progeny can register with the NRC. Those who came after are termed D-Voters, D for Doubtful.

Of all those who applied about 58% found their name in the first draft list. The final list is not out yet. The release of the first list has already jolted the political scene of Assam. The chief minister had to come out with the assurance that genuine Indian citizens need not worry.

Is there is any reason to worry? Take the indigenous people first. It is doubtful if all indigenous people have their paper in order. For instance, how many poor people belonging to nomadic

tribal communities would be able to produce documentary evidence that they lived in the state forty seven years ago? To calm nerves, the state coordinator of the NRC Mr. Prateek Hajela has assured, “It is my duty to note that no genuine citizen, that is, someone from an indigenous community is labeled as a D-Voter or a Doubtful Voter. I have personally tried to ensure that no such errors creep up in our listing process”.

The comment is notable. It implicitly proposes that “genuine citizen” implies “someone from an indigenous community”. The former does not imply a migrant, irrespective of when she entered the state. Understandably, the anxiety is palpable among migrant settlers. Incidents of harassment on the charge of being illegal Bangladeshi on flimsy ground, or no ground at all, are making the migrants nervous. To complicate matters, many indigenous in the Barak valley are Bengali speakers. A part of the erstwhile Sylhet district was cut off and merged with Assam during partition. Is Mr. Hajela’s assurance meant for the Bengali indigenous as well, or is there an assumed equivalence between Bengalis and settlers?

Migration history and politics

The migrants’ anxiety has roots in the “son of the soil” politics. This politics has a long history in Assam. One may not endorse it but it’s not hard to see where it comes from. Many waves of migration reached these shores after the British annexed Assam in 1826. In the 1891 census it was estimated that nearly one-fourth of the population of the Brahmaputra valley was of migrant origin. Tea garden workers were brought in as indentured labourers from the Chhotanagpur plateau region. Bengali traders, clerks migrated from East Bengal – Sylhet was a part of Assam since 1874. Marwari traders were some of the earliest migrants. Nepali grazers were attracted by the lush grasslands of the Brahmaputra. Most importantly, from the last decades of 19th century and early 20th century the colonial government embarked on a policy of encouraging migration of peasants from East Bengal. The aim was to settle the peasants on the so called “wastelands” by the river to grow jute. Jute area was saturating in East Bengal by that time, whereas demand for raw jute was rocketing courtesy the growth of the jute mills around Kolkata. These peasants were mostly Muslims from Mymensingh district. Notice the large gap between India and Assam’s population growth in the first decades of 20th century in table 1.

Trade and commerce grew in the colonial economy, but the commercial capital that grew in tandem was mainly in the hands of the outsiders. European tea planters were the biggest players of course. But merchants from the mainland were also numerous. Exploitation which occured through the route of commerce was bitterly felt by the local population. The anger would be often directed against commercial establishments owned by the outsiders. The partition of the country and the Bangladesh war of independence brought influx of refugees.

Meanwhile, the middle class among the local communities gained strength. Assamese nationalist sentiments, as well as nationalist sentiments of other indigenous groups, found articulation and grew. Competition with the settlers in land ownership, jobs, education and so on lent legitimacy to demands to protect the son of the soil. Government administrative jobs was a preserve of educated Hindu Bengalis during colonial times, it became a bone of contention. The indifferent health of the economy, evidenced in large scale labour migration to other states, bolstered these demands. Aside from economic conflicts, cultural anxieties heightened as well. Recalling this history would help us understand why there exists support for the NRC updating in some quarters. A hope against hope that the foreigners' issue would be settled.

Changing electoral politics of the state also needs to be put in the context. The party of Assamese nationalism, the Asom Gana Parishad (AGP), was born out of Assam Movement. Today it is a feeble shadow of its 1980s avatar. It is surmised that the militant form of Assamese nationalism has been on the wane. In the meantime there has been a remarkable ascent of Hindutvavadi nationalism. This change in political balance had the effect of subtly shifting the political discourse: from indigenous communities versus outsiders, to Indians versus illegal Bangladeshis, to Hindus versus Muslims. The coalition government in the state is led by the BJP. The AGP is only a minor ally in the coalition government. Difference between the two visions of nationalism often leads to frictions, like the one over the Citizenship (Amendment) Bill, 2016. The bill grants citizenship eligibility to Hindu refugees from Pakistan, Afghanistan and Bangladesh. The BJP general secretary Kailash Vijayvargiya has demanded that the AGP must support it. The AGP, on the contrary, is up in arms on the bill. But it is not walking out of the coalition.

What will the updation deliver?

Notwithstanding hopes in certain quarters, it is difficult to fathom what the mammoth and distressing exercise of updation of the NRC will deliver. One sees two possibilities, none of which is reassuring.

First possibility: few foreigners are detected at the end of the process, for, (a) the infiltrators got themselves enrolled in the NRC courtesy corruption and callousness, or (b) there were not many of them to begin with – we have seen that population growth of Assam has not been out of line with India after 1971. This is similar to demonetization when almost all denotified notes came back to the banks. In this eventuality one may ask, what was the point of it all?

One answer could be, "Now we know for sure that not many illegal Bangladeshis were present. So, no more bickering on this issue." This invites two responses: (i) The population data indicated this anyway. Should not the political parties be studying facts to know the truth

instead of egging on violent nativist tendencies? (ii) Will political grandstanding over illegal Bangladeshis really stop if very few of them are found?

Second possibility: it so happens that a large number of people are identified as foreigners. What will the government do with them? Bangladesh does not acknowledge that illegal migration exists. While campaigning during the 2014 elections Mr. Modi assured that illegal Bangladeshis would be sent home if he wins. But diplomatic talks have not progressed on this front, despite Supreme Court's direction. If Bangladesh does not take them will the government forcefully push the detainees across the border? Or, will military tactics be deployed, like Myanmar does on the Rohingyas?

Amid all these unanswered questions there is a certainty: the BJP is solidly backing the NRC updating. BJP MP Mr. R. P. Sharma went to the extent to demanding NRC updating for the entire country so that the five crores illegal Bangladeshis can be sent home. Assam Governor, an RSS BJP old-timer, Mr. Jagdish Mukhi has declared NRC updation for other states. Why is the BJP so eager?

The two-stage game of the BJP

One reason is ideological. Citizenry purity drills and xenophobia are the fodder on which a right-wing nationalist party thrives. The humongous exercises we are trudging through in the last few years – Aadhaar, demonetization, NRC updating – have something in common. They give us a rude jolt and remind us our connection with the State. They invert the relation though: instead of people bestowing legitimacy on the State, people must prostrate before the state and plead for legitimacy. A muscular, meddling State is up the BJP's alley.

But there are important matters of practical politics too. It has to be conceded that the Hindu Bengali constituency of the party is worried. Silchar town in Barak valley has seen press conferences, citizen meetings. Less than 40% of the valley has got a place in the first draft. This disaffection will register on the cost side of the book. On the benefit side is the assurance given to indigenous groups: we are doing something about the foreigners. After the demonetization pains, the benefit the common man received was questionable. Yet, the party could successfully convey that they are serious about tackling black money. Something similar can happen here.

But what will happen to the D-Voter Hindu Bengalis? Forsaking them goes against the core Hindutva belief that India is the punyabhu of Hindus. Perhaps the answer lies in the Citizenship (Amendment) Bill. Mr. Vijayvargiya is confident that the bill will be passed before the 2019 general elections. If that comes to pass Hindu Bengalis would be inducted in the NRC, Muslims would be declared illegal. The march towards the Hindu Rashtra would advance a step.

What Puranic historians won't accept

Devdutt Patnaik I The Hindu

A study has shown that there is no evidence of Steppe genes in Harappa according to analysis of DNA found in Rakhigarhi. This has led to the claim that Harappan civilisation was indigenous, 100% Indian, not shaped by any foreign influence whatsoever.

Since many Puranic historians are convinced Rakhigarhi was Vedic, it could follow that the Vedas had no foreign influence either. Puranic historians have dated the Vedas, based on internal astronomical evidence, to 7,000 BCE (9,000 years ago), the events of the Ramayana to 5,000 BCE (7,000 years ago) and the Mahabharata war at Kurukshetra to 3,000 BCE (5,000 years ago). They are convinced the Vedas shaped the Sindhu-Saraswati civilisation which, according to archaeologists, waxed from 2,500 BCE (4,500 years ago) and waned by 1,900 BCE (3,900 years ago).

Horse, chariot and a civilisation

But there is only one problem. According to archaeologists, the horse was only domesticated 5,000 years ago, in Eurasia. The spoked-wheel chariot was invented in the same region 4,000 years ago. It was used by Hyksos to conquer Egypt 3,600 years ago, long after the Harappan civilisation had waned. The earliest visual evidence of archers on chariots riding into battle involves the Hittites and the Egyptians who fought in Khadesh, in what is now Syria, about 3,300 years ago. In other words, the oldest horse-drawn spoked-wheel war chariot in the world is younger than the Harappan civilisation.

How then can the Vedas, the Ramayana and the Mahabharata which, according to Puranic historians, predate the Harappan civilisation already have knowledge of horse-drawn spoked-wheel war chariots? The Vedas adore horses and speak of Indra riding spoked-wheel chariots. Rama rode one out of Ayodhya and Krishna served as charioteer in another. How is that possible? Is there a global conspiracy to deny that horses and spoked-wheel chariots were part of Indian civilisation over 9,000 years ago? Puranic historians insist Indians are victims of a complex Western 200-year-old conspiracy involving hundreds of scientists, historians, linguists and archaeologists. Anyone who argues otherwise becomes anti-national. Thus, a gag order is passed.

As the Puranas inform us, there were several kings even before Rama. His ancestor, Ikshavaku, was the son of Manu, who established a civilisation after the Great Flood, probably referring to the Last Ice Age, which occurred 12,000 years ago. This aligns well with information found in the Manusmriti that the four ages of man lasted 4,800, 3,600, 2,400 and 1,200 years, making the total age 12,000 years, which is half the time taken by the sun to travel across the 12 houses of the zodiac (27 nakshatras), known as The Great Year. Of course, none of this has any archaeological evidence. But it is in the memory of a people, a popular truth, favoured by politicians who can destroy the careers of journalists, historians and scientists who argue otherwise.

Agriculture in India is dated only to 7,000 BCE (the age of Rama, according to Puranic historians) and oldest pottery in the Gangetic plains is dated to 1,000 BCE. But Puranic historians are convinced that there is more evidence out there — the archeologists have not yet found it, or maybe don't want to find it, or, worse, are hiding it. In America, there are 'White Hippie Brahmins' who have made a lucrative career of selling the idea to nostalgic Indians, who have given up Indian citizenship, that all of human civilisation has its roots in India. Cultural wisdom spread via the Vedas, from India, since the last Ice Age.

Puranic and Jain history

But while Puranic history may be true, it conflicts with Jain history. The Jains say that Nemi-natha was a contemporary of Krishna, but he lived 84,000 years ago at least. He was the 22nd Tirthankara, while Munisuvrat-natha (contemporary of Ram) was the 20th Tirthankara who probably lived in 1,184,980 BCE. The first Tirthankara was Rishabha-nath. He lived over 84,00,000 years ago, as per conservative estimates. Rishabha and Nemi names are found in the Yajur Veda, revealing that the Vedas have memory of these ancient sages. Rishabha's symbol, the bull, has been identified in Harappan seals (dated to 2,500 BCE by archaeologists). His son was Bharat, after whom India is called Bharat-varsha. His daughters introduced the Brahmi script (dated by historians to only 300 BCE) and decimal system (dated by historians to 200 CE). It is not clear if Manu came before Rishabha, or after. Neither Puranic nor Jain historians seem to agree. Some argue that Rishabha was Shiva, or that Shiva was Rishabha. But Hindu Puranas speak of Shiva's marriage and entry into worldly life, while Jain Puranas speak of Rishabha's renunciation of marriage and worldly life.

Questions about the Vedas

That the Harappan civilisation was totally indigenous is indisputable according to current genetic studies. But the Vedas? Could they have been composed after arrival of Steppe Pastoralists around 1,500 BCE (3,500 years ago) which aligns with global historical timelines? Puranic historians dismiss the horse-drawn spoked-wheel chariot argument, the linguistic papers, the archaeological readings and genetic research by insisting that Western scholars are interpreting data to suit pre-existing hypothesis. After all, the Rig Veda does not have any memory of a homeland beyond the Himalayas.

But the Vedas do not refer to any south Indian geography. Does that make the Vedas a pan-Indian scripture, or a north Indian scripture? Early Dharma-sutras refer only to the Gangetic plains as Arya-varta. Agastya, a Vedic rishi, migrated to the south as per Puranic as well as Tamil tales. Kaveri is called Dakshina Ganga, or Ganga of the south. Does that mean only north India, and not all of India, is the homeland of Vedas? Who decides? Historians or Puranic historians? Politicians or scientists?

THE SOCIAL

40 government departments are using a social media surveillance tool – and little is known of it

Kumar Sambhav Shrivastava I SCROLL

The limited information publicly available on the AASMA tool suggests it can track social media profiles, devices and their locations.

On August 3, the Centre withdrew its proposal of creating a Social Media Communication Hub, through which it wanted to monitor the social media accounts of citizens, after the Supreme Court called the plan an attempt at creating a "surveillance state". But even before this plan of the government could come under public scrutiny, several of its agencies had been using a "strategic" tool that conducts mass surveillance of citizens' social media activities, show documents reviewed by Scroll.in.

The tool – Advanced Application for Social Media Analytics or AASMA – was developed by the Indraprastha Institute of Information Technology, Delhi, a Delhi government university, with funding from the Union Ministry of Electronics and Information Technology around 2013-2014. Since then, its use by government agencies has grown manifold without much public scrutiny.

"Government of India has officially declared this project as STRATEGIC in nature and is closely monitoring the growth of the same," says the Indraprastha Institute of Information Technology's annual report of 2016-2017. According to the report, more than 40 state and Central government departments had deployed the tool by April 2017 and another 75 had requested its installation at the time.

The report goes on to say, "AASMA has been discussed at the secretary / minister level… Some agencies have also given formal feedback in writing that the tool is very useful to them and they are using it for their internal purposes." It, however, does not name the departments using the surveillance tool or in the process of installing it. Nor does it specify the purpose they are using it for.

The limited information about the features of AASMA in publicly available government documents suggests the tool can "24X7" collect and analyse "live data" on users from "multiple social networks" including Twitter, Facebook, YouTube, Flickr, and Google+. It can track social media profiles, their posts and networks of connections to identify "top users", conduct "sentiment analysis" of their posts to categorise them as either "positive" or "negative", according to a note by the National Police Mission on use of the tool for surveillance for police departments. It can also track users' devices and their locations and send "alerts" to authorities depending on the "criteria" set by the authorities, the note says. It adds that the police would

use AASMA to “track public views and sentiments on various social media platforms”, to handle “sensitive issues and protests”.

According to the curriculum vitae of Ponnurangam Kumaraguru, associate professor at the Indraprastha Institute of Information Technology, Delhi, the tool has been requested by the armed forces too.

‘We don’t know who is using it for what purpose’

It is not clear from the documents if the use of AASMA is limited to security and intelligence agencies. It is also not clear what oversight these agencies have on the surveillance tool to prevent any misuse of personal data collected by it. Given that India does not yet have a law to ensure data protection or to define the process of obtaining consent from individuals before using their online data, the widespread use of a social media surveillance tool by government agencies has raised privacy concerns.

“The biggest concern around use of this tool is there is no transparency,” said Amber Sinha of the Centre for Internet and Society, a non-profit research organisation. Sinha added, “We don’t know who is using it for what purpose. We don’t know whether the government agencies are just using it to aggregate data of social media chatter or tracking profiles of past criminals or profiling each individual. If they are tracking social media activities of each individual, it would have a chilling effect on free speech.”

Raman Jit Singh Chima, Director of Public Policy at global digital rights non-profit Access Now, agreed. “If the government departments are collecting and analysing social media data of citizens on a mass scale, it is definitely surveillance,” he said. “It does not matter if the data being monitored and processed is publicly available. After the nine-judge-bench order of the Supreme Court on privacy, it is fairly clear that even the publicly-available personal data of citizens is protected.”

Chima said that for any kind of surveillance of data, the government needs to justify the purpose. “It has to have a process of authorisation for conducting such surveillance, oversight to ensure accountability and a mechanism to provide remedy in case any harm is caused by such surveillance to citizens,” he said. “Unfortunately, we don’t have such a legal process in place yet.”

Neither the Ministry of Electronics and Information Technology nor the Indraprastha Institute of Information Technology, Delhi, responded to Scroll.in’s queries on which government departments are using the tool, for what purpose, and what kind of oversight is being exercised by them.

Surveillance to influence?

Fear of misuse of social media data has increased globally over the past few months, ever since it emerged that the United Kingdom-based political consulting firm Cambridge Analytica had mined the social media data of individuals, without their informed consent, to use it for political campaigning. The company is alleged to have analysed the social media posts of millions of

individuals to create their psychological profiles, which it used for targeted messaging to influence voting patterns.

Concerns over government surveillance of citizens' social media communication grew in India after the Union Information and Broadcasting Ministry floated a tender to create a Social Media Hub in April. Scroll.in had first reported how the government wanted to use the hub to monitor the social media accounts of individuals to gauge their opinions about government policies, create "360 degree" profiles of them and target them with personalised messages to alter their opinions. The ministry had to withdraw the tender after a public interest litigation in the Supreme Court challenged it on the grounds of privacy violation.

Even as this plan of the government was challenged in the court, the Unique Identification Authority of India, which manages the Aadhaar database of more than one billion Indians, floated a tender to hire an agency to monitor social media conversations related to Aadhaar. It hoped to use this information to identify "detractors" and "influencers" and run campaigns to "neutralise" negative sentiments" on social media. This plan has also been challenged in the court.

These attempts of the government came to public notice as the procurement of software and services for the schemes was done through public procurement process. But AASMA is being installed at interested agencies on their request, away from the public glare. According to the Police Mission note, the tool would be provided free of cost to police departments by the Ministry of Electronics and Information Technology.

Secrecy around the tool

The government's "strategic" schemes – purportedly for intelligence gathering, law enforcement and crime prevention – are shrouded in secrecy, which it justifies for the effectiveness of the schemes. And so, there is little information available on the design, features and ongoing use of AASMA.

A report in The Indian Express, published in February 2016, said the National Security Council Secretariat was planning to set up a National Media Analytics Centre, which was based on a media and social media "tracking software" designed by Ponnurangam Kumaraguru of the Indraprastha Institute of Information Technology. According to the news report, the "software would comb posts and comments to classify them into negative, neutral and positive categories" and "come up with instant counters to plug resentment triggered by news items so that personal opinions do not snowball into public protests and threaten law and order".

The newspaper, quoting unidentified "sources", said, "The software would also help recall the past pattern of the writer to check the number of times he took a negative or positive stand, his background, and preferences of websites and areas of interest to judge whether they were aimed at fomenting trouble or radicalisation." There has been no information about the National Media Analytics Centre proposal in the public domain since then.

The Advanced Application for Social Media Analytics or AASMA has been developed by Kumaraguru. His curriculum vitae shows that one of the projects he has been working on since

2016, with a funding of Rs 1.69 crore from the Department of Electronics and Information Technology, is on “Integrating Open Source Intelligence from Traditional Sources and Online Social Networks for Intelligence Gathering”. Kumaraguru did not respond to Scroll.in’s repeated requests for a meeting or to email queries asking how he plans to ensure that the technology is not misused.

The National Police Mission’s note offers a glimpse of the ways the software can be used. According to the note, the tool would be used to establish “Social Media Labs” at state police departments to keep a watch on the social media activities of the public at large. “The Social Media Labs will provide public sentiment analysis, identify behavioural pattern, influences and advocates, track the change and increase in chatter and generate alerts in real time for police to take suitable action,” says the note. “The advanced social media monitoring tools [AASMA] shall help in gauging and analysing the public media and sentiment, draw up predictive analysis of projected events and provide indicators to police regarding the size and seriousness of these public emotions.”

Prakash Singh, who was formerly director general of the Border Security Force and Director General of Police in Uttar Pradesh and Assam, questioned the significance of mass surveillance of social media by law enforcing agencies. “The law enforcement agencies are authorised to intercept personal messages of a person they suspect. There is a process for such authorisation and this kind of targeted surveillance is justified. But I can’t see a reason why they should conduct mass surveillance of social media users to gauge public sentiments,” he said. Singh ended with a question. “It can have some justification in a totalitarian state where things happen under the radar but, in a democracy like India, where public sentiments are out in open, why do you need to create such data labs?”

THE POLITICAL

‘Working People Will Make a Better World’: An Interview With Labor Historian Priscilla Murolo

Andy Piascik I COUNTERCURRENTS

Priscilla Murolo is a professor of history at Sarah Lawrence College, where she formerly directed the graduate program in Women’s History. She also teaches in the Union Leadership and Activism Master’s Program at the University of Massachusetts. Beginning in the 1960s, she has been involved in the women’s movement, labor organizing and many community campaigns and organizations.

Murolo is the co-author with A.B. Chitty of From the Folks Who Brought You the Weekend: An Illustrated History of Labor in the United States, with illustrations by Joe Sacco. Originally published in 2001, a new edition of From the Folks Who Brought You the Weekend was published by the New Press in August. Murolo also writes for a variety of publications including Radical History Review, Labor Notes and Women’s Review of Books and blogs at http://priscillamurolo.net/Labor%20Negotiations.htm.

Piascik: Can you talk about your background?

Murolo: I grew up in Connecticut, mostly in Wolcott. One of my parents was usually in school, first my dad, who went to college and later to law school on the GI Bill, and then my mom who became a high-school math teacher. They were both working-class kids—emphasis on “kids” because they were 19 and 23 when I, the oldest of three, was born and, when it came to taking responsibility for family life, both were late bloomers. They weren’t labor people, though my mom belonged to the National Education Association. They divorced when I was 19, by which time I was pretty much on my own.

Piascik: You came of age during the excitement and tumult of the 1960s. What were you doing at the time and how did it influence you?

Murolo: I went to college in 1966, to Barnard in New York City, but I stayed there just a year before I dropped out. While I was there, I became active in the antiwar movement, but I wasn’t an organizer in the sense that I strategized. That happened later on, in increments. First, I was

working at Columbia University's math library just as Local 1199's drive to unionize Columbia's libraries was going public in the winter of 1968-69, and I got involved in that.

The next year I was living in North Carolina and joined a women's liberation group. North Carolina's left was entirely different from New York City's. In New York, there were so many leftists that all sorts of groups could flourish to the point where they imagined they'd someday take over the world. In that atmosphere, sectarianism ran rampant. Not so in North Carolina, where leftists were so outnumbered and outgunned, both literally and figuratively, that different groups tended to make common cause whenever they got the chance to do so.

Through my women's group I worked on all sorts of causes: welfare rights, Black communities' access to medical care, worker organizing, the war in Vietnam…you name it. Then, in 1971, I moved to the Bronx, got involved in various kinds of community organizing such as tenant issues, unemployed workers' rights and strike support, to name just a few. Because I worked in office jobs in Manhattan, I also joined a group of clerical workers, Office Workers United, that advocated for unionism in white-collar workplaces like insurance companies and publishing houses. This is how I learned to think strategically, which is another way of saying I learned how to be not just an activist but also an organizer.

Piascik: What led to your interest in history and why labor history specifically?

Murolo: I thoroughly disliked reading history until the early 1970s, when I discovered labor history and African American history, neither of which got any coverage in my history classes in high school. I had no political critique of "great man" history; all I knew was that it bored me. Then, in the Bronx, I took part in a community organization that, among other things, ran a little bookstore on 183rd Street, and I started reading the books on sale there, mostly African American history.

The one I remember most vividly is To Be A Slave, a collection of excerpts from slave narratives that was edited by Julius Lester. I loved that book. Now I realize that I was experiencing the excitement of reading primary documents for the first time. All I knew then was that the book offered first-person stories that were astonishing, infuriating, saddening, and inspiring all at the same time. This is how I discovered that history didn't have to be boring.

About a year into this reading project, an older woman involved in Office Workers United steered me toward labor history, in particular Labor's Untold Story by Richard Boyer and Herbert Morais. I read it again and again. So when I went back to college in my late twenties, I gravitated toward courses in history, and by the time I was finished, I wanted to be a historian. Going to graduate school at Yale, where David Montgomery had recently joined the faculty, made it possible to concentrate in labor history under the guidance of a world-class mentor.

Piascik: There were important changes in history scholarship in the 1960s and 1970s such as "history from the bottom up" and "people's history." What influence if any did these efforts have on you and how do you assess them?

Murolo: I first encountered "history from the bottom up" and "people's history" through the books I found at that little store on 183rd Street, through Labor's Untold Story, and through the stuff I picked up at random at radical bookstores in Manhattan, especially the Communist Party's Jefferson Books and the Maoist-oriented China Books and Periodicals.

My tendency as a labor historian has always been to look at life beyond the workplace as well as on the job, and I'd say that derives first and foremost from experience. Life taught me that working people are multi-dimensional. They care about many things in addition to work and unions, and they bring multiple concerns and aspirations to any movement they get involved with. For some women, for example, getting active in a union can be a way of getting out from under the thumb of your husband as well as getting a fair shake at work. That was certainly true for me when I joined 1199.

Later on, in the Bronx, I worked with a group of unemployed youth; we'd leaflet and petition and pull guerrilla actions to get quick justice for people who were coming to the unemployment office on Jerome Avenue and 168th Street, where we set up shop on the sidewalk out in front. The other people involved in that project made a profound impression on me and still, more than 40 years later, influence the way I think about working people. For instance, there was a guy named Sonny who was a pretty tough kung fu fighter but also an extraordinarily patient, tender teacher of kung fu for children in his neighborhood. Another person, Shirley, was an avid feminist; she carried around a spiral notebook in which she'd write down her thoughts on the subject, including all of the lyrics to Helen Reddy's song "I Am Woman," which Shirley loved.

Another lesson that I still vividly remember took place under the auspices of Office Workers United. Those of us who worked in midtown Manhattan got the local YWCA to supply free meeting rooms and every few weeks we'd leaflet to try to get office workers out to a lunchtime meeting about organizing at work. Very few people showed up. Then one time, about a year into this effort, we leafletted for a meeting about organizing an office workers contingent in an upcoming antiwar march. That was our only meeting that got a good turnout, and we did in fact muster a contingent for the march. The lesson seemed clear to me. That few people came to talk about unionism didn't mean they thought the status quo was hunky dory; it was that they had other things on their minds, among them the war in Vietnam. These and similar experiences go a long way to explain why From the Folks Who Brought You the Weekend addresses subjects beyond labor history's usual parameters.

Piascik: The multi-dimensional nature of working class life is definitely a rich feature of From the Folks Who Brought You the Weekend. Is there an example or two from the book that make that point especially well?

Murolo: One prime example that springs to mind is the way the book addresses the era we commonly call "the sixties." Historians of the American sixties—which actually began in the mid-1950s and extended into the late 1970s—typically overlook or underplay the fact that workers took part in the liberation movements that sprang up in that era. Likewise the fact that many of the radical youth exceptionally active in those movements were children of the working class. In From the Folks, the chapter on sixties movements places workers and their children at center stage; and, really, that's not hard to do because they were actually there. Rosa Parks was an experienced civil rights organizer and a department store seamstress; E.D. Nixon was her fellow leader of the local NAACP in Montgomery and an officer of the Brotherhood of Sleeping Car Porters; Fannie Lou Hamer was a guiding light of the Mississippi Freedom Democratic Party and a third-generation sharecropper who got evicted from her home when she became active in the movement for voting rights; Bobby Seale was the founding chairman of the Black Panther Party and the son of a carpenter who had moved his family from Texas to Oakland, California, during World War II.

I could continue in this vein for another hour because much the same pattern prevailed in the Chicano movement, the Puerto Rican movement, the Asian American movement, the Native American movement, and the welfare rights movement along with large parts of the antiwar movement, the women's movement, the queer movement, and the vanguard of the movement among people with disabilities. And it's not just that working-class individuals played prominent roles in liberation movements; it's also that grassroots activism surged in working-class communities, which mobilized around issues including tenants' rights, healthcare, community control of schools, environmental pollution, and police brutality.

Sixties consciousness and causes penetrated the labor movement, too. The Black freedom struggle inspired a giant wave of union organizing among public employees and workers in semi-public institutions such as New York City's voluntary hospitals. Chicano nationalism fueled the rise of the United Farm Workers. Women asserted their rights in uprisings like the Farah strike of 1972-1974, in which 4,000 Mexican American women struck for union recognition and won the support of a national coalition of unionists, Chicano nationalists, radical students, men and women religious, and others. The rebellion at Farah was part of a gigantic strike wave that stretched from 1968 into 1977, a period in which work stoppages numbered over 5,000 per year, involved an average of 2.5 million workers, and included quite a few wildcat strikes. This, too, should be seen as a sixties movement, for in virtually every case the strikers described their struggle as a fight for equality, fairness, dignity, self-determination…in short, liberation from oppressive regimes.

My own experience made me especially determined to challenge American historians' conventional wisdom about the sixties; I knew at a gut level that stereotypes casting workers as enemies of sixties movements are simplistic to say the least. But you can scratch the surface of any period in labor history and find complexities like those I've just outlined. In the decades that preceded the Civil War, the labor movement spawned not only unions and the first central labor councils but also workers' political parties, workers' cooperatives, and a massive self-help movement that promoted abstinence from alcohol. In the 1880s workers came together in the Knights of Labor not only to fight for fair wages and the eight-hour day but also to sing songs, write poetry, attend picnics and parties, and discuss the importance of kindergartens and currency reform. During the labor upheavals of the 1930s, victories in the workplace inspired thoughts about remaking the rest of the world. Len De Caux, editor of the CIO News, put it this way: "Now we're a movement, many workers asked, why can't we move on to more and more? . . . Why can't we go on to create a new society with workers on top, to end age-old injustices, to banish poverty and war."

This is why the multi-dimensional nature of working class life looms so large in From the Folks.

Piascik: Another outstanding feature of the book is the ongoing tension between wonderful episodes of multiracial working class unity on the one hand and other instances where the white supremacist nature of the society infected white workers and resulted in disunity while also fueling the oppression of people of color. Is this going to be an ongoing problem until enough white workers confront white supremacy head on?

Murolo: This has always been a monumental issue for the American labor movement, and the long history of how white supremacy has played out there in terms of exclusion, division, betrayal and violence is just plain depressing. Still, I think we can draw useful lessons from this history, especially the moments of multiracial solidarity but also the moments when the same old same old has prevailed.

One important lesson on the latter front is that race itself—the assignment of people to different categories based on their ancestry and physical appearance—is both very powerful and very fragile. It's powerful enough to have served as a central, often the central, organizational principle of American society ever since the late 1600s, when colonial law simultaneously institutionalized chattel slavery and racial categories. At the same time, it's so fragile that it must be constantly re-invented and re-asserted through party politics, which routinely call on working people to support this or that group of elites on the basis of racial policies, not class interests. This has been going on ever since the late 1820s, when the Democratic Party established itself as the voice of both white workingmen and slaveholders by offering them the common ground of white supremacy.

While the particulars have changed over the past 190 years, the basic structure has remained the same. The Roosevelt coalition of the 1930s-1940s included class-conscious workers of all colors, but the Democratic majorities in Congress depended on the presence of southern "Dixiecrats" who rejected racial equality and detested the CIO. Today, Donald Trump's Republican Party presents itself as the mouthpiece of the "forgotten American"—presumably white, perhaps African American, but above all a native-born person threatened by immigrants. On the other side we have the Democratic Party, whose insurgent progressives may yet win the day but whose regulars deploy a politics of race that merely mirrors Trump's—whatever he's for, we're against—and here, too, class politics have no place. This situation poses immense challenges for a labor movement that may not be strong enough to take on the Democratic establishment, let alone inclined to do so.

But history suggests that we might be mistaken to zero in on party politics as we try to figure out what the labor movement can do to counteract the Trump phenomenon. The moments when white workers have managed to transcend white supremacy — when class solidarity has overshadowed racial divisions — have invariably arrived when the labor movement was gaining ground in workplaces. Extrapolating from this fact, I'd say that the most important thing unions can do to promote working-class unity is to win on the job. And by this I don't mean that the union wins by acquiring more dues-paying members; I mean that the workers win by seeing how much they can accomplish through collective action.

To bring all of this back to your question, I don't think history supports the idea that white workers need to grapple with all of the pernicious implications of white supremacy before they join with workers of color to build working class solidarity. Instead, I think history offers multiple examples of white workers' overcoming white supremacy in the process of struggling side by side with workers of color.

A case in point is Sylvia Woods's testimony in Rank and File, a wonderful compendium of first-person testimony of worker organizers collected by Alice and Staughton Lynd. During World War II, Woods, an African American activist, worked at Bendix Aviation in Chicago. Talking with the Lynds about her years at the plant, she recalls how Mamie Harris, a white union officer, responded when white workers objected to a Black man's getting a skilled job in the tool room. "He's coming here to work." Mamie told them. "Anybody who doesn't like it if a black person comes in this shop can leave right now. Turn in your union cards and get the hell out. Go." No one left, and six months later the tool room elected this man as shop steward. Over time, that is, Mamie Harris, Sylvia Woods and others built a strong interracial local at Bendix.

Black and white members didn't just practice solidarity at work; they also partied together after work. New friendships and new points of view developed to the point where one of the plant's most vocal white racists began to champion Black workers' rights. And even after Bendix shuttered the plant at the end of the war, that local's members continued to get together. "We

could call a union meeting and bring in maybe seventy-five percent of our plant two years after it closed down," Sylvia Woods remembers. Looking back, she concludes, "I have seen people change. This is the faith you've got to have in people."

This is the faith that today's labor movement very badly needs. We have at least some evidence that hostile work environments can change—can even become friendly environments—when union people take a strong stand against bigotry. Let's act on that. Let's demonstrate that another world is possible.

Piascik: And you document the similar dynamic where men and women workers sometimes struggled in common cause and others where male workers opposed women's equality.

Murolo: On this front I think it's especially important to consider connections between what happens on the job and what happens at home. To illustrate the point, I'll share a story told to me by Francine Moccio, author of Live Wire — a wonderful book about women in the construction division of the International Brotherhood of Electrical Workers in New York City, IBEW Local 3. Some years ago, Francine told me a story that I don't think made it into her book, and here it is: Like most electricians in the IBEW, members of Local 3's construction division attend the "topping out" ceremony that the Ironworkers hold once they've finished a building's frame and the electricians have wired the elevator that workers will use to construct the rest of the building. They put a fir tree and an American flag on top of the frame and throw a little party, which the workers' families often attend. One time Francine went to a topping out party on a jobsite where Local 3 had a woman working, and when her union brothers' wives saw her, they were shocked and kind of angry.

Talking with them, Francine found that they weren't afraid their men were going to engage in sexual hijinks with this woman. What bothered them, rather, was that their husbands expected to be waited on when they came home from work. These guys didn't want to do a lick of housework, and they excused themselves from helping out at home by telling their wives, "I go out there every day and do men's work that you could never do, so don't ask me to do women's work when I come home." But at the topping out party, the wives were seeing that, actually, a woman can do what a male electrician does. So why couldn't the men wash a dish or change a diaper or run a vacuum cleaner now and then? As this story suggests, workingmen's opposition to women's equality in the workplace may have less to do with the workplace than with home life.

I should add that, as a member of a household in which both husband and wife spend long hours on the job, I deeply sympathize with anyone, male or female, who craves a leisurely home life. Fact is, however, that's not what early twenty-first-century capitalism has in store for us, so let's working men and women stick together instead of quibbling about who has to do the dishes (both of us, hello!).

Piascik: Socialism and labor have historically been closely linked, yet today we find ourselves in a period where socialism is rapidly rising in popularity while organized labor is in catastrophic decline. Do you see ways in this new period where labor can be invigorated by socialism and socialists?

Murolo: Had you asked me this six months ago, I might have dithered; but here's what happened this past July when I taught a seminar at UMass's master's program in union leadership and activism: for the very first time since I began teaching labor history in the program in 2005, my students — all of them labor movement staffers or rank-and-file activists – asked me to stay late one day to talk about the history of socialism. Bottom line: the young people in labor movement jobs have already cast their lot with socialism. We oldsters need to get with it, sharing our knowledge, our questions, our hopes. It's difficult for those of us from the sixties generation to give the reins to youngsters, but all I've seen at UMass tells me that our successors are definitely up to the task.

Piascik: From the Folks Who Brought You the Weekend is incredibly comprehensive; is there any one thing you would like readers to take away after reading it?

Murolo: Here's what I most want readers to take away from the book: The labor movement may be down, but it's never down for the count. Every day for more than 400 years, working people have been devising new ways to defend themselves against indignity, deprivation and injustice. When one line of defense fails, another takes its place, and since collective strategies are invariably the most effective for the most people, the arc bends in that direction. This is the main lesson of labor history, and since the past is the best predictor of the future, there is every reason to believe that working people will make a better world.

Migrant detention centers in U.S.: A few accounts

Migrant detention centers in the U.S. are turning out to be an issue of debate. U.S. Vice President Mike Pence toured two detention facilities on the Texas border Friday, July 12, including a Border Patrol station where hundreds of men were crowded in sweltering cages without cots.

“Look, this is tough stuff,” Pence acknowledged at a later news conference.

“I knew we’d see a system that is overcrowded,” he added. “It’s overwhelmed and that’s why Congress has to act.”

The caged migrants were being held in an area at the McAllen Border Patrol station, U.S.

When detainees saw reporters arrive, many began shouting, saying they had been there for 40 days or more and they were hungry and wanted to brush their teeth.

The U.S. Department of Homeland Security Inspector General released a blistering report in early-July, slamming the Department for substandard conditions, where detained children did not have access to showers, changes of clothes, or hot meals.

U.S. House Speaker Nancy Pelosi (D-CA) has criticized President Donald Trump, saying there had to be a “better way” of securing the borders. “We don’t think that we have to put children in cages to do it,” she said, calling Trump’s immigration policies “outside the circle of civilized human behavior.”

Following reports shed light on the issue:

A “What first-hand government reports say about conditions at migrant detention centers” headlined USA Today (July 16, 2019) report by James Sergent said:

“The country is embroiled in a furious debate over the conditions of U.S. immigration detention facilities, as violence and poverty in Central America sends many refugees and migrants northward.

“So far in 2019, Border Patrol agents have taken roughly 600,000 migrants into custody. Seven children have died in U.S. custody since last year.

“A reporter traveling with Vice President Mike Pence during a recent tour of an all-male detention center in Texas described a horrendous stench and said nearly 400 men were housed in sweltering cages so crowded it would have been impossible for all of them to lie down. The Border Patrol supervisor who gave Pence the tour admitted that the men in custody hadn’t taken a shower in 10 to 20 days.

“After his visit, Pence said: ‘It was frankly heartbreaking, as parents, to talk to young children who told us of having walked two and three months … to cross into our country.’

“He also defended the facilities: ‘Every family that I spoke with told me they were being well cared for.’”

The report said:

“Many media reports, including the USA TODAY Network’s El Paso Times, have described conditions at the detention facilities as nightmarish.

“President Donald Trump has said media accounts of the detention centers are ‘exaggerated’ and that they are ‘beautifully run’ and ‘clean.’ ‘Great reviews!’ he tweeted.

“The Department of Homeland Security’s Inspector-General, however, called the overcrowded conditions ‘a ticking time bomb.’”

USA Today assembled accounts only from the government’s own reports as well as that of pediatricians who have toured border facilities first-hand. Following are those:

The article originally appeared on USA TODAY: “Trump, government accounts at odds on migrant detention center quality”

USA Today carried another report headlined “Chilling first-hand reports of migrant detention centers highlight smell of ‘urine, feces,’ overcrowded conditions” on July 17, 2019/

The report said government officials and pediatricians who have toured border facilities give first-hand accounts of conditions. USA TODAY compiled their words.

The report by James Sergent, Elinor Aspegren, Elizabeth Lawrence and Olivia Sanchez cited the following comments:

“The first thing that hit me when we walked in the door was the smell. It was the smell of sweat, urine and feces. No amount of time spent in these facilities is safe for children.” — Dr. Sara Goza, who toured two CBP facilities in June, told CNN

“Children at three of the five Border Patrol facilities we visited had no access to showers … [and] limited access to a change of clothes.” — Office of Inspector General Report on Rio Grande Valley, July 2

“We observed that two facilities had not provided children access to hot meals … until the week we arrived.” — Office of Inspector General Report on Rio Grande Valley, July 2

“The administration has continued to separate children from their parents at the border since June 2018. In February 2019, the Administration identified 245 children separated since the court order. That number increased to more than 700 by May 2019.” — U.S. House of Representatives Committee on Oversight and Reform staff report, July 12

“The youngest child separated from his parents was a four-month-old baby boy from Romania who was separated from his 35-year-old father upon arrival in February 2018. The father was deported in early June 2018.” — U.S. House of Representatives Committee on Oversight and Reform staff report, July 12

Foreign policy and migrant crisis

The “How US foreign policy in Central America may have fueled the migrant crisis” headlined report by USA Today (published December 21, 2018 and updated December 25, 2018) said:

“As thousands of migrants seek asylum at the U.S.-Mexican border, the Trump administration said it’s committed to promoting ‘a safer and more prosperous Central America’ as a way to stem the tide of people fleeing poverty, violence and corruption in their home countries.

“That pledge – issued Tuesday in a new State Department strategy toward Central America – may ring hollow in places such as El Salvador, Guatemala and Nicaragua.

“For one thing, President Donald Trump has threatened to cut assistance to those countries, not increase it, citing their governments’ inability to curb the desperate outflow of migrants. Trump wants to end a decades-old humanitarian immigration program, which would force tens of thousands of documented Central American immigrants to return to their countries.”

The report by Deirdre Shesgreen said:

“Long before Trump took office, the United States had a checkered history of involvement in Central America – and some say American foreign policy in the region caused the instability and inequality at the root of the current crisis.

“‘The current debate … is almost totally about what to do about immigrants when they get here,’ said Jeff Faux, a distinguished fellow at the Economic Policy Institute, a left-leaning think tank. ‘But the 800-pound gorilla that’s missing from the table is what we have been doing there that brings them here, that drives them here.’”

The Washington datelined report cited decades of U.S. intervention in the region.

It said:

“From the perspective of Faux and others, the answer goes back decades. There was the CIA’s covert operation to overthrow Guatemala’s democratically elected president in 1954. And America’s intervention in El Salvador’s civil war in the 1980s. And the Obama administration’s refusal in 2009 to label the ouster of Honduras’ president a military coup – even though soldiers dragged him out of bed in the middle of the night and sent him into exile in his pajamas.

“‘We’ve sent troops there, we’ve suborned governments there, and basically, we have been supporting the elites who protect U.S. business interests,’ Faux said.

“The decades-long history of American intervention has left Central American governments weak and fragile, he said, while empowering oligarchs and drug cartels, which has, in turn, fueled the corruption and gang violence that drives residents to flee.”

Costs of children in cages

A “Migrant ‘children in cages’ costs American taxpayers more than $4.5 million daily” headlined report by Yahoo Finance said:

“The ongoing crisis at detention centers on the southern U.S. border is costing American taxpayers more than $4.5 million per day.

“Health and Human Services (HHS) told Yahoo Finance that of the 13,000 children in its care, 2,594 are staying at the two influx shelters at Homestead, Florida, and Carrizo Springs, Texas. About $2 million is spent each day for those nearly 2,600 children staying at those two facilities. Taxpayers are spending $2.7 million to house the remaining 10,406 children at permanent HHS facilities, bringing the total to roughly $4.7 million.

“The Department of Homeland Security (DHS) Inspector General (IG) released a blistering report on Tuesday, slamming the Department for substandard conditions, where detained children didn’t have access to showers, changes of clothes, or hot meals.”

The report by Kristin Myers said:

“The IG called on DHS to ‘take immediate steps to alleviate dangerous overcrowding and prolonged detention of children and adults in the Rio Grande Valley.’”

The July 6, 2019 datelined report said:

“Legally, unaccompanied children and children with a parent or legal guardian are to be taken care of by the Office of Refugee Resettlement (ORR). HHS says it has 13,000 children its agency’s care. Children are kept in one of two types of facilities: temporary (emergency influx shelters) and permanent. According to HHS, while it costs $256 a day to house children at permanent HHS facilities, the figure balloons at temporary shelters to $775 a night.

“Homestead has drawn the ire of both politicians and activists, who are trying to get the facility in Florida (a former Job Corps facility) shut down.

“Senator Jeff Merkley (D-OR) has introduced the ‘Shut Down Child Prison Camps’ act in a bid to permanently close the shelter. After visiting the site earlier in the year, the senator tweeted: ‘It was absolutely chilling to see so many children locked up in prison camps. They should be in homes, playgrounds, and schools!’

“Responding to requests from Yahoo Finance, the agency said ‘the safety and care of UAC is our top priority. ORR has worked aggressively to meet its responsibility, by law, to provide shelter for unaccompanied children referred to its care by the Department of Homeland Security.’”

The report said the Bank of America decided it would no longer finance companies involved in immigrant detention centers and called on policy makers to take on immigration reform.

Ballooning costs of detaining migrant children

The report said:

“While American taxpayers are currently spending nearly $5 million each day on detaining children at HHS facilities, it pales in comparison to the totality of the border crisis, and what has been spent so far this fiscal year.

“HHS isn’t the only government agency inundated thanks to an exploding crisis at the southwest border. So have sister agencies Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE).

“ICE reports that it has currently detained 31,093 adults who are not convicted criminals or have pending criminal charges. The agency is currently conducting mass immigration raids across the country, which has prompted an outpouring of advice and support for undocumented immigrants. Once detained, the average detention for immigrants who have not been convicted of crimes or have pending criminal charges is 47.6 days. Responding to requests from Yahoo Finance, the agency shared that its adult average daily bed rate was $126.52. In addition to paying for raids against what ICE has labeled “other immigration violator,” taxpayers spend $3.9 million each day to detain undocumented immigrants. Considering the average length of detention, the U.S. will likely pay $187 million to hold all of the undocumented immigrants currently being detained.

“Echoing statements made by HHS, ICE told Yahoo Finance that the agency ‘is committed to ensuring that those in our custody reside in safe, secure, and humane environments and under appropriate conditions of confinement.’”

The report added:

“Along the Southwest Border, CBP has detained hundreds of thousands of adults and children this fiscal year (October 2018 through September 2019) alone. In FY 2019, CBP has detained roughly 594,000 people: 204,248 adults, more than 56,000 children, and nearly 333,000 family units (defined as an adult apprehended with a child). Given that the fiscal year is still ongoing, these numbers continue to increase each day. Adults detained by CBP are kept in facilities for an average of 20.5 days meaning that so far this year, $529.7 million was spent to keep adults in shelters that the IG described as ‘overcrowded’ and posing a risk to the health and safety of those in custody.

“But it is when considering all the adults, families, and unaccompanied children apprehended by Border Patrol this fiscal year that the total cost of the crisis comes into sharper focus. Using the daily bed rate and the average length of detention, the detention costs of everyone

apprehended by Border Patrol this year ranges from just under $5 billion, to as high as $13.8 billion this fiscal year so far.|

'The cruelty is the goal'

The report said:

"But if these costs are high, it's not being reflected in the level of care given to those being detained. Border Patrol's own 'TEDS Standards' requires that CBP make a 'reasonable' effort to provide adults with showers after being held for 72 hours. Yet while in Border Patrol custody, the report found, 'most single adults had not had a shower in CBP custody despite several being held for as long as a month.'

"Freshman Congresswoman Alexandria Ocasio-Cortez (D-NY) has said that there is "abuse" in the facilities, and that women were drinking water out of toilets. Some adult detention centers were described in the Inspector General's report as having facilities with "standing room only."

"The ACLU says that 7 children have died in custody or after being detained; while children recently released from custody drew pictures of themselves in cages. 'The cruelty is the goal,' AOC tweeted after her visit. 'It's called "deterrence" – a policy stance that if our country inflicts enough pain on refugees, they will think twice before believing America is worth their dreams & aspirations.'

"At the end of June, the House passed a $4.5 billion humanitarian aid package for the crisis at the border, to the objection of the Congressional Hispanic Caucus and several Democrats.

"'This bill — opposed by the Hispanic caucus and nearly 100 Democratic members of the House — will not stop the Trump administration's chaos and cruelty,' they said in a statement.

"Many blasted the bill for not including restrictions and protections for migrants.

"'Only policy change can end cruelty, not blank checks to the status quo,' AOC said in a tweet.

(CounterCurrents Collective)

THE MEDIA

India's mainstream media 'delegitimising' space of citizen journalism: Ravish Kumar

Excerpts of speech by NDTV India's Ravish Kumar on the occasion of receiving Ramon Magsaysay award

India has conquered the moon. In this very proud moment, I am looking at the moon and at the ground beneath my feet simultaneously. My streets have craters and potholes which outnumber the moon. Across the world, democracies on fire in broad daylight are craving the coolness of the moon. But this fire can only by doused with information that is pure and with courage, not by mere rhetoric. The more pure our information, the deeper the trust within our citizenry.

Information helps build nations. Fake news, propaganda and false history on the other hand helps create mobs. Two months ago, I was working on my daily broadcast in my corner office when I received a call on my cell phone. The caller ID flashed an unknown international number from the Philippines. I was certain it was a troll calling. For some reason, a lot of my troll calling traffic comes from the Philippines.

I turned around to my colleague and asked her if she'd be interested in listening to the language used by my trolls. I put my phone on loudspeaker and from the other end, was greeted by a female voice which asked "May I please speak to Mr Ravish Kumar?". I have received thousands of calls from trolls in my life but never from a woman. I quickly shut off the speaker and put the phone against my ear. In sophisticated English, the woman informed me that I won the Ramon Magasaysay Award.

We are living in testing times, as journalists and as common citizens. Our citizenship itself is on trial right now and make no mistake about it, we need to fight back. We need to rethink our duties and responsibilities as citizens.

I believe that in today's times when the attack on our citizenship is all-encompassing and the state's surveillance apparatus is more overbearing than ever, the individuals or groups who are able to withstand this onslaught and emerge stronger from it, will be the ones who lay the foundation for a better citizenry and for that matter, maybe even better governments in the future.

Our world is filled with such determined citizens already who in spite of pervasive hatred and a manufactured information deficit, have chosen to fight back and bloom like the cactus flower

does in the midst of a barren hopeless desert. Standing alone and surrounded by the ever stretching desert on all sides, the cactus doesn't think about the meaning of its existence: it stands there to let you know that it's possible.

Wherever the fertile plains of democracy are being subverted into deserts, the exercise of citizenship and the fight for the claim over - and right to - information have become perilous, but not impossible.

Citizenship effectively requires a free flow of verifiable information. The state today has established full control over the media and the corporations. The implication of this control over the media and in turn your information flow is that it limits and narrows the scope of your citizenship.

In other words, the media controls diversity of the news stories, and specifies what interpretation of news events are acceptable. The media is now a part of the surveillance state. It isn't the fourth estate anymore, but the first estate.

News channel debates take place within a vocabulary of exclusionary nationalism wherein they seek to replace the collective history and memory of the nation with that of the ruling party's in their viewers' minds.

Bal Gangadhar Tilak, Mahatma Gandhi, Dr Ambedkar, Ganesh Shankar Vidyarthi, Pir Muhammad Yunu were all citizen journalists

There are only two types of people in this news universe narrative: the anti-nationals and us. It's the classic "us" and "them" technique. They tell us that the problem with Anti-nationals is that they ask questions, disagree, and dissent. Disagreement is the aatma [spirit, soul, or essence] of democracy and citizenship.

The democratic aatma is under relentless attack every day. When citizenship is under threat or when its very meaning has been altered, then what happens to the nature of a citizen's journalism? Both are citizens: those who claim to speak as the nation, and the victims of their derision.

There are many countries in the world where this regime, which co-opts the judiciary too, has gained legitimacy amongst people. And yet, when we see what's happening in Hong Kong and in Kashmir, you realise that people are still out there fighting for their citizenship. Do you know why the millions of people fighting for democracy in Hong Kong renounce social media?

Because they could no longer trust a language that they know their government speaks better than them. And so they created their own language and communicated protest strategies and tactics in this newfound syntax. This is an innovative vision of the fight for citizenship.

In order to save their rights, the citizens of Hong Kong are creating (parallel/similar) spaces where lakhs of people now talk in a new register. Where they fight in new, innovative ways and

gather at and disperse from protest sites in a matter of minutes. Where they have created their own apps and have altered the use of electronic metro-cards. They have modified their phones' SIM cards.

The citizens of Hong Kong have challenged the government's effort to render citizenship hollow by refashioning objects of control into devices of liberation. The citizens of Hong Kong were willing and able to extricate themselves from the authoritarian network of information. This tells us that the state has not yet defeated citizenship.

Kashmir is another story. An information and communication blackout imposed for several weeks. More than 10 million people cut off from any information trade whatsoever. There was an internet shutdown. Mobiles were rendered useless. Can you imagine a citizen without information?

What happens when the media, which is meant to gather, process and relay information, supports the shutdown of all sources of information? In doing so, the media stands against the citizen who is trying to learn about the world around her -- not as a matter of curiosity, but for her survival and her family's well-being.

It is an unfortunate coincidence that most of India's neighbours are also its neighbours on the press freedom index. India, Pakistan, China, Sri Lanka, Bangladesh, Myanmar -- all fall within 50 ranks of each other, right at the bottom of the international press freedom index released by reporters without borders.

A few days ago, going through my Twitter feed, I encountered a notification issued by the Pakistani electronic media regulatory authority which gave clear directions to the country's news channels on reporting the situation in Kashmir.

Very aptly (and un-ironically) titled 'Advice', the directions in the notification included suspending all Eid celebrations as a token of mourning, reporting news of Indian atrocities on minorities, telecasting news which was in solidarity with Kashmiris and observing August 15 as a black day.

One merely has to look at the kind of headlines which are used on Indian TV channels with respect to Pakistan. Every night, our 8 or 9pm news shows design flashy, apocalyptic headlines, turn every piece of casual news into an insult for Pakistan and keep viewers hooked while they have their dinner under the blaring cacophony of these anchors and their panelists shouting themselves hoarse.

Recently, the Press Council of India sent an application to our Supreme Court, supporting the media ban in the Kashmir valley, citing its commitment towards national interest and keeping up "high standards of public taste". The Editor's Guild took cognisance of the matter and issued a letter condemning the Press Council saying the Council was working against journalists.

Naturally, the Press Council backtracked and issued a statement, stating in bold letters that it does not support restrictions on the media. Such incidents are almost amusing in their occurrence, but have graver implications on our freedoms as viewers and citizens. Freedom here has become a farce.

When those that are meant to safeguard the reporter's right to report make a mockery of freedom in such an obvious way, not only is our intelligence as viewers insulted, but the very imagination of citizen journalism begins to weaken.

When mainstream journalism can neither support its own rights nor the sheer idea of journalism, citizen journalists and citizen journalism both are under a constant (existential) threat. The threat here is not merely on the practical implications of reportage, viewership or financial sustenance, but also on the atmosphere which should not enable the growth and nurture of such hypocrisy and bankruptcy.

Such media -- and may I go so far as to claim that its audiences too -- cannot stand by pure information and hard facts, be it anywhere in the world. It has moved so far away from its foundational ideals and principles that it was imagined on, that it will, and it already does, fail to see the irony and tragedy in the cases that I have just listed.

This is the same media that promoted "citizen journalism" to reduce operating costs for itself. It outsourced its risk to you. Citizen journalism within mainstream journalism is different from citizen journalism outside mainstream journalism. In the early days of social media when people began asking hard questions online, the old school media houses had turned against social media and critiqued it.

Blogs and websites were blocked inside newsrooms. Even today, several newsrooms do not allow reporters to express their personal opinion. It is another matter however, that when the 24-year old woman 'Riverbend' started documenting the Iraq war and its devastation in the form of everyday blogs and which was later published as the 2005 book "Baghdad Burning: Girl Blog from Iraq", prominent media houses from around the world conceded that their reporters could not have done what this unnamed girl had done through social media.

Today if a Kashmiri girl decided to write a blog on the lines of Baghdad burning, our mainstream media would label her as anti-national. The media today is increasingly delegitimising the space of citizen journalism because it is not interested or invested in journalism. Under the garb of journalism, the media is today the comprador of the state.

In my opinion, citizen journalism is the need of the hour when the media and mainstream journalism turn hostile to information. When the struggle for information itself is described as anti-national, and disagreement is decried as treason, 'testing time' is a meek euphemism for where we are today.

When the media turns against the citizen, then it's time for the citizens to take on the role of the media. She has to do so knowing that the chances of success are slim in these times of state brutality and surveillance. The state has increasingly being opaque and blocking information.

The mainstream media seeks profit maximisation above everything else and this singular motive compels it to serve as a PR agent of the state. Government advertising forms a huge chunk of revenue for the media today. Citizen journalism, on the other hand, is struggling to survive purely on public support whilst staying outside the web of the government patronage and advertisers.

India's mainstream media is working night and day to convert our citizens into "post-illiterates". It has given up on trying to convert superstitious beings into rational thinking beings. Its syllabus is comprised of unthinking nationalism and communalism. The mainstream media has begun to consider the state's narrative as pure information. There are numerous channels on television but the manner and content of news on all these channels is the same. Opposition is a derogatory word for this media.

The definition of citizenship trumpeted by the media doesn't allow for the raising of slogans against the state. This is why citizens are attempting to preserve that essential part of themselves by creating videos for their WhatsApp groups. They begin to upload their videos on YouTube. Agitators begin to practice citizen journalism. By uploading their videos on YouTube, agitators have become citizen journalists.

Mainstream media seeks profit maximisation above everything else and this singular motive compels it to serve as a PR agent of the state

When the state and media unite to control citizens, is it possible for a citizen to be able to act as a journalist? To be a citizen and exercise the associated rights, it requires a system that has to be provided for by the same democracy that the citizen belongs to.

If the judiciary, police, and media become hostile towards the citizen, and the part of society that is aligned with [is/indistinguishable from] the state begins excluding them, how much can we expect a defenceless citizen to fight? Yet, the citizen is fighting back. The cactus is coming alive.

Every day I receive about 500-1000 messages on WhatsApp, sometimes more. In every second message, people, alongside their problems, also write about what journalism means to them. Mainstream media may well have forgotten what journalism is, but the people remember how it should be defined. Every time I open my WhatsApp to check for updates on my office group, I never even make it that far.

Instead I get caught up in the messages from thousands of people sharing their news. Trolls publicised my number in an attempt to send abuse my way. The abuse arrived, as did threats.

They continue to. But so did the people, bringing with them their stories and news from their regions.

Stories and news that, in the understanding of news channels, were finished and irrelevant. When they face trouble themselves the viewers of these mainstream news channels realise what journalism means. The meaning of journalism has not yet been erased from their minds.

When the ruling party boycotted my show, all paths were closed to me. At that time, it was these people who filled my show with their issues. As the mainstream media maintain the illusion of a functioning media among the people by outsourcing even voices against journalism and power in the name of citizen journalism, this group of citizens made me a citizen journalist within mainstream media. This is the future of the media. Its journalists need to become citizen journalists just so that people can be citizens.

It was the same during the independence movement. Bal Gangadhar Tilak, Mahatma Gandhi, Dr. Ambedkar, Ganesh Shankar Vidyarthi, Pir Muhammad Yunus; the list is endless. They were all citizen journalists.

In 1917, during the days of the Champaran satyagraha, Mahatma Gandhi told the press in a letter to not come to Champaran for a few days and to stay away from the area. He then started meeting farmers and listening to their stories. The people of Champaran made a newsroom around Gandhi. They started telling him about their complaints and provided proof. The history of India's independence struggle from then on is there for all to see.