EXPERIENCES OF MOBILITY AND INCARCERATION: CONTEXTUALISING WOMEN'S NARRATIVES OF BANGLADESH-INDIA BORDER CROSSINGS

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submitted by me for the award of the Degree of Doctor of Philosophy in Arts at Jadavpur University is based upon my work carried out under the Supervision of

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Experiences of mobility and incarceration: Contextualising women's narratives of Bangladesh-India border crossings

Abstract

Transnational migration is increasingly being contextualised as a preeminent form of global threat in the popular discourse thereby inviting reconfiguration of overarching security and citizenship policies followed by the international community. Although this rhetoric locates border as a site for primary action against such 'threats', the modality of exclusion transcends boundaries and categories of legalities or criminalisation of 'illegal' migration making border a fluid entity, a practice and a performance. Criminology of mobility as a framework offers diverse perspectives on how immigration and asylum policies have evolved with time against an increasingly exclusionary politics of citizenship and belonging. Therefore, borders emerge as a tool and as method to check and criminalise any sort of unauthorised transnational movement. As a tool, border becomes the site where the non-citizens are detected and excluded; as a method, border continues as a practice of detecting and excluding non-citizens from citizens at spaces that extend beyond the frontiers. This performativity of border is carried out by not just state actors but also various stakeholders in the contemporary political geography comprising of civil, state and market actors. Foreigners Act 1946, a criminal law can be seen as an extension of such practices as it criminalises foreigners who have entered India illegally or have overstayed their visa. The Prison Statistics of India reported 2,534 Bangladeshi nationals as lodged in the prisons of India accounting for over 32 percent of total foreign national prisoners as of 31st Dec 2022.

The challenges of mobility are further complicated by gender. Women who cross borders, especially when traveling alone, are often perceived as losing their morality, which society usually associates with being rooted in a specific place. Furthermore, a woman is seen as secondary to male citizen, who becomes the primary national subject. An illegal traveller is

often seen as disgraceful, but when that traveller is a woman, she is viewed as transgressive and immoral. If the woman is incarcerated, this perception is even more pronounced. Thus, negotiating one's identity becomes deeply connected to issues of belonging, honour, and agency in such situations.

This research tries to interrogate such practices in the highly active and porous India Bangladesh border, a well-researched border region but rarely looked at through the lens of criminology of mobility as thousands of border crossers are jailed and incarcerated every year. The India-Bangladesh border, although dotted with fences and ultra-militarised infrastructure is seamless with a shared history and mobility that has endured the political changes that has happened in both the nations.

This mobility is characterised by a continuity of history, facilitated by various factors. Cross-border networks exist on both sides of the border and consist of border brokers, contractors, local politicians, border guards, and others. These networks not only enable border crossings but also facilitate job opportunities, the distribution of fraudulent documents, and clandestine movements within the cities, making cross-border activities a routine occurrence. Additionally, the historical presence of transnational marriages and kinship exchanges further normalises border crossings. Therefore, examining the India-Bangladesh border through the lens of the criminology of mobility is crucial, especially when considering factors that challenge the notion of criminality associated with such movement.

What follows the arrests at the border is Bangladeshi women spending time in the prison until their deportation. Often this time extends beyond the length of their sentence because of the delay in court trials and drawn-out deportation processes. Spending time in an overcrowded prison, which is observed as a masculine space largely meant for citizens, means negotiating not only space and limited resources, but also questions of morality, identity, honour and shame. Moreover, foreign national prisoners are unable to participate in paid labour

like Indian convicts, which adds another layer of negotiation for the prisoners. Consequently, the prison environment reflects the market relations and labour dynamics between citizens and non-citizens. This situation leads to the prison both reflecting and reproducing existing power relations, particularly in the interactions between Bangladeshi prisoners and prison staff, as well as between Bangladeshi and Indian prisoners. In this context, this research explores how these women negotiate their sense of unbelonging identity. It seeks to understand whether they resist these identity-forming processes, and if so, how they do it.

The process of identifying non-citizens, excluding them, and criminalizing them for illegal movements has its own set of challenges. While the state's aim is to swiftly remove unauthorised foreign individuals from its territory, India faces prolonged court case backlogs and a complicated deportation process, which often causes these individuals to remain in the prison even after the completion of their term. This situation is further complicated by the historical context of cross-border movement between India and Bangladesh, which is widespread and mired in bureaucratic delays. Moreover, the situation is made more complex by the movement of people living on both sides of the border. Indian citizens who are arrested at the border and charged under the Foreigners Act of 1946 often struggle to prove their citizenship. Here, the process of categorising of people, and the reliance on documents reveals the fault lines of the process, thereby showing how it is an unfinished task.

However, what also follows this process of criminalisation of mobility at a border mired with generational economic, cultural, and kinship exchanges, is that individuals who are arrested from moving across the border, find ways to subvert the statist notions of female bodies, morality and mobility in various ways, displaying the socialisation, aspiration, as well as agency of these women.

Therefore, the research examines the process of criminalisation of mobility at the India-Bangladesh border by delving into these aspects, and experiences of incarcerated Bangladeshi

women. Through these questions of identity, morality, and labour, the research explores how Bangladeshi women conceptualise the criminality of their crossings and how they negotiate these concepts at a carceral space. The research explores the unique aspects of criminalisation of mobility in India, highlighting both the historical context of cross-border movements and the legal procedures following irregular migration. It shows how detection of the irregular migrants when coupled with detention and deportation, reveal continuity as well as fault lines in the criminalisation of mobility at the India-Bangladesh border.

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Preface

It was the October of 2021, when I walked into the office of the superintendent of a government shelter in Kolkata. I had conducted my M.A. dissertation in the same place where I had looked at the repatriation of Bangladeshi trafficking survivors; I now planned to look deeper into the problem. Covid 19 pandemic had just subsided after engulfing the world in a devastating manner. After my second dose of vaccination, I returned to Kolkata after 18 months where things had changed. The world was now a little different after the pandemic. But little did I know that my field site would also change hereafter.

Initially, the superintendent welcomed my research proposal during our first meeting. However, subsequent visits took a different turn when her assistants expressed concerns. They pressed me for details about my inquiries and insisted I obtain permission from the Directorate of a government department. The head of the directorate, first told me to get a letter from the Home Ministry and then went on to say that I would not be allowed to speak with any Bangladeshi women in the shelter, thus shattering my hope and plan for conducting field work which was already stalled due to Covid.

Over two years into my research, I now had no option but to change directions, my field site was no longer accessible. So, I began talking to people, went from one point to another. Eventually, I ended up writing to the Inspector General of Prisons requesting for permission to conduct research in prison, who, without any hassle, wrote back in two months with a permission. So, I took two autos, and a train and reached my field site, a little anxious and more hopeful that perhaps, I will now have a field site after all. Part of my anxiety was because of how I looked, distinctly different and visible; not only did I look different, but I also spoke the local language differently than the rest. But, with time and months, the difference slowly disappeared and my presence inside the prison slowly became less visible.

Conducting research in prison significantly broadened my perspective. For my M.A. dissertation, I interviewed many girls who had been trafficked or ended up in unfortunate situations. Initially, I viewed most of these girls as victims of their circumstances. However, the interviews this time around, revealed a different narrative. The Bangladeshi women I spoke with refused to identify as victims, despite their belief that they were not criminals either. This observation forms the basis of my study: the necessity of moving away from viewing female irregular immigrants solely as either criminals or victims.

The interactions with state actors, primarily border guards and law enforcement officials, provided new insights. While border guards are often viewed as repressive agents, my interviews revealed that the situation is more complex than simply characterising them as aggressive enforcers. There are layers of intuition, discretion, and symbolism associated with their role in bordering practices. These factors play a crucial role in understanding the criminalisation of mobility at specific borders.

The significance of this study lies in the revelations that challenge and unpack the fixed meanings often associated with different categories of individuals. The narratives and viewpoints presented in the following dissertation explore the complexities of citizenship, the agency exercised by women on the move, and the shared spaces where identities are negotiated. In these contexts, societal norms are subverted, and the meanings related to female mobility are actively contested.

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Abbreviations

AHTU- Anti Human Trafficking Unit

APDR- Association for Protection of Democratic Rights

ASPD- Anti-Social Personality Disorder

BDR- Bangladesh Rifles

BGB- Border Guards Bangladesh

BJP- Bharatiya Janta Party

BoI- Bureau of Immigration

BOP- Border Outpost

BSF- Border Security Force

CAA- Citizenship Amendment Act

CAB- Citizenship Amendment Bill

CC- Company Commander

CHRI- Commonwealth Human Rights Initiative

CID- Criminal Investigation Department

CPF- Central Police Force

CRPF- Central Reserve Police Force

EPR- East Pakistan Rifles

EUROSUR- European Border Surveillance System

FIR- First Information Report

FNP- Foreign National Prisoner

FRRO- Foreign Registration Regional Officer

GoWB- Government of West Bengal

GRO- Grievance Redressal Officer

IB- Intelligence Bureau

IB- International Border

IBBR – India Bangladesh Border Roads

IG- Inspector General

INR- Indian Rupees

IPC- Indian Penal Code

IRC- Immigration Removal Centre

ITC- Integrated Checkpoints

ITPA- Immoral Traffic Prevention Act

KSFS- Karimganj Steamer and Ferry Station

MARSUR- Maritime Surveillance

MASUM- Banglar Manabadhikar Suraksha Mancha

MHA- Ministry of Home Affairs

NALSA- National Legal Services Authority

NCRB- National Crime Records Bureau

NGO- Non- Governmental Organisation

NPR- National Population Register

NRC- National Registry of Citizens

PAN- Permanent Account Number

PQR- Person Query Report

PSI- Prison Statistics of India

SIVE- Sistema Integrado de Vigilancia

SOP- Standard Operating Procedure

SWO- Social Welfare Officer

UIDAI- Unique Identification Authority of India

Glossary

Amra- we

Aporadh- Crime

Bangal- People originally from East Bengal/ Bangladesh

Bhool- Mistake

Daak Naam- pet name

Dalal- Broker

Desh – Nation

Dhur- Border brokers

Didi- Sister

Chor- Thief/ Deviant

Ghoti- People from West Bengal

Haat- Market

Jaankhalash- End of life/ prisoner who has completed their sentence

Kharaap kaaj- Sex Work

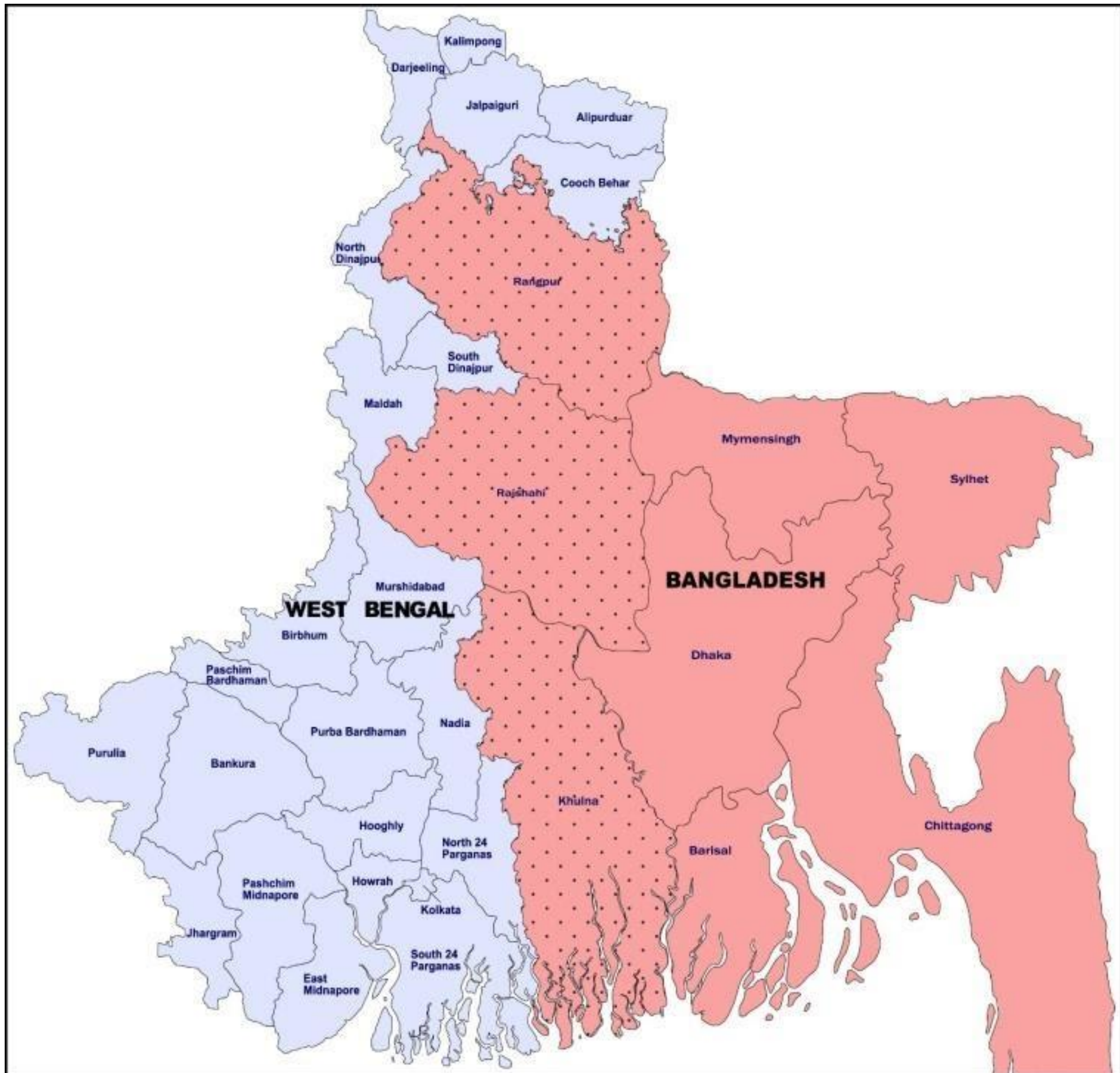
Khabaar- Food

Kopal- Fate

Malik- Lord/Employer

Swadhinta- Freedom

Map of West Bengal- Bangladesh with adjoining districts



Source: https://thewire.in/rights/what-does-demography-reveal-about-immigration-into-west-bengal

Chapter 1

Introduction

1.1 Background

The Partition of 1947 led to the largest exodus of people in the history of South Asia displacing nearly twelve million people between the two newly created nations of India and Pakistan.[1] A result of mostly the political aspirations of leaders of an emerging new nation and an ambition to achieve a religiously homogenous nation, the Partition caused the displacement of lives and livelihoods and the separation of hitherto shared lives between us and them. The flux of people from India and Pakistan and vice versa could not be achieved in a short time; hence, the border was opened as per the Standstill Agreement of Nehru, which would expire in February 1948. There was a difference in the attitude of the Nehru Government in treating the Partition and movement of people in the western border and the eastern border. The violence on the western border soon forced the Indian government to implement a policy of army-assisted Punjabi minority evacuation. On the Bengal frontier, however, such an "exchange of population" was deemed unnecessary, and Nehru observed that "the business of shifting millions of people is beyond our capacity." However, such efforts failed, and millions migrated from one land to another.[2]

Most of the first wave of Hindu refugees to enter West Bengal came from the well-to-do and educated middle classes, with resources and skills they could bring across the border and, frequently, with family members waiting for them on the other side.[3] For the most part,

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[1] Urvashi Butalia, *The Other Side of Silence: Voices from the Partition of India* (New Delhi: Penguin Books India, 1998), 34.

[2] For more, see Haimanti Roy, "Refugees, Citizens, and the Making of a Nation" in *Partition of India* (Oxford: Oxford University Press, 2018).

[3] By June 1, 1948, there were 1.1 million Hindus who had left the east, of whom about 350,000 were urban *bhadralok* and another 550,000 were rural Hindu gentry. The remainder were mostly businessmen. The exodus

however, emigration was a far more daunting prospect for the Hindu population in East Bengal, who worked as agricultural labourers, sharecroppers, or peasants. Most of them had only their small landholdings as assets, and many were enslaved by debt to local creditors and patrons. Thus, a study of the changing demographics of the refugee population reveals an amazing paradox. Following the Partition, the wealthiest Hindus, who stood to lose the most materially, tended to leave first. A comparatively smaller number of poor Hindu peasants made the decision to depart than their more prosperous middle-class fellow adherents.[4] Conversely, the lowest class Hindus, who stood to lose the most in terms of social standing or financial independence, as well as being the most exposed to prejudice and violence, were the ones who were least willing to leave their homeland and stay as long as they could.

Nonetheless, over 3 million Hindu refugees had moved from East Pakistan to West Bengal until 1961, which had increased to over 6 million by the end of 1973; the contention about how many of them would like to be referred to as refugees remains given the reason for their movement and how much of a disruption in their lives was caused by the Partition.[5] The Standstill Agreement also allowed for trade on the border. This was partly to encourage migration and also to allay the doubts of the minorities. Also, the aim was to cause as little disruption as possible during the movement despite the fact that there were hints that the Indian Government also preferred that people stay where they lived until then, especially the Hindus of East Bengal.[6] People were also allowed to retain their titles on either side of the border, whereas some crossed the border on a daily basis for work.[7] Unlike India and West Pakistan, where people's movement was restricted, people in East Pakistan and India moved across the

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also saw artisans moving over to the West as they felt most of their patrons had left. As cited in Joya Chatterji, *The Spoils of Partition: Bengal and India, 1947–1967* (Cambridge: Cambridge University Press, 2007), 115.

[4] Peasants made up three-quarters of the Hindu population in East Bengal, but they only made up about 40% of all refugees.It's noteworthy that just one in four refugee families were from tribal peoples or the lowest social classes, such as the Scheduled Castes . See Chatterji, *The Spoils of Partition,* 136.

[5] Joya Chatterji, *The Spoils of Partition*, 119.

[6] Haimanti Roy, *Partitioned Lives: Migrants, Refugees, Citizens in India and Pakistan, 1947–65* (Oxford: Oxford University Press, 2012); Chatterji, *The Spoils of Partition*, 127-141.

[7] Roy, *Partitioned Lives*, 2021, 62.

border even though goods were monitored.[8] The movement between India and Pakistan on the eastern border, unlike the western, was perceived to be temporary. People who crossed the border on a daily basis were permitted to live in one nation and work in the other. As a result, the Indian government intervened in bilateral talks with the Pakistani government to guarantee the safety and security of minorities in Bengal and to prevent any exodus.

However, after the riots in Dacca[9], Pakistan announced the need for the introduction of passport and visa schemes. India also followed suit and introduced the passport system in 1952. The monitoring of the border started in 1950, and the passport and visa schemes began in 1952.[10] Searches were conducted on the evacuee groups. Often, their valuables were taken away, and the hostility of the guards increased with time. To avoid this, both nations appointed officers at customs points. Custom barriers were imposed to prevent smuggling. However, both countries depended on the border for revenues.[11] The normal economic and social lives of those residing in this area were disrupted by the incursion of bureaucracy and militia into the border zone.

The movement of people between India and East Pakistan continued even when both states devised instruments to deal with border issues, and the border increasingly became a site of disputes. The division of India into India and Pakistan was grounded on religious lines, at least theoretically. Even though the border was primarily created to separate Hindus and Muslims, it did not apply uniformly on that basis. Almost three-fifths of the India- East Pakistan border length was not a Muslim-Non-Muslim divide. Only 26 per cent of the border

[8] Willem van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia* (London: Anthem Press, 2005), 95.

[9] The riots in Dacca (now Dhaka) in early 1952, sparked by protests for making Urdu the national language of Pakistan, were widely believed by Pakistan's central leadership to have been provoked by Indian agents. Newspapers in East Pakistan, like *The Morning News*, regularly published articles supporting these claims and called for stricter border controls. Although these suspicions had no real basis, they influenced discussions about introducing a permit system on the eastern border. Pakistan later announced that having a passport and visa system was essential for a sovereign nation, prompting India to implement the same policy. See Roy, *Partitioned Lives*,72.

[10] Van Schendel, *The Bengal Borderland*, 95.

[11] Roy, *Partitioned Lives*, 63.

separated a Muslim-majority area of East Pakistan from a Hindu-majority area in India, and an additional 15 per cent separated the Muslim-majority area of East Pakistan from a non-Muslim area comprising Christians or Buddhist majority area in India. There were many cases where the Muslim majority fell on the Indian side of the border, and Hindus fell on the East Pakistan side.[12]

The minorities living on the border faced mistreatment and intimidation by the border officials on both sides. The border became a site for the state to exercise its sovereignty and power. The will to homogenise the population and create a 'natural border' by removing the minorities continued to be exercised by border state officials even long after the Partition.[13] This desire to homogenise the populations as much as possible was observed even when the Congress Party in Bengal had proposed a claim for a much smaller portion of undivided Bengal during the Partition against the opposition from Hindu Mahasabha and other parties. At the same time, parties such as Hindu Mahasabha sought to have as many areas as possible in West Bengal. Congress, much to the dismay of these parties, proposed to the Boundary commissions for a modest number of territories. Although the reason lay in administrative and economic grounds, this was largely motivated to avoid the Muslim population in West Bengal and have as much homogenous Hindu population as possible.[14] Nonetheless, Muslim-majority areas remained on this side of the border in India and along the border areas of Murshidabad and Nadia.[15]

The Anti-Muslim sentiment seeped into the national narratives with time. Following different communal riots in Noakhali, Barisal, and Dacca between the 1940s-60s, the political climate became further divisive. The exodus of Hindu Refugees happened in waves, the last

[12] Van Schendel, *The Bengal Borderland*, 44.
[13] For more, see Van Schendel, *The Bengal Borderland*; Roy, *The Partitioned Lives*; Debdatta Chowdhury, *Identity and Experience at the India-Bangladesh Border: The Crisis of Belonging* (London: Routledge, 2018).
[14] For more see Chatterji, *The Spoils of Partition*, 24-46
[15] Chatterji, *The Spoils of Partition,* 46

one being the Liberation War of 1971. By the Indira-Mujib Pact of 1972, anyone who had entered India before March 1971 would be allowed to remain in India. However, slowly, the fear of 'infiltration 'made its way into the national narratives with time, especially in the 1980s when violent anti-Bengali demonstrations broke in Assam, where popular discourse equated Bengali Muslims to infiltrators, which continues to this day.[16] A rhetorical anxiety surrounding the concept of the "Muslim infiltrator," which is equated with the "illegal migrant," has been a part of India's harsh border-control policy with Bangladesh since the late 1980s.[17]

This marked the switch of narrative from homecoming to infiltration. In 1991, after the state and national elections, Bhartiya Janta Party (BJP)[18] claimed that West Bengal had over six million Bangladeshi 'infiltrators' in the state, with over one million in the capital city, Kolkata and the rest dispersed in border districts).[19] In 1992-93, the authorities in New Delhi and Bombay detained hundreds of people who they suspected to be Bangladeshi and shipped them to the Bangladesh border; however, they were forced to abandon the operation after Bangladesh refused to take them in.[20] Subsequently, Delhi-Mumbai furthered the anxiety of Bangladeshi infiltration after Hindu parties came to power, and West Bengal eventually caved in 1999.[21] In 2001, the Supreme Court of India declared Bangladeshi immigrants as infiltrators and hence a national threat.[22] Henceforth, the Bangladeshi migrants increasingly became both a deportable and detainable subject.

[16] As required by the Citizenship Act, 1955 amended in 2003, the National Register of Citizens (NRC) is a registry created to list all Indian citizens. Its main objective is to locate and enumerate Indian people who are legally citizens to make it easier to identify and expel illegal immigrants. Assam was the first state to adopt the NRC between 2013 and 2014. Even though the Indian government declared that it was going to extend the NRC nationwide in 2021, the program has not yet been implemented nationwide.

[17] Reece Jones, "Categories, Borders, and Boundaries," *Progress in Human Geography* 33, no. 2 (2009): 174–189; Sujata Ramachandran, "Operation Pushback: Sangh Parivar, State, Slums, and Surreptitious Bangladeshis in New Delhi," Singapore Journal of Tropical Geography 23, no. 3 (2002), 324.

[18] BJP is a major national political party of India.

[19] Michael Gillan, "Refugees or Infiltrators? The Bharatiya Janata Party and 'Illegal' Migration from Bangladesh," *Asian Studies Review* 26, no. 1 (2002): 84.

[20] Van Schendel, *The Bengal Borderland*,197-200. For further reading Ramchandran, "Operation pushback"

[21] See Roy, *The Partitioned Lives*, 8-11; Rizwana Shamshad, *Bangladeshi Migrants in India: Foreigners, Refugees, or Infiltrators?* (New Delhi: Oxford University Press, 2017).

[22] For more, see Van Schendel, *The Bengal Borderland*, 195-198.

1.2 Locating Women in the Nationalist Discourse

Women find their space in the nationalist discourse born in the space created by male narrative only as passive subjects who are traditional, emotional and symbolic support to their male counterparts who are in turn active, progressive and potent in nation-building.[23] Women are subsumed in national body politics as representations of the nation's essence of national honour and as metaphorical barriers separating the nation and its consequences from the authority of men.[24] Language has been instrumental in sanctioning this. In this discourse, women find themselves as embodiments of national boundaries and national honour who are meant to be saved by the sons of the nation, i.e. the men of the nation.[25] Women find themselves situated in nation-building projects to uphold and reinforce traditions often relegated to their role as reproducers of behaviour, values and collectives.[26]

Amidst the plethora of discussions and discourses around the Partition of People and the beginning of the movement of people between two new dominions, women remained at the core of it. The way that the category "woman" has historically been articulated makes her feel that a community is connected.[27] Women bore the burden of masculine nationalist thought and often made a battlefield of national imagination.[28] Women witnessed brutal physical and sexual assault during the Partition and communal riots that followed as their families were torn apart,

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[23] Nira Yuval-Davis and Floya Anthias, *Woman-Nation-State* (London: Palgrave Macmillan, 1989).
[24] Anupama Roy, *Gendered Citizenship: Historical and Conceptual Explorations* (Hyderabad: Orient BlackSwan, 2005), 41.
[25] Julie Mostov, "OUR WOMENS"/"THEIR WOMENS" Symbolic Boundaries, Territorial Markers, and Violence in the Balkans," *Peace & Change* 20 (1995): 515–529.
[26] Partha Chatterjee, "The Nationalist Resolution of the Women's Question," in *Recasting Women: Essays in Colonial History*, ed. Kumkum Sangari and Sudesh Vaid (New Delhi: Kali for Women, 1989); Partha Chatterjee, "Colonialism, Nationalism, and Colonialized Women: The Contest in India," *American Ethnologist* 16, no. 4 (1989): 622–633.
[27] Roy, *Gendered Citizenship,* 230.
[28] For more, see Mrinalini Sinha, *Colonial Masculinity: The "Manly Englishman" and the "Effeminate Bengali" in the Late Nineteenth Century* (Manchester: Manchester University Press, 1995).

communities destroyed and lives uprooted[29]. Although the political turmoil of the time wreaked havoc on those found on the wrong side of the border, displacing them and rendering them refugees, the recovery of women as national subjects who carried the honour of the community was carried out during the Partition. Up until 1957, both India and Pakistan sought to recover women from each other territories under the Inter-Dominion Agreement of 1947 and later under the Abducted Person Recovery and Restoration Act of 1949[30]. Menon and Bhasin further contend that abducted women come to represent border crossings and the rupture of social, cultural, and political boundaries because women were seen as carriers of a community's identity and its markers of boundaries. Following this logic, it became crucial to retrieve them to preserve the community's sanctity. However, at the same time, many of the families refused to admit the abducted women back to their homes as they were no longer 'chaste' or 'pure'. Mookerjea-Leonard argues how, in such conditions, 'home' and 'family' as a 'safe space' were contingent on regimes of a female body and sociological abstractions of the nation that make their way into domestic spaces.[31] However, there are critiques of literature/fiction authored by male authors around the Partition that paints Hindu women as a 'body of evidence' where violence by the Muslim' other' is marked and used as a justification of communalism and nationalist aspiration of Hindu men.[32] In a similar vein, Menon and Bhasin explicitly note in their work how the gendered violence was carried out by both communities.

Besides the harrowing experiences that women must go through each time a nation makes a shift, women have more than often constituted the chief migrant in the families of the

[29] For more, see Ritu Menon and Kamla Bhasin, *Borders and Boundaries: Women in India's Partition* (New Delhi: Kali for Women, 1998); Urvashi Butalia, *The Other Side of Silence: Voices from the Partition of India* (New Delhi: Penguin Books India, 1998);Joya Chatterji, *Bengal Divided: Hindu Communalism and Partition, 1932–1947* (Cambridge: Cambridge University Press, 1994); Chatterji, *The Spoils of Partition;* Roy, *Gendered Citizenship.*

[30] Menon and Bhasin, *Borders and Boundaries.*

[31] Debali Mookerjea-Leonard, "Divided Homelands, Hostile Homes: Partition, Women and Homelessness," *The Journal of Commonwealth Literature* 40, no. 2 (2005): 142.

[32] For further reading, see Shumona Dasgupta, "The Spectacle of Violence in Partition Fiction: Women, Voyeurs and Witnesses," *Journal of Postcolonial Writing* 47, no. 1 (2011): 30–41.

Indian Sub-continent. Despite the traditional nature of female migration, which is often tied to her temporary role as a member of the pre-natal family, women are rarely seen as primary migrants, and their status is more reserved for their earning male counterparts. As male migration is largely economic in nature, men are traditionally seen as the primary migrant who moves to earn and support the livelihood of the family, whereas women have been understood as someone who accompanies their husbands in their migration to support them. Kinship obligations and migration through these relations are rarely considered as any form of migration in South Asian sensibilities. Hence, although census reports largely failed to capture it, kinship relations and marriages between people of Western and eastern districts of Bengal were a common thing before the Partition[33]. In the Indian sub-continent, female socialisation is entirely tied to her future after her marriage. Acculturation also formed a basic part of women's migratory journey as they would have to adjust and learn new ways of life in a new land. After the Partition and the upheaval of the lives of minorities, men had to move over to the other side and often disliked the idea of moving over to their land of the in-laws against the patrilineal setup.[34] Even then, very little attention was given to women who were equally caught in the crossfires of Partition as men were often ashamed of the unusual *ghor jamai*[35] status.[36] However, even when cross-border movement was scrutinised and regulated after Partition, marriage remained one of the licit movements that was still allowed. For instance, Bangladesh put legislative measures in the 1980s to monitor and prevent female labour migration, but marriage migration was still allowed.[37] They seemed like a passive counterpart

[33] There always existed a fair amount of marriage migration and kin relations between different districts in Bengal which facilitated such future marriages as Bengali women traditionally went where their husband lived. (Chatterji, *The Spoils of Partition*, 124.
[34] Chatterji, *The Spoils of Partition*, 124.
[35] A son -in law who lives with wife's parents.
[36] Taslima, *Meyebela, My Bengali Girlhood.* (New York: Steerforth Press, 1998),29.
[37] Naila Kabeer, *The Power to Choose: Bangladeshi Women and Labour Market Decisions in London and Dhaka* (London: Verso, 2000); V. Redcliff, 'Changes in Family Reunion Migration from Bangladesh to the UK 1985–2004: Policy, Gender and Social Ties', MSc thesis, London School of Economics and Political Science, 2006.

to the men who were crossing the borders. This was primarily because of how women are understood as secondary in the national imagination, often viewed mainly as bearers of the collective identity[38] and how the concept of citizenship traditionally excluded them, being defined through male, militaristic, and civic ideals. [39]

1.3 Women and Mobility

Hannah Bradby remarks, 'womanhood implies travel'.[40] If the location of women in nationalist discourses was marginal, then contextualising women as migrants was even more difficult in a common narrative. Migration carries different meanings and complexities for both men and women. The ability to move between different categories of migrants, for instance, colonial, refugee, migrants and so on, is different for women than for men, and the ideas of gender play a significant part in shaping policies and media discourses.[41] Women who chose to migrate alone were seen as transgressing the boundary of the domestic space drawn for them. Hence, it is widely seen as her breaking away from the mould that was set for her, which can only mean inviting trouble.[42]

South Asian women were always on the move, as counterparts to their husbands having to adjust to new lives not just across the borders after the Partition but also across the seas, consolidating the migration into a permanent family structure. Migrant wives are seen as the embodiment of 'culture' and 'community' when they move to a land where culture is vastly different and as an incarnation of a nation in a foreign land. The culture was seen as a body of practices practised by women; men decoupled from them while travelling, so much so that

[38] Nira Yuval-Davis, *Gender and Nation* (London: SAGE Publications, 1997).
[39] Roy, *Gendered Citizenship*.
[40] Bradby, H. (2000). Locality, loyalty and identity: experiences of travel and marriage among young Punjabi women in Glasgow. In S. Clift, & S. Carter (Eds.), *Tourism and Sex: Culture, Commerce and Coercion* (pp. 236-249). London: Cassells, 236. Bradby makes the remarks in her work on Punjabi women married in Britain.
[41] Marlou Schrover and Deirdre M. Moloney, eds., *Gender, Migration and Categorisation: Making Distinctions between Migrants in Western Countries, 1945–2010* (Amsterdam: Amsterdam University Press, 2013).
[42] 'Trouble' could mean danger. However, 'trouble' could also mean her creating a 'bad' reputation of oneself as someone is potentially immoral and /or indocile.

women were termed as 'casual migrants' alongside their 'economic migrants' husbands by the colonial census officers.[43] Even to this day, it is not uncommon to find these kinship bonds between the two nations, often generational.

New emerging trends in feminist scholarship on migration have opened new discussions on female migration in the current neo-liberal society. The spotlight has been on asylum policies, precarity of labour, the dichotomy of refugee versus migrants, feminisation of labour, as well as detainment and deportation of migrants.[44] The major theoretical paradigm, however, for most of these studies remains in the context of the Global North or the developed countries. Also, studies have shown that contrary to popular opinion, people from developing countries mostly choose to migrate to a developing one for work, most of the time being unskilled/semi-skilled workers.[45]

Migration theories from the 1960s and 1970s often relied on the assumption that most migrant workers were men and that women served only as their dependents. However, women's participation inside and outside of the job market dramatically grew as they became family breadwinners by the 1980s as a result of the feminisation of poverty and changes in global economic policies that created a demand for women's cheap labour.[46] The decision to migrate

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[43] For example, see *Census of India, 1921,* Bengal, Part 1,130.

[44] For more, see Catherine Dauvergne, *The New Politics of Immigration and the End of Settler Societies* (Cambridge: Cambridge University Press, 2016); Liisa H. Malkki, *Purity and Exile: Violence, Memory, and National Cosmology among Hutu Refugees in Tanzania*(Chicago: University of Chicago Press, 1995); Matthew J. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge: Cambridge University Press, 2004); Greg Ogrinc et al., "SQUIRE 2.0 (Standards for QUality Improvement Reporting Excellence): Revised Publication Guidelines from a Detailed Consensus Process," *BMJ Quality & Safety* 25, no. 12 (2016): 986–992; Bridget Anderson, *Us and Them? The Dangerous Politics of Immigration Control* (Oxford: Oxford University Press, 2013); Didier Fassin, *Humanitarian Reason: A Moral History of the Present* (Berkeley: University of California Press, 2011); Saskia Sassen, *Globalization and Its Discontents: Essays on the New Mobility of People and Money* (New York: New Press, 1998); Rhacel Salazar Parreñas, *Servants of Globalization: Women, Migration, and Domestic Work* (Stanford: Stanford University Press, 2001).

[45] For more, see Hein de Haas, "The Internal Dynamics of Migration Processes: A Theoretical Inquiry," *Journal of Ethnic and Migration Studies* 36, no. 10 (2010): 1587–1617; Catherine Taylor and Susan B. Sorenson, "Community-Based Norms about Intimate Partner Violence: Putting Attributions of Fault and Responsibility into Context," *Sex Roles* 53, no. 7–8 (2005): 573–589; Bridget Anderson, *Migration and Care Labour: Theory, Policy and Politics* (London: Palgrave Macmillan, 2019).

[46] Denise Paiewonsky, *The Feminization of International Labour Migration, Gender, Migration, and Development Series*, Working Paper 1 (Santo Domingo: UN-INSTRAW, 2009).

is a household decision guided by normatively prescribed kinship and/or gender roles within the hierarchy of power within households.[47] Families need not always function as household units, where conflicting interests may co-exist over migration despite possible attempts by families to forge an appearance of family unity.[48] Patriarchal authority, as well as resistance to these conflicting and divergent restraints, play a great role in shaping migration decisions. Additionally, South Asian countries exert gendered control on women's mobility, which is seen in the case of poor and young women who are denied equal opportunities in terms of age, skill and guardianship[49]. Thereby, migration ends up becoming a gendering process as well as shaping gender relations, challenging rules of patriarchy through new patterns of behaviour and social roles.[50]

1.4 Bangladeshi Female Labour Migration: A Brief Overview

It is challenging to give a historical summary of patterns in international migration since many nations either do not have a continuous system in place to record international migration, or even if they do, it is not well-functioning as they don't prepare and disseminate the data[51]. Nonetheless, reports have focussed on the outmigration of Bangladeshi women over the years. A Daily Star report[52] claims that women's engagement in the labour field has multiplied over time in Bangladesh. Just 4% of women were employed in 1974; by 2016, that percentage had risen to 35.6%. Bangladesh's female labour force participation rate increased from roughly 8%

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[47] Sherri Grasmuck and Patricia R. Pessar, *Between Two Islands: Dominican International Migration* (Berkeley: University of California Press, 1991), 133-161.
[48] Roger Rouse, Mexican Migration to the United States: Family Relations in the Development of a Transnational Migrant Circuit (PhD diss., Stanford University, 1989).
[49] Andrea Wright, "'The Immoral Traffic in Women': Regulating Indian Emigration to the Persian Gulf," in *Borders and Mobility in South Asia and Beyond*, ed. Reece Jones and Md. Azmeary Ferdoush (Amsterdam: Amsterdam University Press, 2018).
[50] Pierrette Hondagneu-Sotelo, "Overcoming Patriarchal Constraints: The Reconstruction of Gender Relations Among Mexican Immigrant Women and Men," *Gender & Society* 6, no. 3 (1992): 393–415.
[51] Schrover et al 2013, 16
[52] "Women's Participation in the Job Market," *The Daily Star*. https://www.thedailystar.net/supplements/womens-participation-the-job-market-1545181. Accessed on 05.12.2023.

in the middle of the 1980s to 30% in 2010[53]. This has not necessarily meant that their lives have changed drastically in the traditional patriarchal setting of their home, but there have been recent trends of women moving out of such domestic settings in search of work and a better life, challenging the narrative that women are to remain in the private sphere, 'protected' and docile. Women, especially those from low-income households, are more frequently pursuing work opportunities beyond their homes to take care of expenses and provide financial support for their families[54].

Bangladesh is the sixth-largest "labour-sending" nation, sending around 7.8 million people abroad.[55] Since 2003, when the Employment Act of 2011 lowered the age threshold for unskilled and semi-skilled women migrants to 25 years old, the Bangladeshi government has endeavoured to address gender biases in the job market.[56] The government of Bangladesh has made international labour migration a top priority because the country's economy is heavily dependent on remittances from foreign migrants, which account for around 7% of its GDP. In many labour-sending countries, women's remittances are among the largest sources of cash revenue. Although women generally earn less than men, and so may send home smaller amounts of money at a time, they tend to remit a higher proportion of their earnings and do so more frequently.[57] Unfortunately, the data available on remitters is not sex-disaggregated.

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[53] Simeen Mahmud and Sayema Haque Bidisha, "Female Labor Market Participation in Bangladesh: Structural Changes and Determinants of Labor Supply," in *Structural Change and Dynamics of Labor Markets in Bangladesh*, ed. Selim Raihan, South Asia Economic and Policy Studies (Singapore: Springer, 2018), 51.

[54] Paul 1992:2; BMSP 1995:94 as cited in Paul, Bimal Kanti, and Syed Abu Hasnath. "Trafficking in Bangladeshi Women and Girls." *Geographical Review* 90, no. 2 (2000): 268–76. https://doi.org/10.2307/216125.

[55] IOM Bangladesh (02 December 2021), World grows with 281 million migrants; Bangladesh is the 6th largest migrant sending country, https://bangladesh.iom.int/news/world-grows-281-million-migrants-bangladesh-6th-largest-migrant-sending-country. Accessed on 17 July 2024.

[56] A presidential order in 1981 barred semi-skilled, unskilled workers from emigrating alone in order the protect their dignity which was changed in 1988 where certain exceptions were allowed. In 1997, a blanket ban was imposed on all women migrations except for skilled women such as doctors, engineers and teachers which was later lifted. See, Anannya Chakraborty, "Renegotiating Boundaries: Exploring the Lives of Undocumented Bangladeshi Women Workers in India," in *Borders and Mobility in South Asia and Beyond*, eds. Md. Anwarul Ferdoush and Reece Jones (Amsterdam: Amsterdam University Press, 2018), 123–144.

[57] See International Organization for Migration, *World Migration Report 2000* (Geneva: International Organization for Migration, 2000); Irena Omelaniuk, *Gender, Poverty Reduction and Migration* (2005) http://siteresources.worldbank.org/EXTABOUTUS/Resources/Gender.pdf.

However, study findings reveal that even low-skilled female workers remit between 70 to 80 per cent of their income to their families, much more than men do.[58] According to Naila Kabeer, a Bangladeshi woman employed in the Middle East typically sends home 77% of her earnings, with 64% of Bangladeshi migrant workers heading to Gulf and Arab countries and the remaining migrants heading to Southeast Asia.[59]

Beginning in the early 1990s, Bangladesh began to send women from its pool of international labour migrants alongside male migrants, the majority of whom joined the overseas labour force as domestic workers[60]. According to the Bangladeshi Migration Organisation, women made up 15.7% of migrant workers in the five Bangladeshi unions that were studied; this percentage ranged from 27.5% in Arpangashia (Barguna) to 5.1% in Majlishpur (Brahmanbaria). While the overall findings are close to the national average, the differences between them were significant.[61] Sayestanagar, which reported a higher percentage of women migrants at 7.9 per cent of the overall population, revealed that women started migrating to the Middle East before men in the mid-1970s. Similarly, for years, women from Bangladeshi districts such as Satkhira and Jessore have been known to migrate to India for work.[62] However, maintaining discriminatory provisions like the need for male guardianship or the ongoing prohibition on domestic workers based on skills is counterproductive to the

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[58] UN Women, *Policy Brief on Women Migration*, November 26, 2016, 3. https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAsia/Docs/Publications/2016/11/261116%20_Policy-Brief-on-Women-Migration.pdf. Accessed on 20 January 2022.

[59] Naila Kabeer, "Footloose Female Labour: Transnational Migration, Social Protection and Citizenship in the Asia Region," Working Paper 1, *IDRC Women's Rights and Citizenship Working Paper Series* (Ottawa: International Development Research Centre, 2007), 16.

[60] Population Council, "Insights into Labor Migration in India and Bangladesh," https://popcouncil.org/insight/insights-into-labor-migration-in-india-and-bangladesh/. Accessed on 12th June 2023.

[61]Thérèsa Blanchet and Hannan Biswas, *Migration and gender in Bangladesh: An irregular landscape,* (International Labour Organisation, 2021), 26.

https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@sro-new_delhi/documents/publication/wcms_832493.pdf Accessed on 12 March 2023.

[62] Theresa Blanchet, "Migration to the Bars of Bombay: Women, Village Religion and Sustainability," Women's Studies International Forum 33, no. 4 (2010), 345-353.

integration of women migrants. Myriad irregular migration patterns have also emerged because of governmental policies that fail to acknowledge women as important participants in the migration process,[63] where women are often forced to depend on informal routes and networks while making irregular cross-border movements. Offering flexible labour with low to no benefits and at very low wages, they are preferred and exploited by the contractors. It is precisely their predicament as unregistered citizens that makes them more vulnerable to the exploitations of the market and it is this vulnerability that the contractors thrive upon. It is also where such unauthorised movements establish a thriving network of workers, employers and contractors who recruit and employ women in informal sectors.[64] To assume that they are secret non-citizens would be far-fetched as locals are most of the time aware that they are Bangladeshi and are legally unauthorised to work in India. Nonetheless, the façade remains.

Bangladeshi women form a large invisible informal workforce in India as India remains a preferred choice for these women given the abundance of work opportunities[65] even though Bangladesh has never really acknowledged the movement of women between India and Bangladesh.[66] The Bangladesh-India migration was ranked fourth in the top international corridors in the world and largest in bilateral stock of international migrants[67]. Undocumented migrations make up for a huge fraction of this populace that come to India looking for ways of sustenance. The documentation and invisibility of irregular or undocumented workforce make them vulnerable, prone to exploitations of the market and easily absorbed into the labour force due to their malleability and flexibility and inability to unionise[68]. Most undocumented women

[63] Ananya Chakraborty, "Renegotiating Boundaries."
[64] Katja Hujo and Nicola Piper, eds., *South-South Migration: Implications for Social Policy and Development* (Basingstoke: Palgrave Macmillan, 2010), 57-59.
[65] See Blanchet, *Migration to bars of Bombay*; Naila Kabeer, *"*Footloose*"*
[66] Sujata Ramachandran, "Operation Pushback."
[67] Office of the Registrar General & Census Commissioner, India. Census of India 2001. New Delhi: Ministry of Home Affairs, Government of India, 2001.
[68] Jolin Joseph and Vishnu Narendran, *Neither Here nor There: An Overview of South-South Migration from Both Sides of the Bangladesh-India Migration Corridor* (ISS Working Paper Series, International Institute of Social Studies, Erasmus University Rotterdam, 2013), 10.

work in service sectors as domestic help in cities; they work as construction workers, rag pickers, waste sorter, dance bars and so on[69]. Due to the illicit nature of their stay in the country, they have low bargaining power and work for meagre wages. The contractors get away with making up arbitrary rules that keep them from getting a raise or facilities. Women are the worst sufferers since they are given lower wages than their male counterparts. Upon arrival, they experience "double segregation" since they are disproportionately employed in feminised jobs compared to local women or male migrants, which pushes them to the bottom of the labour market[70]. The living conditions are deplorable, and the working conditions are abusive.[71]

1.5 Methodology of the Research

The following section explains the methodology of the research.

Statement of the Problem

Although India and Bangladesh share a friendly relationship, the border between the two nations remains a highly sensitive, militarised, and heavily surveilled area infamous for its violence. Each year, a significant number of people cross this border, but the exact figure is unknown. Among these, hundreds are arrested and criminalised for unauthorised movements. The focus often falls on these crossings' 'criminal' nature, deemed illegal and labelled as 'infiltration.' This term has become central to popular discourse around India-Bangladesh border crossings, overshadowing the complex realities of migration, kinship, and intertwined border lives shared by both nations. The 'infiltrator' is cast as the 'enemy,' fueling populist politics and spreading fear of the external into the internal. Under such conditions, borders extend beyond their geographical limits, permeating public domains of governance such as

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[69] Kabeer, *Marriage, Motherhood and Masculinity*, 28.
[70] Lourdes Benería, Carmen Diana Deere, and Naila Kabeer, "Gender and International Migration: Globalization, Development, and Governance," *Feminist Economics* 18, no. 2 (2012), 7.
[71] For more, see Ranabir Samaddar, "Migrant and the Neo-Liberal City: An Introduction," *Economic and Political Weekly* 51, no. 26-27 (2016), 51.

hospitals, workplaces, welfare stations, transportation hubs, and government offices. The state, as the primary identifier of categories, enacts bordering practices in these spaces, turning them into sites of identification, exclusion, and often criminalisation. In this context, the criminalisation of unauthorised crossings at the India-Bangladesh border serves as a critical link between bordering as both a performative act and a symbol that reinforces and sanctifies national security.

While West Bengal witnesses a substantial undocumented influx of individuals from other neighbouring countries, such as Nepal, these migrants are not criminalised under the Foreigners Act of 1946. In contrast, Bangladeshis who are found to have crossed the border through irregular and unauthorised means are promptly charged under the Foreigners Act of 1946, the Passports Act of 1920, and Section 188 of the Indian Penal Code. Although both men and women comprise a large portion of this influx, women's migration is intricately linked to a longstanding history of kinship, cultural exchanges, and labour relations between the two regions. Bangladeshi women encounter this issue with additional layers of complexity related to gender, kinship, and labour, rendering their experiences particularly distinct and significant.

Literature Review

The thesis looks at the Criminology of mobility or criminality of mobility as its primary theoretical framework. Since the study looks at mobility at the border, it also takes in from a cluster of scholarship done on cross-border mobilities both from within the larger discourse of criminality of mobility as well as specific to India-Bangladesh borderlands.

Border Studies: Willem van Schendel's *The Bengal Borderland: Beyond State and Nation in South Asia* becomes the fulcrum of the India-Bangladesh border studies as van Schendel elaborately lays out the India- Bangladesh (then Pakistan) borderlands in this book. He charts

the journey of the India-Bangladesh border from its birth, traversing through the politics of drawing the border to policing the border and how nationhood is situated in the borders. The eighth chapter, "Narratives of Border Crossing", looks at how the border's creation changed labour dynamics and economic activity. The boundary between India and East Pakistan changed labour relations and forced people to change how they worked and move through a world split by freshly drawn political lines. The workers creatively adjusted to these developments in order to sustain their livelihoods despite the fact that new regulations and constraints made cross-border employment and trade more difficult.This is further discussed in the ninth chapter, "Migrants, Fences and Deportations", which examines the social and political effects of the border with an emphasis on how people came up with ways to get around its restrictions and how identities were formed in an environment where local, social and economic realities frequently conflicted with state-imposed borders. van Schendel contends that the Bengal borderlands represent a singular site of resistance to inflexible national narratives by underlining the disconnect between official political boundaries and people's lived experiences. This highlights the intricacies of border life and the tenacity of transnational social networks albeit state policies intended to create division.

Ranabir Samaddar's *The Marginal Nation* opens to the world of migrants rather than migration. He explains how a nation rests its sovereignty in the border, thereby creating soft internal and hard external and how, during times of distress, this hard external manifest themselves in vulnerable groups such as cheap labourers and new minorities. While the book spans an array of discussions, the second chapter becomes poignant in the context of the study. The second chapter, named “Legality, Illegality and Reasons of State”, explores the question of legality and illegality while looking at the social reality of migration. He argues that the state controls and moulds people's lives for these purposes. However, the question of legality and illegality operates not on the borderlands but rather away from it in the overdetermination of

state, territory and people. He states, "What then is the state to do? It knows legality produces illegality; reality produces national lament; quantitative research produces mystery; welfare measure produces more migration; border produces subversion, and Partition produces its illegitimacy. And, ironically, no one more than the state is aware of the strength of popular perceptions, of unofficial linkages across the border, of the inexorable nature of economics and of the geography of the nation."[72] He argues that although the state produces the concept of illegality, there will also be subversion of norms that attribute to such meaning makings at the borders.

The subversion of border rules, contestation of sovereignty and cross-border movements in the India-Bangladesh border is also discussed in Reece Jones's essay "Spaces of Refusal: Rethinking Sovereign Power and Resistance". Jones argues that in borders where the sovereign deploys the state of exception to maintain control, resistance involves challenging these categories imposed by the state, thereby creating spaces of refusal where such powers are fragmented and contested. In borders, the sovereign operates outside of the legal system, often through exceptional violence; negotiating power in such conditions involves the dualistic world of domination and resistance. People who move across the border refuse the state at the borders by manoeuvring the gaze of the border guards, not conforming to the state-sanctioned categories and maintaining imaginative geographies outside the categories imposed by the sovereign.

In her 2019 essay "Everything Must Match," Sahana Ghosh emphasises how the process of documentation leaves many citizens in the borderlands in a space of unclear documentation, often because of an excess of documentation, as they must constantly worry about proving their citizenship. Drawing from her fieldwork experiences and interactions with people living in Cooch Behar (India) and Lalmonirhat (Bangladesh), Ghosh argues that

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72 Samaddar, *The Marginal Nation*, 62.

borderland citizens undergo a continuous process of claim-making and negotiating identity and citizenship, especially with border forces such as the Border Security Force making them an unstable category of citizens. Ghosh points that hyper-documentation aims to fix identity and the new ways of biometric and technology to do that self-perpetuates as an infinite process. However, this ambition and the anxiety of the state to separate between an Indian and a Bangladeshi at the borderlands often falters due to the 'indeterminacy of documents'; there is no definite way of knowing which document suffices to prove one's identity as a citizen, often one document contradicting and complicating legibility of other documents.

Ghosh's book, *A Thousand Tiny Cuts* also offers expansive ethnographic insights into mobility at the India-Bangladesh border. In contrast to a large body of scholarship that sees border lives and mobility as a violent construct, Ghosh paints the India-Bangladesh borderlands as where mobility is not always riddled with violence but is often embodied and negotiated in myriad ways. Her introductory chapter shows how border crossings are carried out through embedded networks on both sides, and borderlands become sites for clandestine mobility and formation of subjectivities through a thousand tiny cuts. Similarly, her third chapter, 'Relative Intimacies,' shows how gendered mobility in the borderlands has perpetuated the kinship relations across the border and how transnational kinship ties become arenas of struggle, power, and inequality, shaped by practices of bordering. While cross-border kinship is not new, the tightening of borders in the past two decades has increasingly tied these relationships to national identities, making the family a focal point for expressing and reinforcing them. Through stories of women who had cross-border marriages, Ghosh points that these ruptured kinship is the past, whereas today these "illicit flows" defy border security. She goes on to further highlight how the state (the border forces) often disregards such mobility, even during the pursuit of (repressively) policing mobility at the border.

Rizwana Shamshad's 2017 book *Bangladeshi Migrants in India: Foreigners, Refugees or Infiltrators?* is an in-depth examination of how Bangladeshi migration is imagined and perceived in India. Through expansive fieldwork and interviews focusing on three states in India, Assam, West Bengal and Delhi, Shamshad offers how such perceptions are contingent on the political, historical and cultural contexts of the region. The third chapter, 'The Refugees and the Migrants of West Bengal' elaborately maps how Bangladeshi are perceived in the state of West Bengal, a state with whom Bangladesh shares pre-partition ties. Shamshad traverses through history, migration and evolution of politics in West Bengal with regard to the Bangladeshi migration; however, one of the most important contributions of the chapter is that it moves past the tangible aspects of such migration and the facts and goes into the perception of the locals. Through in-depth interviews of natives, political leaders, academics, media persons and so on, Shamshad puts forth an argument that Bangladeshis are not seen as a 'threat' or 'nuisance in the state of West Bengal as it is in Assam or Delhi, such that anti-Bangladesh sentiment is not even fully present in rural Bengal. Highlighting the economic nature of the current-day migration from Bangladesh to West Bengal, Shamshad draws from history and contends that for the Bengals, these migrants are one of them; they are not competitors, even if they are economic migrants. For the West Bengal Ghotis, these migrants are Neo-migrants who are 'not one of them' but they are 'non-threatening'. The significance of this book lies in the insights that Shamshad gives about how Bangladeshi migration is understood not only in national political discourse but also in day to day lives of Indian citizens.

Criminology of Mobility: The primary reason why criminology of mobility is the main theoretical framework for the thesis despite the study largely revolving around ideas of identity, citizenship, border and judiciary is that criminology of mobility as a field explores

interconnections between border control and criminal justice[73]. Border control practices are intertwined with concepts of citizenship and are designed for people who do not belong to the citizenry. This interdisciplinary nature of the field further helps this study which looks at multiple aspects of a phenomenon as well as is multi-sited ethnography in nature. Criminology of mobility as a recent and developing framework looks at how criminology is entangled with mobility, especially as human mobility has increased dramatically post-globalisation and neo-liberalisation. While countries adapt to accommodate newcomers, there are also simultaneous processes of blocking them out and criminalising them.

The genesis of the framework could perhaps be credited to Stuart Hall et al.'s remarkable 1978 work *Policing the Crisis*: *Mugging, the State, and Law and Order*. Although the book does not directly talk about the criminology of mobility, it becomes noteworthy as it begins with an account of why and how a 'moral panic' starts. The book begins with how 'mugging' was a crime that was not new but had suddenly started becoming a concern and creating moral panic. As the book proceeds, it traverses through the' crisis of hegemony' in Britain in the 1960s-70s and mugging as an act of revolt. Though the book has a Marxist undertone in explaining the crisis in British capitalism, it talks about how such panics are designed for certain groups of people, immigrants and belonging to a certain race. Here, the book tries to bring forth the issue of mugging, but the book is not about that; rather, it tries to delve into the construction of threat and panic and how unwanted immigration is criminalised because of the portrayal of racial stereotypes as being linked to social disorder and prejudice in the system caused by criminal justice. Such racial concerns increasingly make borders a regular feature with criminological anxieties in both national and transnational policing. Jude McCulloch, in her 2007 essay "Transnational Crime as Productive Fiction", talks about how

[73] *The Borders of Punishment: Migration, Citizenship, and Social Exclusion* (United Kingdom: OUP Oxford, 2013), x-xi.

increasing concerns over transnational crimes or crimes committed by immigrants and asylum seekers has led to a hybrid war on terror, thereby facilitating repressive measures coupled with increased military intervention. She argues that a pretext more than a bonafide rationale, this anxiety of rising transnational crime, mostly organised drugs market and terrorism, has been a basis for the political legitimation of such volatile military actions on the immigrants. Similarly, Sharon Pickering, in her essay "Transnational Crime and Refugee Protection" on the same issue as McCulloch, argues how matters of geopolitical concern are increasingly being made matters of crime and security, which border crossing is seen as the most immediate threat. She states that borders cease to be lines on the map and go on to become spaces of legitimate and illegitimate behaviours that call for action.

Under this condition, Juliet Stumpf's 2006 article "The Crimmigration Crisis: Immigrants, Crime and Sovereign Power" becomes even more important as it brings forth the link between crime and immigration. Introducing the term 'crimmigration', Stumpf brings forth often overlooked overlaps of immigration and crime and states how the convergence of the two is alarming. Taking the backdrop of riots in the US prisons, Stumpf starts by drawing a future where the criminal laws and immigration laws have merged and how immigration violations have become federal violations. She then takes more into light the current intersection of criminal law and immigration, where even the smallest of offences warrants immediate expulsion. Considering the inequality in the divisions between the citizen and non-citizen, Stumpf very importantly highlights and questions how the smallest of misdemeanours or even violating visa terms can result in immediate criminalisation, granting the state the right to punish as well as expel the offender.

Such criminalisation of persons who have violated the visa terms also shows the illegal nature of their presence and the moral panic relating to such illegal presence, which Catherine Dauvergne highlights in her book '*Making People Illegal*'. Taking into context the United States

and The European Union, Dauvergne argues that new-age immigrants and asylum seekers' mobility is increasingly being curtailed in two ways: one, by making more restrictive immigration policies and two, by extending law that tends to categorise more immigrants acts as criminal, the same act by a citizen being non-criminal. She argues in her introduction chapter that, however, both these 'crackdowns' fail to contain but rather increase extra-legal movements of people. She further states, that "Although the term 'illegal' is precise in its relationship with the law, it is empty of content. It says even less than other identity markers in the migration hierarchy: resident, visitor, guest worker or refuge. The minimal content of the term 'illegal' obscures the identities of those to whom it is affixed."[74] The statement encapsulates her book, as it poignantly questions the unequal exercise of sovereignty, which selectively chooses to make people illegal and categorises them as undesirable and deviant. The book shows in various ways how, against ever-growing globalisation, countries aim to move towards a global regime of checking immigration through a unifying law. However, she counters such goals by arguing that global reordering of systems and law can never be fulfilled as the application of any law is local with local objectives and interpretations, which also depend on local contexts. This leads to an unpredictable future when law is tried to be deployed globally.

While taking into context the illegality of migrants, Marlou Schrover's book *Illegal Migration and Gender in a Global and Historical Perspective* becomes an important work to read with Dauvergne's work. By charting female migration in various contexts in the Netherlands, Germany, Pakistan, Malaysia, the Horn of Africa, Soviet Russia, the United States and countries in the Middle East, the book offers various perspectives on how illegality as a category in mobility developed over the years in various parts of the world. Here, the book tries to investigate the historical discourse on the illegality of migrants, definitions of citizenship,

[74] Catherine Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (Cambridge: Cambridge University Press, 2008), 16.

and mechanisms of inclusion and exclusion through the lens of gender. The introduction chapter is important not only as it opens new discussions into the conceptualisation of migrants as illegal and possibly a threat but also because it looks at how female migrants have been observed over the years and how the irregular nature of their mobility pushes them into being seen as risked bodies. By fusing the two common strands of illegality attached to female migration, one that involves the state's role in constructing concepts of illegality and two, female migration often been limited to trafficking and sex work, the book takes the discussion forward by shifting the discussion from trafficking to more explored experiences of female migration. The book, through the varied accounts of different contexts, takes the discussion forward by how illegality is constructed and countered in global perspectives through detections, migration law, labour policies, amnesties, human smugglings and deportations.

Such growing discourses that question how migration creates panic selectively among certain countries towards certain groups bring us to the site of mobility where most panic is situated. One of the most striking scholarships on transnational mobility is John Torpey's book *The Invention of the Passport: Surveillance, Citizenship and the State*. The book is not simply about Passports but about the interests of the state in restricting and regulating international movements. By looking into state policies in Western Europe and North America, Torpey delves into a gamut of ways in which the state checks the movements of people, often encouraging as well as discouraging such movements. In the first chapter titled “Coming and Going: On the State's Monopolization of the Legitimate "Means of Movement’”, Torpey posits that as opposed to how one may look at passport control as a means of 'sovereignty', the claim is, in fact not of the state's making but rather a means of cooperating with international policy. He counters the masculinised imagery of 'penetrative' states while discussing how states enter societies to create enduring relationships between them and the citizens and instead insists on using the term 'embrace' to make better sense of body of citizens and movements. However,

one of the most important arguments that Torpey makes in the chapter is regarding the state's power to control the legitimate means of movement' of the people. Taking in from Weber's 'means of violence' that the state takes from an individual, thereby making only the state eligible to use violence legitimately, Torpey argues that "the modern states and the international; state system of which they are a part of, have expropriated from individuals and private entities the legitimate "means of movement", particularly though by no means exclusively across international boundaries."[75]

Here, it becomes important to focus on borders as a site of criminalisation as well as a site for control of mobility. Some very important works that highlight the state at the border become very relevant in this dissertation as the dissertation also tries to look at the state while trying to look at the immigrants. Criminology of Mobility as a framework looks at immigration centres as an extension of border, thereby becoming sites of border control practice. It also looks at the border through a lens that tries to understand the mechanism beyond simply a site for stopping the aliens. In this space, Didier Bigo's work becomes even more important. Coining the term 'banopticon' in 2006, Bigo derives from Foucault's panopticon to argue about how new profiling technologies decide who to place under surveillance. In his 2007 essay "Detention of Foreigners, States of Exception and the Social Practices of Control of the Banopticon" Bigo argues that these new methods cover internal security measures as well as physical border control strategies designed to keep an eye on, manage, and exclude those who are deemed to be a threat to social order or national security. Bigo looks at how these security measures show up in regular social settings and establishments. He contends that the banopticon impacts broader societal ideas about immigration, security, and belonging in addition to having an impact on individuals who are directly subjected to surveillance and

[75] John Torpey, *The Invention of the Passport: Surveillance, Citizenship, and the State* (Cambridge: Cambridge University Press, 2000),5.

control. This involves the normalisation of discriminatory actions, the perpetuation of stereotypes, and the stigmatisation of marginalised people. The idea of "states of exception," in which legal requirements and safeguards are suspended or disregarded in the interest of crisis management or national security, is central to Bigo's theory. This permits the normalisation of extreme measures, including mass monitoring, incarceration without charge or trial, and the limitation of specific groups' rights, particularly those of migrants and refugees.

Katja Franko Aas takes the discussion on banoptic forward in her chapter "The Ordered and the Bordered Society" in *Borders of Punishment*, edited by her and Mary Bosworth. The book is a gripping examination of the relationship between border control and punishment in modern cultures. The book critically investigates how nation-states' increasingly securitised borders have begun to resemble punitive systems, obfuscating the distinctions between traditional criminal justice and immigration enforcement. Drawing from a range of case studies, Aas and Bosworth make a strong case that borders are locations where state power is expressed via monitoring, incarceration, and exclusionary policies in addition to being merely geographic lines. They examine how laws meant to control immigration sometimes resemble harsh penalties usually only applied to criminals, extending the reach of criminal control into the field of immigration. Aas, in the first chapter of the book, explains how border control goes on to direct penal technologies moving towards exclusion as well as expulsion of individuals. This administrative removal of people following a punitive regime of deportation is a bio-political and disciplinary form of penal and border control. She argues that these disciplinary methods create an 'ordered' society to maintain a 'bordered' society. She states that the two elements- the 'bordered' and the 'ordered' come to be put together varies, revealing the complexity of existing control practices populations and actors involved in them, and demands concrete investigation. She further highlights the gap in criminological scholarships that often fail to look at the penal regimes directed at non-citizens.

Mary Bosworth fills this important gap in her work that is directed at the detention of non-citizens. There are two significant works by Bosworth that become relevant in the thesis. First is her chapter, "Can Immigration Detention Centre be Legitimate? Understanding Confinement in a Global World" in the book *Borders of Punishment*. Bosworth, in the essay questions the legitimacy of detention centres by questioning the functioning of Immigration Removal Centres (IRCs) in Britain and if power flows are negotiated and resisted in these spaces. Bosworth concludes that immigration centres lack clarity in the presence of legitimacy, and therefore, there needs to be new vocabulary to understand these spaces. She argues that how factors that decide what is legitimate in carceral spaces do not apply to detention centres due to the arbitrary and coercive nature of the state that is tied to enforced detention. The comparison with prisons is obvious as it tries to gain the legitimacy that comes with it, but IRCs are not necessarily designed to punish but rather to deter, which stands in contradistinction to the study.

Bosworth's *Engendering Resistance: Agency and Power in Women's Prisons* (1999) becomes a timely intervention in studying how women negotiate power in prisons. Bosworth uses two related concepts—identity and resistance and agency and power—to examine the reality of the women's prison. She speaks with female prisoners about their experiences and emotions regarding a range of prison-related topics, including relationships between prisoners and guards, education and employment, discipline, self-harm, and health concerns. She also demonstrates how conflicting and disputed conceptions of womanhood serve as arenas for struggles involving identity and anonymity, resistance and suppression, and powerlessness and empowerment.

Rimple Mehta takes a Southern feminist approach while studying the criminology of mobility at the West Bengal Bangladesh border. Her research that was carried out at correctional facilities in Kolkata uses narratives of women to understand how Bangladeshi

women who have moved see their movements and how their mobility is intertwined with their identity as women. In *Women, Mobility and Incarceration: Love and Recasting of Self Across the Bangladesh -India Border*, she delves into women's understanding of illegality, honour, mobility and love while being incarcerated non-citizens. In the chapter 'Bhool to Aporadh', she argues that the respondents often found it hard to understand the meanings that border, and state entailed and how such practices of incarceration act like the state's effort to put these notions in their mind. She argues, "The experience within the Indian criminal justice system appeared like an attempt to steer them towards internalising the values of the sovereign state by processing them through its criminal justice system."[76] In the chapter, Mehta states that seeing the border crossing act as a *bhool* (mistake) to understanding it as *aporadh* (crime) is important as many of the women saw it as binary, but some also saw their act somewhere in the continuum of the two.

Gap in the Literature

Thomas Ugelvik calls the research on prison a 'blind spot' as there is no proper work that focuses on foreign nationals imprisoned for mobility. Scholarships focussing on criminology of mobility in the Global South, especially South Asia, are scarce. There are new scholarships that have steered this framework to the Global South. Franscesca Esposito, Raquel Matos and Mary Bosworth's essay "Gender, Vulnerability and Everyday Resistance in Immigration Detention: Women's Experiences of Confinement in a Portuguese Detention Facility" shows how women negotiate their identity as immigrants in Portugal when faced with questions of identity and sexuality. Often tied to a colonial history (as in this case of the study), Brazilian

[76] Rimple Mehta, *Women, Mobility and Incarceration: Love and Recasting of Self across the Bangladesh-India Border* (London: Routledge, 2018),55.

women find their way in the cities negotiating labour and identity as well in the prisons where they challenge hegemonic gendered constructs in the detention centres of Portugal.

It is in this space that Rimple Mehta's work becomes even more significant in the framework for multiple reasons. Although Mehta's monograph *Women, Mobility and Incarceration: Love and Recasting of Self across the Bangladesh-India Border* does steer the framework in the South Asian context and India-Bangladesh border, it does not explicitly talk about the border as a space of criminalisation of mobility, neither does it look at the state, in this case, border guards. My research tries to bring in the viewpoint of the state actors and looks at the border as the first site of criminalisation of mobility. Unlike Mehta's work, which largely confines itself to the prison as its field and talks about the daily experiences of Bangladeshi women in prisons, this study expands from border to prison and briefly judiciary. While Mehta talks about concepts of criminality, honour and love on how Bangladeshi women negotiate their identity and space in prison, this study takes the discussion further by bringing in the concepts of labour and kinship to the discussion.

Research Objectives

The proposed research tries to understand the criminality of mobility at the West Bengal-Bangladesh border. It tries to understand how, in a border that shares a colonial history, mobility is understood and controlled by the state and how this border control practice is enacted. The study foregrounds female border crossers' experience in understanding this criminalisation of cross-border mobility and simultaneously situates the state's understanding of the same in these contexts. By situating these women's experience in the border and prison as a site of border control practice, the research tries to interrogate their experiences of navigating the border, urban internal spaces, prison and judiciary through their identity as 'foreign women'. The research, hence, tries to understand and contextualise the experiences of incarcerated

Bangladeshi women from border to prison to court while they are being criminalised for crossing the West Bengal- Bangladesh border.

Research Questions

1. In what ways does the criminalisation of mobility at the West Bengal- Bangladesh border function as a border control practice?
2. How do Bangladeshi women who make irregular border crossings at the West Bengal- Bangladesh border experience the process of criminalisation?
3. How do incarcerated Bangladeshi women border crossers navigate border and carceral spaces?

Conducting Fieldwork

The research was a multi-sited fieldwork carried out in a central correctional facility in Kolkata as well as in some border villages in the district of North 24 Parganas areas of Kolkata, where I interacted with border guards as well as local villagers. The names of the border outposts shall not be disclosed to maintain the confidentiality of the said border guards.

Respondents of the Study: Besides the prison and the border, I also talked to a couple of other state and non-state actors in and around Kolkata. The interviews were semi-structured, leaving room for more discussions. The interviews with the state officials needed permission from the concerned authority; therefore, the first step usually involved writing letters for permission to the offices through emails. It normally took several weeks for the offices to revert to the letter, and often, there would be no responses at all. There were also a couple of informal meetings set up with state officials over the telephone where they would speak about their work and how they handled border activities in their region and context. The state officials that were

interviewed like this were top officials[77] of Kolkata Police, West Bengal Police Department, Border Security Force and Correctional services in the district of Cooch Behar, West Bengal. Many of the officers referred me to other top offices, making it easier for me to arrange a meeting with them.

Besides the state officials, other non-state actors were also interviewed during the study. They were five residents of border areas, seven social workers and members of two human rights groups based in West Bengal, namely *MASUM* and *APDR*[78], two members of a Non-Profit Organisation, *Parichiti*, that works for and as a domestic help organisation in Kolkata, two members of anti-human trafficking organisation, *Purnata* and *Durbar Mahila Samanwaya Committee* in Kolkata, two journalists, three lawyers and four academicians. These were largely carried out as informal, non-structured interviews in person or many times over the telephone. The contacts of the interviewees were often referred by previous interviewees who would refer me to them, resembling more snowball sampling in loose terms. Such a mode also enabled me to approach people who would often be wary about talking about topics dealing with state and state operations.

Table 1.1. List of respondents of the study

Respondents	**Number**
Incarcerated Bangladeshi women	27
BSF personnel	9
Border Police Personnel	1
Police personnel (Kolkata)	4

[77] The designations are not disclosed to maintain the anonymity of the respondents.

[78] APDR or Association for Protection of Democratic Rights is part of the countrywide civil and human rights movement based in West Bengal, India has been working for the protection of civil and democratic rights of the people

Prison Officials	10
NGO workers/ Human rights Organisation members	6/4
Lawyers/Legal Volunteers	3/1
Journalists	1
Border villagers	10
Academics	4
Total	80

Source: Author's Own

Sites of Fieldwork

The study was qualitative in nature. The fieldwork was primarily conducted in the prison because, despite the limitations, the prison was the only accessible site where I could have got a chance to interact with those persons who are criminalised for making irregular border crossings at the West Bengal- Bangladesh border.

A secondary study was conducted in five border villages of North 24 Parganas, namely Gobindapur, Hakimpur, Purba Joynagar, Panitar and Sayaeshtanagar, to understand how border crossings are understood by the border residents and law enforcement officials stationed in these regions. These field visits were conducted between January 2022 to December 2022.

Correctional home: The study at the correctional home was carried out between February 2022 and September 2022 where I was given permission to conduct interviews of the concerned respondents once a week. The permission was given by the Inspector General of Prisons, and the Superintendent of Police was given the charge of deciding the time and place of the

interview.[79] Since the Coronavirus pandemic was still a big threat during the time of the interview, I was not allowed to enter the prison barracks and had to conduct interviews of both the prison officials as well as the prisoners in the common spaces of the prison. Therefore, the interviews were carried out mostly in the clerical offices as well as near the common entrance of the prison.

On each visit, I had to produce the letter of permission from the Inspector General of Prison at the front gate, which was followed by another round of questioning at the main entrance of the prison. After clearing through the questioning, I had to register myself at the logbook stating my name and affiliation. The Superintendent of the Prison had given the Social Welfare Officer the charge of overseeing the study, so I first had to go and see the Officer[80]. The Social Welfare Officer then would request the controller to request the wardens to bring in three Bangladeshi women for the interview. The interviews were conducted in a group of three due to shortage of prison staff at the prison. It was also due to this issue; I could not conduct interviews on several occasions when there was something happening at the prison like vaccination drive and there would not be enough prison staff to supervise the prisoners. Hence, it would often align with Mary Bosworth idea of prison as a 'secretive' place[81] characterised by coercion, and various conflicts where conducting research is difficult to arrange and carry.

On the initial days of the research, I had to go through the enquiry about the kind of work I was doing and what my research aimed to look at. One of the reasons why I drew more attention during the early days of the visit was because the state was cautious of the kind of study that was carried out and this was visible even in the interactions I would have with wardens. Another reason was my identity as I visibly belong to a different community than most of the prison population, both prisoners and prison personnel. For the first few visits, I

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[79] See Appendix.
[80] There was a change of Social Welfare Officers during the study.
[81] Mary Bosworth, *Border Criminologies: Assessing the Changing Architecture of Crime and Punishment* (Geneva: Global Detention Project, 2016), 3.

had to depend a lot on the clerical staff, mostly the controller, as they would be the one giving most information about the criminalisation as well as the prisoners. The Social Welfare Officer was particularly welcoming and cooperative even as there was a change of post. The social welfare officer would often arrange for a meeting with the legal aid who would come to visit the prisoners or with the prison doctors.

Gradually, everyone in the prison became familiar with my visits and the questions stopped with time; rather, the questions would almost be about my personal life, primarily due to my visible status as a female outsider in the cultural context. This played in both ways. The prison staff often saw me as a harmless naïve woman due to the marginal status of being a female outsider. However, this would also often mean the lack of any sort of cultural affinity that could be helpful in kickstarting a conversation or asking for any sort of favour. I had no say in who I wanted to interview among the prisoners as I had no access to the barracks. The controller used to instruct the warden in the barracks to send three women for interviews during each visit. A warden would often bring in these women for the interview and used to accompany them during the interview which visibly made them more aware and cautious of their answers. Often, the interviews had to be rushed as the warden had to be back in the barracks.

The interviews would typically last for around an hour. Due to the time and space constraints on the study, I had a set of questions ready which had mostly open-ended questions, open to change based on the prisoners' accounts and experiences as a foreigner in India. The reason for framing the interview structure beforehand was mainly due to lack of time in not just conducting the interview but also carrying out the fieldwork. As I was given very limited access to prison space and prisoners, I had no scope to build any sort of rapport with the prisoners. Also, since I belonged to a different ethno-linguistic community than the prisoners, language played an important marker of separation in these interviews. To make the most of

the limited time we had, I tried to limit the interview to the context of criminality of mobility of these women.

The interviews, however, were different each time with different kinds of perspectives and attitudes as offered by the women. While some would be visibly more antsy and nervous, some would often come across as calmer and less unsure of their judicial trajectory as foreign prisoners. There would be instances of camaraderie between the prisoners or moments when they would let out gossip. Many a times, a new prisoner's query or fear would be allayed by older prisoners. Some would ask about the kind of research that was being carried out, some would ask about me, and some would ask for help, mostly those who had long pending cases or had not have any sort of correspondence with their families.

Border: Conducting fieldwork with the state actors was rather difficult to get through as it often meant getting more approvals[82]. Firstly, I was at no point allowed to walk into any law enforcement offices or border outposts beyond the main entry point. So, I had to get a letter of permission that had to be shown before I could be at the offices. Most letters seeking permission would be emailed to the official emails of the designation asking for permission to speak to law enforcement personnel, be it in the police or at the border. For those in the police or BSF headquarters, people who the letter was addressed to decide to give the interview, though at no point the letter would have mentioned who I wanted to talk to. I preferred talking to subordinate officers as they came across as more honest and less cautious about their answers and also because they would be most active on field whereas the higher-ranking officers and in-charge seemed to be wary of the kind of study, even suspicious about whether it would be critical of the state. The answer would be more precise, closed ended and cautiously constructed as to evade any sort of further follow-up questions and critiques. Often if the interviewee were not

[82] The designation and the location of the interviewees shall not be disclosed to maintain ethics of anonymity and to avoid indication of any sort of information.

as wary, they would refer me to the officers of other departments thereby making it easy for me to get access to interviews.

Doing fieldwork at the border meant getting holds of various networks at my disposal. The research was carried out in five border villages[83] in the North 24 Parganas district where I interacted with village leaders[84], villagers, BSF personnel, border police officers. With the assistance of a local human rights organisation. I could participate on some panchayat meetings that were focussed on the border guards' operations at the border villages. Many villagers expressed their experiences, put forth their queries and shared their plights in these meetings. I had a chance to talk to these villagers before and after such meetings where they also offered to show her around the villages and the fence. In one of the visits, a villager arranged for me to visit the fence which is restricted for outsiders. The time of the visit was post 5 pm which is usually the time the fences are closed even for the villagers who work in their fields around the fence. However, the villager and the stationed BSF personnel had a good rapport more reflective of a cooperative relation which enabled him to arrange this visit for me.

However, other meetings and visits required more than that. I was not allowed anywhere near the gate of many government offices as well as border outposts without a letter of permission. For visiting another border outpost (BOP2), I had to get hold of a local leader in this case a ward counsellor who arranged for a meeting with the Company Commander (CC1). Before the ward counsellor could arrive at the outpost, I was asked to leave by the sentry and not be around the outpost. It was only after the counsellor showed up that I was allowed to enter. In this meeting, the company commander was mild mannered in his interactions, although an intelligence officer was present throughout the meeting, not engaging in any of the conversations but observing it.

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[83] The name of the villages shall not be disclosed to maintain the confidentiality of the BSF officers as well as village leaders.

[84] Here village leaders refer to panchayat Pradhan and ward counsellors.

In another visit to the border outpost (BOP3) in North 24 Parganas, I had to carry the permission given by one of the top officials of the BSF. This outpost was rather tense and infamous as one of the most active and porous border regions of the district. Most of the respondents of the study were also arrested at this outpost. The tension was visible as soon as one entered the point where the village started as people seemed to be more alert and cautious even while doing routine stuffs. One of the outer checkpoints was crowded with people who wanted to make movements in the interior part of the village, and everyone was being thoroughly checked. This was not even near the border fence but right around the outskirts of the village. Here I was again asked about the purpose of her visit. Once it was known that I had permission by the top senior of this BSF personnel, he immediately treated me well and engaged with me in a conversation sharing about the kind of work he did and what the scenario was like in this part of the border while he waited for the permission by his company commander to let me through the checkpoint. Once the call from the office of the company commander came with the permission, the person hailed a toto passing by asking them to drop me to the outpost.

Throughout the ride, the toto driver and his friend kept quiet and seemed a little gloomy. They clearly seemed frustrated about border life and the restrictions it entails. Once I reached the outpost, I met a cadet who asked me to wait for the Company Commander (CC2) at his office. The cadet then started telling me everything about this border, about the people who cross the border, and how it is different from the border in Murshidabad where he was stationed before. He then went on to speak a little about himself. In the meantime, the Company Commander of this outpost took the permission letter and went in to make a few phone calls to verify the letter. The letter itself was very precautionary in nature refraining me from publishing anything contentious.[85] Once the phone calls were done, the Company Commander

[85] See Appendix.

then came for the interview but was mostly closed off during it unlike CC1 who was more welcoming and approachable. Meanwhile, the cadet came in frequently under the pretext of bringing water for me especially every time the Company Commander left the room. He would then continue to speak about his experience, mostly in frustrated and complaining manner, showing me the pictures of the arrested people and fugitives that were put up on the wall.

On the other hand, meeting with the Officer in charge of a primary police station of the district under which most border arrests of the region are registered was not as difficult. I only had to go to the police station and ask for the permission to speak to the Officer in Charge. The officer in Charge came in and spoke for a good amount of time extensively about the border crossings, arrests and challenges that the police face. Once the interview was over, the officer also offered me for a cup of tea which I politely declined.

Relying on Memory

In all these visits and interviews, I had to rely a lot on my memory. No voice recorders were allowed at the prison, so I had to note down everything in my notebook. But noting down during the interview meant the interviewees becoming more conscious of their narratives and more cautious of their accounts. To avoid that I had to make such interviews more conversation- not just between me and the interviewee but also other audience present so that more other people could join it and make the speaker less cautious.

Similarly, talking to state actors meant more caution on my side as to receive information from them without being persistent. No recorders were allowed, but also notebooks would have invited caution. So, I kept noting down to a minimum and only when needed, such as noting down figures and facts. The interviews had to be conversational in these cases, too.

Usually, I would leave a voice note on my recorder as soon as I left these premises to document as much information as could be recalled and retained, which would later be

converted to field notes. This certainly did lead to missing out on some information from my side.

Timeframe of the Study

The fieldwork was conducted from November 2021 to December 2022. At the time of the interview, the respondents' duration of incarceration was no more than two years. The study has examined secondary data from the past ten years that are available through government agencies and independent research.

Significance of Study Area

I look at two areas, prison and the border, as field sites because both are pivotal when it comes to the criminality of mobility at the India-Bangladesh border.

The prison contains those who are criminalised for extra-legal border crossings in the West Bengal –Bangladesh border, primarily at the North 24 districts. Despite the limitations of the prison as a field site, it was the only accessible site where I could have a chance to interact with those persons who are criminalised for making irregular border crossings at the West Bengal- Bangladesh border. Additionally, prison acts more than a physical space; it encapsulates the temporality of criminality as the people are confined for a certain 'time' with the intention of punishment and correction. 'Time' becomes different in prison; it is elongated.[86] Hence, prison becomes a site where the criminality of mobility as a legal and codified process and practice is enacted and executed. Without prisons, the process is incomplete.

Another fieldwork site was the North 24 Parganas borders. Besides the fact that barring two women, the respondents were arrested at the borderlands of the district, the study chooses

[86] Time becomes different in the prison due to extended period of isolation, lack of correspondence with family and longing for home. However, time also becomes elongated due to slow judicial process, prolonged sentence and arduous process of negotiation space and identity as prisoners.

to look at the border as a secondary site of ethnography because borders are where the process of criminalising these individuals happens for the first time. Borders become important in this context because, without the nature of the border in context, it will be incomplete to understand why and how people move across it without authorisation. Out of 27 respondents of the study, 25 were arrested at the border while entering or leaving India, which makes it important to note that criminalising of border crossing is not limited only to entry to the country. The interviews with the border guards, BSF and Police help us understand how the state perceives and aims to prevent cross-border movement and, of such understanding, is uniform across.

Narratives of Experiences as Data

The research uses narratives as a primary tool of data collection. Here, the narratives mostly belong to the 27 prisoners who were incarcerated in a correctional facility in Kolkata, charged under the Foreigners Act 1946. Besides the prisoners, narratives of state actors were also used to reflect more on the objectives of the study. All narratives were obtained through in-person interviews.

Narratives as a source of information in a social science has often been questioned for its validity and reliability in a study. Reliability is the ability of research findings to be replicated in similar situations with steady results, whereas validity is the capacity of a study to examine an external reality or measure concepts. Narratives have also been designated as an *epistemological other*, often failing to find the more serious academic response reserved for causal explanations and quantitative research[87]. This means that empirical studies are often viewed as providing reliable data that can be used to establish facts due to their systematic, measurable approach. In contrast, narrative accounts are frequently perceived as less

[87] Margaret R. Somers, "What's Political or Cultural about Political Culture and the Public Sphere? Toward an Historical Sociology of Concept Formation," *Sociological Theory* 13, no. 2 (1995): 113-144.

dependable for factual basis because they rely more on subjective interpretation than on quantifiable evidence. Narratives are relegated as stories[88], doubted as fiction as experiences of people are questioned about their validity and reliability in matters of social science research. Unlike written texts, which are valued highly, oral narratives are often overlooked in research and confined to the domain of storytelling. During this research, many times I would be questioned if the narratives were credible and how I could be sure that what the prisoners were to say were, in fact the truth.

Nonetheless, Bauman urges a change in perspective when examining narratives to comprehend how storytelling is performed in various settings and daily life.[89] What narratives offer in any study is beyond the measurable aspects of any event. Hayden White notes, 'Narrative might as well be considered a solution to a problem of general human concern, namely, the problem of how to translate knowing into telling'.[90] It conveys the meaning of events through three important features: i) 'chronological' as it is told as a sequence of events, ii) 'meaningful' as narratives are evaluative and subjective and, iii) most importantly 'social' as it is produced for an audience[91] which is especially relevant in this study. Labov and Waletzky argue that narratives provide a way of 'recapitulating past experiences by matching a verbal sequence of clauses to the sequence of events that actually occurred'.[92] Hence, narratives are increasingly being paid attention to because of their temporal qualities of social life[93].

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[88] Hayden White, "The Value of Narrativity in the Representation of Reality," *Critical Inquiry* 7, no. 1 (1980), 6.
[89] Richard Bauman, *Story, Performance, and Event: Contextual Studies of Oral Narrative* (Cambridge: Cambridge University Press, 1986).
[90] Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore: Johns Hopkins University Press, 1987), 1.
[91] Jane Elliott, Using Narrative in Social Research: Qualitative and Quantitative Approaches (London: SAGE Publications, 2005), 4.
[92] William Labov and Joshua Waletzky, "Narrative Analysis: Oral Versions of Personal Experience," in *Essays on the Verbal and Visual Arts*, ed. June Helm (Seattle: University of Washington Press, 1967), 12.
[93] Adam Zachary Newton, *Narrative Ethics* (Cambridge, MA: Harvard University Press, 1995)

Similarly, many have paid attention to the importance of the telling nature of the narrative and how listening also plays a huge part in the making of a narrative[94] .

These narratives are ubiquitous; they are about life. Narratives reflect larger structures and meaning makings of the study in how it is constructed, produced and consumed[95]. How these narratives are consumed by a listener and in this case, the researcher also happens in multiple stages, further showing how narratives are beyond just story sharing. First, as a telling of event and the 'content' of the narrative, second is how the story is 'structured' and told and third lies in the 'performance' of the telling through interactions and contexts[96]. Here narratives become a social activity such that reconfiguration of the stories are constantly being restructured considering new events. People make sense of their lives according to the narratives that are available to them, and that stories do not exist in a vacuum but are shaped by ongoing personal and community narratives are hallmarks of the analysis. Every story—no matter how fictitious—rests on and demonstrates the personal story structures that everyone possesses. They thus offer a glimpse into people's experiences and beliefs[97].

Meanwhile, there also lies ethical dilemmas when using other people's narratives in research. Firstly, the tendency of the researcher to impose their own meanings and interpretations on the experiences of the narrators[98] , which Josselson (1996) calls 'imposed re-storying'.[99] Hence, my own idea of reality, subjectivity and lack of similar lived experiences are evident in these interpretations. Secondly, how the researcher chooses to prioritise one matter over another is also reflective of the meanings that they impose in not just evaluating

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[94]Janet Holmes (1997): Janet Holmes, "Women, Language, and Identity," *Journal of Sociolinguistics* 1, no. 2 (1997): 195–223; Elliot G. Mishler, *Research Interviewing: Context and Narrative* (Cambridge, MA: Harvard University Press, 1986).

[95] See Plummer, Ken. *Telling Sexual Stories: Power, Change, and Social Worlds*. London: Routledge, 1995; Linde, Charlotte. *Life Stories: The Creation of Coherence*. New York: Oxford University Press, 1993.

[96] Elliot, *Using Narrative in Social Research*, 38.

[97] Bell, Jill Sinclair. "Narrative Inquiry: More Than Just Telling Stories." *TESOL Quarterly* 36, no. 2 (2002), 209.

[98] ibid, 210.

[99] Ruthellen Josselson, ed., *Ethics and Process in the Narrative Study of Lives* (Newbury Park, CA: Sage Publications, 1996).

narratives but also giving selective emphasis to parts of narratives that they feel are more important. Therefore, as I start becoming aware of the structures, I make selections, and decisions of inclusions and determine the boundaries and structures of the accounts.[100]

However, narratives are also about self-representation that cannot be abandoned in research. Although I use my judgements while retelling these stories, the stories were told as lived experiences in the first place. This gives the narrator some agency to begin with. This agency is intertwined with their sense of identity. Margaret Somers posits that new approaches see narratives and narrativity as concepts of social epistemology and social ontology, helping understand the social realities and agencies that are temporal, relational, cultural, as well as institutional and macro-structural.[101] Narratives constitute identity[102] , which is even more present in this case since the women's narratives largely revolve around their experiences and identity as foreigners. Identity cannot be assumed to be static as the narrators in this case, both the imprisoned women and the state agents, cannot be understood as one fixed social agent by situating them as fixed categories in larger discourses. It becomes important to understand, through narratives, the interactional and relational facets of their identity which is constantly evolving based on time and space. There is a continual production of identity in discursive contexts and such ongoing practices need to be open to intervention and resignification[103]. Narratives have the unique ability to reflect and deconstruct social structures and cultural discourses, showing how beliefs are embedded within these frameworks. This is particularly relevant in this case of national identity as this study, where narratives reveal the ways in which social structures are established and sustained and how collective identities and ideologies are

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[100] Elliot, *Using Narrative in Social Research*, 13.
[101] Margaret R. Somers, "The Narrative Constitution of Identity: A Relational and Network Approach," *Theory and Society* 23, no. 5 (1994): 605–649
[102] For more, see Margaret R. Somers, "The Narrative Constitution of Identity"; Margaret R. Somers and Gloria D. Gibson, "Reclaiming the Epistemological 'Other': Narrative and the Social Constitution of Identity," in *Social Theory and the Politics of Identity*, ed. Craig Calhoun (Cambridge, MA: Blackwell, 1994), 37–99.
[103] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990),33.

formed. While the narrator has the chance and the freedom to tell their story as they would want, it is also larger templates and available resources that shape their accounts[104] , which are followed but also changed. Edits are made, and tones are adopted depending on the context and the audience of the story.[105] This can be further elaborated two-fold in the context of this research—one through the approach of narrative criminology and the second in the light of the respondents of this study.

Narrative Criminology in the context of this study

Using Narrative Criminology[106], researchers can examine ideas through the lived experiences of those who have been criminalised and how they have changed over space and time. According to Jennifer Fleetwood et al., narrative criminology makes a connection between traditional criminological concepts and the usefulness of storytelling.[107] Narratives play a crucial role in crime studies because the phenomena we examine is often difficult to witness directly and are relatively uncommon. To understand it, both researchers and practitioners in the field must rely on the narrative structure. Narratives have traditionally been analysed by criminology scholars as neutralisations.[108] While accounting is one of their activities, it's important to note that they also engage in other endeavours. In fact, violent stories serve to inform, enlighten, establish order, build identity, preserve culture, integrate and address experiences, break taboos, and amuse both audiences and storytellers.

This is a crucial component for me to consider because their job is to examine the relationships that shape the story rather than evaluate the story's authenticity. Additionally, it

[104] Michael P. Kelly and Hillary Dickinson, "The Narrative Self in Autobiographical Accounts of Illness," *The Sociological Review* 45, no. 2 (1997): 254–278,
[105] Elliot, *Using Narrative in Social Research,* 129.
[106] Lois Presser and Sveinung Sandberg, *Narrative Criminology: Understanding Stories of Crime* (New York: New York University Press, 2015).
[107] Jennifer Fleetwood, Lois Presser, Sveinung Sandberg, and Thomas Ugelvik, eds., *The Emerald Handbook of Narrative Criminology* (UK: Emerald Publishing Limited, 2019).
[108] Shadd Maruna and Heith Copes, "What Have We Learned in Five Decades of Neutralization Research?" *Crime and Justice* 32 (2005): 221–320.

becomes critical for me to comprehend the narrative being conveyed through their body as Sébastien Tutenges posits that storytelling is an intersubjective, embodied act that involves more than just word exchanges.[109] This telling of their experiences of committing a crime is for offenders not a consistent process as Sandberg argues; they are complex, inconsistent, often changing with situations. Such processes are also dialogical involving multiple voices, actors and often negotiations and ambiguities of viewpoints. Storytellers speak in borrowed words with one sideward glance towards the audience.[110] In these narrations, the offenders have a chance to justify their action, make them look not as immoral and present them in a positive light, thereby also obtaining validation from the audience or from the peers who might be sitting next to them hearing their accounts. As in the case of this study, the women were seated next to their peers and/ or fellow prisoners and wardens, therefore making the latter an audience to these accounts. It also becomes a location for these women to make an impression about themselves to all the audience besides me. Especially in a place like a prison, where women are continuously questioned about their morality, these interviews became a place for the women to assert themselves as moral and righteous women, which can be observed during the thesis. The act of telling stories aloud aids in understanding the cultural contexts, the setting, and the audience's reaction.

The accounts of these women were not bereft of ambiguities. There were a few instances during the interview where I could find inconsistencies in the stories, which will arrive later in the chapters. However, these ambiguities are significant as they demonstrate the beliefs of these women and how they situated themselves in the context of their criminalisation. According to Fleetwood, who highlights the complex ways in which the narrator exercises

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[109] Sébastien Tutenges, "Narrative Ethnography under Pressure: Researching Storytelling on the Street," in *The Emerald Handbook of Narrative Criminology*, eds. Jennifer Fleetwood, Lois Presser, Sveinung Sandberg, and Thomas Ugelvik (UK: Emerald Publishing Limited, 2019), 27–44.

[110] Arthur W. Frank, "Practicing Dialogical Narrative Analysis," in *Varieties of Narrative Analysis*, eds. Jaber F. Holstein and Jaber F. Gubrium (London: SAGE Publications, 2012), 35.

agency in telling the story, the narrator uses strategies in these interviews because they belong to a marginalised group, in this case as incarcerated people.[111] Here, both the content as well as the performance of the storytelling becomes important for the narrator. However, the study does not so much focus on the performative aspect and ambiguities of these narratives but focus on the content.

Hence, the reason why narrative criminology is important in this study is because it helps the researcher to get rid of the binary oppositions that comes with defining categories. One of the most significant types of discourse is the use of binary oppositions and narratives.[112] Female prisoners, especially women who have moved and found themselves at a place they did not want to, have often been bracketed in two wide categories: victims and immoral women and in this case, criminals. Similarly, state agents, particularly border forces have often been broadly perceived as a uniform body of repressive agents. But what narratives attempt is to place these people into plots, bestow upon them moral responsibility, causality, beliefs and most importantly agency.[113] These narratives become a point where these women decide how they want to tell their stories of crossing the border, of navigating transnational spaces, inhabiting multiple spaces and being criminalised for them and where they would like to situate themselves in the discourse. Narratives become a site where such realities juxtapose with identity as discussed above, in this case, the realities of moving across the border with how these women identify themselves. Likewise, through narratives, the state agents also try to establish their own set of beliefs, which are again not uniform and given. Their experiences of policing and navigating borders as representative of the state here overlap with their own set of ideas, discretion, moral responsibility and agency, which can be seen through the course of

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[111] Fleetwood, *The Emerald Handbook of Narrative Criminology.*

[112] Claude Lévi-Strauss, *Structural Anthropology*, trans. Claire Jacobson and Brooke Grundfest Schoepf (New York: Basic Books, 1972).

[113] See Vladimir Propp, *Morphology of the Folktale,* 2nd ed., trans. Laurence Scott, ed. Louis A. Wagner (Austin: University of Texas Press, 1968); Algirdas Julien Greimas, *Narrative Semiotics and Cognitive Discourses* (London: Pinter, 1990).

this dissertation. Therefore, as Joan Scott posited, these experiences provide fresh information about people and enable a more profound subjective as well as objective reflection of identities and consciousness, making narratives a significant way of understanding the otherwise incommensurable facets of everyday life.[114]

Therefore, I chose to use narratives as the mode for data collection because it offers insights into stories that are not documented elsewhere. These stories throw light on the various ways in which borders are conceptualised, navigated and crossed by people who are criminalised for doing so. By placing these persons at the forefront, the research chooses not to categorise them into broad categories of cross-border migrants or criminals.

Research Ethics

Conducting research in prison through interviews of incarcerated foreign nationals and conducting research with state actors as respondents both invited caution and awareness from them, vis-à-vis the sensitive location of fieldwork as well as the position of the researcher.
In both instances, I made sure to minimise any sort of discomfort to the respondents by not coercing them into answering anything they were not comfortable with. Also, the respondents were always made to feel free to answer any questions. While talking to the state actors, the position that the respondents derived from the office that they held kept them in a position of power to rely on their instructions and whim largely whim. However, in prison, I was aware that my position as a 'free citizen' of a country put me at a position of advantage and that the position of the respondents as 'foreign prisoners' immediately put them at a position of disadvantage. Fully cognizant of these facts, I tried not to violate codes of ethics while conducting fieldwork.

[114] Joan W. Scott, "The Evidence of Experience," *Critical Inquiry* 17, no. 4 (1991): 773–797.

All the respondents knew about who I was and the nature of the study that was being conducted with no misinformation. All had also consented to the study on the basis that confidentiality and anonymity would be maintained. The respondents at the prison were specifically told that their names or identities would not be disclosed, and the study would not affect their ongoing case in any way. They were also fully informed that the study would not help their cases either or accelerate their process of deportation. Although some women did ask me for help, like arranging a phone call or helping with their case, they were at no point given any sort of false hope that the study could individually help them. Given that these interviews were not one-on-one and were carried out amongst their peers, I also refrained from asking too personal questions that would put the respondents in a difficult spot.

Many of the state actors actively asked me not to mention their names. Those who were interviewed informally were assured beforehand that their names or locations would not be disclosed in the study since they would be visibly tense when speaking about their job. Those who were formally interviewed were contacted through recorded mail, yet I have consciously decided not to include their names or their offices in the study to maintain anonymity.

I have not deployed any deceptive practice to conduct or record the interviews at any point in the study. I had asked for permission to audio-record the interviews in prison, but on clear denial of permission, I refrained from adopting any methods that would question the credibility towards ethical research.

1.6 Chapterisation

The first chapter, "Introduction", begins by introducing the context of the study by discussing in brief the history of migration between India and Bangladesh and where this research locates itself in this context. It then lays out the methodology of the paper by delving into the research questions, review of the literature and the method of the study. The chapter

also focuses on the researcher's experience of conducting fieldwork in the prison and the border and explains why both sites of fieldwork are important. The chapter then elaborates on the significance of narratives through the viewpoint of narrative criminology as well as by giving agency to the narrators of their stories. The chapter then delves into the ethics of conducting research.

The second chapter, "Policing the Border", maps the India-Bangladesh border by looking at the border guards of India, primarily the Border Security Force and then at the border police and how they operate at the borders. The objective of the chapter is to understand the border operations in the borderlands of North 24 Parganas, where most of the respondents of the study were arrested, thereby making such arrests the first step towards their criminalisation. The chapter starts with a brief introduction to the India-Bangladesh border and the Indian Border forces stationed in the borderlands. It then tries to interrogate the symbolic meanings that fences carry and the strategies of policing at the border. Lastly, the chapter delves into the narratives of interaction between the border forces and the respondents of the study at the time of their arrest.

The third chapter, "The Criminality of Mobility at the West Bengal-Bangladesh Border", then examines how the respondents criminalised for crossing the border perceive and contextualise their incarceration. The chapter takes three themes while doing so. First is through their experiences of navigating the border with the help of embedded cross-border networks that enable border crossings and by situating their incarceration against ongoing rampant border crossings, which give it an ordinary character. Second, by looking at their experiences of working explicitly as non-citizens in Indian urban spaces. Lastly, through instances where Bangladeshi women are married to Indian men making it is difficult to locate themselves as citizens when they are jailed. It then interrogates the separation between the concept of illegality and criminality.

The fourth chapter, "Negotiating Identity, Honour and Labour as Non-citizens: The Experiences of Imprisonment", then takes the study from the order into the prison, where the respondents share their experiences of prison, where they spend time until their deportation. The chapter delves into how detention for foreigners mirrors the Foucauldian penal system and aims to train the foreigners as it does to the citizens. Through the narratives of incarcerated Bangladeshi women, it foregrounds their experiences of being detained as Bangladeshi female prisoners, an identity that they must constantly negotiate with while also negotiating ideas of morality, honour, labour community and indignation at the prisons. The chapter examines the way in which prison perform as a border reinforcing stereotype, othering and exclusion.

The fifth chapter, "Deportation, *Jaankhalaash* and Contested Citizenships", looks at the process of deportation of the category of foreign prisoners that the respondents belong to and how it is affected by the issue of pendency of court cases in India. It then looks at instances where citizenship is contested when citizens are arrested at the border and charged under the Foreigners Act 1946. As the Foreigners Act 1946 becomes a tool to criminalise border crossers, citizens and non-citizens, the chapter critically looks at the process of criminalisation of mobility in the India-Bangladesh borderlands in the aftermath of the implementation of the Citizenship Amendment Act 1955. Through these questions, the chapter critically examines the importance of documents as a reliable tool and marker for citizenship.

The sixth and final chapter, "Summary and Conclusion", brings the dissertation together and concludes with the final thoughts of the researcher. The chapter sums up the dissertation while explaining the relevance of the study. It then discusses the findings of the research. Lastly, the chapter ends with the limitation of the dissertation and highlights questions for future research.

Chapter 2

Policing the Border

2.1 Introduction

In October 2021, the Ministry of Home Affairs announced the plan to extend the jurisdiction of the Border Security Force from 15 km to 50 km inside the international border in Punjab, West Bengal and Assam. This caused uproar in the concerned states, with political parties and social organisations condemning the move, calling it an attack on the federal structure and infringing upon the rights of the state government. In West Bengal, the ruling party and human rights organisation objected to the move, stating that this would only cause more disruption and torment in the lives of the common people living in and near the borderlands, who are still bearing the brunt of the Partition of 1947. The India-Bangladesh border forms one of the most active border regions of the world, with countless cross-border movements carried out daily. The exclusive power to decide who is allowed to enter and exit its borders is a fundamental aspect of how the state defines itself.[1] This chapter tries to look at the India-Bangladesh border through its history and politics. It then delves into how border forces operate in the borders vis a vis controlling mobility. Lastly, the chapter tries to investigate the interactions between border forces and the crossers.

2.2. Nationhood and Border

[1] John Torpey, "Coming and Going: On the State Monopolization of the Legitimate 'Means of Movement,'" *Sociological Theory* 16, no. 3 (1998): 239–259.

Although located at the margins and geographically remote from the administrative centre, borders become a site for the state to exercise its most intense control.[2] Border serves more than a line and a limit, and that is something that is increasingly being made known. Border, often interchangeably used with 'frontier' and 'boundary',[3] is rather an all-embracing term as compared to 'frontier', which means more militarised and 'boundary', which represents a line of contact.[4] Nonetheless, a border is commonly understood as a boundary, predominantly used to understand a line dividing one country from another. A product of modernity, borders have historical, political and social origins, subjected to shifting paradigms and discourses of power and geopolitics. Nonetheless, borders are regarded as sacrosanct and eternal. International borders often cut through spatial realities carrying larger meanings, dividing regions into not just separate nations but also separate zones, creating larger material, political and cultural shifts and consequences.[5] Also, borders cut through internal regions of a nation, thereby creating boundaries between one part and the rest depending on its geographical and geo-political location.[6] However, borders often run through landscapes, cultures, communities and lives, serving more than the cartographic function and entering more into the arena of political and sovereign functions. It not only separates communities geographically and linguistically but also in the lines of military alliance, production and labour system, network of relations and so on.

The origins of borders can be traced back to religious wars of Reformation and Counterreformation in the 16th -17th centuries, but it is predominantly the Peace of Westphalia

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[2] Chris Rumford, "Theorizing Borders," *European Journal of Social Theory* 9, no. 2 (2006): 155–169.
[3] Daniel Power and Naomi Standen, *Frontiers in Question: Eurasian Borderlands, 700–1700* (New York: St. Martin's Press, 1999), viii-ix.
[4] Sanjay Bharadwaj, "India-Bangladesh Border Governance: Issues and Challenges," *International Studies* 50, no. 1–2 (2016): 94–95.
[5] For example, the border in Turkey creates a shift of East and West, the borderland in Burma and Bangladesh creates two separate zones of Southeast Asia and South Asia, the border between Mexico and United States of America creates the distinction of North and South. But also, the understanding of these regions carry larger contexts in the global understanding.
[6] Every state in India has a check post at its border with other state. Northeastern states issue permits for visitations from Indians as well.

that legitimised borders and gave them the meanings that they carry to this date. The treaty of Westphalia[7] , which was negotiated in 1644 and finally signed in 1648, brought an end to the thirty years of war in Central Europe. Under the terms of the settlements,[8] one of the most enduring and striking features was the principle of international law that each nation-state has sovereignty over its territory and domestic affairs to the exclusion of all external powers, on the principle of non-interference in another country's domestic affairs and that each country is equal in international Law (Peace of Westphalia, signed in 1948). The treaty has clearly stood the test of time because border remains the ultimate marker for sovereignty preceding states, as states are defined by their borders rather than their culture, language, nationality or economic and legal infrastructure. Borders are, therefore, not just a representation or a territorial boundary, but they are also a crucial element of modern nation-state imagination, serving as a container for statehood, nationalism, and citizenry. Border defends and legitimises sovereignty, and through the function of territorialisation, citizenship and rights become a function of space. Here, sovereignty implies the existence of geographic space over which control is exerted. Thus, ideas of sovereignty are intimately bound by ways of conceiving territory.[9] However, the notion of borderlands as a crucial node for the sovereignty of the nation extends beyond the geographic location of the nation and into the minds of the individuals across nations, making the border not just a highly monitored land but also constantly on the precipice of threat, real or imagined. Benedict Anderson says a nation is imagined as finite with limited boundaries beyond which other nations lie; it is imagined as sovereign and as a community conceived in

[7] The Peace of Westphalia, signed in 1648, ended the Thirty Years' War and the Eighty Years' War. It marked a turning point in European history by establishing principles of national sovereignty and religious tolerance. The treaties, signed in the Westphalian cities of Osnabrück and Münster, involved 109 delegations and brought peace to the Holy Roman Empire after a devastating conflict that killed millions.

[8] The Peace of Westphalia in 1648 recognised the sovereignty of over 300 German principalities, ended the Holy Roman Empire's centralised authority, allowed rulers to choose their state's religion while ensuring minority religious rights, acknowledged the independence of the Dutch Republic and Switzerland, and aimed to maintain a balance of power in Europe. These terms laid the groundwork for modern international relations and the contemporary state system.

[9] Stuart Elden, *The Birth of Territory* (Chicago: University of Chicago Press, 2013), 21–52.

language rather than blood, hence making a nation simultaneously open and closed.[10] Besides, race, ethnicity, and religion play an important role in influencing popular nations about the other. Anderson says that a nation is ideally imagined as internally fluid and externally bound, where the national culture diffused within the states should stop at the frontiers. It is here that culture plays an important role in the separation of nations. Culture is often seen as static, fixed, objective, consensual and shared by all members of a group[11].

An epistemological shift in looking at borders happened when it was seen as more than a line dividing one clearly defined state territory from another, and rather as an institution producing and reproducing power dynamics and categories of insider versus outsider,[12] thereby defining the boundaries of imagination.[13] Here, the border divides the external and internal, not just in terms of culture and language but also in terms of subjectivities. However, this does not necessarily always hold up as we can see the culture permeates through borders where people living at the border many times end up adopting cultures of both sides, rejecting the presence of dichotomy between internal and external as a simplistic derivation of the border dynamics.

Nonetheless, borders are social and discursive constructs that have significant effects on politics and people's daily lives.[14] Moreover, one can observe the extension of the border beyond its spatial limits into the performativity, giving the border a mobile character, making it both fixed as well as ever-changing. It is, as Samaddar says, that "territorial border then produces internal any boundaries, which remain not merely physical, but also spiritual,

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[10] Benedict Anderson, *Imagined Communities* (United Kingdom: Verso, 2006).
[11] Unni Wikan, "Culture: A New Concept of Race," *Social Anthropology* 7, no. 1 (1999):62.
[12] Chiara Brambilla, "Exploring the Critical Potential of the Borderscapes Concept," *Geopolitics* 20, no. 1 (2015): 14–34; Corey Johnson et al., "Interventions on Rethinking 'the Border' in Border Studies," *Political Geography* 30, no. 2 (February 2011): 61–69; David Newman and Anssi Paasi, "Fences and Neighbours in the Postmodern World: Boundary Narratives in Political Geography," *Progress in Human Geography* 22, no. 2 (1998): 186–207.
[13] Timothy Mitchell, "The Limits of the State: Beyond Statist Approaches and Their Critics," *The American Political Science Review* 85, no. 1 (1991): 77–96.
[14] See, Anssi Paasi, "Bounded Spaces in a 'Borderless World'? Border Studies, Power and the Anatomy of Territory," *Journal of Power* 2, no. 2 (2009): 213–234; David Newman, "Territory, Compartments and Borders: Avoiding the Trap of the Territorial Trap," *Geopolitics* 15, no. 4 (2010): 773–778.

metaphorical".[15] Therefore, the border as a site for nation-building produces soft inside and hard outside, thereby grafting manifestations of external on the new minorities and the poor on the inside.[16] In a similar vein, Harsha Walia says, "Border externalisation governs through prevention and deterrence far beyond the border itself, such that 'the definition of border increasingly refers not to the territorial limit of the state but to the management practices directed at "where the migrants are”.” [17]

Similarly, borders can be understood as what Jason Cons calls "sensitive spaces." These spaces are defined by uncertainty, displaying fears regarding the "fragility and instability [...] of national territory" while trying to eliminate these risks by "asserting jurisdiction over and control of space."[18] Risk assessments conducted at the border could portray migrants and travellers as potential security risks,[19] as possible victims that require rescue,[20] or as privileged travellers whose mobility should be further increased.[21]

Borders have changed with time. However, because of the shifting and fluid nature of the border that extends inward from the margin to the mainland, it becomes a site for exclusion not only in practice but also in ideology and imagination, functioning as a tool as well as a method. Borders as a territorial location become a tool as they enable the state’s ambition and effort to exclude people who are not citizens from its territory. However, when border transitions are a practice of detecting and separating citizens from non-citizens, regardless of where it is carried out, it becomes a method. Additionally, borderlands should not be thought

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[15] Ranabir Samaddar, *The Marginal Nation: Transborder Migration from Bangladesh to West Bengal* (New Delhi: Sage Publications, 1998), 20.
[16] Ibid.
[17] Harsha Walia, *Border and Rule: Global Migration, Capitalism, and the Rise of Racist Nationalism* (Chicago: Haymarket Books, 2021).
[18] Jason Cons, *Sensitive Space: Fragmented Territory at the India-Bangladesh Border* (United Kingdom: University of Washington Press, 2016), 7.
[19] Anna Pratt and Sara Thompson, "Chivalry, 'Race' and Discretion at the Canadian Border," *British Journal of Criminology* 48, no. 5 (2008): 620-640.
[20] For more, see Sharon Pickering and Julie Ham, eds., *The Routledge Handbook on Crime and International Migration* (New York: Routledge, 2014).
[21] For more see Katja Franko Aas, "‘Crimmigrant’ Bodies and Bona Fide Travelers: Surveillance, Citizenship and Global Governance," *Theoretical Criminology* 15, no. 3 (2011): 331–346.

of as uniform because all borders are unique. Some are more militarised, violent, and contentious than others. Nonetheless, the same logic of security and, to varying degrees, sovereignty underlies all borders.

2.3. India-Bangladesh Border: A Brief Overview

The following section looks at some features of India-Bangladesh border.

The Drawing of the Radcliffe Line: British India went through three partitions, creating three international borders. The first one happened in 1937 when British India was divided into British India and British Burma. This was followed by the Partition of India into India and Pakistan. The final one came with the collapse of Pakistan and the emergence of Bangladesh in 1971, hence creating four separate nations from the division of British India.

The partition of India in 1947 was conducted in haste. It was only six weeks before British rule ended when the Boundary Commission was created by the Viceroy of India, Lord Mountbatten. The Commission was chaired by Sir Cyril Radcliffe. The Boundary Commission was given the instructions to plan the division on the basis of 'Muslims and 'non-Muslims' so that the area was divided keeping in mind the religion of the majority of the populace.[22] However, when the border was drawn, there was no such sharp gap between the two communities as planned in the border regions.[23] Also, it was not just Bengalis who inhabited these borderlands as opposed to the popular understanding as could be observed in areas such as Assam, Tripura and Cooch Behar. Nonetheless, overarching political and nationalist rhetoric narrowed the whole partition down to the division of Hindus and Muslims despite numerous

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[22] Willem van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia* (London: Anthem Press, 2005), 39-49; Joya Chatterji, *The Spoils of Partition: Bengal and India, 1947–1967* (Cambridge: Cambridge University Press, 2007).

[23] Nearly three-quarters of the border's length did not separate Muslims from non-Muslims. A mere 26% of the border divided an area with most Muslims from one with a majority of Hindus. Also, another 15 percent separated a Muslim dominated part of East Bengal with parts of India that had majority of Christians or Buddhists (Schendel 2005:44).

players and factors driving the partition of territories for reasons besides the communal basis.[24] The Commission's huge dependence on maps, focussing on *thanas* and district boundaries and lack of detailed knowledge about the topography of the region that was to be demarcated led to confusion that remains to this day[25]. Additionally, many mapping mistakes led to more disputes over the years between the two nations as to who had a claim on it[26]. Consequently, there were also awards and accords passed to take care of these disputes, such as the Bagge Award[27], Nehru-Noon Accord[28] and the Indo-Bangladesh Border Agreement of 1974[29]. Nonetheless, a patchy border called the Radcliffe line was drawn, which was unique in its features as it ran through forests, hills, rivers, agricultural lands and often through houses where one part of a house lay in India and another in East Pakistan. By the end of it, East Pakistan shared its border with the princely state of Tripura, the princely state of Cooch Behar and the Indian states of Assam and West Bengal.

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[24] Refer to Chatterji, *The spoils of Partition*, 17-60; Haimanti Roy, *Partitioned Lives: Migrants, Refugees, Citizens in India and Pakistan*, 1947–65 (New Delhi: Oxford University Press, 2012).

[25] For instance, fixing a border at rivers was difficult as its shifting nature made the demarcation uncertain and faulty. Similarly, *chors*, a silt laden islands found on large rivers due to their temporary and shifting nature made for another difficult category of territory to include in maps. Hence, establishing or controlling border on chors, if it passed through one, would be cumbersome for a state since these chors were largely unadministered self-reliant territories.

[26] For more see Beruberia (West Bengal) Dispute, Mathanbhanga river (West Bengal) dispute, The Cooch Behar enclave (chhitmahals) dispute, Muhari River Belonia (Tripura) dispute, Lathitilla-Dumabari (Assam) dispute, The Lathitilla-Dumabari dispute, The Meghalaya-Bangladesh land dispute.

[27] In December 1949, a tribunal headed by Chairmanship of Hon'ble Algot Bagge, former member of the Supreme Court of Sweden was set up with a member each from India and East Pakistan to investigate issues of disputes that arose out of Radcliffe Line. The tribunal investigated disputes of areas between Murshidabad and Rajshahi involving the stretch of Mathabhanga river, East Bengal Assam disputes concerning Patharia Hill Forest Reserve and Kusiyara River.

[28] At Pandit Jawaharlal Nehru's invitation, Pakistan's prime minister travelled to New Delhi in 1958. The goal of the conversation between the two prime ministers was to ease tensions and create a peaceful environment along the Indo-Pakistan border, which includes East Pakistan. On September 10, 1958, in New Delhi, the Nehru-Noon Agreement on India-East Pakistan Border was signed, resolving border disputes pertaining to West Bengal, Assam, and Tripura.3. The agreements included Bholaganj, the Piyain and Surma rivers, the Feni River, the Cooch-Behar enclaves, Hilli, Berubari Union No. 12, the 24-Parganas-Khulna and 24-Parganas-Jessore boundary, and the Bagge Awards.

[29] Mrs. Indira Gandhi, the then Prime Minister of India signed the 1974 Indo-Bangladesh Agreement and entered a contract with Prime minister of Bangladesh, Sheikh Mujibur Rehman. The Agreement outlined in detail the steps to take to address all unresolved border issues, such as enclaves and non-delineated boundaries. This Agreement gave India permission to keep Southern Berubari and the Muslim enclaves that were nearby. In return, Bangladesh was given authority over eighty percent of the Muslim communities in Dahagram and Angarpota. India offered to lease an area measuring 178 m x 185 m (Tin Bigha) to Bangladesh for perpetuity in order to connect the two enclaves with Panbari Mouza, as they were not adjacent to the mainland of Bangladesh.

At present, Bangladesh shares its border with five Indian states, namely West Bengal, Assam, Meghalaya, Mizoram and Tripura, each one distinct from the rest in terms of landscapes, culture and political climate with the Bangladeshi divisions of Dhaka, Khulna, Rajshahi, Rangpur, Sylhet and Chittagong. Tripura and Bangladesh share an 856 kilometres long border making over almost 84 percent of the state's total border. Mizoram shares a 318 km border with Bangladesh, Meghalaya shares 443 km, and Assam shares 263 km. West Bengal shares the longest border with Bangladesh, around 2217 km. The entire border region can be broadly classified as follows: riverine (about 200 km along the southern border of West Bengal and 50 km into Assam); hilly/jungle (in Meghalaya); flat/plain (in West Bengal, Assam-Barak Valley, Tripura); nearly devoid of natural obstacles; heavily populated; and used for farming to the very edge of the border.[30]

Border Haats: Tripura and Meghalaya also have official trading posts called *border haats* at border points once a week, which are organised by both India and Bangladesh. These points act as a crucial site for bilateral relations and the exchange of goods and culture, as well as a site where families divided by the border connect. The positive impact of the *border haats* over the years in generating revenues and helping the local economy has led to further interest by both the governments in setting up more such trading points.[31] In recent times, there have been demands for the set-up of border haats in the West Bengal – Bangladesh border as well. In 2023, both countries announced their plan to set up 16 such border haats in the state of Mizoram and West Bengal as well.[32] In these border haats, the border is seen as an engine of financial growth. With parallel fencing projects and border haats that encourage local trade between

[30] N. S. Jamwal, "Border Management: Dilemma of Guarding the India-Bangladesh Border," *Strategic Analysis* 28, no. 1 (2004): 5–36.

[31] Calcutta Resource Centre, *Border Haats Between India And Bangladesh As A Tool To Reduce Informal Cross Border Trade Between The Two Countries*
https://cuts-crc.org/border-haats-between-india-and-bangladesh-as-a-tool-to-reduce-informal-cross-border-trade-between-the-two-countries/

[32] The Business Standard. "Bangladesh and India Plan to Set up 16 Border Haats to Increase Trade." *The Business Standard*, August 7, 2023. https://www.tbsnews.net/world/south-asia/bangladesh-and-india-plan-set-16-border-haats-increase-trade-683662.
Accessed on 10 February 2022.

India and Bangladesh at the borderlands, both operated by the state, the border can be seen as both closing and opening at the same time.[33]

Integrated Checkpoints: India and Bangladesh have a couple of official crossing points at the border. Petrapole - Benapole is the largest land crossing point and a site for major trade operations, accounting for nearly 30 per cent of land-based trading between the two nations[34]. It is also the largest land customs station in Asia.

Table 2.1. List of Integrated checkpoints at the India-Bangladesh border.

Border	**Integrated Checkpoints**
Assam-Bangladesh Border	1. Mankachar Land Customs Stations (India) and Rowmari Post (Bangladesh), 2. Karimganj–Beanibazar Upazila (India)- Sheola post (Bangladesh), 3. Karimganj Steamer and Ferry Station (KSFS) Land Customs Stations (India) and Zakiganj post (Bangladesh).
	1. Bagmara Land Customs Stations (India) and Bijoyour Post (Bangladesh) 2. Borsara Land Customs Stations (India) and Borsara Post (Bangladesh)

[33] Edward Boyle and Mirza Zulfiqur Rahman, "Border Layers: Formal and Informal Markets Along the India-Bangladesh Border," in *Borders and Mobility in South Asia and Beyond*, ed. Md. Azmeary Ferdoush and Reece Jones (Amsterdam: Amsterdam University Press, 2018), 59.
[34] Lands Port Authority of India.

Meghalaya -Bangladesh Border	3. West Garo Hills–Bakshiganj via Mahendraganj crossing on NH12 4. Tura–Nalitabari via Dalu crossing on NH217 (India) and Nakugaon post (Bangladesh) 5. Shillong–Sylhet via Dawki integrated checkpost crossing (India) and Tamabil post (Bangladesh)
Mizoram – Bangladesh Border	1. Kawarpuchiah integrated check post
Tripura – Bangladesh Border	1. Agartala–Dhaka via Agartala integrated checkpost (India) and Akhaura checkpost crossing 2. Santirbazar–Feni via Santirbazar integrated border checkpost road and railway crossing in South Tripura district 3. Sabroom–Ramgarh in Chittagong Division via Ramgarh integrated border checkpost crossing Maitri Setu on Feni River
	1. Kolkata–Dhaka via Petrapole-Benapole integrated checkpost crossing

West Bengal- Bangladesh Border	2. Malda (India) – Rajshahi(Bangladesh) via Mahadipur crossing 3. Changrabandha (India) integrated checkpost 4. Hili (Land Port, India)

Source: Ministry of Home Affairs, Annual Report 2022-23, 33.

Those who choose to enter India through unprescribed norms and unauthorised routes are criminalised and jailed under the Foreigner's Act 1946.

Between 2012 and November 2014, the Border Security Force apprehended 986 Bangladeshi nationals for crossing into Indian territory. Of these, 689 were found innocent and handed over to Border Guard Bangladesh, while 297 were handed over to the police for further legal action.[35] Based on data provided by an official of BSF (Border Security Force of India) to the researcher, over 20,000 people, including Indians, Bangladeshi and Rohingyas, were held at the southern borderlands in the state of West Bengal between 2016 -2022.[36]

2.4 Establishment of Border Forces

Haimanti Roy elaborately discusses the emergence of militarised forces at the border. Following the huge frequency of smuggling at the India and East-Pakistan border, both states expressed their growing concern about how it would affect the economies of both nations.[37] To curb illegal border activities, the Government of West Bengal (GoWB) proposed constructing three aerodromes in the bordering districts of Nadia, 24 Parganas, and Murshidabad, as well as building a road to connect Calcutta to the border as part of the national defence plans.[38] In order

[35] See Appendix
[36] See Appendix
[37] Haimanti Roy, *Partitioned Lives: Migrants, Refugees, Citizens in India and Pakistan, 1947-65* (India: OUP India, 2012), 68.
[38] ibid.

to clearly mark the boundaries of the two states, concrete pillars would also be built along the border and river. In order to stop smuggling and educate border residents about their patriotic obligations, East Pakistan and West Bengal also established private militias. The Bangiya Jatiya Raksha Dal was an unofficial organisation aimed to "protect the frontiers of West Bengal from any aggression by evil-minded persons" by educating young people from the seven border districts of Darjeeling, Jalpaiguri, West Dinajpur, Malda, Murshidabad, Nadia, and 24 Parganas.[39] This Brigade later became a part of the West Bengal National Volunteer Force, which was supported by the Indian government and tasked with working with the police to maintain law and order in the region[40]. In addition to this, West Bengal, Assam, and Bihar all had volunteer Home Guards. The Kirit Bikram Bahini, a volunteer militia in Tripura, were notorious among the Muslim population in the borderlands.[41]

On the other hand, post-Partition East Pakistan was left with only two infantry battalions as the major military was situated in West Pakistan. Hence, the border was guarded by a police force of around 60,000 men, which was ineffective. Hence, a new army corp, East Bengal Regiment and a paramilitary force, East Pakistan Rifles (EPR), was formed in 1948.[42] The Pakistani Army, navy and Air Force were given control over a ten-mile belt along the East Pakistan border in 1957 to stop the growing smuggling, during which it ruled by terror. Following the end of the campaign in 1958, the East Pakistan Rifles assumed responsibility for the border operations that had been handled by the police in East Pakistan in its early years.[43] After the formation of Bangladesh, EPR changed into Bangladesh Rifles (BDR), presently renamed as Border Guards Bangladesh (BGB). Similarly, on the Indian side as well, the border operations were handed over to the police forces of states that shared their border with East

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[39] Roy, Partitioned Lives, 68-70.
[40] Roy, Partitioned Lives 69.
[41] Willem van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia* (United Kingdom: Anthem, 2005), 97.
[42] Roy, *Partitioned Lives*, 59.
[43] van Schendel, *The Bengal Borderland,* 94.

Pakistan, namely Assam Rifles, Tripura Rifles and West Bengal Rifles until 1965 when the Border Security Force (BSF) took over all the border operations. Besides the paramilitary forces, the customs department also took over border movements after the introduction of passports and visas in 1952.[44]

In early 1948, the East Pakistan state established the Ansar Bahini in East Pakistan after a protracted recruitment drive. While "Bahini" technically means "army," the name "Ansar" was chosen because it "expresses within itself the historical and religious significance, the whole idea of voluntary service to the community and to the nation". All male Pakistanis between the ages of eighteen and forty-five were eligible to join, although the volunteers were mostly young Muslim men who had recently left the Muslim National Guards. Ansar Bahini's mission was to raise funds to improve local infrastructure while also assisting in maintaining safety and security in rural areas. By 1949, there were 118,000 Ansars enrolled, almost half of them trained in firearms and trained along military lines and stationed mostly in the borderlands. The Ansars were, however, notorious for violence and intimidation. They were sent to work in border outposts whenever the border police faced shortages, and they became the most active and largest army volunteer corps in East Pakistan.[45]

2.5 Border Security Force

As its name suggests, the Border Security Force (BSF) is one of India's four border patrol agencies[46] and one of the seven Central Police Forces (CPFs) that report to the Ministry of Home Affairs. BSF was initially formed under the CRPF[47] Act. Parliament passed the Border

[44] Although there had previously been limitations on the amount of goods and money that may cross the border, travel between East Pakistan and India was unrestricted unlike travel between West Pakistan and India, which had been limited since 1948. The new technology proved to be a very practical instrument for borderlands security. Along with being able to monitor some cross-border activity, it also gave the states the power to expel illegal border crossers from their respective parts of the borderlands. See van Schendel, *The Bengal Borderland*, 95.
[45] See Roy, *Partitioned Lives*, 2012, 69-70; van Schendel, *The Bengal Borderland,* 275-277.
[46] The four major border patrol forces of India are Assam Rifles, Border Security Force, Indo-Tibetan Border Police (ITBP) and Shashatra Seema Bal (SSB).
[47] Full form of CRPF is Central Reserve Police Force.

Security Force Act 1968, which contained BSF Rules. The specific task was the protection of the India-Pakistan border. The Indo-Pakistan and Indo-Bangladesh borders are guarded by the BSF, the largest border-guarding force in the world. Although the BSF's core duty is border security, the expanding threats to India's internal security have mandated that it also do additional tasks, including counterinsurgency, counterterrorism, disaster management, and domestic peacekeeping. In the United Nations peacekeeping missions, BSF also serves as the Indian government's envoy. Although BSF has made significant contributions to securing India's borders and enhancing internal security, it has come under fire for its methods, disregard for human rights, corruption, and affiliation with criminal organisations.

BSF was established as a specialised force on December 1 to protect India's borders. Significant structural issues with India's border protection strategy were exposed during the 1965 Indo-Pakistan War, which was sparked by Pakistani attacks on Indian border outposts. State police forces manned the Indo-Pak border from 1947 to 1965 before the BSF was established. The police departments operated separately from the federal government and had little to no contact with neighbouring states. These state forces had little cooperation with the Army or any other central police force, were frequently ill-equipped for their jobs, and lacked sufficient numbers and equipment. Additionally, they lacked a reliable intelligence infrastructure. On April 9, 1965, the State Reserve Police Force of Gujarat's Rann of Kutch was breached by the Pakistan Army's 51st Infantry Brigade, which then attacked and seized the border outposts of Sardar Post, Chhar Bet, and Beria Bet in Kutch, Gujarat. To assist the Gujarat police, troops from the Indian Army and CRPF had to be sent. Rethinking border security was necessary considering the Pakistani Army's repeated incursions prior to April and the continuation of such attacks until June.

On April 20, 1965, the Emergency Committee of the Cabinet convened under the direction of the prime minister at the time, Lal Bahadur Shastri, to consider the role of the

police in border protection. A plan for the future BSF was presented on May 17 during a meeting between the Union Home Minister, the Union Defence Secretary, and the Chief of Army Staff. The requirement to consolidate all border patrolling police units into one under federal authority was one of the most significant ideas. The right responsibilities, command structures, equipment, and training were also examined. The central government will henceforth be responsible for border protection, state home ministers decided at a meeting on June 6-7. K.F. Rustamji, an IPS officer, was chosen by the central government to represent the upcoming paramilitary force. To further investigate efficient border protection, the government also established a Special Study Group. To suggest concrete actions for the new force, the panel identified issues with border police protection. The organisational structure of BSF was created based on the group's recommendations. Twenty-five border battalions of the state police forces were combined to form the BSF. This new force included five of the twelve India Reserve Battalions. BSF Rules were included in the Border Security Force Act of 1968, which was passed by Parliament. The safeguarding of the border between India and Pakistan was a unique job. The BSF was established at the same time when hostilities with Pakistan ended. As the first line of defence against Pakistani invaders in 1971, the army had its first significant test.[48]

BSF, which has around 2,20,000 members and is led by a director-general, is made up of 159 battalions. Various directorates, including those for operations, intelligence, information technology, training, and administration, carry out delegated tasks. One of the few Indian militaries with aircraft and maritime capabilities is the BSF. The BSF looks over the frontier regions of Jammu, Kashmir, Punjab, Rajasthan, Gujarat, West Bengal, Assam, Meghalaya, and Tripura, which are further divided into regional offices in the above states. There are various

[48] Border Security Force. "BSF History." *Border Security Force*2025. https://www.bsf.gov.in/bsf-history.html Accessed May 7, 2024.

training centres all over the country as well. Besides the border regions, the BSF has Special Operations deployed in Odisha and Chhattisgarh as well.

Jurisdiction of the Border Security Force: Up until October 2021, BSF held jurisdiction for 15 km in the states of West Bengal, Punjab and Assam and for 80 km in the states of Meghalaya, Manipur, Nagaland, Tripura and Mizoram, which was then uniformly made 50 km across all the border regions. On increasing the BSF's jurisdiction from 15 km to 50 km in the former states, there were protests held by civil and state bodies as a violation of civil rights and human rights of borderland citizens. BSF has combined jurisdiction in the border areas along with the state police force. BSF, after apprehending anyone involved in illegal cross-border activity, needs to report the persons who are held to the border police within 24 hours.

2.6 Border Police

One of West Bengal's two police departments is the West Bengal Police, the other being the Kolkata Police, which has exclusive authority over all of Kolkata.

Under the terms of the Police Act 1861, the West Bengal Police was reorganised during the British Raj. It is led by the Director General of Police, who is responsible for reporting to the State Government via the Home (Police) Department. In accordance with the terms of the Police Act of 1861, the West Bengal Police has concurrent jurisdiction over the 22 revenue districts of the State (apart from the metropolitan area of Kolkata), which makes up one of the two general police districts of West Bengal. The other general police district is made up primarily of Kolkata's metropolitan region, and it has its own police force (the Kolkata Police Commissionerate), which was established and is run in accordance with the Calcutta Police Act of 1866 and the Calcutta (Suburban Police) Act of 1866. When Calcutta served as the

capital of British India during colonial times, this arrangement—unique in all of India—was developed. The city police have maintained their separation from the state police.

Jurisdiction of the Police: To overseeing police service throughout the state, there are 3 Zones and 8 Ranges. The West Bengal Police Department operates in South Bengal Zone, Western Zone and North Bengal Zone, where the South Bengal and North Bengal Zone both share borders with Bangladesh. There are 28 districts covered by the West Bengal Police, including 4 Government Railway Police Units. In addition to this, the West Bengal Police is comprised of 6 (six) Police Commissionerates.[49] The area's leader is the range of an officer of the rank of Assistant Director General/Inspector General of Police; the police officer holding the position of deputy inspector general and oversees the Commissionerates, with each officer holding the title of deputy inspector general of police.

The West Bengal Police's administrative offices are in "Bhawani Bhavan" Alipore, Kolkata, and "Nabanna" Mandirtala, Howrah. There are many departments in the West Bengal Police Department[50] , but the departments that relate to this study are the Special Task Force of Kolkata Police, which handles cases of terrorism, smuggling and illegal activities in the city and at borders and the Anti-Human Trafficking Unit of Kolkata Police that primarily looks at cases of human trafficking in and around Kolkata. The other department that plays a crucial part on the criminalisation of irregular border crossers is the police department stationed at border villages of West Bengal, henceforth will be mentioned as border police in the thesis. Besides these three departments, it is also the police force holding jurisdiction in the areas where judicial custody and court are located, that are important in the study.

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[49] There are 6 (six) Commissionerate under West Bengal Police namely Bidhannagar Police Commissionerate, Barrackpore Police Commissionerate, Howrah Police Commissionerate, Siliguri Police Commissionerate, Asansol-Durgapu r Police Commissionerate and Chandannagar Police Commissionerate.

[50] The different departments of WB police departments are: a) criminal Investigation Department b) Economic Offence Wing c) Traffic Police d) Intelligence branch e) West Bengal Armed Police f) Enforcement Branch g) Police Control Room h) Vigilance i)Telecom j) state Crime Records Bureau k) Training

2.7 Border Fencing

James Scott argues that enclosure of territory is a display of state authority "to the very edge of its territory, where it meets…another sovereign power projecting the command of its own adjacent frontier".[51] Construction of fences between India and Bangladesh, erstwhile East Pakistan, was first proposed by regional politicians of Assam in the 1960s in order to control the population flow between India and Pakistan but the proposal was rejected.[52] However, the Military Sub-Committee of the Indian and Pakistani delegations developed the Ground Rules on October 20, 1959, and they stated that "after an identifiable boundary line, whether real or working, has been demarcated, neither side will have any permanent or temporary border security forces or any other armed personnel within 150 yards on either side of this line." Additionally, no permanent posts will be built prior to the completion of the final demarcation. In the 300-yard stretch (150 yards on either side of the working boundary), any defensive works, including trenches, must be removed or filled in.

A violent protest and anti-Bengali campaign took place in Assam in the late 1970s and early 1980s, which resulted in the Assam Accord's creation. In 1985, the mainstream political figures in India debated the subject and added it to the country's agenda.[53] In order to stop illegal (irregular) migration from Bangladesh, the Indian government approved the Indo-Bangladesh Border Road and Fence Project in 1986; however, that project moved forward

[51] James C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (Ukraine: Yale University Press, 2009), 11.

[52] Said Saddiki, "Border Fencing in India: Between Colonial Legacy and Changing Security Challenges," *International Journal of Arts & Sciences* 7 (2016): 117.

[53] For further reading , see Sujata Ramachandran, "Operation Pushback: Sangh Parivar, State, Slums, and Surreptitious Bangladeshis in New Delhi," *Singapore Journal of Tropical Geography* 23, no. 3 (2002): 311–332; : Myron Weiner, "On International Migration and International Relations," *Population and Development Review* 11, no. 3 (1985): 441–455; Myron Weiner, *Rejected Peoples and Unwanted Migrants in South Asia* (New Delhi: Oxford University Press, year); Sanjoy Hazarika, *Strangers of the Mist: Tales of War and Peace from India's Northeast* (New Delhi: Viking, 1994).

extremely slowly.[54] The project's budget for 1986 was Rs 3.73 billion.[55] Up until 1998, the construction of the fence along the Bangladesh-Assam border moved slowly and unevenly. Around 1998, the Indian government also considered constructing fences carrying non-fatal low-voltage electricity along the India-Bangladesh border, which did not materialise during that time due to high-cost maintenance and also the possibility of a potential fallout between the Indian and Bangladeshi states.[56] Nonetheless, the Indian state was committed to constructing strict separation of lands with some states, such as Assam, being more serious about not just fencing but also the quality of it.[57] As of August 2021, 3141 kilometres of the total 4,096 kilometres of the India-Bangladesh border was fenced making up for 76 percent of the total border[58]. Additionally, 3,750.87 km of a total of 4,223.04 km of border roads were built as of 2022 and the rest was expected to be completed by 2024[59].

Bangladesh, on the other hand, argued that building fences and border roads breached the Ground Rules and opposed to their development within 150 yards of the International Border (IB). As a result, Bangladesh lacks both border roads and border fences.

Due to the Ground Rules of 1959, no major permanent or defensive structure could be constructed from the border, making it a no-man's land. But when the Indian side, especially in West Bengal, the border was constructed, the government found the fence through inhabited villages, which was difficult to relocate. As a result, there are numerous border regions in West Bengal where agricultural land lie between the fence and zero point (border). Villagers work

[54] van Schendel, *The Bengal Borderland*.

[55] Centre to complete border fencing by 2007'. The Assam Tribune. 20 August 1999, Phase I of Rs. 1335 crore (1 crore is 10 million) Indo-Bangladesh border fence to begin soon: Shenoy'. *The Sentinel*. 19 October 2001

[56] van Schendel, *The Bengal Borderland*, 215.

[57] van Schendel, *The Bengal Borderland*, 215.

[58] " "About 76 Pc of India-Bangladesh Border Covered by Fence: MHA," *ANI News*, August 3, 2021, https://www.aninews.in/news/national/general-news/about-76-pc-of-india-bangladesh-border-covered-by-fence-mha20210803181426/. (Accessed on 02 December 2023).

[59] ABP News Bureau, "Indo-Bangla Border Marked with High Degree of Porosity: MHA Highlights Illegal Migration, Cross-Border Activities," *ABP Live*, November 29, 2022, https://news.abplive.com/news/india/indo-bangla-border-marked-with-high-degree-of-porosity-mha-highlights-illegal-migration-cross-border-activities-1563252. (Accessed on 10 May 2024)

in these areas at stipulated times of the day by getting permission cards issued to them by the concerned authority, in this case the Border Security Force.[60] The gates of the fence open at certain points during the day when the villagers go over beyond the fenced part by submitting their identity cards, which they collect at the end of the day while returning. However, the same villagers are not authorised to be around the fence unauthorised especially in a group of more than four people after 5 pm.[61] The manner in which these gates operate differs greatly from the official border crossing locations. The locking and unlocking of gates only at a certain time does cause troubles to the farmers in more than one way beside the material loss of lands to the fences and the border roads. For instance, if someone working or living beyond the gates were to have a medical emergency or had any sort of urgent matter to attend to, then they would have to wait for the gates to open.[62] Also, the area of Indian territory situated between the "zero-point" and the fence is essentially a no-man's land, as private ownership of the agricultural land is not fully established, and for those who reside there, there exists an absence of complete seamless interaction with the rest of the village.

Politics of the fence: Visiting the fence was difficult every time the researcher tried to. Moreover, once she was allowed to see the fence with restrictions such as not being allowed to take a photograph around the area, the fence looked alarmingly still and lifeless. However, the meaning this fence carried was heavier every time there were conversations about it. In one such visit, the researcher tried to converse with a male sentry (BOP2), stationed atop a watch tower around 15 feet, about his kind of work and what he felt about it, but he outrightly denied

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[60] See Debdatta Chowdhury, *Identity and Experience at the India-Bangladesh Border*: A Crisis of Belonging (Abingdon, Oxon: Routledge, 2018), 32.

[61] During the field visits in the border villages, the time varied from 5 pm to 6 pm for closing the fence gate for the villagers to return to their homes from their fields. Nonetheless, being present around the fence beyond that time was restricted.

[62] There have been demands made by the border residents to shift the border to the zero-point as contrasting the fences inside the village has caused them countless issues. The researcher had chance to attend some of these meetings organised by MASUM in the border villages.

it. The tone of refusal to speak was visibly dismissive. Perhaps he was wary of speaking to a stranger and asking questions about a contentious geographical and political territory, or perhaps he was just tired. He looked drained and fatigued to even look at the researcher, let alone speak to her[63]. However, in another such visit to another border fence (BOP1), the researcher interacted with a young female guard patrolling the border and walking along the fence. A woman in her 20s, she looked demure and spoke shyly about her hometown somewhere in a southern state of India. But as she was asked about her work, she immediately showed signs of control. Although she answered most questions, she also pointedly enquired about the purpose of such field visits. Both these fences were relatively less active in terms of cross-border activities, perhaps one of the reasons why the researcher was allowed to visit the fence in the first place.

Things seemingly minor issues can have different meanings and contexts in the borderlands where no movement is entirely unrestricted, especially around the fence. Unlike other border points where people submit to the state, people specifically submit to the authority of the border guards at the gates and river crossings rather than just the state's authority[64]. They determine what kinds of activities are permissible, regardless of whether they are permitted by the state's sovereignty regime. Such authority is exhibited through conspicuous militarism accompanied by uniforms and weapons. Peter Kraska defines militarism as a set of beliefs, values and assumptions that stress the use of force and threat of violence as the most appropriate and efficacious means to solve problems whereby, emphasising the exercise of military power, hardware, organisation, operations and technology as its primary problem-

[63] It must be noted however in this conversation that the researcher was accompanied by the local leader which perhaps aided in the lack of alertness in the guard’s attitude.
[64] Reece Jones and Corey Johnson, “Border Militarisation and the Re-Articulation of Sovereignty,” *Transactions of the Institute of British Geographers* 41, no. 2 (2016): 187–200; Reece Jones, "Spaces of Refusal: Rethinking Sovereign Power and Resistance at the Border," *Annals of the Association of American Geographers* 102, no. 3 (2011): 685–699; Chowdhury, Identity and Experience at the India-Bangladesh Border, 32-35.

solving tools.[65] The enforcement of such military practice and problem-solving tools here extends beyond mobility and encompasses all activities beyond the daily routine. The state, in this case, border guards, try to be informed and in control of the village's routine life. Border guards inconspicuously make rounds in the villages, noting down any irregularities.[66] However, the inconspicuousness of such presence is itself a paradox since the villagers also adapt and detect such presence or acts of anyone trying to make surveillance rounds. Any seemingly insignificant event, like the arrival of a new guest or someone purchasing more groceries than usual, raises suspicions and should be reported to the appropriate authorities, in this case, the BSF.[67] Due to the politics of the land, borderland residents' experiences are consequently distinct and unequal from those of the rest of the nation, one that is continuously monitored, questioned and controlled.[68]

Under such ongoings, the Indian government's border fence, road, and floodlighting project is the most recent and significant attempt to control late movement in the Bengal borderlands. As a result, about three-quarters of the 4,096-km border is now fenced.[69] Of 4096.7 km of border between India and Bangladesh, 3196.70 km are bound by physical

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[65] Peter B. Kraska, "Militarization and Policing—Its Relevance to 21st Century Police," *Policing: A Journal of Policy and Practice* 1, no. 4 (2007): 503.

[66] As told by the ward counsellor (concerned border village) accompanying the researcher on her field visits. During the visit, an Intelligence Officer was present in the meeting between the researcher and the BSF company commander mostly being audience to the interactions. Later, after leaving the BSF office, the ward counsellor, who also present in the meeting, told the researcher that this person made regular village rounds. All the villagers were aware of him as the intelligence officer doing monitoring rounds in the village. Field visit and interview conducted on 06 April 2022 between 10 am to 5 pm at a border village outpost in North 24 Parganas. Name of the village undisclosed to maintain anonymity of the BSF officers.

[67] Information gathered in panchayat meetings organised by MASUM in 13 and 14 February 2022. The villagers resented having to follow, often arbitrary, rules set by the BSF. One incident involved a villager complaining that the BSF tried to stop him from making a well in his land on the pretext that no constructions were allowed in the village.

[68] For more see Chowdhury, Identity and Experience at the India-Bangladesh Border; Malini Sur, *Jungle Passports: Fences, Mobility, and Citizenship at the Northeast India–Bangladesh Border* (Philadelphia: University of Pennsylvania Press, 2021); Sahana Ghosh, *A Thousand Tiny Cuts: Mobility and Security Across the Bangladesh-India Borderlands* (United States: University of California Press, 2023); Jones "Spaces of Refusal".

[69] For more, see Naila Kabeer, *Inclusive Citizenship: Meanings and Expressions* (London: Zed Books, 2005); Ministry of Home Affairs, Annual Report, 2008; Reece Jones, "Categories, Borders, and Boundaries," *Progress in Human Geography* 33 (2009): 174–89; Reece Jones, "Agents of Exception: Border Security and the Marginalization of Muslims in India," *Environment and Planning D* 27, (2009): 761–779.

fencing.[70] The construction of floodlights and IBBR further 150 yards inside the territory also shows how the border has been shifted further into the village, as all these features can be seen as an extension of borderlines.[71] 2729.23 km of the 3077.54 km of border flood lights that were authorised along the border have been finished[72] and 3785.30 km of India-Bangladesh Border roads out of the sanctioned length of 4223.04 km have been constructed.[73]

As noted by Kyle Gardner, although roads seem to be the opposite of borders at first because they seem to facilitate movement and link far-off places, the imperial state in India in the second half of the 19th-century thought of roads similarly to borders. It established influence and control over the region—and, occasionally, not always successfully over the neighbouring regions—and effectively controlled the movement of people and goods.[74] IBBR, which is off-limits for common people and cannot always be accessed unequivocally, embodies the zero point. It thereby becomes not just restricted but also inaccessible as you are not allowed to take pictures of it or be around it without permission.[75]

Additionally, the extension of the zero-point and the shifting nature of borders can be observed in not just this construction of fences and IBBR but multiple checkpoints across a border village where you are checked and questioned as every admission to these areas is strictly monitored and recorded. Every time the researcher had to access any of the border outposts, they required prior permission and every time they had to enter the border outpost

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70 Ministry of External Affairs, *Annual Report 2023–24* (New Delhi: Government of India, 2023), 30.
71 There have been instances of fences being constructed further into the villages which is not just the violation of but also has caused loss of agricultural lands of the borderland farmers. See, Chowdhury, *Identity and Belonging*, 35.
72 Ministry of External Affairs, Annual Report 2023–24 (New Delhi: Government of India, 2023), 30.
73 Ibid.
74 Kyle J. Gardner, *The Frontier Complex: Geopolitics and the Making of the India-China Border, 1846–1962* (Cambridge: Cambridge University Press, 2021), 93.
75 On participating in a meeting in a border village that was coordinated by the human rights group, Banglar Manabadhikar Suraksha Mancha (MASUM), the villagers expressed that they were not allowed to use the IBBR by the BSF on the pretext that it belongs to the BSF. Many times, they were also told that the BGB had made complaints to the BSF regarding the use of roads by the locals. Meeting was held on 13 February 2022 between 3-5 pm in Sayestanagar, North 24 Parganas and on 14 February 2022, between 2 to 4 pm in Panitar, North 24 Parganas.

with that letter of permission, they had to go through multiple checkpoints where the purpose of their visit was recorded, and their identity proof were checked. Therefore, if one were to consider all the increasingly stringent and watchful characteristics of both the border fence and the border villages—which are continuously under surveillance, one could not help but notice the politics of the fence expanding further onto these spaces as well. Here, every inch of the land is monitored and everyone that occupies the land carries with them the infinite possibility of being surveilled at some point. Subsequently, this leads to these villages absorbing the politics of the fence and hence becoming an extension of the hard-wired fences. Such politics goes beyond the act of 'governing' or body of regulations, it also carries existentially charged questions at stake.[76] Amidst the heightened vigilance of the region, any movement becomes worthy of attention and scrutiny, implying any sort of movement near the fenced zone beyond the stipulated time[77] could invite danger even to the village residents. Danger here pertaining to beating, arrests or sometimes death. Here border patrol becomes a link between immigration enforcement and criminal law.[78]

The embodiment of border politics by not just borderlands but also the people living in it is not possible without the symbolic and performative aspect of borders making it more of a practice than an entity.[79] On a visit to one such highly active border village of West Bengal (BOP3), the researcher had a brief interaction with the Company Commander and a cadet of the stationed BSF company.[80] When questioned about the politics and ethics of their work as

[76] Didier Fassin, "Another Politics of Life Is Possible," *Theory, Culture & Society* 26, no. 5 (2009): 44-60.
[77] The border gates always remain closed but open at regular intervals from 6 am to 6 pm, allowing villagers access to their agricultural lands. However, villagers are prohibited from approaching the gates or the fence after 6 pm. This schedule varies across different villages, with some reporting gate access from 6 am to 5 pm. During a visit to the border village of Purba Joynagar, the researcher arrived after 5 pm, resulting in restricted access. Nonetheless, an interlocutor named Amir negotiated with a BSF cadet, permitting the researcher to visit the fence under the condition that no photographs would be taken.
[78] Juliet P. Stumpf, "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power," *American University Law Review* 56, no. 2 (2006): 367–419.
[79] Chapter 5 will expand further into this.
[80] Interview conducted on 24 September 2022, between 12pm -2.30 pm at a border district police station in North 24 Parganas. Name and location of the speaker undisclosed to maintain anonymity.

BSF personnel, they responded that their job required high level of scrutiny and strictness because of the village's location. The Company Commander added that since no nation can guarantee a complete absence of hostility except itself, nothing would have changed even if it had been any other border region between some other nations.

While it is true that the ambition and the anxiety of securitisation of the region remains, constructing fences throughout the border is also unattainable owing to the difference in terrains in the India – Bangladesh border which are difficult to surveil[81]. Under such conditions, manning the border and being in control of it also becomes as an endless task.

2.8 Border Management

Reece Jones calls border inherently violent constructs demonstrating both the attempt to boost sovereign authority by means of the use of exceptional violence,[82] Willem van Schendel calls the India-Bangladesh border 'a killer border'.[83] BSF has over the years acquired notoriety for its functioning and violation of human rights. Reports tell how the paramilitary force has been responsible for hundreds of killings and assaults in the borderlands, making the India-Bangladesh border one of the most violent borderlands in the world[84] despite being in a no-conflict zone between friendlier nations.[85] Odhikar, a Bangladeshi human rights group, reported that more than 800 citizens of Bangladesh were killed by the Border Security Force (BSF) between 2000 and 2009, whereas between 2009 to 2024, 593 Bangladeshi citizens were killed and hundreds more were shot and injured, often with no warning and no consequences

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[81] For instance, the water channels at the Sundarbans through which the border runs is impossible to surveil and build a fence on.

[82] Reece Jones, "Agents of Exception: Border Security and the Marginalization of Muslims in India," *Environment and Planning D: Society and Space* 27, no. 5 (2009): 879–897.

[83] Van Schendel, *The Bengal Borderland*, 296.

[84] Sumit Ganguly, "The Deadly Border Between Bangladesh and India," The Diplomat, February 2024, https://thediplomat.com/2024/02/the-deadly-border-between-bangladesh-and-india/ Accessed on 03 March 2024.

[85] For more see, Human Rights Watch, *Trigger Happy: Excessive Use of Force by Indian Troops at the Bangladesh Border*, December 9, 2010, https://www.hrw.org/report/2010/12/09/trigger-happy/excessive-use-force-indian-troops-bangladesh-border.

for the border guard.[86] Ruben Andersson describes the temporal dimensions of mobility and immobility as bodies are scanned or trapped and lives are wasted or lost, shedding light on the ways in which rings of security structure the lives and journeys of migrants.[87] The BSF has mostly addressed to these incidences in the past as an act of retaliation against attacks from border traders and smugglers but there have been various independent research works done that throws light on these acts of violence as a huge violation of human rights.[88] Jones invokes Agamben's concept of 'exceptional violence'[89] in describing these acts as it renders a political citizen into bare life subjected to a kind of violence that happens without any warning or has no consequence while the normal laws are still very much in place.[90] In the same light, Malini Sur describes the India-Bangladesh border as one straddled with violence, impunity and killings.[91]

In the aftermath of the 9/11 attacks[92] and the 2006 Mumbai train bombings,[93] combating terrorism has become the top priority for national security agendas worldwide.[94]

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[86] See Appendix.

[87] See Ruben Andersson, *Illegality, Inc.: Clandestine Migration and the Business of Bordering Europe* (Berkeley: University of California Press, 2014).

[88] Some human rights organisations such as Odhikar (Bangladesh), Ain-0- Salish Kendra (Bangladesh) and MASUM (India) publish reports on state violence at the India-Bangladesh Border. See Appendix for more.

[89] Agamben's idea of "bare life" (or "nuda vita" in Italian) describes a way of living that is devoid of political meaning and rights and is only necessary for biological survival. It is the most basic form of existence, without any social, legal, or political characteristics. By creating and preserving this condition of bare life, Agamben investigates the workings of sovereign power. The sovereign determines the exception, making a distinction between those who are excluded and those who can be incorporated into the political system. The idea is connected to the historical Roman concept of "homo sacer," which refers to a person who might be slain without facing legal repercussions but was not offered as a sacrifice in religious ceremonies. This picture represents the condition of bare life, residing in a space between the lines between the law and life. For more see, Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998.

[90] Jones, "Spaces of Refusal."

[91] Malini Sur, *Jungle Passports: Fences, Mobility, and Citizenship at the Northeast India-Bangladesh Border* (Philadelphia: University of Pennsylvania Press, 2021).

[92] Nineteen terrorists targeted the United States when they seized four planes on September 11, 2001. Nearly 3,000 people were killed when two planes crashed into the World Trade Center's Twin Towers in New York City, forcing them to collapse. This incident had a profound effect on international relations and counterterrorism strategies, causing major changes in security measures around the world and starting the U.S.-led War on Terror.

[93] The 2006 Mumbai train bombings occurred on July 11, 2006, when seven bombs exploded within an 11-minute span on the Western Line of the suburban railway in Mumbai. These pressure cooker bombs, placed in first-class compartments, killed 209 people and injured over 7001.

[94] For more see Reece Jones, "Border Security, 9/11 and the Enclosure of Civilisation," *The Geographical Journal* 177, no. 3 (2011): 213–217; Didier Bigo, "From Foreigners to Abnormal Aliens: How the Faces of the Enemy Have Changed Following September the 11th," in *International Migration and Security: Opportunity and Challenges*, ed. Elspeth Guild and Joanne van Selm (Oxon: Routledge, 2005), 64–81.

After the Mumbai attack, Indian politicians called India as 'the worst victim of terrorist violence in the world'.[95] Jones says this fear of the impending threat of terrorism has justified exceptional violence[96] by not just executing extraordinary military action and violence but also by increasing securitisation and surveillance in public spaces and fencing projects at borders. Therefore, studying border security requires paying close attention to "(in)securitization," a term that refers to ill-defined but researchable processes that cross institutional and even national-state boundaries, resulting in the emergence of new technological and security assemblages as well as, of course, a host of risks, dangers, and unfavourable outcomes.[97]

At present, 1113 BSF border outposts are constructed in the India-Bangladesh border, with around 383 Composite border outposts are approved and under process.[98] At the outset, it is the BSF that primarily detects this group of potential crossers, or what Peter Andreas calls 'transnational clandestine actors'.[99] BSF describes the nature of the functionality of their services at the border as trying to prevent terrorism, smuggling, trafficking or any other kinds of illegal activities in the borderlands as well as trying to culminate an maintain feelings of

[95] L. K. Advani (2008) as cited in Reece Jones, "Geopolitical Boundary Narratives, the Global War on Terror and Border Fencing in India," *Transactions of the Institute of British Geographers* 34, no. 3 (2009): 294.

[96] Agamben's concept of "exceptional violence" is closely tied to his exploration of the state of exception, a situation in which sovereign powers suspend the rule of law during emergencies. This suspension creates a legal and moral vacuum, leaving individuals in a precarious state that Agamben refers to as "bare life." In this state, individuals are stripped of their political and legal protections, rendering them vulnerable to unchecked power. Agamben argues that such conditions, often justified in the name of public safety, enable acts of violence that surpass the standards of legality and ethics. These actions are no longer bound by judicial accountability, allowing violence to take on an extraordinary form. For Agamben, this is not just a theoretical idea but a significant critique of contemporary practices, where states increasingly implement emergency measures, blurring the lines between law and power. See Agamben, *Homo Sacer*.

[97] Eileen Murphy and Mark Maguire, "Speed, Time and Security: Anthropological Perspectives on Automated Border Control," *Etnofoor: Anthropological Journal* 27 (2015): 157–179.

[98] Ministry of External Affairs, *Annual Report 2023-24* (New Delhi: Government of India, 2023), 29.

[99] Andreas defines clandestine transnational actors (CTAs), as non-state actors operating across borders in violation of state laws, vary significantly in their motives, including profit-driven activities like drug trafficking and migrant smuggling, politically or religiously motivated violence (e.g., terrorism), and the pursuit of employment or refuge (e.g., unauthorised migrants). However, despite their diversity, CTAs share common traits: they are targets of border control measures and strategise to evade detection and capture. While CTAs have existed as long as border controls, their organisation, methods, and cross-border speed have evolved alongside changes in state laws, enforcement intensity, and public anxiety, which have shaped responses to these actors over time. For more, see Peter Andreas, "Redrawing the Line: Borders and Security in the Twenty-First Century," *International Security* 28, no. 2 (2003): 78–111.

nationhood and brotherhood in the borderlands[100]. The task of having to create feelings of love towards one's nation highlights how borderlands are perceived as regions that lack these features. So, it is also here that BSF claims to protect the frontiers from unwanted intruders.

Here, one can observe the contradictory practice of targeting and protection performed by the state at the border that though antithetical, need not be mutually exclusive as both emerge from the rationale of power[101], emanating both hope and fear at the same time. Taking from how the BSF defines the function of the organisation (early on in this chapter) to how the BSF personnel talked about their role when talking to the researcher, it was clear that they saw themselves as not just someone who is stationed at the frontiers to protect the nation from the 'outsider' but also to safeguard and work for the people living at these regions as well. This contradictory persona expands to the border residents as well who see BSF as someone to fear but also pursue for help on multiple occasion. The researcher had a chance to interact with *Amir*,[102] a man in his early 20s who worked in Dubai and is a hotel management graduate from Kolkata.[103] He took slight pride while saying how he is educated and works in a good job sector, unlike the rest of the villagers who are uneducated and work as menial workers and women who work as sex workers. The researcher, while talking to *Amir* learnt that the BSF often makes the border residents do chores for free. He also said though this happens there are also many times when people refuse to engage in unpaid chores. *Amir* mentioned a particular instance when his father was ordered to cut fish for the BSF, and when he protested, the BSF

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[100] As mentioned in the BSF rule book as well as told to the researchers by the BSF officers. The researcher interviewed a top officer of BSF at one of the BSF headquarter in Kolkata. One of the early questions that the officer asked the researcher was what they knew about the BSF, to which the researcher replied, 'Not much'. The officer then proceeded to give the said answer.
Interview conducted on 10 August 2022 between 4pm to 5 pm at a BSF headquarter. Name, designation and location of the speaker undisclosed to maintain confidentiality.
[101] Judith Butler, *Notes Toward a Performative Theory of Assembly* (Cambridge, MA: Harvard University Press, 2015), 144.
[102] The names of the speakers and participants of the study have been italicized from hereafter.
[103] Resident of Purba Joynagar village, North 24 Parganas. Interview conducted on 14 February 2022 in the border village of Purba Joynagar, North 24 Parganas, between 4pm to 6pm. Name of the speaker undisclosed to maintain anonymity.

apologised. Similarly, the researcher, on several occasions, had villagers of other border villages tell her that the BSF helps them too, like providing transport to go a hospital in case of an emergency. This stood in opposition to how the state in the borderlands has predominantly been conceptualised as a coercive agent unvaryingly disrupting peace and livelihoods as these accounts also threw light on how the BSF, many times, tried to work in collaboration with or seek cooperation from the villagers and panchayats[104]. According to *Amir*, their village rarely sees any hostility from the BSF, and they work together with the villagers. It was also interesting to note how unexpectedly the BSF guard let the researcher visit the fence on insistence by *Amir* despite the initial reluctance. Similarly, in another border outpost, the researcher was allowed to visit the fence (BOP2) and talk to the Company Commander without official permission as she was accompanied by a local political worker.[105] Throughout the interaction with the said Company Commander who did not wish to disclose his identity to the researcher, had nice things to say about the village and the villagers, perhaps influenced in some sense by the presence of the local leader.

Checking mobility: Criminalising mobility at the national frontiers captures the complexities of nation-state imagination transcending the limits of a physical space and performing bureaucratic functions and diplomatic institutions between nations through passports and regulating mobility. Most of these frontiers don't necessarily serve to control mobility but to

[104] A Panchayat is a grassroots-level system of local self-governance in India. It operates mainly in rural areas and serves as a democratic platform for decision-making on local administrative matters. The Panchayati Raj system, based on the principles of decentralisation, empowers villagers to participate in governance and development activities.

[105] Interview conducted on 06 April 2022, between 11am -12.30 pm at a border district police station in North 24 Parganas. Name and location of the speaker undisclosed to maintain anonymity.

selectively allow it,[106] thereby operating as differentiated border control regimes.[107] There are multiple factors at play in deciding how to filter cross-border movements be it at immigration offices or borders, economics forming a major driving factor for the states to block mobility.[108] But it is at the border that the military capacity of the state is at full display, the state trying to control not just who enters but also who leaves its territory. It is also where the ultra-militarised border infrastructure takes full control exerting its capacity to decide how different types of bodies move and their modalities of mobility at the border. Through such mechanisms the modern states go on to expropriate from private entities their legitimate "means of movement"[109] not just through criminalising it but also through interference with body politics of the people involved, i.e., through how different bodies[110] should behave, move and engage in the border.

Once the border crossers[111] are detained, they are brought to the BSF outposts for interrogation. The strip and search are carried out, and the entire interrogation is video-graphed. The BSF is required to report these cases at the border police station or thana in within twenty-four hours of arrest. The border police, in this case are the one that holds the jurisdiction over the concerned border outpost and village. It is the police who oversee the case from here on,

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[106] Stéphane Rosière and Reece Jones, "Teichopolitics: Re-considering Globalisation Through the Role of Walls and Fences," *Geopolitics* 17, no. 1 (2012): 217–234; Kristina Korte, "Filtering or Blocking Mobility? Inequalities, Marginalization, and Power Relations at Fortified Borders," *Historical Social Research* 46, no. 3 (2021): 49–77. Different borders serve different functions in varied ways when it comes to mobility. While the privileged in a post-globalisation era, such as the Global North, do come with easier access despite the fortified walls and borders, some borders seek to enable movement while others seek to block it. For instance, the US-Mexico border serve to block the movement from Mexicans or other Central Americans but allow the movements of US citizens at the same time. Similarly, a border like that between India- Pakistan sees no to very little migration but the India - Nepal border enables movement between people of both the nations.

[107] Jason Ackleson, "The Emerging Politics of Border Management: Policy and Research Considerations," in *The Ashgate Research Companion to Border Studies*, ed. Doris Wastl-Walter (Routledge: Ashgate Publishing, Ltd., 2012), 245–261 find page no

[108] See, Ron E. Hassner and Jason Wittenberg, "Barriers to Entry: Who Builds Fortified Boundaries and Why?" *International Security* 40, no. 1 (2015): 157–190; Roseire and Jones, “Teichopolitics”.

[109] John Torpey, *The Invention of the Passport: Surveillance, Citizenship, and the State* (Cambridge: Cambridge University Press, 2000), 6-13.

[110] The difference marked by gender, religion and caste of these individuals or group of individuals in the borderlands.

[111] Crossings can be carried out in either direction, into the country or out of the country.

responsible for the trial proceedings. Those held at the border go through another round of interrogation and proceedings, the police also deploying various strategies to extract more details about these people. After the First Information Report (FIR) is registered stating the details of the arrest and the arrestee, the case starts legally. These cases start at two levels, at the police station and at the court. It is within 24 hours of the filing of the FIR that the arrestee needs to be produced at the court. Depending on the case, the arrestee is either sent to police custody (thana) or to the judicial custody, i.e. the correctional facility or jail. The arrestee will have to remain in the jail until they are proven not guilty of violating the Foreigner's Act 1946. In case of being guilty of violating the said law, the arrestee is convicted and sentenced a term that they need to serve, following which they are deported back to their country of origin.

The entire procedure depends on the primary act of detection as it takes centre stage in the border operation. Detection also becomes rather difficult when both the potential 'intruder' and the borderland resident do not have a visible physical marker for distinction. This becomes even more challenging for the border guards who are not familiar with the language or the culture of the region. This is where the border guards, besides following the rulebook, heavily rely on intuition and discretion.[112] On being asked by the researcher about how they can detect foreigners in the border, a BSF personnel (BOP3) replied that they can differentiate between people by their attitude and by sending fear in their body language, a junior cadet chimed in, saying their attitude makes them 'stand out'. Such statements were indicative of how such detection and consequently criminalising procedures were initially shaped by intuition, as

[112] Discretion is when an official has the authority to exercise public power and determine how it should be used in specific situations, relying on their judgment and expertise. It is considered necessary in legal and administrative contexts because it translates abstract rules and policies into real-world applications. Alexandra Hall (2017:496) states that discretion is best understood as "a profoundly visual practice, a kind of discernment, a matter of seeing what is there," as well as "distinguishing between the particular and the general". For further reading see Alexandra Hall, "Decisions at the Data Border: Discretion, Discernment and Security," *Security Dialogue* 48, no. 6 (2017): 488–504; Anna Pratt and Lorne Sossin, "A Brief Introduction of the Puzzle of Discretion," *Canadian Journal of Law and Society* 24, no. 3 (2009): 301–312; Josiah McC. Heyman, "Trust, Privilege, and Discretion in the Governance of the US Borderlands with Mexico," *Canadian Journal of Law and Society* 24, no. 3 (2009): 367–390; Karine Côté-Boucher, "The Paradox of Discretion: Customs and the Changing Occupational Identity of Canadian Border Officers," *The British Journal of Criminology* 56, no. 1 (2016): 49–67.

Patrick Honig argues how no checks at the border are random as it involves suspicions based on looks or behaviours.[113] Another cadet (BOP1) from a southern state of India who, according to her, had no deep familiarity with the West Bengal borderland also echoed the same thought. She was primarily in charge of manning the fence while the villagers worked in their fields. She said there was no chance of any foreigner entering the fence along with the villagers since she could detect them as they were 'different'. The notion of this 'difference' that the border guards claim to understand raises questions about their decree on having control in the borderlands. Such power of discretion also raises questions about prejudices that may juxtapose with stereotypes to effect detection.

A border guard may be thought of as the state come to life: they are uniformed, they ventriloquise rules, and frequently bored to no end, but they are also endowed with their perceptions, politics, compassion, thereby making them the researchable human in the security apparatus. Hence, to homogenise the state and its agents as one uniform entity functioning in a unidirectional way would be abandoning these factors that make state methodical yet erratic in its practices at the borders. Given their position and the discretionary power they have at the border, border guards have a multifaceted approach, so it's important to avoid viewing them solely as repressive agents of the state. Through her research on Canadian border security, Karine Cote Boucher has presented a similar argument for why border guards aren't always coercive agents and why their discretionary power sometimes causes them to face difficult decisions and frustrating situations.[114] Moreover, borderland projects deconstruct the complexity of interlocking discursive power relations while paying attention to regional and socio-historical factors that both cause and modify social inequality. Hence, trying to

[113] Patrick Hönig, "States, Borders and the State of Exception: Framing the Unauthorised Migrant in Europe," *Etnofoor* 26, no. 1 (2014): 135.
[114] Katrina Côté-Boucher, "The Paradox of Discretion: Customs and the Changing Occupational Identity of Canadian Border Officers," *British Journal of Criminology* 56, no. 1 (2016): 49–67.

understand border guard behaviour in the borderlands also requires taking changing political agendas into consideration[115].

Still, this reliance on intuition and discretion, making border operations unpredictable, causes self-policing as Sahana Ghoshposits how the inconclusiveness, the practice, and the fear of detection impel people in the borderlands to police themselves as much as the state does.[116] Besides, how these bodies police themselves and others plays a pivotal role in understanding how mobilities work in a border regarding socio-cultural meanings attached to movements in a militarised zone as well as regarding detection[117]. This further suggests that policing goes beyond movement but also to language, gestures and body language, thereby body policing consequently transcending over to body politics. In the US-Mexico border, such detections are carried out based on one's appearance or presupposed appearance. For instance, Christine Kovic lays out how Homeland Security measures at the US-Mexico border often stop and interrogate people who look 'Mexican' or 'illegal', making them hyper-visible and vulnerable.[118]

Therefore, it is important to understand how the filtering and blocking of mobility[119] and the criminalisation of those who make their way evading this process of blocking happens. The dispersal and engagement of policing as a practice[120] also make border security become a practice where the state participants and the border residents do not just engage and enforce in an interactive action and behaviour with each other, but such actions and conduct have far

[115] During the interactions with BSF and the border police, it was interesting to note that they often saw themselves situated on different sides often blaming the other for the cross-border activities and tampering with the official figures. This was largely because the BSF came under the central government of India and the border police came under the West Bengal government. A senior police officer remarked that this conflict often heightens at times when the central government and the state government do not belong to the same political party or ideology.

[116] Sahana Ghosh, "Everything Must Match: Detection, Deception, and Migrant Illegality in the India-Bangladesh Borderlands," *American Anthropologist* 121, no. 4 (2019): 870–883.

[117] Though 'detection 'in this sentence indicates getting arrested at the border, detection need not be limited to the frontiers, thereby making its way into the mainland as well.

[118] Christine Kovic and Patty Kelly, "Migrant Bodies as Targets of Security Policies: Central Americans Crossing Mexico's Vertical Border," *Dialectical Anthropology* 41: 1-11.

[119] Korte, "Filtering or Blocking Mobility?"

[120] Farhana Ibrahim, "Policing in Practice: Security, Surveillance, and Everyday Peacekeeping on a South Asian Border," *Comparative Studies of South Asia, Africa and the Middle East* 39, no. 3 (2019): 425–438.

deeper meanings beyond the obvious. The state as well as family, produces forms of everyday policing in the borderlands.[121] It is also through these practice that the legislative and administrative instruments of the state are contextualised and mediated. And it is not just through the state actor but also through the ordinary actors that border as a practice is performed [122] in varied ways. The civil actors perform through self-policing, navigating law and order, evasion of the surveillance, trade and negotiation and often through violence.

[121] Sharon Pickering, *Women, Borders, and Violence: Current Issues in Asylum, Forced Migration, and Trafficking* (New York: Springer, 2011); Farhana Ibrahim, *From Family to Police Force: Security and Belonging on a South Asian Border* (Ithaca: Cornell University Press, 2021).
[122] C. Rumford, "Introduction: Citizens and Borderwork in Europe," *Space and Polity* 12, no. 1 (2008): 1–12.

Table 2.2. Apprehension of Bangladeshi Citizens at India- Bangladesh Border in the year 2024-25.

Sl. No.	Month	Apprehension (in Nos)
1	Jan 2024	138
2	Feb 2024	124
3	March 2024	118
4	April 2024	91
5	May 2024	32
6	June 2024	247
7	July 2024	267
8	Aug 2024	214
9	Sept 2024	300
10	Oct 2024	331
11	Nov 2024	310
12	Dec 2024	253
13	Jan 2025	176
Total		**2601**

Source: Ministry of Home Affairs, 2025. [123]

Violent Policing at the Border: It also becomes important to consider how all border regions between the same two nations are not uniform throughout in the way it is perceived through the lens of state functioning and disputes. While the village that Amir belonged to was calmer as compared to how borders are usually contextualised, other border regions that the researcher

[123] "ADDRESSING ILLEGAL MIGRATION AND BORDER SECURITY" *Press Information Bureau, Government of India*, https://www.pib.gov.in/PressReleasePage.aspx?PRID=2110805. (Accessed on 30 March 2025)

visited during the study was different; it was more tense and contentious, and the border guards were less approachable.

In this light, it becomes pertinent to engage with the hypermasculinity of the state when trying to read how and why the state is so violent at the borders. Iris Young argues that security states employ a specific gendered logic of masculinist protection towards women and children; this logic serves as the foundation for the nation's appeal to "protection and security" and demands compliance and allegiance within the home.[124] The category of border designates how power is etched in various ways on the body, culture, history, space, land, and mind, both literally and figuratively.[125] Nation creates masculinity and masculinity creates nation[126] and it is quite apparent how nationalism and masculinity work together to produce this idealised picture of the state apparatus as a masculine institution. Not just women but men too are at the receiving end of the state's apparatus as idealised masculinity is not necessarily just about men or gender relations.[127] While women experience physical and sexual forms of masculine violence, male bodies are used by the state to perform ideological acts of de-masculinizing civilians in order to turn them into submissive men, in addition to exercising bodily expressions of masculinity.[128] Masculinity as a practice transcends gender. Female cadets too practice, perform and integrate masculinity with the gender hierarchies in an organisation where courage, power and authority are associated with masculinity and carried out in androcentric norms.[129]

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[124] Iris Marion Young, "The Logic of Masculinist Protection: Reflections on the Current Security State," *Signs* 29, no. 1 (2003): 1–25.
[125] Henry A. Giroux, "Border Pedagogy and the Politics of Postmodernism," *Social Text*, no. 28 (1991): 51–67.
[126] Todd W. Reeser, *Masculinities in Theory: An Introduction* (Malden, MA: Wiley Blackwell, 2010).
[127] Marilyn Strathern, *The Gender of the Gift: Problems with Women and Problems with Society in Melanesia* (Berkeley: University of California Press, 1988), 65.
[128] Debdatta Chowdhury, "Masculinity at Work, Masculinity at Stake: 'Male' Negotiations Along the West Bengal-Bangladesh Border," in *Popular Masculine Cultures in India: Critical Essays*, ed. R. K. Dasgupta and S. Baker (Kolkata and Delhi: Setu Prakashani, 2012), 32.
[129] Orna Sasson-Levy and Edna Lomsky-Feder, "Gendered Gratitude: The civic subjectivity of Israeli women soldiers," *Citizenship Studies* 26, no. 2 (2022): 245–261.

This exhibition of masculinity also decides what kind of bodies are allowed to cross the border and how this varies from one place to another. Malini Sur points that female bodies are often allowed to cross the border in the town at Meghalaya-Bangladesh border whereas men are subjected to restriction and intense violence.[130] But, in the case of the West Bengal-Bangladesh border, women are just as much exposed to violence and incarceration for making cross border movements. In addition to gender, other determining factors include age, sexual orientation, and religion.

Therefore, border can be understood as a gendered construct in more than one way. Firstly, it is overtly masculine in how it is performed, regardless of who is performing. However, it is also imagined as a feminine space, a space always at threat, a site of perpetuating sovereignty and honour of the nation that requires protection from the men of the nation. Hence, the border occupies a sacrosanct position in nationalist discourses, akin to the 'inviolable' women of a nation, to be protected by men and to be untouched by an outsider. Secondly, border crossers are treated differently at the border depending on what kind of bodies they are. Sharon Pickering (2011) argues how the experience of extra-legal border crossing is different for women due to the gendered nature of policing. Women are usually not represented in this population as border crossers gives off an imagery of a male body[131]. Border becomes a site of extreme violence for vulnerable bodies[132] by not just state actors but also smugglers, touts and traffickers. However, this also inadvertently dichotomises border crossers in 'gendered and racialized notions of either the vulnerable, exoticized, and feminine migrant or the dangerous, exploitative, and risky masculinized migrant.[133] As discussed, Sur counters such narrative by

[130] Sur, *Jungle Passports*.

[131] The constant representation of migrants in the media, mostly as young men with predatory impulses, has exacerbated the already-rising anti-immigrant sentiment while also negatively affecting the experiences of women. (Mattoscio & MacDonald 2018)

[132] Although, all bodies are vulnerable at a site of militarised violence, if not at equal measures.

[133] Lawreen Gyan-Addo, Madita Standke-Erdmann, and Saskia Stachowitsch, *The Women, Peace and Security Agenda in EU Border Management*, Working Paper 110/June 2021 (Vienna: Österreichisches Institut für Internationale Politik, 2021).

showing how the imagery that paints men as risky and dangerous curtailing trans-border mobility for them, has created new opportunities for women's mobility as the docile and benign other.[134] Nonetheless, women experience not just gendered abuse but additional moral policing as well; they are frequently shamed for being immoral and for overstepping their private lives when they migrate.

2.9 Disorder at the Border

Disorder is frequently caused by the very policing strategies meant to keep it under control.[135] One such disorder is the cross-border activities that continue to exist even today despite the heightened efforts of securitization and border policing. The state is not the only authority with aspirations to manage territory and take advantage of opportunities that arise in frontier areas; armed groups, local strongmen, customary institutions, and religious authorities are just a few examples of the various authorities that frequently have these goals.[136] The state apparatus at the border has evidently failed to deter illegal activities at the border. Since the regularizing duty of separating the legal from the illegal is taken on by the border and at the border, the tension between the legal, illegal and illicit transforms the border into a unique and extremely powerful area in a nation-state.[137] Swagato Sarkar shows how an illicit economy has been formed due to the lack of antagonism and fluidity of multiple identities at the West Bengal-Bangladesh border. [138]Although the securitisation efforts by BSF have increased and changed the illicit economy of the border, certain activities still remain as lucrative and carried out, such

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[134] Sur, *Jungle Passports*.

[135] Bernard E. Harcourt, "Neoliberal Penality: A Brief Genealogy," *Theoretical Criminology* 14 (2010): 74; University of Chicago Law & Economics Olin Working Paper No. 472; University of Chicago Public Law Working Paper No. 268 (2009)., ii.

[136] Itty Abraham and Willem van Schendel*, Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization* (Bloomington: Indiana University Press, 2005), 6.

[137] Abraham and Schendel, Illicit Flows and Criminal Things; Chowdhury, Identity and Experience at the India-Bangladesh Border, 45-64.

[138] Swagato Sarkar, "The Illicit Economy of Power: Smuggling, Trafficking and the Securitization of the Indo-Bangladesh Borderland," *Dialectical Anthropology* 41, no. 2 (2017): 185–199.

as 'illegal' human crossings, trafficking, cattle trading, smuggling of commodities such as rice, salt, onion, phensedyl, gold, silver, a black market for Indian rupees and so on.[139] Here the border becomes both risk and a resource.[140] The officials of BGB have made statements in the past that border smuggling will never stop and made a point that killing the smugglers should not be the option since these people are trying to earn their livelihoods and instead, a proper investigation should be conducted[141]. Often, cadres have confessed to being involved in cross-border smuggling[142].

2.10 Interception of Border Crossers and Border Forces

Almost all the respondents of this study barring a few were arrested at the border while trying to make crossings and many of these crossings were not done for the first time. The coming and going across the border between the two nations were motivated by a variety of reasons but many of it was economic in nature, the women moved for work. Another common reason was the existence of kinship relations and relatives across the border, some of these women were married across the border, some had relatives who were married to Indians and some had families who had settled in India. But each of these movements were carried out to evade

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[139] See Swagato Sarkar, "The Illicit Economy of Power"; Sahana Ghosh, "Chor, Police and Cattle: The Political Economies of Bovine Value in the India–Bangladesh Borderlands," *South Asia: Journal of South Asian Studies* 42, no. 6 (2019): 1108–1124.

[140] Ghosh, *A Thousand Tiny Cuts*, 23.

[141] "Cross-Border Smuggling Cannot Be Stopped Fully," *Deccan Herald*, July 21, 2019, https://www.deccanherald.com/world/cross-border-smuggling-cannot-be-stopped-fully-747419.html. Accessed on 23 November 2022.

[142]" BSF Officer Arrested by CBI in Kolkata in Cattle Smuggling Case," *Hindustan Times*, August 11, 2020, https://www.hindustantimes.com/india-news/bsf-officer-arrested-by-cbi-in-kolkata-in-cattle-smuggling-case/story-R6SO6NZ3xelf7JfnWq3qfO.html. Accessed on 23 November 2022.

"BSF Takes Action Against 33 Personnel for Involvement in Cattle Smuggling," *The New Indian Express*, January 31, 2022, https://www.newindianexpress.com/nation/2022/Jan/31/bsf-takes-action-against-33-personnelfor-involvement-in-cattle-smuggling-2413413.html. Accessed on 15 December 2022.

"ED's Complaint Blows the Lid off Anubrata's Syndicate, BSF's Involvement in Bengal Cattle Smuggling Scam," *The Hindu*, May 7, 2023, https://www.thehindu.com/news/cities/kolkata/eds-complaint-blows-the-lid-off-anubratas-syndicate-bsfs-involvement-in-bengal-cattle-smuggling-scam/article66820494.ece. Accessed on 15 December 2022

"Cattle Smuggling at India-Bangladesh Border: Former BSF Official Arrested," *The Daily Star*, April 21, 2022, https://www.thedailystar.net/news/asia/india/news/cattle-smuggling-india-bangladesh-border-former-bsf-official-arrested-3012286. Accessed on 20 December 2022.

detection and with an act of self-policing keeping in mind the conspicuous presence of the state at the borders. So, it becomes important to address how the state and the crossers interact with each other. In the interviews with the state actor, the state said they saw themselves merely as a cog in the wheel required to carry out the function of detecting and punishing the 'intruders' whereas the women often saw the state as overpowering and intimidating but humane at the same time, as someone who would listen to their plea and let them off when arrested.

Chanda Ghosh in her late 30s, had no option but to come to India in other to take care of the medical requirements of her husband who suffers from kidney ailments back home in Satkhira, Bangladesh.[143] She planned on first reaching her sister's place in a village near the Sundarbans, from where she and her sister would go to work as domestic help in Kolkata. However, she was caught right at the border by a BSF guard. So, her first response to the arrest was by telling him that she was an Indian who worked in a border village school. But it was after she was asked to reiterate the same thing in Hindi, that she had to cave in and confess that she was a Bangladeshi. She then cried and pleaded to be let go, which the BSF didn't pay heed to. She was told that she'd have to spend 3 years in the prison.

Chanda said she had come prepared with the answer, but it was due to language that she was arrested. Language here plays a pivotal role in the detection of foreigners, though one could argue that it is not a very reliable tool for detection since many of the respondents could understand and speak in Hindi during this interaction. Also, what stands out in *Chanda's* account is that she felt she could plead her way out. This is not unique to her case. Pleading formed a major part of negotiating with the state during the arrest; it is also partly because the neighbouring cadre of Bangladesh, the BGB, is known to let the caught border crossers leave without arrest.[144]

[143] Interview conducted on 24 August 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[144] To be discussed in Chapter 3.

Like *Chanda*, *Sapna's* first response was also to elude the arrest by showing her Aadhaar Card and passing off as an Indian.[145] *Sapna,* 21 and widowed, was travelling to Hyderabad where her sister lived. Sapna was travelling to Hyderabad for work, so that she could help her sister in taking care of the household expenses. Although *Sapna* was not held at the border and was arrested in a town near Kolkata, she eventually confessed to being a Bangladeshi once she was asked to produce additional documents. *Sapna* pled to the police who had arrested her. Likewise, *Reshma*, 21 had managed to cross the Bongaon border in a group of 20 and was on her way to work, with the help of an Indian agent.[146] She, however, was also held at a railway station in a border district of West Bengal in transit. She first tried passing off as an Indian when asked by a policeman. However, it was after she was asked about her address that she got scared and ended up telling the policeman she's a Bangladeshi.

In all these cases, *Chanda*, *Sapna* and *Reshma* first tried hiding their identity, and then when that didn't work, they tried requesting to the officers to let them off. But in these cases, all were also entering India, perhaps what made them partly cautious of detection and hence, mildly preparing them to dodge an arrest through a prepared answer or a fake Aadhaar card. Border crossing is a performance[147] , and these three ladies had pre-meditated this performance with the aim of evading detection. However, things were slightly different for those who were married to an Indian or were leaving for Bangladesh and had not perhaps anticipated detection or arrest in the same way.

Many of the respondents of this study were arrested on their way to Bangladesh.[148] The fact that, barring a few, most of the respondents had sought an agent's help plays an important

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[145] Interview conducted on 18 July 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[146] Interview conducted on 27 July 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[147] Shahram Khosravi, "The 'Illegal 'Traveller: An Auto-Ethnography of Borders," *Social Anthropology* 15, no. 3 (2007): 321–334.
[148] See Appendix for more details on the arrestees.

role in them being assured of not getting caught and hence not prepared for the state's intervention. There can be other reasons too, such as repeated past experiences of crossing the border and not getting caught. *Sabina*, 35, was travelling to Bangladesh from Mumbai, where she lived with her son and worked as domestic help for a year.[149] It was when she was going to Bangladesh to attend a funeral in the family that she was arrested at the border. *Sabina* had made documents such as Aadhaar, Pan and Ration Card but left those in Mumbai. She said she cried and pleaded a lot to the BSF but was scolded. This shows that *Sabina* was not unaware of the importance of documents but perhaps she was not fully worried about or was not anticipating drawing the border guards' attention because she was 'leaving' the country. Another common reason why these border crossers do not have documents on their person is also because the border touts (brokers) end up taking each of their belonging and promise to hand it over back to them once the crossing is done. Like in the case of *Neha* who was told by her tout that three ladies wearing 'nighties' would be waiting for her on the other side with her belongings. Instead, she was arrested (more on the next chapter). Hence, most of the negotiations end up in requesting and pleading with the border guards.

What forms an important part of the experience of border crossers interaction with the state is how the state officials behave with them on arrest. The women said they weren't mistreated though they also said the BSF intimidated and shouted at them during the arrest and interrogation. *Sehada Bibi*, 30 and widowed, was caught with her son, said the BSF "slapped" her son before her yet the BSF did not "mistreat" them and also "fed" them.[150] This note about 'feeding' was recurrent as if the arrestee overlooked the intimidation because they were fed and taken care of, further reinforcing the idea of how the border guards are often perceived through the duality of threat and protection as discussed above. *Reshma* on arrest said she kept her head

[149]Interview conducted on 18 August 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

[150] Interview conducted on 27 July 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

low while dealing with the police officers, while being very scared when getting on the police van. However, she also quoted “Police people are also humans, so they are not very scary”.[151]

Still, there were also respondents who chose to speak about how they were not treated well by the border guards. It usually ranged from how they were beaten up while running across the border, to how they were taunted as 'immoral women' engaging in sex work. While most women said they weren't mistreated and that they were yelled at in the same breath, *Amina*, 27, said the method of interrogation which had stripping and frisking was itself a humiliating experience. Originally from Dhaka, *Amina* was married to an Indian man from Bihar nine years ago. She lived with him in Bihar. She was arrested at the Balti border on her way to see her ailing father in Bangladesh. She said although she wasn't misbehaved with, she was intimidated. She recalled, "I could hear people being beaten up in the next room. Although I did not face any such beatings, I have come across many stories of people facing assault at the hands of the BSF."[152] She said, contrarily, the police were better behaved and did not intimidate her at any point. Similarly, *Puja*, 22, seated next to *Amina*, saw no point in the strip search that is conducted as she says the crossers are poor people with no possessions.[153] *Puja* was on her way to her sister's place in Kolkata with her husband when she was arrested, although she does not know if her husband made it across. When she was arrested by a cadet while running through banana fields on being caught, she says she was beaten badly, which led to her hand swelling. Showing her swollen hands, she strongly stated that "the BSF intimidates a person so much, people end up confessing to crimes that they haven't committed due to fear. They (BSF) videotaped the whole interrogation and made me say that the BSF treated me well. But, why frisk us, we are poor with no possessions."[154] This shows that the primary mode of detection

[151] Interview conducted on 27 July 2022 in Kolkata. Name anonymised.
[152] Interview conducted on 03 August 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[153] Interview conducted on 03 August 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[154] Interview conducted on 03 August 2022 in Kolkata. Name anonymised.

which relies heavily on body language and the reliance on 'fear' as a marker for guilt, unravels in these situations as a military authority exalts fear in a person regardless of them being guilty or not.

The difference between how *Amina* differentiated between the BSF and the police needs to be examined further. BSF primarily sees itself as the 'protector of the nation', as discussed above. Police, on the other hand, see themselves as the legitimate authority that looks after law and order, primarily focussed on the judicial trajectory of dealing with crime, and punishment and hence, also has more jurisdiction in these cases. The *Officer-In-Charge* (OC) of a police station of a border district[155] in West Bengal called the border crossers a 'nuisance' while going to lengths describing the mode of operations of some.[156] He blamed the locals for being complicit in facilitating fake documents for them by being their fake guardians in lieu of small amounts of money. Meanwhile, a *Company Commander* of a border outpost (BOP2) falling under the jurisdiction of the same police station said that the locals are usually cooperative as they see Bangladeshis as unwanted competition for work. When these two people were asked for suggestions that could be implemented to stop the rampant border crossings, the *Company Commander* suggested that the cadre should be given more authority and power, especially to carry out the investigation without the intervention of police as well as the power to shoot the intruders.[157] On the other hand, the *OC* suggested the term of imprisonment should be longer and harsher. This stark difference in such statements, where the former sees having more disproportionate power as a solution as opposed to the other, who suggests a change in the extent of legal punishment, stands out to explain the scope of their personal ambition as well. Also, this also goes on to reveal the difference in how these two

[155] Name of the border district undisclosed to maintain anonymity of the speakers and BSF officers.
[156] Interview conducted on 06 April 2022, between 3 pm to 4 pm at a border district police station in North 24 Parganas. Name and location of the speaker undisclosed to maintain anonymity.
[157] Interview conducted on 06 April 2022, at a border district police station in North 24 Parganas. Name and location anonymised.

state officials working in nearly the same village, amongst the same population, viewed the acts of border crossing differently. Both stated that these crossings were a threat to national security; however, the problem-solving method was different in thought and process. The BSF saw themselves as entitled to more power since they were guarding the frontiers, and the police saw themselves as a part of the legal-judicial apparatus.

2.11 Conclusion

The India-Bangladesh border has, over the years, witnessed extreme militarisation that has made it one of the most violent borders in the world. Understanding the nature of how this border operates is important in terms of its shared history and how the border came into existence. Also, the genesis of the now-stationed border forces in this borderland was designed for aggression and sees itself as a dual agent of protection and aggression. The criminalisation of mobility in the area has reached further than its ambition to control cross-border mobility making its influence in the lives of border villagers and their mobility as well. However, all these efforts of maintaining the state's idea of law and order have also resulted in some sort of disorder in the forms of cross border smuggling and trafficking.

The latter part of the chapter delved into how border crossers negotiated with the border guards when arrested. The discussed interactions of the arrested women reflected that the border crossers tried to make their way across the border by either pleading to be let off or dodging arrest after encountering the state. Similarly, through their interactions and negotiations with the crossers, the state, i.e., the BSF and the Police also reveal their modalities and ideas about dealing with cross border activities which often contest each other.

Nonetheless, the gendered practices of border crossing and dwelling are important to understand the criminalisation of cross-border movement. The next chapter investigates how Bangladeshi women conceptualise the criminality of their border crossings while navigating

ideas of licit and illicitness. It also juxtaposes women's experiences of moving across the border and residing in India with the meanings of legality and illegality attached to it.

Chapter 3

The Criminality of Mobility at the West Bengal- Bangladesh Border

"I am visible - see this Indian face - yet I am invisible. I both blind them with my beak nose and am their blind spot"- Gloria Anzaldua.[1]

3.1 Introduction

The above line by Gloria Anzaldua encapsulates the visibility and invisibility of Central American transmigrant groups in the US, moving as if they are blind but often also becoming a blind spot as an outsider. Understanding the act of moving across the border as something criminal comes with the nuances of the region in context. Likewise, the anxiety of cross-border mobility in the India-Bangladesh border is deeply rooted in the 'infiltration' narrative after it made its shift from the 'homecoming' narrative post-Partition, which continues to this day and has found its place in Indian populist discourses.[2] If one were to compare such border crossings between India and another neighbouring country, Pakistan, the inhabitable and unpopulated borderlands would make it easy to guard frontiers because any movement would be detectable. Crossing such a border is criminal prima facie. Criminal not just because they are detectable, but primarily for the history that these countries share and deny. However, the India-Bangladesh border, with its farmlands, forests, rivers and delta, is not only hard to monitor but also gives cross-border movement a mundane character. And this perception of border

[1] Gloria Anzaldúa, *Borderlands/La Frontera: The New Mestiza* (San Francisco: Aunt Lute Books, 1987), 108.
[2] Willem van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia* (London: Anthem Press, 2005), 195.

crossings as a mundane activity extends onto not just the borderlands residents and border crossers but also the state.

In one of the interviews the researcher had with the legal aid and paralegal volunteer working on prison cases, a significant thing emerged.[3] The individuals who choose to cross the border pay way more than the cost entailed for getting a passport and visa. The agent/touts at the border charge huge amounts of money, take their belongings, and many a times also abandon them midway through the border crossings. So, the question arises as to why these women choose to move 'illegally'.

Modern societies are marked by mobility and mobility means interactions and mediation between strangers. Such mediation between societies invites more ways of surveillance to control and coordinate them.[4] It is a common perception that fences, walls, modern detection measures and patrolling officers are bound to stop border movements and curb cross-border flows.[5] Therefore, surveillance now extends beyond the physical body with advancements in biometrics and genetic testing, making the body itself almost incidental in such monitoring, where it is the name, number or the nationality that really matters.[6] Audrey Singer and Douglas Massey state how growing literature on undocumented border crossings has looked at the problem in three major ways; first, organisational and bureaucratic measures meant to stop such movements. Second, migrants' viewpoint through various approaches and thirdly, the various aspects and approaches of apprehensions at the borders.[7] This chapter attempts to merge the latter two approaches. By engaging with the viewpoints of border crossers about their movement and the nature of the border and analysing these perspectives in

[3] Both interviews conducted on 13 March 2022 between 11 am to 12 pm at a correctional facility in Kolkata. Name and location of the speakers undisclosed to maintain anonymity.
[4] David Lyon, "Under My Skin: From Identification Papers to Body Surveillance," in *Documenting Individual Identity: The Development of State Practices in the Modern World*, ed. Jane Caplan and John Torpey (Princeton: Princeton University Press, 2001), 291–310.
[5] Dunn 1996 as cited in Audrey Singer and Douglas S. Massey, 'The Social Process of Undocumented Border Crossing Among Mexican Migrants," (International Migration Review, 1998), 562.
[6] Lyon, "Under my Skin", 305.
[7] Singer and Massey, "The Social Process of Undocumented Border Crossing", 562-563

the context of detection and apprehension, the intricacies of mobility-related criminality at the West Bengal-Bangladesh border can be better understood.

Rimple Mehta, through her experiences and interviews with a similar group of respondents, argues how Bangladeshi women who cross the border illegally often fail to understand the legalities and concepts of *desh* (nation) given the ambiguous and porous border and generational movements of people across it.[8] The apparent complicity of border forces (mainly the BSF) in cross-border activities, the historical connections between India and Bangladesh, the transactional nature of relations brought about by such mobilities benefitting both the countries and many times the marginalised location of these women with no formal education contributed to their limited understanding of the illegality of such crossings.[9] However, there were also instance brought forth by her when Bangladeshi women chose to evade the detection once they were arrested and were well aware of risks of border travelling.[10] Correspondingly, Malini Sur paints a picture in her book, Jungle Passports, where the border people smoothly move between nations, manoeuvring each border posts easily at the Meghalaya-Bangladesh border.[11] The porous, densely populated nature of the border and hard-to-fence terrains make it favourable for hidden border crossings as the border populace living on either side often knows the area and fences like the back of the hand. West Bengal Bangladesh border, hence, becomes a distinct social space where sovereignty and authority are consolidated but also where subversion of such consolidations happens in myriad ways. Sahana Ghosh posits that in such borderlands riddled with long enduring movements of people, the state often shifts between three ways of dealing with the cross-border activities; first, as something the state sees as permissible, second, as something it can turn a blind eye to and

[8] Rimple Mehta, *Women, Mobility and Incarceration: Love and Recasting of Self across the Bangladesh-India Border* (London: Routledge, 2018), 53-61
[9] Ibid.
[10] Ibid 62-63
[11]Malini Sur, *Jungle Passports: Fences, Mobility, and Citizenship at the Northeast India-Bangladesh Border* (Philadelphia: University of Pennsylvania Press, 2021).

third, as something it needs to combat.[12] Each of these modes that the state might adapt depends on who the state actor is in context, and their individual reservations about the nature of the movements that might be happening.[13] It also depends on which part of the borderland the context is based upon. Border guards tend to be more vigilant and aggressive in areas where smuggling is high (despite the border guards' claim of actively trying to combat smuggling and trafficking in the said areas).

However, the legally codified nature of the criminality of mobility at the India-Bangladesh border through the Foreigners Act 1946 also lends it a character which is more legitimate and defined regardless of the various motivations of such movements. There could be individual reservation and discretion at play at the borders as discussed in the previous chapter, but there is also a defined rule of law that makes any sort of unauthorised border crossings criminal and punishable by law. Here we see an overlap of criminal law and immigration policies. The goal of any criminal law is to stop and deal with any sort of fraud, violence or action that could cause harm to the citizens and community whereas immigration law chiefly deals with a country deciding who gets to stay or must leave the country. Immigration law and foreign policy have been traditionally linked more to immigration policies than criminal justice.[14] Juliet Stumpf argues how both immigration law and criminal justice are driven by the policies and politics of creating categories[15] , making both entwined. [16]Although, in the West, most immigration law is increasingly being tied with criminal law, making them more indistinct, in the context of this study, the immigration law overlaps with criminal justice, bringing foreigners and immigration policies directly under criminal law and courts.

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[12]Sahana Ghosh, "Cross-Border Activities in Everyday Life: The Bengal Borderland," *Contemporary South Asia* 19, no. 1 (2011): 54.

[13] As discussed in the second chapter.

[14] Juliet Stumpf, "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power," *American University Law Review* 56, no. 2 (2006)

[15] The categories in both cases implying the creation of binaries such as 'innocent' versus 'guilty' and the 'legal' versus 'illegal'.

[16] Stumpf, "The Crimmigration Crisis."

This chapter tries to look at this criminality of mobility at the West Bengal- Bangladesh border through the narratives of the women incarcerated. First, it starts by looking at the Foreigners Act 1946 as a legal and conceptual tool for criminalisation of illegal/irregular movement made by any non-citizen in India. Then it moves on to understand how various illegal networks tend to facilitate the movement of the crossers in the border and the cities. The chapter then focuses on how women understand their role as border crossers as they negotiate labour as well as long-standing kinship relation across the borders. Lastly, the chapter questions the crossers idea of the criminality of their mobility through ideas of ordinariness of border crossings as well as how crime is understood in popular contexts.

3.2 Criminality of Crossing the Border

The entry, stay, and removal of foreigners in India is governed by the Passport (Entry into India) Act 1920, the Foreigners Act 1946, the Foreigners Order 1948, the Foreigner (Tribunals) Order 1964, Foreigner's Tribunal and Illegal Migrants (Determination Tribunals) 1979, the Citizenship Act 1955, the Citizenship (Registration of Citizen & Issue of National Identity Cards) Rules 2003, the Citizenship Rules 2009, and the Repatriation of Prisoners Act 2003. However, since the respondents of the study were charged under the Foreigners Act 1946, the chapter shall only focus on that.

Foreigners Act 1946: The statute laws of India don't have any uniform nomenclature to define an 'alien is' though they often use the expressions 'foreigner' or 'alien'.[17] The foreigner is a person who is not a citizen of India [Foreigner's Act 1946, Section 2 (a)]. Certain tests have been laid down by the Foreigner's Act 1946 for the determination of the nationality of a foreigner in India in section 8. Unless the Central Government has ordered otherwise, a person

[17] Arun N. Sinha, "Law of Citizenship and Aliens in India," *India Quarterly* 14, no. 3 (1958): 261.

is assumed to retain the nationality they were given at birth. Any subsequent acquisition of a different nationality may be demonstrated by the foreigner. If somebody possesses many nationalities, he may be treated as a citizen of the nation that he currently seems to have the most interest in and sympathies for. If a foreigner does not fit into one of the aforementioned categories and there is any doubt as to his nationality, he must provide proof that he is either a foreigner or a foreigner of a specific class or description. Not only from a security standpoint but also for statistical and other objectives, such as responding to requests from their home states or relatives for information about their whereabouts submitted to the Indian Government, supervising and effectively controlling aliens entering, presenting, and departing from India is important. The statutory laws include their registration, name changes, residences, movements, and employment. The government has broad authority to impose additional restrictions in the right circumstances and to expel them.

The first legislation allowing for foreigner arrest, deportation, imprisonment while being removed, and prohibition was the Foreigners Act of 1864. Because certain clauses, such as those requiring the reporting of foreigners upon arrival, their travel under a licence, and other incidental procedures were only applicable in an emergency, this act's powers were useless and insufficient at regular times. The Foreigners Act 1940 was passed by the imperial legislative assembly during World War II, introducing the idea of "burden of proof," but it still had many of the same shortcomings as the 1864 Act. The legislature eventually passed the Foreigners Act, 1946, by abolishing the 1940 Act, to address all the issues raised by the 1864 Act. This legislation granted the Central Government the authority to establish rules limiting, forbidding, and controlling the movement of foreigners within India. The 1946 Act preserved the 'burden of proof' from the 1940s, which fell on the accused rather than the inquiring party.

It is to be noted that Foreigners act 1946 was codified before India even became a nation, which reinforces the fact that nation building is marked by rules of exclusivity, where

it is important for the state to separate the citizens from the non-citizens. Foreigners act 1946 is a criminal law that criminalises and punishes certain ‘foreigners’ in the country. According to the Committee on Reforms of Criminal Justice System, “The ultimate aim of criminal law is protection of right to personal liberty against invasion of others- protection of the weak against the strong, law abiding against lawless, peaceful against the violent”.[18] Hence according to this definition, Foreigner’s Act protects the citizens from non-citizens. The criminalisation of this non-citizens depicts the notion of them not just being clandestine or unlawfully present in the country but also being threats of any kinds of offences like murder, theft, and trafficking as well.

Section 3 of the Act is a crucial one since it lays out the administrative and legislative power of the state in this context. Sections 3 and 3A of the Foreigners Act of 1946 grant the Central Government an unrestricted and limitless delegation of legislative authority. A “power to make orders” is what Section 3 of the Foreigners Act of 1946 grants. The Central Government is allegedly granted the authority to issue instructions about all foreigners, a specific foreigner, or a class of foreigners by the provisions of this Section and the Subsections and Clauses that follow. The Central Government may issue an order under subsection (1) related to any specific foreigner, or any designated class or description of foreigners, for forbidding, controlling, or restricting foreigners’ admission into India or their departure from or entry into the country.

Section 2 of the Act prescribes not just the authority of the Indian state in deciding and authorising which route a foreigner enters through but also the route that he/she may depart from. It further goes on to say that a foreigner is obliged to give their personal, medical certificates, proof of identification, information regarding place of stay to the state and their

[18] Ministry of Home Affairs, *Criminal Justice System Reforms*, 2022, 5. https://www.mha.gov.in/sites/default/files/2022-08/criminal_justice_system[1].pdf. Accessed on 02 June 2023. The Government of India, through the Ministry of Home Affairs, established the Committee on Reforms of the Criminal Justice System on 24 November 2000 to explore measures for revamping the Criminal Justice System.

movement is not unrestricted.[19] This goes on to show how the idea of foreigner, illusive in nature is meant to be monitored and controlled.

Section 14 of the Foreigner's Act 1946 states that any person found to be guilty under this Act is liable to be sentenced for imprisonment up to eight years and to pay fine.[20] Section 16 states that a person charged under Foreigner's Act can be charged with other laws as well in addition to and not derogation to the provisions of the Registration of Foreigner's Act and Passports Act 1920.[21]

Also, it should be noted that since this Act was codified in British India, some peculiarities can be noticed. Such as the mention of role of pilot of aircraft or master of vessel travelling to India in aiding the entry of foreigner in section 6[22] and Section 13(3).[23] The clear mention of air route and naval route and omission of land route which is more predominant in case of unauthorised entry to the country can be attributed to a time when it was codified and entering British India through air and water route was more common. Also, the word 'Royal' was omitted by the Act 11 of 1957 and British India was substituted by Act 38 of 1947.

However, an important clause of the Act in Section 9[24] states that the burden of proof lies with the accused. This contrasts with how most criminal law Acts in India states that a person is innocent till guilty. Hence, a person charged under Foreigner's Act needs to prove they are not guilty under the charges. This becomes particularly complex in case of borderlands of West Bengal- Bangladesh where countless people are held for making unauthorised movements regardless of their nationality.[25]

[19] See Appendix.
[20] See Appendix.
[21] See Appendix.
[22] See Appendix.
[23] See Appendix.
[24] See Appendix.
[25] This point will be discussed further in the fifth chapter.

Although, the immigration enactment falling under the purview of criminal law means longer terms in the prison before deportation, it also means that those charged under the Foreigners Act 1946 have the same due rights as other prisoners as they can plead not guilty (Chapter 5). Even as vulnerable prisoners, the detainees have less chance of judicial oversight as opposed to those kept in detention centers that makes detainees further prone to arbitrariness.

The Foreigner's Act 1946 does not extend to the citizens of Nepal and Bhutan. Also, after the 2019 extension of Citizenship Amendment Act that allows six identified minority groups (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians) from Afghanistan, Bangladesh and Pakistan to stay in India without attracting any penal provisions of Foreigner's Act, 1946 and Passport (Entry into India) Act, 1920 and the rule made thereunder.[26]

Although there is no certain way of telling how many people were charged under Foreigner's Act 1946, the annual reports furnished by National Crime Records Bureau (NCRB) does give an insight into how many foreigners were detained in the Indian prisons each year. This can give us a rough idea of how many people could possibly be booked under the Foreigners Act 1946, which is perhaps the primary law that effects foreigners unless they have charged for other serious offence.

3.3 Networks That Enable Movements

This section tries to understand the ways that the respondents tried to cross the border with the help of networks and works they were involved in. The extent of cross border movements across the India-Bangladesh border is known to be huge and inestimable. In 2001, the Indian Government had estimated that 3,00,000 immigrants entered India illegally every year and in 2001, they put out the unofficial number of Bangladeshi in India as 12-18 million of which 5

[26] As mentioned in Niraja Gopal Jayal, *Citizenship Imperilled: India's Fragile Democracy* (New Delhi: Permanent Black2021), 25-26.

million settled in West Bengal.[27] Everyone who was interviewed during the course of this study including the state actors stated that the frequency of crossings and illegal activities at the India-Bangladesh border were extensive and uncontrollable. The respondents of this study however, largely accepted that they knew about the illegal nature of the border crossings and what legal movements entailed, such as passports and visas, as opposed to Mehta's respondents who mostly failed to understand concepts of nations as they moved. Although the respondents of this study still struggled to come to terms with criminal nature of it, they were fully aware that they were travelling to a foreign land through unauthorised means which would risk detection by the state.

As discussed in the previous section, lack of passports and visa through authorised means are seen as illegal movements. The respondents of the study said they knew about passports and how it was required to travel to another country. It was for various reasons they said they chose to bypass the requirement and rather adopt a more common way of moving across the border something they had seen happen rampantly. There is an array of such reasons why these women chose to bypass the state. *Rumpa,* 24, had studied up to first year of college.[28] She knew about passports as she had come to India with one before, but since this time her crossing was an impulsive decision following a fight at home, she did not think it would be a big deal this time. *Amina* had come to India nine years ago with her Indian husband through passport but her visa had expired since then and she had not renewed it.[29] *Puja* said with a tinge of non-confidence that she had made a passport but did not carry it during the crossing.[30] *Mumtaz,* 30, who had earlier worked in Saudi Arabia for five years crossed the border with her

[27] As cited in van Schendel, *The Bengal Borderland*, 221.
[28] Interview conducted on 18 July 2022 between 12 pm to 1pm at a correctional facility of Kolkata. Name and location of speaker undisclosed to maintain anonymity.
[29] Interview conducted on 03 August 2022 between 12 pm to 1pm at a correctional facility of Kolkata. Name and location of speaker undisclosed to maintain anonymity.
[30] Interview conducted on 03 August 2022 between 12 pm to 1 pm at a correctional facility of Kolkata. Name and location of speaker undisclosed to maintain anonymity.

husband because she did not have money to get passports this time as things were financially abysmal at her home.[31] *Amrita Bala*, 45 and the oldest of the respondents, said she had her passport made but since she was not wearing glasses at the time she ended up carrying the wrong passport.[32] However, *Amrita Bala* also said she had paid a sum of 25,000 INR for two a relative and herself to a tout for the crossings. *Asha,* 25 did not make passports due to ill health during the time of transit.[33] *Reshma*[34] *and Sapna*[35] could not get passport due to covid pandemic. Some of these accounts do show discrepancies however, it also shows how all these respondents knew about the existence of a document such as passport, hence, also knew about the legal way of moving across the borders. Most of them had also paid a good sum of money to the border touts to bypass this step. In this context, these touts become very important reflecting larger networks and connections at the disposal of these crossers.

Ghosh argues that the ubiquity of mobile transnational connections in the borderlands works together in creating a system run by clandestine crossings through gendered power relations and embodied experience of mobility.[36] These networks extend beyond the borderlands onto the cities where transnational networks function just as well. These networks help manoeuvre not just movement and apprehensions at the border but also lives in the cities. The touts form an indispensable part of border networks facilitating crossings for money often having networks in not one side of the border but also the network extending to both sides at times. For instance, *Reshma* had embarked alone from her place in Bangladesh but was clubbed

[31] Interview conducted on 10 August 2022 between 12 pm to 1 pm at a correctional facility of Kolkata. Name and location of speaker undisclosed to maintain anonymity.
[32] Interview conducted on 18 August 2022 between 12 pm to1 pm at a correctional facility of Kolkata. Name and location of speaker undisclosed to maintain anonymity.
[33] Interview conducted on 24 August 2022 between 12 pm to 1pm at a correctional facility of Kolkata. Name and location of speaker undisclosed to maintain anonymity.
[34] Interview conducted on 27 July 2022 between 12 pm to 1 pm at a correctional facility of Kolkata. Name and location of speaker undisclosed to maintain anonymity.
[35] Interview conducted on 18 July 2022 between 12 pm to 1 pm at a correctional facility of Kolkata. Name and location of speaker undisclosed to maintain anonymity.
[36] Sahana Ghosh, *A Thousand Tiny Cuts: Mobility and Security Across the Bangladesh-India Borderlands* (United States: University of California Press, 2023), 5.

with a group of twenty at Bongaon border which, too, she had managed to cross successfully.[37] She had paid the tout 12,000 INR for one-way crossing and once she had managed to cross the border, there was an Indian agent arranged for her. However, it was at a nearby station that she was arrested when she failed to give her address to a policeman. The agent had escaped by then. The fact that there was an agent to help her beyond the border facilitated by her agent on the Bangladesh side goes on to show how such border networks also extend beyond its territoriality proving not just the existence of established machinery but also the extent and presence of such networks.

These networks comprise of touts, contractors, local political persons and so on that ensures not just smooth passage across the border but also jobs and clandestineness in the cities. Border brokers and /or such rooted networks are those who can "get things done" by selectively transmitting and filtering ideas, power, and resources across potential choke points. Consequently, borders inhabit zones of exchange, connectivity and security, signalling their own spatiality[38]. Such networks are recognised for their ability to understand the knowledge systems and life worlds on both sides of these synapses.[39] Take the case of *Amina,* who had been living in Mumbai for nine years prior to her arrest in April 2022. She was given the details of the tout that would help her cross the border in South Bengal by someone who lived and worked in Mumbai at the time. “The *dalal* did not join me in the crossing but he told me once I have reached on the other side, there will be someone waiting for me”*, Amina* said.[40]

There are often other actors and acts that enable such crossings, too. Facilitating such crossings does not solely depend on the border agents/touts as documents (forged) also carry weightage in unauthorised crossings as well. Documents help mobility in the cities and towards

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[37] Interview conducted on 27 July 2022 in Kolkata. Name anonymised.
[38] Chris Rumford, "Rethinking European Spaces: Territory, Borders, Governance," *Comparative European Politics* 4, no. 1 (2006), 134.
[39] Patrick Meehan and S. Lawn Dan, “Brokered Rule: Militias, Drugs, and Borderland Governance in the Myanmar-China Borderlands,” *Journal of Contemporary Asia* 53, no. 4 (2022): 561–583.
[40] Interview conducted on 31 August 2022 at a correctional facility in Kolkata. Name of the speaker anonymised.

the border. Also, the documents often give leeway to the crossers who pose as Indians, and although there is a likeliness of them being arrested nonetheless due to the extra-legal nature of such crossings, the idea of them possibly being citizens perhaps does not necessarily invite the same amount of mistreatment that being non-citizens do (more on chapter 5). Such rampant apparatuses that take care of forgery and manufacturing of documents play a key role in maintaining cross-border mobility. This in fact becomes a cross-border practice at spaces beyond the frontiers as such undocumented and irregular presence carries the same meaning of illegality in the internal spaces too as identification of individuals continues to exist and evasion of detection continues to happen.

Many of the respondents had forged documents made by families or agents who facilitated their movement in the cities. *Sehada Bibi,* 30 had been working in Kolkata for the past 10 years before her children were born.[41] She had forged documents made through two men (who were siblings) living in Barasat who she said made a living out of offering such services to people coming from Bangladesh.[42] After having crossed the border countless times with her husband and then her kids after his passing, *Sehada Bibi* found these networks handy for navigating urban spaces as a foreigner. She remarked,

> "My neighbours knew I was a Bangladeshi, the party people[43] also knew. I was never asked for any sort of money for being a Bangladeshi. However, I did make a point to not let everyone know about my foreign identity. It did not matter really, my employers knew I was Bangladeshi, they had no issues with the fact. There are these two men who are brothers, they make Aadhaar cards for everyone who come from Bangladesh and

[41] Interview conducted on 27 July 2022 between 12 pm to 1 pm at a correctional facility of Kolkata. Name and location of speaker undisclosed to maintain anonymity.

[43] Here 'party people' implies people belonging to local political groups and party often looking after community matters.

many people do. My job was also arranged by someone who was already working in Barasat."[44]

Likewise, *Arifa*, 35 whose brother worked as a contractor in Mumbai would call people from Bangladesh for jobs.[45] *Arifa* made bags in a home industry in her village in Bangladesh before coming to Mumbai three years ago with her husband. Although her family and children remained in Bangladesh, she would often travel between the two nations with the help of an agent. The fact that her brother in Mumbai would have jobs ready for people like herself coming in from Bangladesh further shows the kind and the extent of the border networks that existed as far as Mumbai from the borderlands.

Singer and Massey invoke Pierre Bourdieu and Loïc Wacquant's social capital theory while discussing such border crossings.[46] According to Bourdieu and Wacquant, "Social capital is the sum of the resources, actual or virtual, that accrue to an individual or a group by virtue of possessing a durable network of more or less institutionalised relationships of mutual acquaintance and recognition."[47] A large part of the migration depends on the neo-classical mechanism of the market where Bangladeshi workers are preferred due to their cheap labour as most respondents of the study had moved for work. Here Massey and Espinosa argue that the social capital play a huge role in facilitating such movements as well as acting as a conduit for information about jobs and wages in the host market. This then gives such migration an enduring self-perpetuating character as can be clearly observed in the case of Bangladesh-India migration. The established networks comprising of border touts, document forgers, and contractors on both sides of the border reflect a similar working of social capital as well as

[44] Interview conducted on 27th of July 2022 between 2 pm to 3 pm at a correctional facility in Kolkata. Name of the speaker anonymised.
[45] Interview conducted on 10 August 2022 between 12 pm to 1pm at a correctional facility of Kolkata. Name and location of speaker undisclosed to maintain anonymity.
[46] The study is based on the US-Mexico border crossings. See Singer and Massey, "The Social Process".
[47] Pierre Bourdieu and Loïc J.D. Wacquant, An Invitation to Reflexive Sociology (Chicago: University of Chicago Press, 1992), 119.

human capital that seeks to enable and perpetuate the ongoing flux of people as well as labour. The social capital of people helps navigate border spaces through one's own repeated experience of having crossed the border, the collective wisdom here playing a key part. Besides, the general human capital comes at the disposal of the crossers who choose to hire paid services while crossing the border which are available at the borders.[48] These services are again part of the social capital as there is always someone who can refer the touts for services. Generations of border crossers benefit from the collective wisdom and social capital of past border crossers which go on to make new entries also easier giving it a recognised as well as ordinary and illicit character.

At the same time, such rooted transnational setups not only demonstrate the frequency of cross-border movement that these women had carried out in the past but also paint a picture of the ordinariness of such movement that no extra help was availed. *Sehada Bibi* was travelling with her kids when she was arrested.[49] She had her mobile phone, some cash and Aadhaar card on her person, which was seized by the border guards. She was making the crossing unassisted. On the other hand, such unassisted crossings also show the seamlessness of borders where one nation flows into another, not just making border crossings unremarkable but also the notion of borderlands rather fluid. The materiality of the border lies in making 'remarkable'/visible this ordinariness.

Many of these respondents were minors when they had first travelled to India, making them ineligible for leaving their country alone. And many had first moved to India and crossed the border frequently making such crossings redundant and less risky. This network of families and friends coming together to facilitate or seek illicit assistances raises the question about why

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[48] Singer and Massey refer to human capital as the individual traits and characteristics that boost performance towards achieving specific outcomes. In the context of crossing the border successfully, general human capital encompasses performance-enhancing knowledge or experience that anyone might have, regardless of whether they have ever been to the United States. This includes aspects such as education or experience in the Mexican labor market. Singer and Massey, *The Social Process of Undocumented Border Crossing,* 567.

[49] Interview conducted on 27 July 2022 in Kolkata. Name anonymised.

the women choose to move in such a way that puts them at risk of getting arrested and jailed. There could be many reasons. Perhaps, these respondents hailing from poor rural sections are wary of engaging with the state, perhaps they do not have the resources such as proof of employment, travel fees, or documentations for such process, or perhaps they do not exactly understand the legal way of transnational migration. Conceivably, the historical nature of such border crossings makes it easier for them to undertake such methods that must go through the bureaucracy, where the financial or personal gain outweighs the risk.

Border Touts: Tout-assisted border crossings are indicative of the rampancy and the nature of the border crossings. A large part of the respondents of the study had taken the service of touts or brokers, infamously called '*dhurs'* by border guards or '*dalals*' by the female prisoners. These touts work through networks, in the cities, and in and across the borders, and these networks could also very well include border guards, aware of the fact that manning a border such as this one is not going to stop the flux. *Sapna* had paid a sum of 20,000 INR to the tout arranged by her sister to help her cross the border.[50] *Fatima*'s father had sought the service of a tout to help her cross the border but had not paid him the money yet.[51] And *Shilpa* tried crossing the border with her husband through an agent arranged by a friend for 15,000 INR for two persons. In all these cases the services were arranged by family or friends of the respondents. Hence, the common thread in this account and almost in all the cases, barring a few, is the presence of a tout who facilitates such movement. At the outermost checkpoint of a highly active border points (BO3) of South Bengal, a border guard called 90 percent of border residents as *chor*. Here *'chor'* did not refer to the literal Hindi translation[52] of the word as 'thief'

[50] Interview conducted on 18 July 2022 in Kolkata. Name anonymised.
[51] Interview conducted on 18 July between 12 pm to 1 pm at a correctional facility of Kolkata. Name and location of speaker undisclosed to maintain anonymity.
[52] The said officer spoke in Hindi.

but rather 'deviant'. Clearly frustrated with having to work at one of most remote border areas of the state known for its porosity, this officer remarked,

> *These people have no fear, no love for the country and no sense of law. They know about all the law, NDPS Act[53] everything. If you question them, they will tell you on your face that they know the law and even if they are arrested, they will come out in a few months. These people facilitate trafficking and smuggling. Most women who come are trafficked. There are touts in the borderlands who facilitate such movement. Everyone in the village knows who the tout is… they are also often arrested and jailed, but they get away after spending some days in police remand. The police in charge of these cases are also complicit and the local political bodies benefit from such smuggling of people. During COVID-19, the crossings had stopped, but until this day I alone have registered around 4000 such cases.[54]*

After a brief interaction with the said officer, the researcher had to enter further into the village to reach the border outpost where the Company Commander was stationed. A makeshift office of tarpaulin walls to keep it cool during the summers had boards with photographs of smugglers arrested with gold and money. Beside it was another series of photographs of Bangladeshi fugitives who have most likely crossed the border. Since the nature of this border region was tense, the atmosphere was not as ordinary as was with the other border villages, also porous but not as infamous. The Company Commander too, spoke in a similar vein about how the border crossings are rampant and not possible to check fully. A subordinate officer sitting next to him soon remarked as soon as his senior left the room,

> "The work pressure is too much to handle at times, these Bangladeshi cross the border so often. It becomes so difficult to patrol along these lines, especially during the winter

[53] See Narcotic Drugs and Psychotropic Substances Act, 1985.
[54] Interview conducted on 24 September 2022 at border outpost in North 24 Parganas between 12.30 pm to 2 pm. Name of the place and the speaker not mentioned to maintain anonymity.

when there is such dense fog. But we cadets are punished if anyone comes to know we failed in catching the crossers. These activities can never be stopped fully, these *dhurs* are everywhere."[55]

The touts were those most blamed for such scenarios by most border forces interviewed during this study. Touts were also rather omnipresent in all the discussions with the prisoners about how they moved across the border.

The visible absence of any sort of collective national identity or perhaps the preferred choice of national identity at this borderland renders the border populace in a perennial state of suspected loyalty. The checkpoint guard highlighted the villagers as 'deviants' in one broad stroke, calling them potential criminals for knowing about the law. *Dhurs* come into this context to reaffirm such notions as loyalties are contested as villagers are often accused of sheltering border crossers through these touts. Many times, *dhurs* also end up taking shelters with the families in these villages when they need to keep low.[56] Although governance does exist in these areas, it does so within a framework in which established social structures and legal frameworks are challenged and being compromised, and where formal state institutions are still scarcely embedded. The *Officer in Charge* of a major police station that holds jurisdiction over ten border villages, remarked on how the border villagers are also complicit in border crossings as they often shelter Bangladeshis and call them as relatives when questioned after they have crossed the border, and they do it mostly for money. He pointed,

"Young Muslim people come over, convince Hindu people to pose as their parents. They are given some money like 5000 rupees (INR). These villagers then claim that their ward was born in other states while they had gone for work and hence had no birth certificates and ask the authorities to issue one. Once the birth certificates are made,

[55] Interview conducted on 24 September 2022 at border outpost in North 24 Parganas between 12.30 pm to 2 pm. Name and location of the speaker undisclosed to maintain anonymity.
[56] Sahana Ghosh, "Cross-border activities in everyday life: The Bengal borderland," *Contemporary South Asia* 19, no. 1 (2011): 52.

making other documents is easy. And government offices are also corrupt and many times the people who work in these offices come from other areas and do not know about the people on a personal basis which benefits the crossers."[57]

Under such practices of illegal/illicit practices,[58] the blame often oscillates between the two border forces.[59] The BSF blames the police for being lenient with the trials letting off arrested agents after a few days of police custody and for being complicit in 'illegal' activities around the border. Meanwhile, the police blame BSF for not guarding the border properly.

However, such spaces also go on to become a playing field for extortion and swindling. The tout that *Asha* had sought for her crossing told her that a 'setting'[60] was arranged with the patrolling BSF guard and that she wouldn't be caught.[61] Instead, Asha was caught by the BSF. During her arrest she had a mobile phone, watch and 9500 INR on herself of which only 120 INR and mobile phone were registered. Similarly, *Shilpa* was also assured by her tout that she and her husband would not be apprehended while crossing the border before putting them in separate groups.[62] Her husband made it through, but *Shilpa* was arrested. *Shilpa* felt like the tout had misled them about the arrests. Likewise, *Uma Mondol,* who was on her way to meet her relatives in a town in West Bengal, was arrested when her tout abandoned her on the pretext of getting a ticket for her as she waited at a railway station.[63] Besides this, many of the respondents also stated how their belongings would be taken by the touts before their crossings on the pretence that they would returned to them once they had made the crossing. In *Reena*'s

[57] Interview conducted on 06 April 2022 between 3 pm to 5 pm at a border police station in North 24 Parganas. Name and location of the speaker undisclosed to maintain anonymity.
[58] Refer to the second chapter.
[59] Inference made from interviews with police personnels and BSF personnel.
[60] A sort of informal deal. Asha used the word setting to explain that an arrangement was done by the tout and the patrolling BSF guard for her to cross the border without getting arrested.
[61] Interview conducted on 24 August 2022 in Kolkata. Name anonymised.
[62] Interview conducted on 03 August 2022 in Kolkata. Name anonymised.
[63] Interview conducted on 27 July 2022 between 12pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

case, she was headed to Mumbai for work and hired a tout.[64] However, after seeing that the group before her got arrested at the border, she decided to drop the plan. But since the agent had already taken money from her, he pushed her in which led to her arrest.

As Bengal borderlands are replete with instances of voluntary and coercive movements, Willem van Schendel argues how the distinction between self-smuggling, trafficking, commuting and voluntary movements are not always clear. Many times, the border crossings, especially those carried out for economic reasons, are not coercive in nature but the conditions and terms of the jobs are often misrepresented or misinformed by the middle person in such embedded border networks.[65] One such incident happened in the case of *Mandira*, the only respondent from the study who had a rather unpleasant experience during the transit. *Mandira* had a good life in Bangladesh, "good enough" as she said.[66] Until, an agent persuaded her to move to India for a better life. Besides her father, no one knew *Mandira* was crossing the border with an agent. It was only after she was kept in a hotel that she found shady, that *Mandira* ran and reported to a nearby police station about her being trafficked. A case was lodged against her thereafter and she was charged under Foreigners Act 1946. *Mandira*'*s* case shows the uncertainty that exists in these border crossings, no matter how embedded or historical, they are, where although the bodies are negotiating agency in many ways, they are also prone to the perils of transnational movements.

3.4 The Mundanity of Border Crossings

The operating of *dhurs*, the established networks that often also includes border state actors mirror the long-drawn negotiations of resources at the borderland between the people of both

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[64] Interview conducted on 15 September 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[65] van Schendel, *The Bengal Borderland*, 228.
[66] Interview conducted on 06 September 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

nations and the enduring itinerant familiarity that have helped continue it. Furthermore, such generational, passed on and historical border crossings are reflective of the mundanity of it. Ghosh puts it in her essay how cross border movements at North 24 Parganas are something that is carried out indistinctly, where lives at the borderlands are intertwined irrespective of which nation one belongs to and often the state is aware and unalarmed about such realities.[67] Thus, continuing cross-border exchanges normalise the border by normalising the habit of refusing total severance.[68] Hence, those who inhabit these spaces of continuous interconnectedness of crossings across the nations are also acquainted with the mundanity of it; the touts, the crossers, the borderland residents as well as the border forces.

Wade Graham compares the border enforcement rules as one where irregular border crossers are quickly arrested only for them to be let go so that they can carry out the same later.[69] In both ways, the interests of the border forces to detect and arrest as many crossings as they can is fulfilled, not necessarily to avoid such activities in the future but also more as a career interest of the officers.[70] The manner in which border crossers are arrested, immediately processed, and deported makes not just the state but the immigrants also anticipative of such arrests; so that they can get back and cross the border right after making such processes.[71] Although most of these ideas was largely posited vis-à-vis the US-Mexico border, it is relevant in the India-Bangladesh border, too, since the BSF makes hundreds of arrests every year at the border, many of who are repeated offenders. However, such movements have gained a more routine character over the time. Such arrests, though rampant, are still in the minority as there

[67] Sahana Ghosh, "Anti-Trafficking and Its Discontents: Women's Migrations and Work in an Indian Borderland," *Gender, Place & Culture* 22, no. 9 (2014): 1220–1235.
[68] van Schendel, *The Bengal Borderland*; Ranabir Samaddar, *The Marginal Nation: Transborder Migration from Bangladesh to West Bengal* (New Delhi: Sage Publications, 1998).
[69] Wade Graham, "Masters of the Game: How the U.S. Protects the Traffic in Cheap Mexican Labor," *Harpers*, July 1996, 35–50.
[70] Singer and Massey 1995, 564
[71] Josiah McC. Heyman, "Putting Power in the Anthropology of Bureaucracy: The Immigration and Naturalization Service at the Mexico-United States Border," *Current Anthropology* 36, no. 2 (1995): 261–287.

is no estimation of how many people go on to successfully cross the border.[72] In a similar vein, a Kolkata *high-court lawyer* stated that this movement of people across the India-Bangladesh border could never be measured or curbed. Rather, the arrests are a way for the border forces to fill the arrest quota of the BSF officers, and additionally give the impression that the BSF and the state is very much in control of border.[73] On the other hand, despite the arrests, these repeated crossings demonstrate how the border is navigated and negotiated by the crossers albeit a strong military presence. The frequency and nature of such border arrests have also gone to raise questions about the need and efficiency of such actions which largely come off as futile but violent.

Hence, making extra-legal (illegal) cross-border movements and consequently being arrested for that also becomes a learning ground for people as opposed to what the state would like.[74] Interception, complicity, arrests or multiple arrests often make such interactions rather mundane and less cautionary. The crossers with each crossing become less wary of the movement and as they become less wary, they are more likely to travel without the help of border agents adopting strategies like choosing a less risky path or a particular time to avoid detection.[75] This also happens as repeated crossings prove that although the risk of detection is inherently high at such borders, the odds of making it across are always more.[76] Embarking on such repeated journeys or seeing it happen regularly also gives it an ordinary character further muddling the criminality of it. Correspondingly, Mehta's work shows how Bangladeshi women who were arrested at a given point in time said they knew ways to evade such arrests in future

[72] See Chandan Nandy, *Illegal Immigration from Bangladesh to India: The Emerging Conflicts* (Cambridge, MA: MIT Center for International Studies, 2015); Pranati Datta, Push-Pull Factors of Undocumented Migration from Bangladesh to West Bengal: A Perception Study, *The Qualitative Report* 9, no. 2 (2004): 335–358; Samaddar, *The Marginal Nation*.
[73] Interview conducted on 10 December 2022 between 10am to 12 pm at the lawyer's residence in Naktala, Kolkata. Name of the speaker undisclosed to maintain anonymity.
[74] Singer and Massey, "The Social Process of Undocumented Crossings", 574
[75] Ibid, 567-75
[76] Ibid, 575

crossings, not just subverting the prescribed norms of travelling but also showing how repeated crossings, as well as detection, offer insights for future movements.[77]

Hence, many of the respondents struggled to grapple with the idea of criminality and incarceration against the ordinariness of border crossings as they moved and continuously saw such movements across the border. However, the point being made is not to question the moral or legal prerogative of these activities but rather to highlight their ordinariness since the mundanity and everydayness of cross-border activities stand out as the most enduring feature in the conversations with the women. *Alifa,* 24, had first crossed the border two years ago when she came to work as a domestic help in Barasat. Her job was arranged by someone hailing from her village Sonadanga in Khulna, who was also working as domestic help in Barasat. *Alifa* said she and her friend had travelled across the border countless times within these two years, so much so that she had not even sought the help of a tout when she was arrested. "Many women cross the border like that every so often, I did too. I would not have returned to India after this. I had not made any Indian documents either," she said.[78] Having no sort of correspondence with her family back in Bangladesh during the three months she had been in prison,[79] *Alifa* later asked the researcher if the latter could arrange a phone call for her while showing a wound on her leg she had got in the prison.[80] There is no certain way of knowing if *Alifa* would have returned to Barasat after this or not, or if this was her first time coming in contact with the state in any form but the significance in her telling lies on the fact that women such as the respondents of this study very well knew how the borders had to be crossed and how these borders were very much porous. Similarly, *Sehada Bibi* crossed the border all the time with her

[77] Mehta, *Women, Mobility and Incarceration*.
[78] Interview conducted on 18 August 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name of the speaker undisclosed to maintain anonymity.
[79] Alifa had been in the prison for three months at the time of the interview. She was still an undertrial prisoner at the time of the interview and had not received a sentence.
[80] Indian prisoners have the right to communicate with the outside world. See, National Human Rights Commission, Rights of Prisoners (New Delhi: NHRC, n.d.), 13. However, the respondents had no provisions for making phone calls in the prison. Many of the respondents had no correspondence to their family and were not allowed to contact them even during their arrest.

husband through different routes but after his passing, *she* continued moving across the border even with her kids.[81] Although she had been evading detection for years, she said she had not anticipated arrest since many people from her village, Satkhira in Bangladesh, continued to make such movements without getting arrested till this day.

Using Asef Bayat's concept of non-movement[82], Sabine Hess elucidates that collective movements such as crossing the border, which are carried out individually, as fragmented and everyday practices, and not driven by a single ideology, cause social transformation as people are not just defying political orders but also evading the detection of such defiance in myriad ways.[83] In a similar vein, Reece Jones notes that there is a refusal in such acts to submit to the territorial order of the state in the borderlands and continue life as normal.[84] Such seemingly uneventful crossings for the respondents, uneventful until they come in contact with the state, need not always come from a place of resistance although any sort of non-compliance could be observed as a form of resistance.[85] However, van Schendel argues how the act of ignoring the crossing of the border immediately turns into defying the border as soon as the crossers come into contact with the state.[86] This unobstructed flow of movement at the borderlands of West Bengal can also be observed as a display of the porous and inefficient performance of militarised biopower where the ambition of stopping any sort of cross-border movement has

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[81] Interview conducted on 27 July 2022 in Kolkata. Name anonymised.

[82] Asef Bayat, "*Life as Politics: How Ordinary People Change the in Middle East*", (California: Stanford University Press, 2009), 19-22. Bayat's concept of "non-movements" refers to informal, everyday actions taken by marginalized groups to advance their interests. Instead of formal protests or organized movements, these individuals effect change through persistent, mundane activities. This can reshape urban landscapes and force governmental responses. Non-movements demonstrate the power of ordinary people to enact social change without traditional organization. The idea emphasizes how small, collective actions can lead to significant social transformations.

[83] Sabine Hess, *"Border Crossing as Act of Resistance: The Autonomy of Migration as Theoretical Intervention into Border Studies,"* in *Resistance*, ed. Maria K. et al. (transcript verlag, 2017), 91-92.

[84] Reece Jones, "Spaces of Refusal: Rethinking Sovereign Power and Resistance at the Border," *Annals of the Association of American Geographers* 102, no. 3 (2011): 685–699;

[85] James C. Scott, "Everyday Forms of Peasant Resistance," *The Journal of Peasant Studies* 13, no. 2 (1986): 5–35.

[86] van Schendel, *The Bengal Borderland*, 212.

However, to opine that these women were resisting the state, deviating from the norm or these motivations superseded idea of nation and nationality or all of the above is beyond the scope of this thesis in its current form and can perhaps be looked upon more to understand the nuances of cross border mobility.

proved to be largely unsuccessful. For instance, this was the first time *Sapna* was crossing the border to work in Hyderabad. She said she always had the option to leave the job in the course of time and go back to Bangladesh, further showing how border crossings were always a viable option and the easiest way to traverse between the nations for the crossers who come for work. Explaining the porous nature of the border, *Sapna* remarked, "So many people cross the border every day, their bodies are bruised due to fences."[87] *Sapna* who was arrested in Kolkata after a local filed a complaint about possible trafficking, said she crossed the border through a river at night and could see the patrolling officer at the border, "I saw the guard, but I don't know if he saw me or not".[88]

This extent of rampancy of border crossings informed not just the respondents understanding of the ordinariness of their act but also the unpredictability of what awaits while making such movements. Although, the idea of making unauthorised and 'criminal' movements at a heavily manned border may come across as a matter of risk, such ongoing practices of mobility also unravel the familiarity and methods of the respondents' navigation of such spaces. This also largely question as what factors particularly guarantee evasion or increases the risk of arrests at the border. To elaborate the point further, one can look at *Rumpa*'s case.[89] *Rumpa,* 21 had a fight with her husband who works in Dhaka, following which she decided to visit her uncle's place in Howrah for a few days. It was during the pandemic, and she had travelled to India before with a passport. So, *Rumpa* walked up to the border guard at the outpost in the border and asked him if she could cross over, this time without any documents. The border guards told her she could not cross the border without proper authorisation and that she would have to return. However, on the orders of his superior, the guard arrested her on the count of crossing the border illegally. *Rumpa* said she did not know

[87] Interview conducted on 18 July 2022 at between 12 pm-1pm at a correctional facility in Kolkata. Name of the speaker anonymised.
[88] Interview conducted on 18 July 2022 in Kolkata. Name anonymised.
[89] Interview conducted on 18 July 2022 in Kolkata. Name anonymised.

the absence of passports would land her in prison, though she knew about the existence and importance of it. Her case not only demonstrates her weak understanding of the legalities around border crossings but also shows the puzzles that the state runs into in such situations. The absence of such a clear set of guidelines in dealing with such situations was made clear as the guards assured *Rumpa* of her return, but the Company Commander had a different set of instructions. When the researcher asked a senior officer BSF officer if any such incidents happened at the borderlands, he quickly assured that even if such an occurrence were to happen, there would be no arrest, and the person would be sent back. However, that is clearly not what had transpired in *Rumpa's* case. The difference in thought and action of these three state officials in question, the guard, the Company Commander, and the senior officer, reflects of the absence of clear guidelines but more than that it shows how the state often must depend on their individual intuition and discretion when it comes to dealing unique instances of border movements.

Though detection does occupy a larger meaning in the practices at the border but, detection, for one, cannot be accurately measured at such active frontiers. Hence, the more measurable and quantitative factor would be recorded arrests. Shahram Khosravi, through his own experience of being an illegal traveller between multiple countries, compares himself to the border. As the border transcends the categories of territory, nationality and practice and graphs itself onto people, people embodying the border, thereby also embody inequality of selection, rights and mobility.[90] Although the larger discourse on filtering of mobility largely looks at it through the neo-liberalism lens and very rightly so,[91] in this case one also needs to look at the uncontrollable nature of the border. It is here, bordering as a practice may be understood as a practice that relies on both the geographical locations of the frontiers and

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[90] Shahram Khosravi, "The 'Illegal' Traveller: An Auto-Ethnography of Borders," *Social Anthropology* 15 (2008), 323.
[91] For more, refer to Chapter 2, footnote n. 90.

identity of the person in question; with political boundaries becoming both the site and object for enquiry, a person's identity as citizen or non-citizen continues beyond the geographical limits of borders and boundaries.

Furthermore, such complexities also brought dilemmas and contradictions for these women who had made several such movements in the past and to further explain what they think made them fall prey to arrest at a border where countless un-arrested crossings are made regularly. Besides the idea of criminality, which will be touched upon later in the chapter, these women offered two other explanations for their arrest. First, the idea of fate and second, the difference in border guards between the two nations.

Kopal (Fate): Many of the respondents were travelling with friends or partners at the time of their arrest, and during most of these crossings, the touts had clubbed them into separate groups. Hence, so it happened that a group would make it unscathed and undetected on the other side, whereas the other group would be arrested. All this would happen in a difference of minutes. *Sameena,* originally from Komila in Bangladesh, blamed her "kopal" i.e. her fate for being arrested. She had first come to India six months before her arrest and worked near Howrah station along with her friend. After the passing of her parents and her husband leaving, she said she had no family to look after. She left her job in the garment industry in Bangladesh due to problems at home, and coming to India was her escape. Visibly angry at her incarceration and the poor living conditions in the prison, *Sameena* remarked,

> "I don't like being here, eating the same vegetable every day, I have no friends in this prison. I was crossing the border while returning to Bangladesh with my friend with an agent's help. He made us cross the border separately. She made it across easily, but I was arrested… after ten minutes... a mere ten minutes. You know she has people to take care of her, but I have no one to look after me. It all depends on your kopal, I had

crossed the border through the same route before I was not arrested then. Your kopal decides everything, not just your arrest but also how long you will be in jail, it could be one month, it could be six months."[92]

Sameena, visibly finding it hard to come to terms with her situation, asserted to the researcher and her fellow prisoners, "I left because I did not feel at home in my house. Now if I go back, my sister won't let me. But I did not do *kharaap kaaj*. I will come back to India. Here, I will have *Swadhinta* (freedom)." On listening this, a fellow interviewee asked her, "Tumi ekhane ashbe ki kore… tomake abar greftaar kore pherot pathiye dewa hobe (How will you come here, you will again be arrested and sent back)." Sameena nodded and said that she had made up her mind.[93]

Mumtaz was crossing the border with her husband in separate groups. Her husband made it across, but she was arrested.[94] It was after five days that her husband tried returning through the same border when he was arrested and sent to the same jail as her. Similarly, *Puja* was also arrested at the border while her husband was in a different group. She still did not know of the whereabouts of her husband and if he had made it safely or not, at the time of the interview.[95] The notion of fate and mundanity came up frequently in these discussions, which is perhaps noteworthy because it questions the border crossers' views about the forbidding and illegality of such movement while simultaneously establishing mobility in these borderlands as frequent and widespread. In such accounts, the women saw their arrests as unfair since for them they were not the only ones to have embarked on such travels but were the only ones who were caught.

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[92] Interview conducted on 06 September 2022, between 12 pm to 1pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[93] Interview conducted on 06 September 2022 in Kolkata. Name anonymised.
[94] Interview conducted on 10 August 2022 at between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[95] Interview conducted on 03 August 2022 in Kolkata. Name anonymised.

On the other hand, conceptualising mobility, and concepts of criminality and legality is perhaps more cumbersome for non-citizens than it is for citizens. Therefore, the sense of fate seemed to alleviate these maladies of incarceration in such accounts where the women were both angry and perplexed at how the same border and similar ways of moving around it meant different consequences at different times. It also appears to absolve oneself of the extent of the said 'criminal' nature of it as it is in fact an 'ordinary' act. Besides the idea of fate as a reason for their arrest, the other factor they offered was the difference in their interaction with their home border guards.

Difference in State Interactions: As discussed in Chapter 2, state actors cannot be seen as a uniform body of agents as they vary in their organisation, ideology and temperament. Border forces are often perceived as repressive agent, and a large body of research supports the idea of BSF as a repressive, violent corp. However, many of the respondents stated how their interaction with the BGB was quite the opposite. *Sapna* said that BGB is known for using force but not for making arrests.[96] She further added that if anyone is held at the border, then they are shooed off, scolded, or at the most given a beating before their guardians are called to fetch them. *Rumpa,* sitting next to *Sapna,* went on and added that BGB is also known to take bribes and let people off. She went on to say, "I did not have money to bribe BSF. Perhaps, had I had some money on me, I could've bribed my way out like people do with the BGB."[97] *Amina,* who said the Indians were treated better in Bangladesh than how she and other Bangladeshis were treated in India, remarked how even the BGB treats Indian crossers better and makes legal arrangements for them to return to India.[98] BGB's way of negotiating with the crossers by not arresting them on contact and sending them back home stands in stark contrast to how such

[96] Interview conducted on 18 July 2022 in Kolkata. Name anonymised.
[97] Interview conducted on 18 July 2022 in Kolkata. Name anonymised.
[98] Interview conducted on 03 August 2022 in Kolkata. Name anonymised.

interactions with BSF have often been described as one that is intimidating and violent, not just by the respondents but through other sources as well. On the other hand, the border guards interviewed during this study would often blame the BGB officers for letting people pass through the border into India.

Perhaps the Border Guards Bangladesh (BGB)'s more compassionate and less hostile attitude adds to the respondents' misconception about the dangers of crossing borders. The border state apparatus of each country is similarly distinguished by the BSF and BGB; for example, while Bangladesh's border lacks ultra-militarised infrastructure and projects, India's border is heavily militarised with increasing fencing projects and ultra surveillance techniques.[99] BGB has also often called out the BSF for their aggression and hostility at the borders.[100] Nonetheless, the respondents encounter with two border forces with different temperaments did have an effect on how they conceptualised cross border mobility. Here, a question arises about how the state is not uniform in its temperament and in its mode vis-à-vis the three ways in how a state chooses to react to border activities as Ghosh argues.[101]

3.5 Illegal Presence but Licit Work

Against such navigation of militarised bordered spaces where crossers continuously put themselves at risk of arrests no matter how low the probability of that is, also raises questions about how these crossers navigate their identity as foreigners in the cities once they cross the border. This section looks at how these women carry their identity as of being illicit workers

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[99] Sahana Ghosh. "Relative Intimacies: Belonging and Difference in Transnational Families." *Economic and Political Weekly* 52, no. 15 (2017), 48.
[100] "BGB Strongly Condemns Border Killing at Meeting with BSF," The Business Standard, February 22, 2020, https://www.tbsnews.net/bangladesh/bgb-strongly-condemns-border-killing-meeting-bsf-940551.
Accessed on 12 January 2022.
"Bangladesh Border Force Asks for Indian Border Security Force Cooperation to Fight Cross-Border Smuggling," *The New Indian Express*, July 16, 2019, https://www.newindianexpress.com/nation/2019/Jul/16/bangladesh-border-force-asks-for-indian-border-security-force-co-operation-to-fight-cross-border-smuggling-2004650.html. (Accessed on 12 January 2022.
[101] As discussed in the first section of the chapter.

after successfully crossing the border and how they negotiate their labour as non-citizens in the urban spaces of India.

Domestic workers form a huge part of this undocumented labour force. Domestic spheres are where there is a clear separation of the private and the public domains. This division is gender specific, but it is also where the delineation of boundaries is not as active. The state abstains from entering this realm of private where there is an overlap of multinationalism and unseen unregulated labour.[102] Saskia Sassen has elaborately discussed in her work the importance of subsistence sector in modern capitalist world and how women working in these subsistence sector has largely supported and contributed to it accompanied by new identity and membership formations representing new subjectivities even when exclusionary politics of citizenship shape their lives.[103] Additionally, such work challenges patriarchal understanding of households by not just situating women as a paid worker for household activity, but also giving the added possibility to the female employer to pursue their career and professional goals. In such scenarios, while the women choose to move out of the country, transgressing political and territorial boundaries, she also mobilises beyond geography. Her mobility here entails the socio-economic tapestry of her family and surroundings.

As women go on to work as domestic help, the hitherto unpaid household work becomes paid labour. *Parveen,* 35, lived with her husband in Khulna, who she says offered her no help in supporting her family, financially or in any other way.[104] She worked in a home industry back home but was primarily a housewife. To be able to provide better for her kids, especially to take care of the medical needs of her daughter she chose to travel to Bombay to

[102] Nira Yuval-Davis, "Women, Citizenship and Difference," *Feminist Review* 57, no. 1 (1997): 4–27.
[103] Saskia Sassen, "Toward a Feminist Analytics of the Global Economy," *Indiana Journal of Global Legal Studies* 4, no. 1 (1996): 7–41.
[104] Interview conducted on 10 August 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker anonymised.

work as a domestic help with the help of her niece, who did the same work. *Parveen's* first attempt to cross the border ended in arrest at Hakimpur border.

Sassen further adds how the role of immigrant women is crucial in breaking the nexus between having an important function in a globalised economy and being an empowered workforce as this category emerges as something she calls 'offshore proletariat' that not only supplies labour but also intensifies transnational as well as local network.[105] This labour force is not regulated, un-unionised and gendered. However, these new inclusions in workforce expanding beyond citizens also show how new practices of inequality as well as claim making are carried out in these blurred spaces of internal and external.

Although clandestine immigrants provide labour with no claim to benefits and low bargaining power, there are moments when they negotiate their identity and labour in such settings too. By deciding how many households they'd work for to how many hours they want to allot to each one, these women participate in such decisions. For instance, *Nasima* in her 40s who lived and worked in City Centre *busty* (slum) in Kolkata for 19 years, says she negotiated her job and wages by herself while also providing for her daughter as a single parent.[106] Her daughter goes to college and has Indian identity proofs issued, but *Nasima,* even after all these years of living in Kolkata, has not. Although tied by the limits of being an undocumented Bangladeshi worker devoid of benefits, she said she very much decided what the kinds of jobs she would do, for how long she would do, and for how much. Her negotiation also expanded to rents and needs for herself and her daughter. *Nasima*, who was arrested at the Hakimpur border, was on her way to see her ailing father in Bangladesh.

Much like *Nasima, Sameena,* who worked as a domestic help in Howrah, Kolkata earned 7500 INR per month, first worked in a parlour. She said she managed to find the jobs

[105] Sassen, "Toward a Feminist Analytics of the Global Economy."

[106] Interview conducted on 01 September 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name of the speaker anonymised.

on her own. The first job at the parlour got her 4000 – 5000 INR rupees in a month which was not enough of an earning. Sameena then switched to her second job as domestic help.[107]

Preferred/Perceived/Indistinguishable Labour

Through remittances and revenues, migrants contribute both directly and indirectly to the growth of their home and host economies. This essential slum-dwelling segment of society is dependent on the metropolis. Both natives and the government are cognizant of the presence of irregular immigrants[108] and are able to distinguish between an internal and external migrants based on factors such as language dialects.[109] Perhaps, a large number of Bangladeshi immigrants have learned how to speak naturally and pass for a local.[110] Nonetheless, illicit clandestine non-citizens are perceived as a threat to a state's sovereignty as ideally the state wants to be aware of the whereabouts of its citizens. Margaret Somers has argued that much of this perception and attitude of the state depends on the shifting institutional and discursive connections and power relations between the state, market and the society, hence, blurring division of labour and grafting patterns of exclusion and exteriority onto internal sites.[111] This stands in contrast to the popular understanding of citizenship as a two-part relationship between the state and an individual, where the market position of migrants can attribute to their position in the entire ecosystem and how they are situated as desirable/non-desirable non-citizen. Using Zygmunt Bauman's[112] definition of a "tourist" as someone who brings in money as opposed to

[107] Interview conducted on 06 September 2022 in Kolkata. Name anonymised.
[108] For more see Ajay Gandhi, "The Sanctioning State: Official Permissiveness and Prohibition in India," *Focaal—Journal of Global and Historical Anthropology* 77 (2017): 8–21; Ranabir Samaddar, "Migrant and the Neo-liberal City: An Introduction," *Economic and Political Weekly* 51, no. 26–27 (2016): 52-54.
[109] A Bangladeshi migrants can easily be recognised by their appearance in cities like Delhi, Bangalore or Mumbai, but in West Bengal, since both Bengalis and Bangladeshis share a common ethno-linguistic culture, dialect can serve as a key differentiator.
[110] For more see Rizwana Shamshad, *Bangladeshi Migrants in India: Foreigners, Refugees, or Infiltrators?* (New Delhi: Oxford University Press, 2017).
[111] Margaret Somers, *Genealogies of Citizenship: Markets, Statelessness, and the Right to Have Rights* (Cambridge: Cambridge University Press, 2008), 20.
[112] Zygmunt Bauman, *Globalization: The Human Consequences* (Cambridge: Polity Press, 1998), 92.

a vagrant who is socially excluded, Ben Bowling & James Sheptycki view the policing of human flows as both positive and negative because it helps to control mobility.[113] Here, the "tourist" should not be confused with the wealthy, as Bauman suggests that both low-wage workers and the wealthy are the preferred groups. The complex migration networks and the fact that immigrants are embedded in the labour markets of destination countries are overlooked in the anti-immigrant rhetoric that portrays immigrants as a threat.[114] These claim-making and decision-making are strongly reflective of their agency and autonomy in not just negotiating their labour but also their identity and mobility, as agency can be understood in how women negotiate their role in larger structures that are constrained in a patriarchal setup.

Almost all the respondents who were working in cities such as Kolkata and Mumbai said their respective employers knew that they were Bangladeshi and seemingly had no issues with it. Although the women tried to hide their foreign identity from most of their surroundings, they negotiated with their employers explicitly as Bangladeshi. *Sehada Bibi,* who had been working in Dumdum, Kolkata for the past few years, said during her interview how her employers knew she was a Bangladeshi.[115] She worked as a domestic help for five families, and out of those, three knew about her being an irregular migrant and had no problem with it. Although this did affect how she negotiated her labour with them, as she said, it put her in a spot of not being able to bargain much regarding her salary and accept what was being offered. *Sehada Bibi* earned an average of around 3000 INR per house. Similarly, *Alifa*, who had been working as a domestic help in Barasat, for the past two years, also said that the two families she worked for knew she was a Bangladeshi and had no problem with her predicament,

[113] Ben Bowling and James Sheptycki, "Global Policing, Mobility and Social Control," in *The Routledge Handbook on Crime and International Migration*, ed. Sharon Pickering and Julie Ham (New York: Routledge, 2014), 57-58.
[114]Andrew Geddes and Christina Boswell, *Migration and Mobility in the European Union* (London: Palgrave M acmillan, 2011).
[115] Interview conducted on 27 July 2022 in Kolkata. Name anonymised.

although she had kept it hidden from most people around her.[116] She was also paid a salary of 3000 INR monthly salary. *Arifa*, who worked in construction in Bombay, also said that both her co-workers and employers knew she was a Bangladeshi.[117]

In conversation with *Parichiti,* an NGO working with domestic workers in Kolkata, it was learned that most domestic workers working in Kolkata came from the villages on the outskirts of the city, many times a consultancy that arranged for jobs and took a share of their wage.[118] These workers, over the years, had begun to seek certain demands regarding their workspace, working hours and wages. For example, they charged more if it was a cooking job, and there would be weekly off on Sundays, sometimes two weekly offs. However, immigrants could not avail of such benefits due to the illicit nature of their stay, even though there could possibly be no distinguishing marker between the two categories of domestic help in this case. Although domestic work has largely been an invisible paid labour, it does invite some sort of negotiation in terms of bargain and demand. Other works such as waste sorting, construction work, parlour works meant even less money.

Though the presence of immigrant workers would suggest anxiety among native workers regarding competition for work, the kind of jobs that immigrants engage in is largely not preferred by the natives. In a capitalist society, immigrants are preferred by the employers as they work for lower wages as well as provide flexible labour[119] which was seen in the case of the respondents who were paid way less than the natives. *Sehada Bibi* said she did not bargain and accepted what was being offered. [120]Likewise, *Sameena* pointed “All that matters is how you work. *Maliks*[121] do not like reminding us of what work to do every day. They prefer

[116] Interview conducted on 18 August 2022 in Kolkata. Name anonymised.
[117] Interview conducted on 10 August 2022 in Kolkata. Name anonymised.
[118] The interview was conducted on 13 March 2022 between 10 am to 12 pm at Parichiti office in Dhakuria, Kolkata. The interviewee was the founder of Parichiti and another worker.
[119] Aristide Zolberg, "Managing a World on the Move," *Population and Development Review* 32, Supplement no. 1 (January 2011): 224.
[120] Interview conducted on 27 July 2022 in Kolkata. Name anonymised.
[121] Bengali word for Lord. Here it implies employer.

those who know their work without having to tell them. Doesn't matter if you are Bangladeshi."[122]

Migration of labour is usually between countries which are culturally distinct, thereby making the presence of immigrants rather visible, which is further reinforced as the segregation of these workers tend to keep them as ethnic others.[123] Such practices lead to overemphasis on the idea of 'identity' where a hegemony is established between the identity of the natives and the immigrants. However, as observed this was not necessarily the case in the context of this study, where the lack of indistinguishability[124] of the workers makes them an easily absorbable workforce. Rizwana Shamshad argues that, despite the Indian government's view of Bangladeshi migrants as undesirable and a threat, in the state of West Bengal, Bangladeshi immigrants are viewed as one of their own by families who fled the Partition and as non-threatening neo-migrants by others because of their shared history.[125] This is in contrast to the neighbouring state of Assam, where strong anti-Bangladeshi sentiment exists.[126] Assam's strong anti-immigrant sentiment is more consistent with Zygmunt Bauman's claim that sub-national attempts to reconstruct identity are becoming more common and that nation-states are gradually losing their "past role as identity producers"[127]. But in West Bengal, the public and political discourse has largely ignored these kinds of open protests. Racial and class-based

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[122] Interview conducted on 06 September 2022 in Kolkata. Name anonymised.

[123] Aristide R. Zolberg, "Managing a World on the Move," *Population and Development Review* 32, no. S1 (December 2006): 222–253.

[124] See Salah Punathil, "Precarious Citizenship: Detection, Detention, and 'Deportability' in India," *Citizenship Studies* 26, no. 1 (2022): 55–72.

[125] Rizwana Shamshad, *Bangladeshi Migrants in India: Foreigners, Refugees, or Infiltrators?* (India: Oxford University Press, 2017.

[126] During British rule, Bengali was declared the official language of Assam from 1836 to 1873, which created tensions between the Assamese and Bengali communities. The partition of India in 1947 and the Bangladesh Liberation War in 1971 resulted in significant migration from East Pakistan (now Bangladesh) into Assam, further altering the region's demographic and cultural landscape. The Assam Movement (1979–1985) was a crucial moment in this context, as it aimed to address the issue of illegal immigration and to protect Assamese identity. The movement led to the signing of the Assam Accord in 1985, which promised measures to safeguard the state's cultural and political interests. However, implementing these measures has proven to be challenging. The recent update of the National Register of Citizens (NRC) in Assam has reignited debates over citizenship and migration, with many individuals excluded from the list facing uncertainty. These historical and ongoing issues have intensified anti-Bangladesh sentiment, reflecting concerns over resources, identity, and political representation.

[127] Bauman, Zygmunt. *Postmodern Ethics*. Great Britain: Blackwell Publishers, 1993, 233.

notions of "otherness," which have influenced immigration laws in the West, may not always apply in these settings since there aren't as many clear-cut physical indicators of otherness.

Both elements that eventually influence how locals in Kolkata view immigrants are visible here. As a result of their shared history and market value, Bangladeshi immigrants are viewed as a desirable category of "foreigners", which contrasts with the criminality of their presence and creates a paradoxical situation regarding their experience as non-citizens. The interaction and performance of labour, which is frequently illegal when it occurs, are perceived as more licit since private domestic domains are frequently thought of as apolitical settings. While there are still some civic practices in these spaces, how non-citizens are perceived varies depending on both the past and the present. Through these movements, people can also inhabit multiple spatialities, which allows them to live in two places at once and take advantage of both locations' advantages and disadvantages.[128] Their experiences with their employers further dispel the popular belief that the natives view the immigrants as a threat to their jobs and are irritated by them. It has a symbiotic quality because of the way illegal immigrants work for locals, frequently in private settings. Since the idea of illicitness is situational and mobility existed before borders,[129] a practice is established in these spaces where concepts of legal and illegality are often subsumed by concepts of licitness.

3.6 Married to Indian: Finding Identity and Belonging

Besides work, kinship obligation is also a prominent reason for why women and men move across the border. Marriages and kinship relationships between people of the two nations, especially those living in the borderlands, are not uncommon;[130] however, one's nationality is

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[128] Howard Campbell, "Escaping Identity: Border Zones as Places of Evasion and Cultural Reinvention," *The Journal of the Royal Anthropological Institute* 21, no. 2 (June 2015): 297.

[129] Itty Abraham and Willem van Schendel, eds., *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization* (Bloomington: Indiana University Press, 2005).

[130] For more see Rimple Mehta, She Came to Stay: Bangladeshi Women in India Negotiate Cross Border Child Marriages (2017). Available at SSRN: https://ssrn.com/abstract=2946108 or

put to the test when one moves permanently to another country and such migrations are not registered legally. These ties also mean continuous moving between the nations fulfilling kinship obligations, seeking to maintain bonds and often reproducing conjugal ties. Such movements do not carry the same meaning that perhaps economic movements do especially in the borderlands where such movements are established as unremarkable. This section tries to look at the dilemma that respondents of the study had to face against their marital life and the illegality of their presence.

Ruby, 25, originally from Dhaka, married an Indian man and had been staying in Howrah, West Bengal, for five years before she was arrested at the border while returning from her home in Bangladesh. She was with her son during the arrest who is also now with her in prison. Ruby has all the documents like Aadhaar Card and Pan Card made. She remarked,

> "I did not take any covert route and went right through the BSF outpost because I am an Indian citizen, I have ID cards, my husband is Indian. So why should I worry? There is no reason to arrest me at the border."[131]

However, she was arrested and now has a bigger issue to deal with post her arrest. Ruby was arrested under her "*daak naam"* (pet name) but her documents are registered under her real name and now she is worried she will have to face fraud charges as well. She remarked,

> "Other prisoners tell me that my case is of cheating, and I'll face a bigger sentence. My main complaint is not that I am arrested but that I have been arrested under a name which is not mentioned in my documents. Now how do I prove my identity at the court."[132]

When asked about why she did not give her real name, she answered,

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http://dx.doi.org/10.2139/ssrn.2946108; Sahana Ghosh. "Relative Intimacies"; Sahana Ghosh, *A Thousand Tiny Cuts: Mobility and Security Across the Bangladesh-India Borderlands* (Berkeley: University of California Press, 2023).

[131] Interview conducted on 06 September 2022 between 12 pm to 1 pm at a correctional facility of Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

[132] Interview conducted on 06 September 2022 in Kolkata. Name anonymised.

> "The BSF interrogates you in such a manner that you confess to crimes you haven't done. They twist their questions, trick you, and ask the same thing in so many way so you are intimidated. They did not mistreat me but as soon as I entered the room, they made me give a statement that I am Bangladeshi, and this was used against me at the court."[133]

Ruby's predicament appears in more than one way. Firstly, she is arrested with her young son. Secondly, her case is registered under her nickname which does not find itself in any of the official papers. Thirdly, she is married to an Indian and sees herself as an Indian citizen.

> "Even if I am sent back to Bangladesh, I will again have to come back from the same route because my life remains in Howrah, with my husband and my child. I lived a happy life as a housewife. I did not understand any of these legalities. So, I will have to come back, and I again face the same risk of being arrested and jailed."[134]

Ruby's case is in no way unique or can be seen in isolation to the rest of the prisoners' journeys. More importantly, she is not the only Bangladeshi woman married to an Indian man among the respondents. *Amina* married an Indian man from the state of Bihar 9 years back. Prior to her marriage, there were existing consanguine relationships between both families. It was during one of his visits to Bangladesh that her husband had seen *Amina* and had sent a marriage proposal which her family accepted.[135] Similarly, *Asha* was also married to an Indian man who worked in Delhi where she lived with him.[136] In many of the cases, other respondents had also stated their relatives in India, often their sister or aunt, were also married to Indian men.

These cases are reflective of the historical and cultural cross national kinship relationships that continue to exist to this day. Almost every family living in agrarian

[133] Interview conducted on 06 September 2022 in Kolkata. Name anonymised.
[134] Interview conducted on 06 September 2022 in Kolkata. Name anonymised.
[135] Interview conducted on 03 August 2022 between 12pm to 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[136] interview conducted on 24 August 2022 in Kolkata. Name anonymised.

borderlands between India and Bangladesh have kin relations on the other side[137] which continues to exist. Marriage across the border was common before fences came into being, sometimes ignored by the border forces as they posed no security risks.[138] After Partition, even when cross border movements were checked, marriage migration remained one of the movements that were still allowed[139] largely, seen as a licit form of movement rather than illegal. Besides the generational affinal ties that exist in the Bengal borderlands, Bangladeshi women are also known to be brought in for marriage purposes in states as far as Haryana and Uttar Pradesh where the sex ratio is skewed[140]; many a time these women who are married off in these regions follow the route of trafficking.[141] The prospect of job or marriage was also played out to entice women to cross the border who would often be transferred from Bangladesh to cities such as Calcutta or Bihar in groups, and would sometimes be trafficked in such courses of travel.[142]

Nonetheless, such instances demonstrated how marriage transactions between India and Bangladesh were not uncommon. However, in the larger context of marriage transactions between the people of West Bengal and Bangladesh, things operate differently. Such heteronormative kinship relationships constitute continuous cross-border network and relationship practices rather than a rupture that is associated with the legacy of Partition. These legacies are manifested through duty and affection which leads to continuing border crossings, back and forth between the nations, which is very much gendered in this context. Here, women's mobility represents other factors beyond 'economic means', which is often an idea

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[137] Joya Chatterji, *The Spoils of Partition: Bengal and India, 1947–1967* (Cambridge: Cambridge University Press, 2007), 124-125.
[138] Debdatta Chowdhury, *Identity and Experience at the India-Bangladesh Border: The Crisis of Belonging* (London: Routledge, 2018), 179.
[139] Claire Alexander, Joya Chatterji, and Annu Jalais, *The Bengal Diaspora: Rethinking Muslim Migration* (London: Routledge, 2016), 144.
[140] Ravinder Kaur, "Marriage and Migration: Citizenship and Marital Experience in Cross-Border Marriages between Uttar Pradesh, West Bengal and Bangladesh," *Economic and Political Weekly* 47, no. 43 (2012):82.
[141] Kaur, *Marriage and Migration*; Thérèse Blanchet, "Bangladeshi Girls Sold as Wives in North India," *Indian Journal of Gender Studies* 12, no. 2–3 (2005): 305–334.
[142] van Schendel, *The Bengal Borderland*, 229

of ‘duty’ towards their family. Not just through the continued marriage migration across time but also through how the state’s construction of women as docile and infantilised citizens, women’s mobility has been both constrained as well as enabled through such movements.[143] These relationships across the border are seen through the lens of sympathy and moral rightness of relative intimacies across the border by the state actors as well even though it goes on to destabilise the border regimes by reinforcing its porosity as well as closure.[144] Sur mentions how the kinship relations of Garo clans in Bangladesh play a role in facilitating border mobilities of Garo Bangladeshi trader women in the Meghalaya- Bangladesh border.[145] Thus, marriage migration occupies a space of licit rather than illicit in popular understanding although legally that may not necessarily be the case.

This is also largely due to how women are often seen as a caregiver and cultural subject rather than national subject.[146] Besides, migrant women are also seen as an embodiment of ‘culture’ and ‘community’ to their migrating families often identified with reproducing ‘culture’ in the foreign land.[147] In the Indian sub-continent, female socialisation/anticipatory socialisation is carried out as a kind of apprenticeship that a girl has to go through in order to transform as married woman at the end of it, hence preparing her not only for marriage but also for migration in the future.[148] It is also how women are mostly seen as temporary member of their natal home and actually belonging to where she would be married in the future.

[143] Malini Sur, *Jungle Passports: Fences, Mobility, and Citizenship at the Northeast India-Bangladesh Border* (Philadelphia: University of Pennsylvania Press, 2021):127.
[144] Ghosh, *A Thousand Tiny Cuts*, 101-111
[145] Sur, *Jungle Passports*, 98-103.
[146] As discussed in the first chapter.
[147] Sherry Ortner argues that the universal devaluation of women can be understood through their symbolic association with "nature," contrasted against men's identification with "culture." Cultures often assert their superiority by transcending nature, which positions women as subordinate due to their perceived closeness to natural processes like reproduction. However, women's roles as primary socializers of children demonstrate their significant contribution to cultural processes. Despite this, the cultural transition of boys’ socialization to men further reinforces the perception of men as more "cultural." This dual alignment of women with both nature and culture perpetuates their intermediate status, explaining their persistent lower valuation across societies. Sherry B. Ortner, *Making Gender: The Politics and Erotics of Culture* (Boston: Beacon Press, 1996), 21-42.
[148] Alexander, Chatterji, and Jalais, *The Bengal Diaspora*, 137-143.

Consequently, it is natural for women belonging to this part of the world to attach their identity to their role as a family member, primarily as a caregiver due to the socialisation that they have received in their growing years. So, it becomes important to understand how the question of belonging would be imagined by Bangladeshi women married to Indian men.

Ghosh calls cross-border marriage transactions a ruptured kinship of the past (Partition) but illicit flow in the present.[149] Although this situation continues, the criminalisation of mobility in the borderlands also results in a loss of mobility in those areas. Even then, it is perceived differently than other similar movements. This has largely to do with how women move. Women's movement are seen as transgressive, socially and morally, as already discussed in this chapter, however, movements out of kinship is often seen as one that is reflective of being dutiful towards their natal home while also managing the elements of distance. These movements, explicitly gendered, are not understood in the same way as other illicit movements across the border as it bring with itself the force of morality as well as kinship duty, making them often acceptable.[150] The Company Commander of one of the border outposts remarked how *Facebook* has been one of the main reasons for women crossing the border for love as more and more people on both sides of the border meet and decide to be together on social media and then embark on their journey across the border. He called it "mobile love" as people fell in love on their mobile phones. He added, "People come and stay in India for 10-15 years and get Indian documents. They then go to Bangladesh and bring brides from Bangladesh with themselves."[151] Such arrangements are also an extension of practices that existed before Partition and a result of long-standing kinship practices. Like in the case of *Amina*, whose husband used to make regular visits to Bangladesh before they got married showing an existence of ongoing kinship relations and practices.

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[149] Ghosh, *A Thousand Tiny Cuts, 94.*
[150] Ibid,108.
[151] Interview conducted on 24 September 2022 at border outpost in North 24 Parganas between 12.30 pm to 2 pm. Name and location the speaker undisclosed to maintain anonymity.

Women married to Indian men are entitled to get Indian citizenship after seven years of marriage and having resided in the country.[152] But for this, they first must enter India and stay legally for those seven years as a foreigner. However, the respondents of this study had bypassed that first step of entering India through passports and visas, and even if they had as in the case of *Amina*, the visas had expired. In the meantime, they had carried on travelling between India and Bangladesh through unauthorised means. For *Ruby,* her incarceration meant a temporary disruption to her life in Howrah because, unlike other respondents of the study, she would have to return to India after deportation. It was after all those early years of anticipatory socialisation that *Ruby* found her identity attached to her husband's place rather than her natal place in Bangladesh. She said it was essentially like uprooting her life and sending her to a country she no longer belonged to. Her belief that she was an Indian citizen now that she is married to an Indian citizen and has Indian documents made also shows how *Ruby* had made that shift of nation and nationality through her marriage. The fact that she owned Indian documents such as Aadhaar and PAN card despite not following the legal trajectory for her arrival and stay further goes on to demonstrate the existence of a mechanism that ensures fraudulent documents, as discussed in the early section of the chapter.

Respondents who were married to Indian men made a point to mention that they were married to one, just like women who were arrested along with their husbands. This was perhaps to assert how they are not fully a foreigner, and they do not fully deserve to be in prison under an act directed towards one. However, it was also after their incarceration they found it difficult to locate themselves as citizens of a country; was it as Bangladeshi where they were born and raised, or was it India where they were married and had been living for years? As *Ruby* declared that she in all likeliness would again have to follow the same trajectory of entering India as she did before, *Ruby* was not necessarily subverting the norms in the way *Nasima* or *Amina* did in

[152] Under Section 5(1) (c) of the Citizenship Act, 1955. See Appendix.

their statements of (il)legality not affecting their mobility. But it echoed more of her conundrum in situating her nation and belonging. However, coupled with the conundrum of situating one's nationhood, *Ruby*, *Amina,* and *Asha* had a bigger issue at hand: navigating the idea of criminality when all they did was get married and follow the established institution of following their husband to his home.

3.7 Illegality Versus Criminality

Looking at such ongoing processes of border porosity, historical mobility, mundanity of cross border movements, existing labour market relationship and kinship relations, the question about how such crossings are understood by these women against a contested idea of its criminality. In the early section of this chapter, it was explained how women knew that passports were a requisite but chose to cross the border without it due to an array of personal reasons. When asked about if the respondents knew about the criminality of crossing the border without passport and visa, they said they knew it was unlawful in some sort but had not comprehended their criminality. The availability of border networks and tout-assisted movements made it obvious for them that moving across the borders in such ways needed evasion of detection and manoeuvring of border spaces. However, the concept of criminality extends beyond it.

Reshma had no idea that she would be jailed. She said,

> "Had I known I would be arrested I would not have taken the help of the *dalal* and crossed the border. My mother visited me in jail once, she scolded me since I had not told them anything. I had crossed the border without telling my parents in the pandemic when no passports were being issued."[153]

[153] Interview conducted on 27 July 2022 in Kolkata. Name anonymised.

Almost all the respondents said that they had no idea they would be jailed also because of how BGB deals with border crossings as discussed in the earlier section. They knew that they had to avoid the state but mostly to avoid being sent back or be beaten and manhandled, but they did not know there would be an imprisonment after that. On a similar note, *Amina*, *Shilpa* and *Puja,* seated together, chimed in, saying they did not know they would be jailed.[154] *Shilpa,* who was from the Khulna district in Bangladesh, said her place was far from the border, "I knew it was wrong and illegal; I did not know it was a crime".[155] They agreed what they did was wrong but when asked if they saw their act as an '*aporadh*'[156] , which translates to crime in Bengali, these three women looked perplexed.

However, not everyone was unaware of the criminal nature of the crossing. *Mumtaz,* who had earlier worked in the Middle East, said she knew very well that crossing the border without necessary paperwork could possibly land them in prison. She remarked,

> "I had come to Bangladesh only a year ago. I did not have money to make passports, and I knew what was at stake, yet I had to cross the border because I had no option, I had to give my child a good education. I had not even paid the agent, so he took my phone, which I would have gotten back after making the crossing. Next time, I will come to India only through the right channel."[157]

People who undertake illegal actions often evaluate the chances of getting caught and if taking such risks is favourable when compared to its sanctions, often internalising the obligations of the sanctions.[158]

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[154] Interviews conducted on 03 August 2022 in Kolkata. Name anonymised.
[155] Interview conducted on 03 August 2022 in Kolkata. Name anonymised.
[156] Mehta, *Women, Mobility and Incarceration.*
[157] Interview conducted on 10 August 2022 in Kolkata. Name anonymised.
[158] Salima Douhou, Jan R. Magnus, and Arthur van Soest, "The Perception of Small Crime," *European Journal of Political Economy* 27, no. 4 (2011): 749-763.

Nasima and *Baby,* case partners, had crossed the border together and worked together in Kolkata.[159] *Baby*, 25, had just married and moved to Kolkata with her husband. With no job back in Khulna and financial problems at home, *Baby* decided to cross the border with her husband. On being asked how she felt about being jailed for crossing the border, she said repented her action and felt she should not have done something that landed her in prison. She said she was scared and anxious about the imprisonment and court trials. On the other hand, for *Nasima*, putting food on the table and sustaining life was more important than whether crossing the border was illegal. *Nasima*'s long-term stay in Kolkata as a non-citizen and her experience with it perhaps led to her near nonchalant defiance towards her imprisonment, which contrasted sharply with her friend *Baby*'s regret. Repentant for what she had done, *Baby* countered, stating that they had committed a serious crime "bigger than the murders that other prisoners are accused of"[160] and that she feared being found guilty. In this regard, even though *Nasima* and *Baby* began their transnational journey nearly two decades apart, it becomes crucial to comprehend the economic component of their journey. The decisions they had to make were influenced by the obligations they had to their families. It's almost fascinating to observe that, despite spending nearly two decades in the city, *Nasima* did not make false documents to make things easier by passing off as an Indian when needed. This makes the criminality of crossing the border rather trivial for her, against her agency and being in control of her decisions about identity, life and labour.

This brings one to the ambiguity or blurring of divisions that separates illegal from criminal. Most of the respondents failed to understand the criminality of the act despite understanding its illegality. The factors that made the border crossings a mundane activity go on to further make it appear more illicit than illegal. The fact that these women had worked as

[159] Interview conducted on 01 September 2022 in Kolkata. Name anonymised.
[160] Interview conducted on 01 September 2022 in Kolkata. Name anonymised.

Bangladeshi for families who very well knew about their foreigner status also further trivialised this criminality of their movement. It is also how crime as a concept is understood generally that crossing the border does not draw the same amount of obviousness as perhaps something easier to understand, such as an act of theft, arson or inflicting physical harm would. Studies show how a society's structural context, the socioeconomic attribute of a person, gender, educational qualification and so on shape how the seriousness of the crime is perceived, which varies from individual's.[161] Thorsten Sellin and Marvin Wolfgang illustrate how individuals vary in how they understood the seriousness of the crime, wherein acts which were more wrong than harmful were seen as wrongful rather than as criminal.[162] One of the most deciding drivers of public perceptions was the concepts of wrongfulness and harmfulness[163] , where harmfulness referred to the kind of consequences it had on human lives, but wrongfulness was largely shaped by the norms of society. Here, moving across the border was not necessarily seen as a harmful crime, also by the state, even when committed repeatedly by a person. Not just because it did not actively cause any sort of harm to any person but also because for the very reasons why it was carried out reflected more about their need rather than any deviant motives.

Social norms increasingly shape the perception of crime which may or may not align with the larger legal constructs of the same. "Crime depends on the law of the nation"[164], said *the controller of prison* as he went on to explain how poor, middle-class people who cross the border and end up in jail move to earn their living; such acts did not invite the same kind of reservation from the society as the crosser who did not move to commit harm. Mehta

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[161] Ying Keung Kwan, Lai Lin Chiu, and Wau Cheong Ip, "Perceived Crime Seriousness: Consensus and Disparity," *International Journal of Offender Therapy and Comparative Criminology* 46, no. 4 (2002): 538–553.
[162] Thorsten Sellin and Marvin E. Wolfgang, *The Measurement of Delinquency* (New York: Wiley, 1964).
[163] Mark Warr, "What Is the Perceived Seriousness of Crimes?" *Criminology* 27, no. 4 (1989): 795–821; Mark Warr, "What Is the Perceived Seriousness of Crimes?" *Criminolog*y 27, no. 4 (1989): 795–822.
[164] Interview conducted on 17 May 2022 between 12 pm to 1 pm in a correctional facility in Kolkata. Name of the speaker undisclosed to maintain anonymity.

demonstrates this dichotomy of 'bhool' and 'aporadh' where a similar group of incarcerated border crossers saw their act as a mistake often oblivious of the political geography of national imagination but failed to see it as a crime warranting imprisonment. The women's imbibement of institutional understanding of notions of illegality and, hence, crime from their potential mistake was a gradual transition, often happening in stages of dealing with the repercussions of their action as well as determination to return.[165] Often, many of the respondents also put the onus of their illegality and crime on the state as it was the state's laxity in controlling such frequent activities, making it come off as 'permitted' and also because it was the state that equated such simple acts of crossing the border with far more serious crimes.[166] The respondents of this study too made a similar point that although they said they understood what they have done is unlawful and a 'crime' as per the law of the country, it in no way warrants such long punitive measures because all they have done is cross the border causing no person any harm. Across the interviews, they echoed the same sentiment that staying in prison alongside people who have actively harmed another person, such as people convicted of murder, did not make sense as it was again the identity and honour of this lot that was constantly threatened by the latter.

On the researcher's interaction with a BSF cadet who was earlier stationed at a border outpost in Tripura, he said there were informants employed by the forces at the border who would let them know of any potential cross-border activities to happen and many of the times the BSF would retaliate violently.[167] However, when asked about the 'crime' of border crossing, the cadet said that it was not a 'crime', perhaps a wrongdoing since crime meant more serious actions with serious consequences. Here, the notion of crime must be understood beyond the juridical meaning it carries and beyond the codified Foreigners Act 1946. A high-ranking

[165] Rimple Mehta, *Women, Mobility and Incarceration,* 62-64.
[166] Ibid.
[167] Interview conducted on 21 June 2022 between 12 pm to 1pm in a correctional facility in Kolkata. Name of the speaker undisclosed to maintain anonymity.

officer in the West Bengal Police Department echoed similar thoughts when asked about the criminal nature of the border crossing. Talking about cross-border activities in the border areas of Cooch Behar district in North Bengal, he said the crossers keep moving between the countries, and they violate the law despite knowing it's a crime, although there are also many instances where people cannot put the finger on where exactly one nation ends, and another begins due to the imprecise nature of borderlines in the region.[168] A jailer stationed in a prison of the same district, when asked about the rampancy of border crossing, said the crossers are not criminals as their primary motivation is to look for a job and earn a livelihood out of these crossings.[169] Through such statements, one can observe multiple trends that lead to one's understanding of crime. Moving across the border for temporary jobs is not the same as moving for smuggling or trafficking, is what the state actors suggested in their accounts. These state actors saw these crossings as an act of deviance or defiance. Often, public perceptions of immigrants separate them from criminal offenders even though, in legal terms, they may have violated the law;[170] they are often perceived as hard-working and rather harmless. A BSF commander stationed at a border outpost (BOP2) in North 24 Parganas in West Bengal borderlands opined, "Many women come to India because unlike Bangladesh, in India they feel safe. In Bangladesh, there is no gender sensitisation, there is Triple Talaq, but here they are treated well; there is no such issue they have to face."[171] In these interactions, the state actors reveal multiple ways of perceiving this category of border crossers: first, as someone who travels for their family, someone who travels because they seek a better life and is not a criminal in that sense, and second, as someone who chooses to transgress their limits and travels

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[168] Interview conducted on 19 June 2022 between 1 pm to 3pm at the Lal Bazaar Headquarters of Police in Kolkata. Name and designation of the speaker undisclosed to maintain anonymity.

[169] Telephonic interview conducted on 15 January 2022 between 5 pm to 6 pm. Name and designation of the speaker undisclosed to maintain anonymity.

[170] Melinda Smith, "Criminal Defense Attorneys and Noncitizen Clients: Understanding Immigrants, Basic Immigration Law & How Recent Changes in Those Laws May Affect Your Criminal Cases," *Akron Law Review* 33, no. 1 (1999): 163, 169–71.

[171] Interview conducted on 06 April 2022 between 12 pm to 2 pm at a border village outpost in North 24 Parganas, West Bengal. Name and location of the speaker undisclosed to maintain anonymity.

to engage in immoral work and therefore is liable to be punished. Nevertheless, one can argue that this perception of immigrants is mostly always in transition, oscillating between harmless working people to threats to society in various ways, as there also existed many conversations with the researcher where BSF guards called border crossing a punishable and serious crime.

3.8. Conclusion

Most of the women who were interviewed in the prison had primarily migrated for economic reasons even when they were migrating with their husbands, or they were married to an Indian citizen. The border setups and services of border agents largely eased border crossings. For those who choose not to use these services, repeated experiences of border crossing accumulate as wisdom as the border becomes a learning ground for manoeuvring through border fences and evading detection. All these cumulatively make border crossings a mundane activity which does not always stand in sharp distinction to the ordinariness of border life.

The identity of irregular foreigners, though following the crossers into the cities and internal spaces of the nation, does not become a determinant factor as these crossers continue to navigate such spaces as foreigners often negotiate labour and agency. The symbiotic relationship between the native employer and the foreign employee further deflates the notion that immigrants carry a threat in the context of the study. Furthermore, women who are married to Indian men following a long history of transnational kinship transactions often find it hard to find belonging as citizens when they are criminalised for being foreigners. For this category of crossers, they belong to the country their husband belongs to.

Therefore, the mundanity of border crossings and the selling of labour muddles its criminalisation, as the respondents of the study failed to see their act warranting punishment. There are also instances where women chose to ignore the legalities for work or freedom, thereby subverting norms for travelling. Similarly, women who had married Indian men also

failed to see themselves as criminals primarily because they now believed they were Indians and even if they were to be deported, they would eventually have to return. Both instances reflect subversion but differently, one aspirational and one conditional.

The next chapter looks at the experiences of these respondents as incarcerated non-citizens in a correctional facility. It explores the ways in which they negotiate ideas of honour, labour, and indignation through their identity as foreigners

Chapter 4

Negotiating Identity, Honour and Labour as Non-citizens: The Experiences of Imprisonment.

'It is necessary to strip from the social institution of punishment its ideological veils and juristic appearance and to describe it in its real relationships… Punishment is neither a simple consequence of crime, nor the reverse side of crime, nor a mere means which is determined by the end to be achieved. Punishment must be understood as a social phenomenon.'[1]

4.1 Introduction

People have always moved between lands, in exiles, through displacement or desire, making movements not necessarily a 'postmodern' phenomenon.[2] People who move across borderlands are often seen as a site of enquiry, as moving targets[3], as borders are often seen as a given, and such movements come off as transgression. The broader understanding of such movements where people choose to cross boundaries is seen as the uprooting of their self, of their identity, which is very much territorialised since the national order of things is passed off as the natural order of things and human beings are supposed to be tied to their place of origin.[4] Chapter three studied how criminality of mobility was understood and executed in the borderlands of West Bengal. It showed how established networks in and across the borders helped enable and perpetuate longstanding cross-border movements that often blurred the divisions of illegal, criminal, and licit. It then, through the narratives of the state actors as well as incarcerated

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[1] Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939), 5.
[2] Liisa H. Malkki, "National Geographic: The Rooting of Peoples and the Territorialization of National Identity among Scholars and Refugees," in *Culture, Power, Place: Explorations in Critical Anthropology*, ed. Akhil Gupta and James Ferguson (Durham, N.C.: Duke University Press, 1997), 52-74.
[3] Carol A. Breckenridge and Arjun Appadurai, "On Moving Targets," *Public Culture* 1, no. 2 (1989): i-iv.
[4] Malkki, "National Geographic,"

Bangladeshi women, showed how the ordinariness of border crossings, longstanding practices of labour and generational kinship exchanges and the harmless nature of such movements made it difficult for the people involved to see it as a harmful crime more than a wrongful act. This chapter looks at how people who have chosen to move out of their territorial identity and spatial confinement[5] negotiate their identity as non-citizens in a space primarily designed for the punishment and reprimanding of citizens of a country. The chapter first focuses at the incarceration of such individuals or immigrants by delving into the politics of confining, punishing as well as banning non-citizens of similar future movements. It then briefly examines the prison system in the state of West Bengal vis-à-vis the foreign national prisoners. The chapter then, through the narratives of the respondents who are prison members, highlights the various points where the members negotiate and interact with each other as individuals as well as communities through concepts of honour, dignity, labour and community. Lastly, it deals with ideas of indignation of incarceration.

4.2 Crime and Punishment

Punishment has been observed differently by thinkers over the ages. Emile Durkheim, in *Division of Labour,* saw punishment as a social institution which is essentially a reflection of a society's moral codes and solidarity and, hence a practice of its social structure.[6] Since crime is seen as a violation of social codes and collective conscience, the nature and severity of punishment were largely contingent on the time's collective conscience and moral sensibilities. Nonetheless, punishment's fundamental function as a tool for upholding social order is the same in all social settings. Durkheim saw punishment as functional in society as it would

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[5] Ibid

[6] Émile Durkheim, *The Division of Labour in Society*, trans. W. D. Halls (New York: Free Press, 1984).

reaffirm the society's collective moral values and social codes, thereby serving as a form of social cohesion.

Similarly, George Rusche and Otto Kirchheimer's seminal work *Punishment and Social Structure* brings forth a Marxist approach to understanding how punishment is tied to the economic conditions of society; the nature of the punishment was shaped by the different modes of production so that during economic prosperity punishment were lenient and rehabilitative whereas, during economic slump, punishments were severe and punitive.[7] They also talked about the function of punishment in upholding social order and managing the workforce. For instance, they contended that the threat of punishment is a useful instrument in capitalist societies for disciplining the working class and guaranteeing that they comply with the system's demands.

Michel Foucault, in *Discipline and Punish: The Birth of the Prison,* discusses how penal systems are structured and informed by certain forms of knowledge and power.[8] Foucault maps the trajectory of penal history through changing forms of punishment from violent public spectacles to milder discreet confinements, i.e. from the scaffold to the penitentiary, where modern techniques of punishment become unbridled through newer methods to discipline and control not the body but the 'soul'. In contrast to older regimes where the accused lacked the privilege of knowing what crime they were accused of, the modern penal system, by letting the accused be a participant in their trial, not only aims to punish one for the crime they have committed but also improve their troublesome behaviour for them to re-integrate in the society. He argues that prison serves a function beyond punishment and reform of an offender, which is to maintain social order by regulating and disciplining the deviant body. The goal of the penal system is to train the disciplined body such that constant supervision is always imposed

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[7] Rusche and Kirchheimer, *Punishment and Social Structure*.
[8] Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1995).

upon the body by not just the authorities but also by the self, invoking Jeremy Bentham's panopticon in such cases of constant unwatched supervision. These techniques were to be used to put bodies through their paces until they were docile, effective, and useful machines, able to perform the tasks for which they had been trained.

Foucault further talks about 'governmentality', which he refers to as strategies and techniques, a set of knowledge used to govern populations and their behaviour in a society, which includes a wide range of organisations, tools, and knowledge bases that support the governance of people and groups, going beyond the conventional conception of government as a centralised authority.[9] Foucault argues that governmentality is an exercise of power that focuses on newer reality, economy and new population as the government seeks to rearticulate forms of power to optimise its population. Biopower, on the other hand, is how the government uses these tools of governmentality on 'docile' bodies. A fundamental feature of governmentality is its emphasis on the power structures that function at different societal levels, such as the government, establishments, and customs. According to Foucault, power is distributed throughout society and operates through networks of institutions, discourses, and practices rather than being imposed from on high by the state. Scholars have used these concepts to explain prison policies, immigration control and discourses on crime and security.

This disciplining of the body can be extended to understand how the criminalisation of non-citizens is also to train such bodies and influence their future movements. In the context of the study, the respondents are confined in a carceral space for the 'crime' of moving so that such future mobilities are discouraged and deterred. The practice of detention of immigrant bodies and putting them through an experience like that of a penitentiary mirrors Foucault's penal system, which is focused on correcting a body so that it can be trained to behave in a certain way. Here, the governmentality of the state extends beyond the citizenry as the idea is

[9] Ibid.

to optimise, regulate and train people who are essentially foreigners. Against such practices, it can be observed that the state uses bio-power in controlling non-citizens, their bodies and their mobility just as it uses bio-power to mark, identify and surveil citizens through perpetual form of surveillance. Henceforth, detention centres and prisons that house foreigners function as a site for maximum use of control on 'alien' bodies. This detention can be seen as a 'punitive', 'corrective' as well as 'border control' practice, all at once.

Didier Bigo takes in from Foucault's Panopticon to explain the modern nation state's logic of 'ban-opticon', which seeks to target and surveil certain individuals.[10] This becomes an unequal process where a state uses modern technologies and warfare to determine who is unfavourable. Building upon Foucault's idea of governmentality to understand the issue of security, surveillance and migration, Bigo expands on how modern governance structures function in relation to risk management and security. The national and international governance technologies and institutions are ingrained with surveillance, control, and securitisation practices in different ways, such as the transnational aspects of governmentality, emphasising how international networks of border control, information sharing, and security cooperation influence governance practices that transcend national boundaries. Katja F. Aas argues this is where "the bordered' and 'the ordered'—come to be put together varies, revealing the “complexity of existing control practices, populations, and actors involved in them." The ordering of society carried out by bordering categories is not, in fact, a singular practice but rather a project that involves another sovereign as well, for those who fail to evade detection are bordered in prisons, which becomes a site for ordering and bordering the carceral space through reinforcement of identities that seeks to replicate transnational boundaries. Identities

[10] Didier Bigo, "Security, Exception, Ban and Surveillance," in *Theorizing Surveillance: The Panopticon and Beyond*, ed. David Lyon (Cullompton: Willan, 2006).

can be multi-faceted through the lens of class, religion, gender, sexuality, and caste. Here, the identities in context are that of a woman and a foreigner.

In such practices, the focus is rather on the 'ban-optic' than on the panoptic and bio-politics objectives of the penal system[11] , as the idea is to control who inhabits the territory and who needs to be removed.[12] Here, the state exerts border control practices manifold, in ways of detecting, detaining and deporting the individuals but at the same time deploying apparatuses that would ensure that such individuals who are 'unworthy' and 'undesirable' are also banned from entering its territory. Detention functions as a form of "international policing of aliens"[13] driven by the need to uphold the "national order of things".[14] Within this order, illegal immigrants become boundary markers against which the sovereign authority asserts its power. Such extension of border practices dictates the logic of expulsion; expulsion is executed in varied ways through social, legal, and territorial meanings. Goodwin Gill notes, "the word 'expulsion' is commonly used to describe that exercise of the state power which secures the removal, either 'voluntarily,' or forcibly, of an alien from the territory of a State".[15] Expulsion differs from more conventional penal measures in that it does not give consideration to reintegration into society, even though it shares long-term exclusionary traits with measures like life imprisonment and long-term incapacitation.[16]

Prisons are spaces where a multitude of territorialisation of state and economic power converge, serving as potent sites of state sovereignty with strong dialectics of fixity and flow,

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[11] Didier Bigo, "Security, Exception, Ban and Surveillance," in *Theorizing Surveillance: The Panopticon and Beyond*, ed. David Lyon (Cullompton, UK: Willan Publishing, 2006), 46–68.; Katja Franko Aas, "‘Crimmigrant’ Bodies and Bona Fide Travelers: Surveillance, Citizenship and Global Governance," *Theoretical Criminology* 15, no. 3 (2011): 331–346.
[12] Willem Schinkel, "The Virtualization of Citizenship," *Critical Sociology* 36, no. 2 (2010): 265–283.
[13] William Walters, "Deportation, Expulsion, and the International Police of Aliens," *Citizenship Studies* 6, no. 3 (2002): 265–292.
[14] Liisa H. Malkki, "Refugees and Exile: From 'Refugee Studies' to the National Order of Things," *Annual Review of Anthropology* 24 (1995): 495–523.
[15] Goodwin-Gill, Guy S. *International Law and the Movement of Persons Between States*. Oxford: Clarendon Press, 1978, 201.
[16] Aas, "The Ordered and the Bordered Society.”

incapacitation, and mobility, such as undocumented presence within a national territory, are present in the nation-state (border) and the city.[17] It also becomes a site for the practice of citizenship and borders. It shall be observed in this chapter that foreign prisoners often find themselves trying to negotiate the identity of non-citizens accused of undocumented and unauthorised presence in the country, as opposed to many other prisoners often jailed for far more serious crimes. However, as prison embodies border through various national and foreign subjectivities, the indignation carried by such undocumented presence is reflected through practices of self-surveillance when confronted with the state and citizens. This kind of supervision is not only limited to behaviours and associations but also space, as the demarcation of space is further visible in such practices of exclusion as will be discussed later in this chapter.

Mary Bosworth and Sarah Turnbull elucidate how most immigration detention facilities in the West are run administratively rather than through criminal law, with the intention of identifying and removing their prisoners.[18] Although detention facilities operate under the logic of border control measures, evoking emotions such as hopelessness, fear, coercion, suspicion, and so forth, Dennis Broeders contends that these locations are not always associated with punishment.[19] However, because of impending deportations[20] and factors such as the nationality of irregular foreigners[21], detention centres have overlapped with carceral spaces frequently. In contrast, the Foreigners Act of 1946 is a unique practice because it treats prisons

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[17] Jenna Loyd, Andrew Burridge, and Matthew Mitchelson, "Thinking (and Moving) Beyond Walls and Cages: Bridging Immigrant Justice and Anti-Prison Organizing in the United States," *Social Justice* 36, no. 2 (116) (2009): 85–103.

[18] Mary Bosworth and Sarah Turnbull, "Immigration Detention, Punishment, and the Criminalization of Migration," in *The Routledge Handbook on Crime and International Migration*, ed. Sharon Pickering and Jane Hamm (Abingdon: Routledge, 2014)

[19] Dennis Broeders, "Return to Sender? Administrative Detention of Irregular Migrants in Germany and the Netherlands," *Punishment & Society* 12, no. 2 (2010): 169–186.

[20] For more, see Katja Franko Aas and Mary Bosworth, eds., *The Borders of Punishment: Migration, Citizenship, and Social Exclusion* (Oxford: Oxford University Press, 2013); Sharon Pickering and Julie Ham, eds., *The Routledge Handbook on Crime and International Migration* (London: Routledge, 2014).

[21] Thomas Ugelvik, "The Incarceration of Foreigners in European Prisons," in *The Routledge Handbook on Crime and International Migration*, ed. Sharon Pickering and Julie Ham (London: Routledge, 2014), 107–120.

as a site of criminalisation as well as a place of detention. The prison also thereby becomes a space to practice border control. As opposed to Anna Pratt, who claims that the forcible confinement of individuals in detention centres in the West is not carried out with the aim to "correct" or "reform",[22] the respondents of the study are specifically confined with the intention of correcting them and deterring their future arrivals. This is because irregular non-citizens are imprisoned alongside criminalised citizens until their deportation. This codified character of detention through penal law and prison also lends to it the legitimacy that, most of the time, detention centres find lacking.

Hence, the Foreigner's Act 1946 is essentially a criminal law for non-citizens actively criminalising them for not behaving or moving according to the prescribed way of India. However, the accused person can be charged with additional acts as well if they are accused of additional offences. If proven guilty, the term will be extended by the term offered by the additional charges as well. This shows how laws designed for citizens can go on to affect non-citizens as well. Those who are charged under this Act are not just detained until deportation but also must serve a sentence under the Act. One can observe the duality of punitive and prohibitive punishment occurring in this context. Not only are the people punished for a crime, but they are also conditioned in such a way by serving harsh sentences to prohibit and/or make them police themselves from there on, making it unlikely for them to cross the border 'illegally' again. Under such conditions, the governmentality of the state, often directed to the citizens of the country, also extends outwards towards others to dictate their movements and behaviour.

4.3 Indian Prison System

Since prisons are state subject under the Constitution of India, prisons in each state are governed by their own manuals. Prison has been defined as "a place properly arranged and

[22] Anna Pratt, *Securing Borders: Detention and Deportation in Canada* (Vancouver: UBC Press, 2005), 23.

equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or for punishment".[23] The concept of a modern prison in India began with the suggestions of TB Macaulay in 1835. Following the recommendations of the Macaulay Committee between 1836-1838, the first central prison was constructed in Agra in 1846. This was followed by the construction of several other central prisons. The government of India then passed the Prison Act of 1870, which laid out the basic structures and administration of Indian prisons. Amendments were later made in 1894. Therefore, the Prison Act of 1894 remains the governing law for the running of prisons in India.

In 1919, the British government appointed a joint commission to investigate jail management and suggest improvements. The commission recommended establishing separate institutions like Borstal schools for juvenile offenders, separating pending trial offenders from convicted ones, and classifying habitual and casual adult offenders. The report also criticised the transportation of offenders to the Andaman Islands and recommended stopping the practice. Solitary confinement was abolished, adult education programs and libraries were established, food quality was improved, and prisoners received two pairs of clothes. The committee's main goal was prisoner reformation and prisoner rehabilitation. However, the Government of India Act 1919, which transferred control of the Jail Department to the Provincial Government, obstructed prison reform. After India's independence, prison reforms increased as leaders who had experienced imprisonment prioritised them along with industrial development plans.

[23]As cited in S.K. Pachauri, "History of Prison Administration in India in 19th Century: Human Rights in Retrospect," *Proceedings of the Indian History Congress* 55 (1994): 492–98.

Section 688B in the West Bengal jail code (prison manual) relating to Foreign National Prisoners state:

(a) As soon as a prisoner of a foreign nationality is admitted into a jail, the Superintendent of the jail shall send a report of such admission together with a descriptive roll of the prisoner to the State Government and copies thereof to the Inspector-General for intimation of the fact of imprisonment of the foreign national to the consular representative of his State.

(b) The interviews with and communications of or to a prisoner of a foreign nationality shall be governed, without prejudice to his being a foreign national, by the relevant rules of this code.

NOTE: —For the purpose of this rule the consular officers of a prisoner's own State shall be deemed to be his friends who shall have the right of interview with the prisoner. But this right of interview does not include the right of private interview i.e., interview out of the hearing of a Police or Jail officer nor the right to inspect the accommodation of the prisoner.

Source: West Bengal Jail Code[24]

In the state of West Bengal, where the study was conducted, prisons are called correctional homes as per the West Bengal Correctional Services Act, 1992. Indian prisons include central prisons, district prisons, sub-jails, special jails, borstals, women's jails and open prisons. Central prisons are usually larger facilities meant to accommodate a higher number of prisoners, while district prisons are in various districts across states. This study was conducted in one such central prison. In India, state governments oversee running prisons, under the central Ministry of Home Affairs' supervision. In addition to overseeing daily operations, prison administration oversees maintaining security, offering medical care, and putting rehabilitation and reintegration plans into action. However, it is the police force that oversees the safety of prisoners during their court visits. Laws guaranteeing certain rights to prisoners include access to legal representation, healthcare, and defence against mistreatment and discrimination. Yet, there are no comprehensive guidelines or manuals pertaining to governing the Foreign National Prisoners in the prison.[25]

[24] *West Bengal Jail Code, Volume I (Part I) : Rules for the Superintendence and Management of Jails in West Bengal* (West Bengal Government Press, Alipore, Kolkata, 1967), 207. https://wbxpress.com/files/2022/05/West-Bengal-Jail-Code.pdf Accessed on 27 January 2024.

[25] Commonwealth Human Rights Initiative (CHRI), *Strangers to Justice: A Report on Foreigners in Indian Prisons* (New Delhi: Commonwealth Human Rights Initiative, 2010): 29.

As of 31st Dec 2021, there were 1,319 jails in India, with Rajasthan having the highest number of jails at 144 and a total of 5,54,034 prisoners confined in various jails across the country. Overcrowding does not only mean a space deficit but simultaneously implies a medical and infrastructural deficit. The Prison Statistics of India (PSI) Report (2019), which is compiled by the NCRB, highlights that 1775 prisoners died in custody due to various illnesses, including heart, lung, liver, and kidney-related ailments as well as tuberculosis and cancer for the period under report. The same report shows that West Bengal prisons had only six resident Medical Officers against the sanction number 40. Similarly, there were three psychiatrists against eight sanctioned and 14 pharmacists against 41 sanctioned for the state. Prison understaffing is still a significant issue.

The PSI for the year 2022 showed how the prison occupancy in India was at 131 per cent of its capacity, with over 5,73,220 prisoners as of December 2022. Most of this number comprised of undertrials who were detained for more than a year. The delay in court cases has disproportionately skewed the population-capacity ratio in Indian prisons.[26] The prison population of India has surpassed its capacity each year in the past decade.

Table 4.1. Occupancy rate of prison in the last ten years

2013	118 %
2014	117%
2015	114%
2016	114%
2017	115%

[26] Further discussion in Chapter 5.

2018	118%
2019	120%
2020	118%
2021	130%
2022	131%

Source: Prison Statistics of India

4.4 Negotiating Ideas of Honour and Dignity

Marlou Schrover et al. argue that historically, a migrant woman had to be moral as opposed to a man who only needed to be skilled, as women were often perceived to be someone who could lure native men, rob them of their money and be a nuisance.[27] Women's identity as travellers is very much intertwined with ideas of honour and morality attached to their sexuality. Chapter 1 had a discussion on how women are naturally perceived as an embodiment of nation and community, and their mobility is often perceived through the duality of immorality and victimhood, both ideas largely tied around her sexuality. Francesca Esposito et al. elucidate that gender significantly influences detention, shaping how detainees and staff perceive and interact with one another that largely rely on gendered, sexualised, and racialised identities and stereotypes to understand their experiences and navigate the unpredictable detention environment.[28] Such instances challenge the view of detention centres as mere exclusion zones,

[27] Schrover, Marlou, Joanne van der Leun, Leo Lucassen, and Chris Quispel, eds. Illegal Migration and Gender in a Global and Historical Perspective. Amsterdam: Amsterdam University Press, 2008, 19.
[28] Francesca Esposito, Rita Matos, and Mary Bosworth, "Gender, Vulnerability and Everyday Resistance in Immigration Detention: Women's Experiences of Confinement in a Portuguese Detention Facility," *International Journal for Crime, Justice and Social Democracy* 9, no. 3 (2020): 5–20. For more, see Mary Bosworth and Sarah Turnbull, "Immigration Detention, Punishment, and the Criminalization of Migration," in *The Routledge Handbook on Crime and International Migration*, ed. Sharon Pickering and Julie Ham (London: Routledge, 2014), Criminal Justice, Borders and Citizenship Research Paper No. 2451088.; Mary Bosworth and Gavin Slade, *In Search of Recognition: Gender and Staff–Detainee Relations in a British Immigration Removal Centre*, *Punishment & Society* 16, no. 2 (2014): 169–186.

instead portraying them as contested spaces of struggle.[29] Hence, in a space such as a prison, which is traditionally understood as a masculine space, negotiating ideas of honour here overlap with their identity as incarcerated non-citizens, thereby implying not just imposing questions of morality but also belonging. Bosworth states that prison is inherently seen as a masculine space; thereby, more than often, prison management overlooks the needs of women in terms of space, sanitation and nutrition and furthermore imposes ideas of femininity and docility on female bodies through policing practices.[30] By virtue of their identity as women in a carceral space, which as Rimple Mehta shows is often equated with a brothel, imprisonment also goes on to be equated with immorality where ideas of honour supersede goals of return.[31] This internalised notion of a women's place in the society that excludes carceral spaces, hence, becomes a primary site for claiming spaces of honour and dignity. This meant not just the prisoners negotiating their identity as Bangladeshi with the other Indian prisoners but reinforcing their ideas of morality through their daily experiences in prison.

[29] Mary Bosworth and Blerina Kellezi, "Citizenship and Belonging in a Women's Immigration Detention Centre," in *New Directions in Race and Ethnicity*, ed. Coretta Phillips and Colin Webster (Abingdon: Routledge, 2014), Criminal Justice, Borders and Citizenship Research Paper No. 2448450.

[30] Mary Bosworth, *Engendering Resistance: Agency and Power in Women's Prisons* (Aldershot: Ashgate, 1999).

[31] Rimple Mehta, *Women, Mobility and Incarceration: Love and Recasting of Self Across the Bangladesh-India Border* (New Delhi: Routledge, 2018),72, 106.

Table 4.2. Number of Foreign National Prisoners in the prisons of West Bengal

Year	Total Foreign National Inmates		Female Foreign National Inmates	
	Convicts	Under trials	Convicts	Under trials
2016[32]	1599	1545	171	293
2017	1379	576	186	105
2018	NA	NA	NA	NA
2019	NA	NA	NA	NA
2020	466	1295	73	259
2021	329	1179	34	73
2022	471	1424	87	276

Source: Prison Statistics of India.

Risked/Immoral Bodies: Migrant women have it more difficult to embark on a long journey than their male counterparts because female migration is seen as not just desperate and morally questionable but also perilous. Hence, women tend to set up networks before they leave, making migration trajectories that already have a cumulative causation preferable.[33] Female migrations are assumed to be filled with difficulties and danger and dramatised into emotional

[32] State wise data on Foreign National prisoners before 2015 is unavailable.

[33] The theory of cumulative causation was propounded by Gunnar Myrdal and later elaborated by Douglas Massey. According to the theory of cumulative causation, a group or individual is more likely to continue gaining advantages after they have achieved a minor one (such as improved access to resources, housing, or education). On the other hand, early disadvantages may compound to create more profound disparities. Massey has used cumulative causation in the context of migration to illustrate how migration patterns might become self-reinforcing.

stories.[34] There has been excessive attention given to literatures on women trafficking.[35] This is primarily seen if the female migrants belong to a poor economic stratum. There had been, of late, criticisms made of such theorisations that not just reduce women as naive persons with no agency but also act as a precondition to control and restrict female mobility. Nonetheless, the sexualised-victimised image is hard to get rid of. It is so strongly established.[36] Here, we can observe the fixed binary that situates female migrants as either morally corrupt criminals or infantile women with no agency, making them derive their agency and safety from men who are also the perpetrators in most of these discourses. The obsession with women's bodies hence travels with them no matter the discourse or the context they occupy.

Since women who travel alone or without male counterparts are assumed to be prone to sex trafficking[37], many of the conversations the researcher had with the women did delve into how they perceived these ideas. The women were always cognizant of the fact that the notion of morality was palpable, present even in these interviews, as their fellow respondents would also have similar questions or apprehensions against their collective predicament. It was important for the woman to assert at any given point that they were not violated at any point of their journey, nor did they violate any societal limits set for them during it. As opposed to men, women are far more frequently the victims of suspicious border crossings for prostitution and

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[34] Gretchen Soderlund, "Running from the Rescuers: New U.S. Crusades against Sex Trafficking and the Rhetoric of Abolition," *NWSA Journal* 17, no. 3 (2005): 77-78.
Jo Doezema, "Ouch! Western Feminists' 'Wounded Attachment' to the 'Third World Prostitute',
" *Feminist Review*, no. 67 (2001): 16–38.

[35] Marlou Schrover, Joanne van der Leun, Leo Lucassen, and Chris Quispel, eds., *Illegal Migration and Gender in a Global and Historical Perspective* (Amsterdam: Amsterdam University Press, 2008), 11; Sodurland, "Running from the Rescuers".

[36] See Mary MacLeod and Esther Saraga, "Challenging the Orthodoxy: Towards a Feminist Theory and Practice," *Feminist Review*, no. 28 (1988): 16–55; Patricia Connell, "Understanding Victimization and Agency: Considerations of Race, Class and Gender," *PoLAR: Political and Legal Anthropology Review* 20, no. 2 (1997): 115–136.

[37]Globally, human trafficking is a multi-million industry especially of women and children. In a 2005 report by the United Nations, each year 1.2 billion children are trafficked (UNICEF 2005a). Bangladesh serves as a prominent source of trafficked persons. The Bangladesh National Women Lawyers Association estimated 300,000 Bangladeshi children were working as sex workers in India in a 1997 report.[37] Similarly, every year huge number of young women and girls are trafficked from Bangladesh to parts of South Asia and the Middle East to work in sex industry, domestic servitude and debt bondage.

gender-based violence, especially rape.[38] However, border issues that are framed in terms of national security disproportionately affect men.[39]

Women border crossers are generally assumed to have travelled for work as sex workers in the general narratives. This idea came up in almost all conversations that the researcher had with her respondents besides the prisoners, be it the state officials, NGO workers and border villagers. For instance, *Amir (*Chapter 2) had made a sweeping statement that men travel for menial jobs and women for sex work[40]. Similarly, a prominent activist who works on human rights issues in the Bengal border suggested that women migrate for sex work.[41] SWO1 also, in his account, largely emphasised how Bangladeshi women worked as sex workers. Although, in both these accounts, the speakers did not question the morality of the people in context, that was not always the case. [42] On the other hand, the prison psychologist stated that Bangladeshi women engage in sex work with "full willingness".[43] Similarly, the Sub-Inspector of a police station of a border district asserted that although women say that they work in parlour, everyone knows what "they actually do"[44], implying sex work.

How the state behaves with female immigrants in this context is riddled with dualities of policing and protecting again stemming from the need to control women's sexuality. Since women are perceived through the binary of criminal/trafficked, then the state (in this case, the

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[38] Kamala Kempadoo and Jo Doezema, eds., *Global Sex Workers: Rights, Resistance, and Redefinition* (New York: Routledge, 1998),14-19.
[39] Andreas Mahler, "On the Meaningfulness of Transgressions," *Arbeiten aus Anglistik und Amerikanistik* 44, no. 1 (2019): 3–18.
[40] Interview conducted on 14 February 2022 between 3pm to 6 pm in Purba Joynagar, North 24 Parganas. Name of the speaker undisclosed to maintain anonymity.
[41] Interview conducted on 17 February 2022 between 11am to 1pm near Kolkata. Name, location and organization of the speaker undisclosed to maintain anonymity.
[42] During the duration of the study, the said prison saw a transfer of the Social Welfare Officer halfway through the field work, hence giving the researcher an opportunity to interact with two Social Welfare Officers. So, for the remainder of this thesis, they shall be referred to as SWO1 and SWO2. Interview conducted on 12 June 2022 between 12pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[43] Interview conducted on 31 March 2022 between 12pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[44] Interview conducted on 06 August 2022 between 2pm to 4pm at a border village in North 24 Parganas, near Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

border forces) acts as a protector in two ways in these cases, one protecting the nation against 'illegal' immigrants and protecting these women who are coerced to cross or are being trafficked. Here, every so often, both categories overlap as women who could possibly be trafficked are also 'illegal' immigrants, and the border forces are trained to stop. Hence, the interception of the state arises out of the need to ensure safety, like in the case of *Sapna,* who was approached by the state on suspicion of trafficking or *Reshma,* who confessed to being a Bangladeshi after being approached by a police constable in a railway station while she was alone. Chapter 3 explained how the state reveals multiple ways of perceiving this category of border crossers, as someone who travels for their family and is not a criminal in that sense, someone who travels because they seek a better life and as someone who travels to engage in *kharaap kaaj* or sex work**.** A high-ranking officer from an Anti-Human trafficking unit described the need to protect women who were trafficked and worked in brothels. "All women who run such businesses are criminals. Rest are victims" [45], he said as he agreed that the incidence of trafficking is exaggerated and not all sex workers are coerced into sex work in the same breath. Seeing himself and his subordinate officer (seated next to him during the interview) as cogs in the wheel, as no historicity or gendered relations of such border crossings can change its definition of crime as prescribed by the law, he said that it is their duty to "save the chastity of these women". The usage of words like *chastity* further shows the masculine obsession with women's bodies, their sexuality and, subsequently, their morality.

One cannot abandon the maladies of equating trafficking with prostitution in most of the discussions. Rendering all trafficking to prostitution and subsequently abuse not only vilifies voluntary sex work but also disregards other forms of trafficking that happen to not just women and children but to men as well for bondage labour or organ trade. Also, the lumping

[45] Interview conducted on 12 February 2022 between 2pm to 4pm in Anti Human Trafficking Unit,Bhawani Bhavan, Kolkata. Name and designation of the speaker undisclosed to maintain anonymity.

of women and children together[46] not only abandons the various types of trafficking but also infantilises women and portrays themselves as dependent without agency or decision-making power.[47] Women who are trafficked and/or are working in the sex industry are also often found to have chosen this alternative and hired for services to facilitate their movements across the border, often paying high sums of money in order to bypass legal formalities and immigration requirements. From mortgaging their agricultural lands to taking a loan from banks, many of these migrants who chose to mobilise to different countries fund their movements, more than often paying the agents more than they should.[48] Therefore, there emerges a need to distinguish between victims of trafficking and voluntary migrants, who may or may not be engaging in sex work.

However, the chapter does not intend to interrogate the factors that might lead to sex work or if there was any sort of truth to what the speaker expresses but rather to critically understand how women's mobility is intertwined with her body and sexuality, something that men are free of. Hence, it becomes more evident why women who are jailed would make sure that they are not seen as immoral women. Immorality here not only pertains to her sexuality but also her mobility. Since the audience of these narratives was also fellow prisoners besides the researcher, it often seemed important for these women to absolve themselves of having engaged in anything 'questionable'[49] before these members. So, the women would often go into

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[46] Over the years, Bangladesh has introduced several laws and provisions to tackle the issue of trafficking such as the 1995 Cruelty to Women and Children Act (prescribes death or life imprisonment to those accused of trafficking women and children for whatever purpose), 2000 Suppression of Violence against Women and Children Act (There is separate process for women and children under this act, where trafficking in women was given more priority and there is a mention of sexual abuse though it is not clearly explained what constitutes sexual abuse. The act criminalises and punishes trafficking for sexual abuse with death or life imprisonment), the 2000 Women and Children Repression Prevention Act (It made trafficking for prostitution punishable by death or life imprisonment along with fines. Additionally, it mentioned punishments for child trafficking across the borders for unlawful purposes).

[47] Neil Howard and Mumtaz Lalani, "Editorial Introduction: The Politics of Human Trafficking," *St Antony's International Review* 4, no. 1 (2008): 5–15.

[48] Mohammad Abdul Munim Joarder and Paul W. Miller, "The Experiences of Migrants Trafficked from Bangladesh," *The ANNALS of the American Academy of Political and Social Science* 653, no. 1 (2014): 141–161.

[49] The researcher does not use the word 'questionable' reflecting on their viewpoints rather it is used to denote what the respondents perceived as questionable. In the context of the study, it primarily implied any form of sex work.

depth explaining the kind of work they did before imprisonment. *Arifa* went into detail about her work in Pune

> "I have a brother who works as a contractor in Bombay. He calls people from Bangladesh and arranges work for them, like he did for me. I worked with my husband for a daily amount of 400 rupees (INR) at a construction site. Everyone knew I was Bangladeshi, everyone I worked with."[50]

Arifa worked near Pune, Maharashtra, almost 1900 kilometres from the border fence she and her husband were arrested at, in the noontime while going to Bangladesh, where her kids remained. They had not taken the help of any tout. *Arifa* was arrested by a female cadet who mistreated her and questioned her about her job, accusing her of engaging in "*kharaap kaaj*". She is now in the same prison as her husband, waiting for conviction.

This leads to a discussion that surrounds not just scholarships but popular narratives as well when we consider female economic migration from Bangladesh to India. Women who choose to migrate for work are inherently seen as morally corrupt or desperate. The narrative is that men migrate to work in low-paying menial jobs and women migrate to work as sex workers, and this assumption comes less as a matter of fact and more as an assessment of poor women migrants in general. In the absence of moral judgements, it comes off as a precursor to how women are trafficked, as they are always naive and unsuspecting. Esposito and Matos bring forth the conundrums that the Brazilian women confined in detention facilities in Portugal had to face as they had to tackle the hyper-sexualised image of Brazilian women as those who come to Portugal for sex or marriage and thereby wreck homes.[51] However, many of these women also stated that they did sex work because it was work just like anything else, and it earned them money. In the context of this study, the women also faced similar questions

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[50] Interview conducted on 10 August 2022 between 12m to 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

[51] Esposito and Matos, "Gender, Vulnerability and Everyday Resistance in Immigration Detention."

about their work. However, a tacit onus seemed to fall upon all female migrants to free themselves of this assumed identity every time they got a chance. The logic of the state that brackets women into categories of risked bodies or immoral women extended to the incarcerated women as well, for others and for themselves. During one of the conversations with the researcher in the prison, the paralegal volunteer and lawyer assigned by the state iterated how Bangladeshi female prisoners refuse to plead under The Immoral Traffic (Prevention) Act 1956 (ITPA) against the legal aid's advice, even though it frees them of getting charged under Foreigner's Act by establishing them as trafficking victims.[52] For instance, *Sapna*, who came in contact with the state when a local filed a complaint regarding suspicion of trafficking, said she made a point to tell the authorities that she was not trafficked even though it would essentially free her from being jailed under Foreigner's Act 1946.[53] The agent that was arrested along with her was sentenced to jail for 15 days, but she, on the other hand, was in prison for the past 9 months as an undertrial during the time of the interview, something she could have avoided had she pleaded under ITPA.

Consequently, the question of a 'good' vs a 'bad woman' looms over not just how a woman behaves but also how she moves. As women embody borders, their movement is often seen as a social transgression pertaining to their sexuality. The prison where the study was conducted had two medical personnel, a doctor and a psychologist, who can also be looked at in the same context. Strangely, contrary to the researchers' expectation, it was the psychologist that the prisoners did not like because they found her to be mean and harsh to them as opposed to the doctor with whom the prisoners had seemingly no problems. The difference in how these two personnel dealt with the prisoners was also observed by the researcher while talking to these two medical staff. On interaction with the researcher, *the doctor in charge* said that

[52] Both interviews conducted on 13 March 2022 between 11 am to 12 pm at a correctional facility in Kolkata. Name and location of the speakers undisclosed to maintain anonymity.
[53] Interview conducted on 18 July 2022 between 12pm to 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

Bangladeshi prisoners are harmless, often "well-behaved", "not addicted to drugs unlike other Foreign National Prisoners and also not suffering from long-term illness."[54] She also went on to say that some of them even cross the border to get caught so that they can be brought to jail and receive attention for their medical condition.[55] Contrarily, *the psychologist* called this category of prisoner "agitated", "misbehaved", "manipulative", "remorseless", "liars", and "risky" and saw no change in their behaviour over the course of their term.[56] According to her, the prisoners behave well with higher officials but do not treat direct officials or wardens with respect unless they have some favour to ask for or need some work done. *The psychologist* went as far as saying that Bangladeshis suffer from Anti-Social Personality Disorder (ASPD)[57], making them "crime-prone", thereby making a broad generalising statement about Bangladeshi prisoners. Such sweeping statements about a community did seem reflective of how these medical staff, who in some extents are representing the state in this carceral space, perceived the Foreign National Prisoners. Although *the doctor* did differentiate between Bangladeshis and other FNPs while mentioning how all are not used to drug abuse, *the psychologist* contrarily said that they also very well engage in substance abuse, further showing how even in the same prison, two different medical actors who might as well be state actors do not necessarily perceive Bangladeshi prisoners/ women in the same light.

The binary of how the state perceives female Bangladeshi migration through the lens of sex work could be observed in the binaries offered by the AHTU officer and the prison

[54] Interview conducted on 31 March 2022 between 12 pm to 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[55] This was also stated by the Social Welfare Officer of the prison.
[56] Interview conducted on 31 March 2022 between 1 pm to 2 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[57] Antisocial personality disorder (ASPD or APD), sometimes referred to as dissocial personality disorder. Individuals suffering from antisocial personality disorder frequently lie, disobey the law, behave recklessly, and show little concern for their own safety or the safety of others. A person can be diagnosed through mental health exam, assessment of family medical history and through their symptoms. Although there could possibly a few prisoners who were a jailed repeatedly for the same offence, it would be too far-fetched, inaccurate and dangerous to rule someone as an ASPD patient without correct and elaborate examination, even if the person making the assessment, is a trained psychologist.

psychologist, where the former saw it as an act of victimhood and vulnerability, and the latter saw it as an act borne out of deviance and personality disorder, in short, the binary of victim vs criminal. State authorities often hold a stereotypical view of these women, seeing them through a lens that both moralises and victimises their past while exerting strict control and discipline over their present.[58] These viewpoints are also largely indicative of how women's sexuality is a marker of her personality in general. So, it was obvious that women who had been arrested with their husbands had less apprehension and claim-making to do. These women would often make a point during their interviews to mention their husbands moving with them. Moving with family or for family meant less indignation and less claim-making to do since family meant a character certificate in this case. *Sehada Bibi* said she'd often cross the border with her husband, who later passed on, leaving behind two kids.[59] *Amina* said her husband was supposed to accompany her while going back to Bangladesh this time, but then he postponed joining later for Eid. She further stated that she could not contact him from the prison since he is also imprisoned somewhere for getting into a fight. Both *Puja* and *Shilpa* crossed the border with their husbands but in separate groups arranged by the tout, which led to the husbands making it across but them getting arrested[60]; *Shilpa* did not mention her husband after that during the entire interview. *Nargis Begum* is jailed with her husband and she doesn't engage in prison chores for money as her husband arranges that for her.[61] *Chanda* crossed the border for her husband and has no qualms about getting arrested.[62] These notes carried an underlying affirmation of one's familial obligation since women's worth is attached to her role as a member

[58] Esposito et. al, "Gender, Vulnerability and Everyday Resistance", 12.
[59] Interview conducted on 27 July 2022 between 12 pm to 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[60] Both interviews conducted on 31 March 2022 between 12pm- 1 pm in a correctional facility in Kolkata. Name and location of the speakers undisclosed to maintain anonymity.
[61] Interview conducted on 01 September 2022 between 12pm- 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[62] Interview conducted on 24 August 2022 between 12pm- 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

of a family, as a mother and a wife. This was again a reinforcement of their telling of how they are moral family people, they were neither trafficked nor did they engage in sex work.

Identities That (Un)belong: Prison can be observed through layers of who it is seen as belonging to and through the distribution of powers following those meanings. Bosworth argues that in prisons, it is not just total power that is in action, but also smaller constant negotiations and practices of power wielded by the state as well as prisoners. Women are often shunned in society for having gone to prison. Men necessarily do not invite the same degree of indignation since prison is not seen as a space for women through the lens of honour, morality, piety and dignity. To add to that, the double marginal nature of *'foreign women'* makes them a subject who is further 'unbelonging' of the space that is traditionally designed for male citizens. Their morality is doubly questioned since they are found not just in a carceral space but also in a country that is not theirs, thereby implying transgression of political, social and cultural limits set for a woman. A legal journey is seen as honourable as the traveller moves to enhance their status, whereas an illegal traveller is seen as a transgressor with no ethics or aesthetics.[63] Here, border crossings are entangled with concepts of honour and shame. The loss of bodily connection to the homelands resulting from moving away from it often showcased the loss of moral bearings of such individuals.[64] Such relations and rootedness to a place are reflected in discursive practices that question their loyalty as citizens.[65] From the accounts of the respondents, the Indian prisoners, although not legitimately but conceptually perceive the category of Bangladeshi women as someone who is not worthy of honour not just through questions of their prior engagements in the society but also through the same lens that sees female migrants as 'immoral' and 'unchaste'. Borders and punishment, hence, generate political

[63] Shahram Khosravi, "The 'Illegal' Traveller: An Auto-Ethnography of Borders," *Social Anthropology* 15 (2008), 331.
[64] Malkki, "National Geographic",63.
[65] Ibid, 61-64.

subjectivity, identity, morality, and goodness; they create the societies they delineate as well as bind them.[66] Through such practices of negotiation of power, assertion of identity and othering, one can argue that penal institutions become an extension of borders, thereby grafting onto it the meaning-makings of borders.

During the interviews, the respondents expressed their discomfort at the face of being treated unequally due to their status as non-citizens. Their dignity was very much attached to the idea that they had to move for their family, that they were a moral family person. However, these women expressed that their identity as 'family' members with moral bearings had to be constantly asserted as they were seen as 'intruders' by the Indian prison members as someone who had 'snuck' into their country through the fences. Hence, in prison, the notion of honour overlapped with different identities such as national identities, gendered identities and class identities. *Amina* remarked,

> In prison, things are okay. We do not have a comfortable space as there is no fan, no veranda, and it is very crowded. On top of that, Indians (prisoners) treat us with disdain. It is very hurtful. We treat them with respect when they come to Bangladesh. We even help them cross the border to get to their home. Our BGB also takes them to court so that they can be sent back. But in India, we are ill-treated.[67]

Amina said although the *didis* are nice to them, she refrains from making complaints about the Bangladeshi prisoners as it would land them in trouble and get them punished, punishments being "arranging books, cleaning drains".

Reshma echoed a similar approach of contacting just the *didis. Reshma* was earlier detained in a smaller prison in Kalyani (West Bengal), which was clean and spacious. After completing her sentence, she was sent to this prison so that her deportation could be carried

[66] Wendy Brown, *Walled States, Waning Sovereignty* (Cambridge, MA: MIT Press, 2010), 90.
[67] Interview conducted on 03 August 2022 between 12 pm to 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

out. Technically, after having completed her sentence, Reshma was not a convicted criminal anymore. She said the difference in how Bangladeshis were treated could be felt. She said her previous prison was better. She recalled,

> "It was like a hostel which was open for the whole day, we could watch T.V., the food was good, and treatment was good. This prison is also okay, but not as much. We are given leave only for 1 hr in the morning and the evening. I don't talk much with other prisoners or wardens. If I need anything, I ask *didi*."[68]

Wardens, or as the women call them "didi", are the ones the women said they turn to if they need any sort of help in the prison. The other important person who directly interacts with the prisoners during their stay is the Social Welfare Officer (SWO). The women saw didis as someone they could rely on in the prison, especially when living amongst people who are jailed for various crimes. *Sapna* said she maintains a good rapport with the didis, who tell them to let the staff know if anyone misbehaves with them. [69] *Reshma* said she did not like to contact the jailer or other staff, and it was just didis that she liked to keep in touch with and who help them with anything.[70] *Amina* said she liked didi because they wouldn't treat them any differently than the Indian prisoners.[71]

However, not all didis showed the same amount of empathy towards these prisoners. As the researcher tried to explain the nature of the study to the respondents before each interview, the respondents reacted in their own way. Some with some kind of formal education would understand the kind of research. On the other hand, some saw this interview as something that would help them reach their country sooner than expected. Not all respondents had questions about it; some would ask for help, and some would thank for listening to their

[68] Interview conducted on 27 July 2022 between 12 pm to 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[69] Interview conducted on 18 July 2022 in Kolkata. Name anonymised.
[70] Interview conducted on 27 July 2022 in Kolkata. Name anonymised.
[71] Interview conducted on 03 August 2022 in Kolkata. Name anonymised

stories. In one of these first few meetings, a respondent asked the purpose of the interview. Due to limited knowledge of the language of the respondents, the researcher found it difficult to elaborate upon the answer, and it was then that the presiding warden translated the answer and explained to them what was happening. Again, in another one of the interviews towards the end of the study, another warden told the researcher that there was no need to explain the research to the prisoners since they do not need to know and would not understand what was being said either. In one such similar instance, *Mandira* requested the researcher to see if she could be let go since she was trafficked.[72] She kept saying that it was not even her choice to come to India, and she feared imprisonment. On this, the latter warden, who looked slightly stern in her approach towards the prisoners, snarkily commented, "Why did you come, now suffer?"[73] Such exchanges reinforce the idea of how these prisoners negotiate identity with the state through individuals who, though representing the state, also have their individual process of interaction with criminalised non-citizens. Besides the *didis,* the social welfare officer would directly contact the prisoners, although they were also not always seen as hostile by the prisoners. Such as the case of *Alifa*, who showed bruises on her leg that she got while being arrested and asked the researcher if she could arrange a phone call for her.[74] When the researcher said that she was not allowed to do that and that *Alifa* should talk to the Welfare Officer, she said she was scared to talk to them.

The refrain from interacting with most prison officials and other prisoners mostly originated from ideas of honour and identity that the women had internalised through practices of bordering at the prison as well. Bangladeshi incarcerated women were either perceived to be sexually immoral or unbelonging, as someone who had wrongfully entered the space. *Sapna*

[72] See Chapter 3, *Section 3.3. Networks that Enable Movements*.
[73] Interview conducted on 06 September 2022 between 12 pm to 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[74] Interview conducted on 18 August 2022 between 12pm- 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

said every small scuffle with other prisoners ends up in Bangladeshi prisoners being taunted for being 'illegal foreigners',

> "We all get along in the prison, but even small fights can lead to us being taunted for not coming to India without documents. We do not always have a comeback to what they say except when the other person has done a bigger crime. It is when we say, "You have killed someone, I only crossed the border"."[75]

Khaleeda, in her late 20s*,* from Magon Zilla in Bangladesh, had gone to Mumbai to get her eczema treated. She lived in Mumbai with her sister and brother-in-law both of whom worked there. *Khaleeda* did not work in Mumbai, although she worked as domestic help in Bangladesh before she came over to India. It was when she was returning to Bangladesh for good, she was arrested at the border. *Khaleeda* pointed,

> "We do not have big complaints; there is not much to do in the prison. Just eat, sleep, and do duties. Of course, the space is crowded, and the taunts keep coming. Indians do not treat Bangladeshis well even though they have done bigger crimes. What we have done is not a big crime. Still, we keep our heads down and do not retort to the taunts. But I'm not afraid of them even if they might have killed someone."[76]

There were also some who said they stayed away from the prisoners, such as *Sabina,* who said, "I fear most prisoners as I do not connect with them. People are dangerous."[77] In such interactions, the unequal position of the prisoners is apparent as the Indian prisoners see themselves as superior to the Bangladeshi prisoners irrespective of what crime they might have committed.

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[75] Interview conducted on 18 July 2022 in Kolkata. Name anonymised.

[76] Interview conducted on 31 March 2022 between 12pm- 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

[77] Interview conducted on 18 August 2022 between 12 pm to 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

It is here that citizenship as a category demonstrates the meanings it carries in full display, as it is not only ideas of morality that are being contested but also ideas of belonging and distribution of power. This practice of power is deeply derived from the idea of belonging in a space not traditionally designed for everyone. Confining people to a place is metaphysical and carries moral dimensions.[78] Hence, women are validated when they stay put where society and families want them to, making them less prone to violence of various forms, be it physical, sexual or symbolic. So, when they choose to mobilise themselves in more than one way, transnationally, economically and socially, they lose those moral bearings attached to their being. In a foreign prison, the unbelonging is manifested twofold: through them leaving behind their homelands and entering a carceral space. Hence, women become more visible as criminalised persons; non-citizens also become more visible due to their identity of being an 'alien'; female foreign prisoners stand out more pronounced.

Even in the context of this study, where the larger population of prisoners, Indians or Bangladeshis, have no ethnic or linguistic separating markers, the difference is very much present and enforced. The politics of space here is very much intertwined with politics of otherness as the prisoners come to terms with such notions of autonomous space and territorialised identity on a regular basis while negotiating with a group of people who have not necessarily moved in the same way as them.[79] The difference is often enforced due to the lack of collective national identity and national imagination between the prison members, shaping up power structures and relation dynamics in a confined place.

4.5 Negotiating Labour

[78] For more, see Arjun Appadurai, "Putting Hierarchy in Its Place," *Cultural Anthropology* 3, no. 1 (1988): 36–49.
[79] See Akhil Gupta and James Ferguson, *"Beyond 'Culture': Space, Identity, and the Politics of Difference,"* in *Culture, Power, Place: Explorations in Critical Anthropology*, ed. Akhil Gupta and James Ferguson (Durham: Duke University Press, 1997), 33–51.

The Prison Act of 1894's extensive provisions serve as the foundation for the management of prison labour. This includes the discussion of hiring prisoners in Sections 34, 35, and 36. The Act distinguishes between the ways in which a prison authority can employ a criminal and civil prisoner. Section 35 of the Regulation of Prison Labour and The Prisoners Act, 1894 lays out certain rules on how criminal prisoners can avail employment in prison. This extends to their duration not being more than nine hours a day; medical officers need to make sure that the prisoners are fit for the kind of job they are engaging in so that their health is not affected negatively due to the labour and that their weight is routinely checked. There is a difference in pay structure based on the three classifications of prison labour: skilled, semi-skilled, and unskilled. The reformist discourse on prison labour includes other parameters, such as the type of labour provided, the distinction between undertrials and convicts, the exclusion of the idea of voluntariness, and the use of wages. In the year 2022, a couple of Indian states also increased the daily wages of these prisoners.[80]

Prison work is centred on society's competing goals of protecting law-abiding citizens from criminals, punishing convicted offenders, and rehabilitating prisoners so they can resume their normal lives after release.[81] Employment in prison is crucial for prisoners as it offers them wages to get access to essentials besides daily meals which are not provided by the prison such as toiletries, sanitary napkins, extra food in the canteen etc. Women who do not work in the

[80] "Karnataka Raises Wages of Convicts in Jails by Up to 200%," *Times of India*, November 29, 2022, https://timesofindia.indiatimes.com/city/bengaluru/pay-hiked-165-200-for-convicted-jail-prisoners-in-karnataka/articleshow/95839815.cms. (Accessed on 23 August 2023);"State Prison Dept Hikes Wages of Prisoners," *Hindustan Times*, March 28, 2025, https://www.hindustantimes.com/cities/pune-news/state-prison-dept-hikes-wages-of-prisoners-101692469325258.html. (Accessed on 04 June 2024); "Uttarakhand Govt to Hike Minimum Wages of Prisoners Employed in Prison Labour," *ANI News*, October 3, 2023, https://www.aninews.in/news/national/general-news/uttarakhand-govt-to-hike-minimum-wages-of-prisoners-employed-in-prison-labour20231003233939/. (Accessed on 05 June 2024)

[81] See Gresham M. Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton: Princeton University Press, 1958); Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Pantheon Books, 1977); Carl B. Hemmens and Mary K. Stohr, "The Two Faces of the Correctional Role: An Exploration of the Value of the Correctional Role Instrument," *International Journal of Offender Therapy and Comparative Criminology* 44, no. 3 (2000): 326–349; Mary L. Griffin, "The Influence of Professional Orientation on Detention Officers' Attitudes Toward The Use of Force," *Criminal Justice and Behavior* 29, no. 3 (2002): 250–277.

prison, or undertrials usually depend on regular visits from their families for the allowances. The prison currency is coupons that one can buy and use in the prison canteens. Foreign national prisoners, however, cannot avail of paid labour which makes them dependent on allowances for these coupons. Since Bangladeshi women rarely have visitors barring some who have relatives in India, managing this allowance is more difficult than Indian undertrials, who can still have frequent visitors compared to FNPs. Some respondents had someone to take care of such needs, such as *Nasima*, who said she doesn't have to work since her daughter gives her around 100 INR every month when she comes to visit her, or *Nargis Begum*, whose husband manages coupons for her so she did not have to manage for money in the prison. The rest did not necessarily have anyone to look after their expenses. Under such conditions, these Bangladeshi women end up working for other prisoners, mostly Indians, in the prison for small amounts of money.

Arifa said she got hold of a job of working for a woman suffering from epilepsy. She does all her prison duties and personal chores, like washing clothes, for Rs 50 per week.[82] *Parveen* said she also does personal chores in prison for money.[83] *Baby,* who is a case partner with *Nasima*, said she must work in the prison, unlike *Nasima,* whose daughter gives her money.[84]

However, there are many such prisoners who offer services and there often arises competition for work. A presiding warden suggested that Indians do not work for other prisoners for money, and it is usually Bangladeshis who do that. Another warden overseeing these conversations commented,

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[82] Interview conducted on 10 August 2022 between 12pm- 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[83] Interview conducted on 10 August 2022 between 12pm- 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[84] Interview conducted on 01 September 2022 between 12pm- 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

"Personal jobs in the dorm are rampant. There are rich prisoners who get money from their families, and these people do not like to do any prison work. So, they pay others to do it for them… it is not necessarily that those who give out jobs are Indians, and those who do these jobs are Bangladeshis. You see, no one in this prison is honest."[85]

Such systems can be seen as a reflection of urban settings where immigrants work for locals. "Bangladeshis have a reputation for being laborious. If people don't want to do certain tasks like washing dishes, they say 'make Bangals do it'" [86], said SWO1 when asked if the workload is the same.[87] The prison assigns equal duties to everyone, but Bangladeshis do all the work, said *Nargis Begum*. So did *Sameena* (showing her bruised hands due to "too much work") who was actually countered by the presiding warden with "even Indians do the work". As discussed in Chapters 1 and 3, Bangladeshi immigrants occupy a vulnerable position in the market due to the illicit nature of the stay that strips them of any bargaining power and labour rights. It is also through their identity that they often negotiate their labour in private spaces as domestic help or as other informal workforce. Through such engagements and negotiations, it is more apparent how a symbiotic relationship exists between locals and immigrants, both benefitting from the other, even if in varying measures[88]. It is through practices in the prison where work is unequally carried out that the unequal position of these two categories of prisoners, i.e. citizens and foreigners, is further reproduced in carceral spaces. From lack of wage employment to disproportionate dispersal of chores, *Bangals* are further stereotyped as the 'hardworking type'.

The negotiation of labour, hence, in these spaces becomes important not only as an extension of the labour practices outside of prison but also as a reminder of the exercise of

[85] Interview conducted on 10 August 2022 between 12 pm- 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[86] Interview conducted on 12 June 2022 between 10 am -11 am in a correctional facility, Kolkata. Name of the speaker unmentioned to maintain anonymity.
[87] The statement was made in reference to all the prisoners and not just female prisoners.
[88] As discussed in the third chapter.

agency in such negotiations by these women. Individuals assess and act upon their choices considering their lived experiences, which forms the basis of their ability for agency. For instance, these women who decided who they would work for and what kind of work they would do while at it shows their position of negotiation rather than oppression. *Amina* outrightly refused to wash the clothes of the prisoners, "I sweep and mop the floor, which the prisoners are supposed to do as part of their prison duty for 30 rupees. I don't wash clothes. With this money I buy soaps. Or else I sell mutton meat that is sometimes given to us in meals," she said.[89] Similarly, *Shilpa* said she takes up the work of those who have court visits and have duties lined up. With a slight laugh when asked about how she spends her time in prison, she remarked, "Eat and sleep…… all are given equal work, but only Bangladeshi do these extra jobs for money".[90]

Foucault, while mentioning labour in prison, underscores the principle that essentially tries to replicate broader societal structures of power. He argues that labour has become a tool for control and discipline in such spaces of confinement. Interestingly, the allocation of duties and further transfer from all prisoners to some prisoners underlines the societal structures in a more definite way, as the latter are seen to be deserving of more control and discipline in a more hierarchical manner. However, paid labour in prison is an important tool for the prisoners to not just earn money but also keep busy. As already discussed, gendered norms and requirements associated with the incarceration of women are frequently overlooked in favour of the perception of prisons as masculine spaces. Since the foreign national prisoners in this instance are not only awaiting deportation but also must endure the trial, conviction, and sentencing process, paid labour should be considered a vital source of income for the

[89] Interview conducted on 03 August 2022. Name anonymised.
[90] Interview conducted on 03 August 2022. Name anonymised.

respondents to meet their basic needs, which are frequently disregarded by the spaces' masculine design.

To get hold of such necessities, besides selling their labour, these women also go on to sell food. As mentioned above, *Amina*, besides working for others, sold mutton that they got in meals for money, and so did many others. *Sameena*, visibly angry as she spoke, said she is wary of all prisoners as they are *dangerous,* said she is "sick of eating the same vegetables in prison", as she also sells the meat that she gets in meals for a little bit of money to help her get by.[91] Ruby, who is jailed with her son, sells meat in her portions for her son so she can feed him well, "I sweep and mop as prison duty, and I sell *khaabar*[92] for my son", she said.[93]

However, it becomes important to note that none of these statements were made as lamentations. Besides *Sameena's* account, which came across as more of a rant over the quality of food than a grievance, all these women who sold their food amidst competition for work and no other source of allowance saw this as a way of negotiating for money, prison replicating a free market where either labour is sold for money or food, even if it is directly coming from one's plate. Consideration of how prisoners get things done and how they assess what they want done is helpful in shedding light on the ways in which power is constantly negotiated in prison. If it is acknowledged that prisoners are always involved in internal power negotiations, regardless of how small their role may be, then it becomes important to think about how prisoners maintain their sense of self as agents despite the constraints they encounter.

4.6 A Community of Outsiders

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[91] Interview conducted on 06 September 2022 between 12pm- 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[92] Bengali word translating to food.
[93] Interview conducted on 06 September 2022 between 12pm- 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

Engin Isin, while talking about the formation of group identities and the constitution of citizenship, suggests that groups cannot materialise themselves as real without realising themselves in space, without creating configurations of buildings, patterns, arrangements, and symbolic representations of these arrangements.[94] Like others, prisoners make decisions and behave in a way that is shaped by the community, which gives them a sense of self. In their ordeal of negotiating identity, dignity and labour, Bangladeshi women go on to form their own circles of outsiders, in some ways mirroring the idea of the national community as their bonding is primarily driven by their collective experiences of facing 'bordering' at the prison. 'Othered' by prisoners and prison officials alike, it is in the existence of each other that these women not just navigate their sentence but also the criminality of their stay in prison by looking at the judicial trajectory of one another. Often, these women whose cases were still on trial at courts during the time of the interview said how, in such uncertain conditions where there was no way of knowing the schedule for both conviction and/or deportation, one would often look at other women's journey as reference for their own. It would also mean added worrying about complexities that might be peculiar to a particular instance, as there would also be tales of overdrawn court cases and confinement. One of the most recurring themes was the long pending case and navigating judiciary[95], and how the older prisoners would give tips, hints or likely outcomes to new arrivals since they shared a collective predicament of being jailed under the Foreigners Act 1946, as a way of peer mentoring that lends emotional support. As Fletcher and Batty note, the advice from peers or prisoners, in this case, appears more credible since it comes from personal similar experiences rather than any rhetoric or existing policies.[96] Prison

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[94] Engin F. Isin, *Being Political: Genealogies of Citizenship* (Minneapolis: University of Minnesota Press, 2002), 43.
[95] To be discussed in detail in the Chapter 5.
[96] Del Fletcher and Elaine Batty, *Offender Peer Interventions: What do we know?* (Project Report, Centre for Regional Economic and Social Research, Sheffield Hallam University, 2012), 3.

is an emotional space[97] , and in such spaces, forming such communities can alleviate the emotional turmoil of being incarcerated in a foreign land.

Besides the idea of being jailed in a foreign land, the idea of constantly navigating this sentence as the 'other' is another thing that brings together these women. As discussed in the above sections, negotiating movements, identity, honour and labour, these women find a sense of community in navigating shared experiences. Even during the interviews, one respondent would often interject into what the other person might be saying as a collective experience, often finishing each other sentences, adding or agreeing to what is being said, making it more like a shared experience that is being recounted. Like when *Sapna* mentioned about small fights leading to Bangladeshis being taunted for coming to India "illegally", her fellow respondents joined in.[98] Or when *Amina* remarked about the prison psychologist as soon as she saw them, *Shilpa* and *Puja* sitting next to them added to the gossip, saying how rude she is and how she often dismisses their request for medicine or extra sanitary pads.[99]

This brings one to a rather important issue of sanitary pads. As already discussed more than once, women's needs are often overlooked in prison, and menstrual products are one such need. However, this section is not to talk about the gendered neglect of health and hygiene in prison but rather about how these women navigate such situations. When asked by the researcher about how sanitary health is looked after, *Amina* said the prisoners are given only six sanitary pads per month. This was an appalling piece of information, as an average woman needs up to 8-10 sanitary pads per cycle. Similarly, in a separate incident, *Nargis Begum,* who had just been transferred from a district prison, was shocked to hear Nasima say that only six pads are given, and it becomes difficult. *Nargis Begum* went to ask *Nasima,* "How do we manage then?" That was also a question on the researcher's mind as to how one manages six

[97] E. M. Crawley, "Emotion and Performance: Prison Officers and the Presentation of Self in Prisons," *Punishment & Society* 6, no. 4 (2004): 411–427.
[98] Interview conducted on 18th of July 2022 in Kolkata. Name anonymised.
[99] Interviews conducted on 03 August 2022 in Kolkata. Name anonymised.

sanitary pads for a month. To this, *Nasima* replied, "You borrow."[100] Likewise, *Asha*, *Chanda,* and *Khaleeda,* seated together, said that sometimes the period goes on for seven days, so they must manage it often by borrowing each other's pads.[101] Other prisoners also made such remarks about lending and borrowing pads when needed. On the surface, this might seem like a minor issue and undeserving of any attention, but it's an important thing if one looks at how such concerns are so important for women and that this community of women prisoners are there to take care of each other. The point is not about how more pads should be given, which is the obvious solution to this, but to see the ways in which these women navigate not just larger concepts of identity, honour and dignity but also day-to-day activity and life experiences such as menstruation.

Labour is another thing where this idea of community is more visible. As discussed, Bangladeshi prisoners with no other source of allowance work for other prisoners or sell food. Due to the large number of such prisoners with no financial assistance and fewer prisoners who can afford such services, there often arises competition for work. But there also exists a passing down of extra work, as a couple of prisoners mentioned about giving extra work to others. Or sharing space at overcrowded prisons. The sharing of space was also directed as something that kept them together. Saying that they refrain from getting into fights with Indian prisoners, most of these women brought forth the idea of making their own circles, a circle of outsiders. This community of outsiders don't function to confront but to navigate and endure the continuous process of othering at the prison. These ideas are also reflected in how the women in these interviews narrated their story of moving to being incarcerated, keeping themselves as the locus of the narrative and as an individual experience. However, their prison experiences as Bangladeshis would often be accounted as '*amra*' or we, positioning themselves as

[100] Interviews conducted on 01 September 2022 in Kolkata. Name anonymised.
[101] Interviews conducted on 24 September 2002 in Kolkata. Name anonymised.

representative of the shared collective experience of incarcerated non-citizens, sharing not just similar day-to-day routine prison life but also similar ideas of identity and honour.

Women prisoners, usually defined and limited by the notion and expectations of femininity, are also often seen as a homogenous group of prisoners sharing the same socio-economic and cultural features. However, the varied experiences of the respondents reveal how one's national identity also overlaps with one's gendered identity. The idea of a shared sense of belonging and collective identifications are "deeply rooted" in borders.[102] Hence, it becomes even more important to mark this difference of subjective experiences driven by identity and morality where one's status as a non-citizen is juxtaposed with one's status as an incarcerated woman, thereby creating collective yet unique journeys. In such experiences of being bordered there also emerges a collective from that border.

4.7 The Indignation of Imprisonment

Incarcerated means different things for men and women. In the case of women border crossers, the usual dichotomy of crime and lawful travel beyond just the character of the border and usual border activities in context. Besides the depiction of women travellers as risked bodies[103], their movement is often gauged through the reasons that made them cross the border, an act more gendered in this context. As female mobility is largely tied around her role as a member of the family, her movement is often not understood as a risk and threat to society in the same measure as male mobility is. However, her movement is often understood as an act of transgression. Prison adds more weight to this indignation attached to women, whose moral bearing is attached to their rootedness more than men, who are largely seen as mobile. Prisons replicate the larger societal structures imposing ideas of morality, femininity and docility on

[102] Etienne Balibar, "At the Borders of Citizenship: A Democracy in Translation?" *European Journal of Social Theory* 13, no. 3 (2010): 316.
[103] As discussed earlier in the chapter.

women who are expected to continue these modes of behaviour in prison as well. As already discussed, foreign female prisoner has the arduous task of negotiating concepts of honour and identity in prison, often relegated as lesser women for moving illicitly. So, the question arises: what do these women who find themselves in prison see their act in the light of the indignation society attaches to carceral spaces and female mobility?

When faced with questions of indignation, many of the women said that their reasons for crossing the border superseded the indignation that came with it. They said that they did not know that crossing the border illegally would mean them getting imprisoned[104] and that had they known there was a risk of imprisonment, they perhaps would not have crossed the border. However, their families and folks back home, knowing that they were imprisoned, meant different things to different people. There were many whose families did not know that they were imprisoned. *Alifa,* who had been making border crossings for the last two years, said she did not have a chance to contact her family back home after her arrest.[105] *Sabina*, 35, said she was relieved no one besides her son knew she was jailed.[106]

Nargis Begum was on her way to Chennai with her husband when she was arrested at the Nadia border. Unlike most respondents, *Nargis Begum* was a convict serving her sentence of two years in this prison after being transferred from a smaller facility in Nadia. Although she did not disclose how far she studied, she visibly had formal education, understood Hindi very well, understood the kind of research that was being conducted, and helped the researcher by translating certain questions to her fellow respondents.[107] Although she was jailed along

[104] As discussed in the Chapter 3, Section 3.7 Illegality versus Criminality.
[105] Interview conducted on 18 August 2022 in Kolkata. Name anonymised.
[106] Interview conducted on 18 August 2002 between 12pm- 1 pm in a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[107] A few times, the researcher faced difficulty in explaining some questions to the respondents due to language barrier as mentioned in Chapter 1 Section 1.6 Methodology of the Research. Nargis Begum, being very fluent in Hindi helped the researcher by translating her questions to the respondents. Similarly, there also a few times that the presiding wardens would help the researcher by translating certain words to the respondents.

with her husband, she said she is wary of her family knowing of their imprisonment, "My family does not know that we are in jail. They had stopped us from crossing the border."[108]

This was the first time *Shilpa*, *20,* had come to India to meet her family, who had been living in Bombay for 15 years (at the time of the interview). Her family had all Indian documents but not Shilpa, who lived with her *mama* (maternal uncle) in Khulna (Bangladesh). Shilpa was a college student at the time of the arrest. She had come on a vacation with her husband, who she had married a few months before the arrest. She and her husband, who works for Pran (a company in Bangladesh), "got on a train after crossing the border" and stayed in Bombay for two months. It was on their way back that she was arrested at the border while her husband made it through in a different group. *Shilpa* was glad that only her family knew she was in prison,

> "I am glad only my family knows I am in jail. News like these spreads from one person to another in villages. Hopefully, it has not happened in my case, and no one in my village knows about my imprisonment. The only time I could contact my family was from the thana. Now, they have not contacted me, and nobody makes it a point to see me in prison. [109]

Amina, seated next to Shilpa, joined, "We have a money crisis since no one comes to visit us."

However, there were many other cases where the family knew about the crossing and facilitated legal counselling for the respondents. *Chanda* said her situation back home was so dire that it was her village folks back in Satkhira (Bangladesh) who suggested that she should cross the border and look for work. She remarked,

[108] Interview conducted on 01 September 2022 in Kolkata. Name anonymised.
[109] Interview conducted on 03 August 2022 in Kolkata. Name anonymised.

> "When I was arrested, I was very scared since no one knew about it. It was when my son called my sister in Hasnabad (India), who then went to Bongaon Police Station to enquire that they got to know about my imprisonment. At least, now I am relieved that my son knows I am in jail."[110]

Like *Chanda,* many respondents said the villagers knew about border crossings because it was an ongoing rampant phenomenon. *Sehada Bibi* said her villagers made countless such movements.[111] The ordinariness of border crossings (chapter 3) also meant there were fewer fears of indignation among these women about crossing the border. However, when asked about fears of indignation of being imprisoned, most of these women talked about not how the extent of imprisonment was more worrying than the idea of imprisonment. Respondents said that had they known about the possibility of being jailed, they perhaps would not have illegally crossed the border (Chapter 3). However, it was the uncertainty of the punishment that baffled them more than made them anxious about what people might say.

Sitting next to *Shilpa* and *Amina* was *Puja,* who pointed as to how they had realised what they had done a mistake but failed to see how being imprisoned for such a long duration was a fitting punishment for border crossings. Here, all three women echoed each other's thoughts that what they did was not '*aporadh*' and that waiting for conviction is more worrying. Most of these fears stemmed from the uncertainty of court trials and the wait for conviction. *Alifa,* who was acquainted with border travels, was more worried about when she would return home; "I worry my fate will fall upon like many others whose trial has not even started. I accept my mistake, but now I am more worried about the uncertainty of when I'll return."[112] Women who were arrested with their husbands, like *Arifa* and *Nargis Begum,* seemed less apprehensive about being in prison than those who had no friends or family in contact. Here, these women

[110] Interview conducted on 24 August 2022 in Kolkata. Name anonymised.
[111] Interview conducted on 27 July 2022, between 12 pm to 2 pm in a correctional facility in Kolkata. Name of the speaker changed to maintain anonymity.
[112] Interview conducted on 18 August 2022 in Kolkata. Name anonymised.

were more worried about the delay in conviction since conviction meant a sentence and subsequent release/deportation.

Through such narratives, it was clear that women, despite knowing the unlawfulness of the act, were more baffled by the nature of punishment. To amplify the worry was the long and tedious process of court trials that added to the problem (more to be discussed in the next chapter). However, it was the length of the punishment that puzzled the women even more. They failed to see how crossing the border for jobs or kinship warranted such long imprisonment. For them, the punitive measure far exceeded the nature of the crime because they were jailed with people who had committed far more serious crimes. In such circumstances, the uncertainty far supersedes the indignation. When asked if they were worried about what the folks back home would say about their imprisonment, many of these women said they were not worried about that when compared to the uncertainty that they face. What worries them is the delay in court hearings and the uncertainty of when they are going to get convicted and get back home to Bangladesh (next chapter). For them, returning home was more important at that point.

There were also things that these women were concerned about. *Chanda,* who had crossed the border for her ailing husband, was more regretful about getting arrested, not because she was imprisoned but because the motivation for crossing the border remained unfulfilled. She could not get a job to take care of his medical expenses. Similarly, S*ehada Bibi* was more worried that following her imprisonment, she would not be able to keep her job back in Kolkata. She was also worried for her child, who was jailed with her and had no change of clothes to wear. *Ruby* was worried that she would have no other option but to cross the border again since her husband and child lived in Howrah.[113] And that meant the risk of getting arrested and imprisoned again.

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[113] See Chapter 3 section 3.6 Married to Indian: Finding Identity and Belonging.

4.8 Conclusion

Since women are perceived through the binary of criminal/trafficked, then the state acts as a protector in two ways in these cases, one protecting the nation against criminals and protecting these women who are coerced to cross or are being trafficked. Hence, often, the interception of the state arises out of the need for safety. The overarching ideas of morality attached to women's bodies and mobility are highlighted in how her border crossings were usually constructed as one that is immoral and second that is risked. It is in such discourses that the respondents of the study made it a point to establish their movement outside of the binary by often asserting the kind of work they did while on the move or how they were not trafficked, although that could have absolved them of incarceration. Such establishing of identity was also manifested in them negotiating space labour and collective in the prison.

Female foreign national prisoners such as the respondents often find themselves at the bottom of the power structure at the prison, taunted and bullied for being an 'illegal' entrant to the country by national prisoners who are often accused of far more serious crimes. Bangladeshi women often work for other prisoners to earn small sums of money to help them buy essentials at the prison. It is in these practices of labour that these women also exercise their agency and choices as to what kind of work they would want to engage in and for whom. Between such practices, these women use their method of resisting and subverting the norms by forming collectives of Bangladeshi prisoners as well as questioning the criminality of their acts. Bangladeshi women navigate the period of imprisonment, judiciary and daily prison experiences through their community of outsiders.

When questioned about ideas of indignation attached to women's mobility and confinement, these women did not fully subscribe to the idea that they are indignant; rather,

they were anxious about the judicial delay and lack of court visits. They were more concerned about their economic needs and their job, about questions of freedom more than what people would have to say about back home. It showed how indignation, which is usually attached to the incarceration of female bodies, takes a back seat as individual motivation and choices become more important.

The next chapter tries to look at how the state of the Indian judiciary and the longstanding issue of the pendency of court trials have gone to affect the respondents of the study. The chapter also explains how the criminality of mobility is implemented in the most rudimentary sense against such complexities.

Chapter 5

Deportation, *'Jaankalash'*, and Contested Citizenships

"I strongly oppose their bail at this early stage of an investigation. If they get bail, they will flew (flee) away to Bangladesh."[1]

5. 1 Introduction

The previous chapter looked at how incarcerated Bangladeshi women navigate carceral space and time when confronted about their 'illegal' presence in the country. It argued that border as a practice extends to carceral spaces as Bangladeshi women are often treated differently for not being citizens. When faced with such tribulations, these women usually found their agency in how they negotiated honour and labour and, through these negotiations, also found a sense of community of outsiders in other Bangladeshi women. When faced with questions of indignation about being jailed in a foreign land, the women expressed their worries about the uncertainty regarding the duration of incarceration more than the idea of being jailed. Understanding the judiciary and navigating court hearings as foreigners was arduous; however, the lack of clarity and pending court hearings seemed to exacerbate their anxieties.

This chapter tries to take a deeper look at how these women navigate the Indian judiciary, conviction and subsequent deportation against such conditions of delayed court hearings. It then tries to understand the Foreigners Act 1946's role in how often citizenships are contested, especially now that the Citizenship Amendment Act has been passed.

[1]The statement was mentioned at a case file carrying Foreigners Act 1946 as a primary charge against the accused. It was stated by the investigating officer in the First Report Investigation (FIR).

Following the criminalisation of migrants, deportation is the next step, and it has garnered lots of attention and criticism both in scholarships as well as popular discourse. Deportation, the removal of non-citizens or aliens from a territory, is often seen as the only solution and result of irregular migration, unlike in the case of refugees or asylum seekers, where multiple solutions and deliberations are pursued and arrived at. Deportation is usually observed as the most natural solution to the alien problem.[2] Political subjectivities for "natural" and "naturalised" citizens, all varieties of "immigrant" and "foreign" citizens, and, of course, the deportees themselves, are created and reconfigured because of deportation. Similarly, the larger communities that deportable individuals are abruptly and violently taken from, as well as those to which the deported are essentially coercively "returned", become locations (scattered throughout the world) where the punitive and expansive effects of deportation ingrain the injustices and abuses of state power and sovereignty into the regular creation of social space and the regulation of routine social interactions.[3] William Walters tries to situate deportation in the larger field of governmentality. He asserts that the logic of deportation has notably evolved to specifically target potential enemies of the state. Originally aimed at agitators, dissidents, and revolutionaries, this focus has broadened to include socially undesirable individuals, such as people from certain countries or ethno-religious groups, along with low-wage foreign workers. This strategy is clearly designed to regulate the labour force. In this framework, deportation serves to effectively separate citizens from non-citizens. When coupled with other government departments, such as welfare and immigration, it unmistakably demonstrates the growing entrenchment of governmental control over various aspects of society.[4]

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[2] Nicholas De Genova and Nathalie Peutz, eds., *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement* (Durham, NC: Duke University Press, 2010).
[3] Ibid, 2.
[4] William Walters, "Deportation, Expulsion, and the International Police of Aliens," in *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, ed. Nicholas De Genova and Nathalie Peutz (Durham, NC: Duke University Press, 2010), 88.

The Western paradigm[5] has largely focussed on the dichotomy of refugees and migrants against the increasingly exclusive society that strictly imposes the rules of citizenship based on market and geopolitics. However, the model in which regimes in most Western countries seek to remove non-citizens promptly from their territories is not necessarily upheld in the Global South context due to the dilemma of shared history and cultural affinity between the citizens of nations sharing borders. Hence, the dichotomy of refugee and migrant has to be brushed aside to make way for more investigation into narratives as a way of exploring relationships and dynamics of migration in South Asian countries.

The strong desire for the removal of non-citizens from its territory can be observed in how the liberal democracies of the Global North have displayed an increasingly intolerant attitude towards immigrants. For instance, countries such as the UK are sending asylum seekers to Rwanda, and the fleeing refugees of the Middle Eastern war-stricken countries are not welcomed on the shores of the Mediterranean Sea in East Europe. Similarly, Frontex charter flights are always available to deport unwanted immigrants from the European Union. Beyond the issue of deportation, one cannot overlook the pervasive hostility and insularity directed toward outsiders in Norway. In the prominent USA-Mexico context, the construction of a wall and the deportation of immigrants with discrepancies in their travel or stay terms is a highly discussed issue.[6] Apart from the visible material boundaries and fences, a technology established for detecting immigrants, such as SIVE (Sistema Integrado de Vigilancia exterior

[5] The categorisation of migrants and refugees is heavily influenced by geopolitical factors. This classification is essential for governance, often rendering some individuals visible while obscuring others exposing the inconsistencies within these categorization processes as migrants' trajectories frequently blur the distinctions among countries of origin, transit, and destination, rendering categorization a political act.
The use of terms such as "migrant," "refugee," and "citizen," highlight how migration has redefined institutions and power relations and how different categories means different levels of visibility and salience. Additionally, there has also been significant academic criticism regarding the effectiveness of traditional concepts such as 'the state', 'the market', and 'civil society', which are foundational to liberal politics and sociology.
[5] For more, see William Allen et al., "Who Counts in Crises? The New Geopolitics of International Migration and Refugee Governance*,"Geopolitics* 23, no. 1 (2017): 217–243.
[6] In February 2025, Indian immigrants were deported from United States to Indian cities in multiple batches. Additionally, nearly 300 individuals from various countries, including Iran, India, Nepal, Sri Lanka, Pakistan, Afghanistan, and China were also deported by the United States to Panama.

since 2002), EUROSUR (European Border Surveillance System since 2013), MARSUR(Maritime Surveillance since 2005), have overtaken invisible networked fences.[7] Additionally, there has been a surge in attempts to expand the areas of expulsion and interception. EU members are increasingly working in concert with nearby "transfer" or "sending" nations on a regular basis to increase the scope of their detention and deportation authority. As an illustration, Italy has funded the establishment of camps for "irregular migrants" who enter Libya from Sudan and Egypt, as well as their repatriation back to sub-Saharan Africa.[8] Furthermore, in order to prevent its "foreigners" from travelling to Europe, the Moroccan government has been sending sub-Saharan Africans back to the Algerian border, despite the fact that its own people rely largely on remittances from these migrants.[9] Similarly, in the early summer of 2001, large-scale militarised police operations were conducted on both sides of the border between Guatemala and Mexico in an effort to stop the flow of "illegal" migrants from Central America into the United States. These operations were made possible by their respective plans, Plan Sur (the Southern Plan)[10] and Veneremos 2001 ("We Shall Overcome")[11]. All of these go on to prove how the borders, though blurring the boundaries for some preferred foreign nationals, are also getting more unyielding and closed for the undesirable ones.

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[7] Sabine Hess, "Border Crossing as Act of Resistance: The Autonomy of Migration as Theoretical Intervention into Border Studies," in *Resistance*, ed. Maria K. et al. (transcript verlag, 2017), 91-92.

[8] See Andrijasevic, Rutvica (2006). Lampedusa in Focus: Migrants Caught between the Libyan Desert and the Deep Sea. *Feminist Review* 82 (1):120-125; Rutvica Andrijasevic, "DEPORTED: The Right to Asylum at EU's External Border of Italy and Libya," *International Migration* 48, no. 1 (2010): 148-174; Galina Cornelisse, "Immigration Detention and the Territoriality of Universal Rights," in *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, ed. Nicholas De Genova and Nathalie Peutz (Durham, NC: Duke University Press, 2010).

[9] See
Hein de Haas, *"Morocco: From Emigration Country to Africa's Migration Passage to Europe,"* Migration Policy Institute, 2005.

[10] Plan Sur, or the Southern Plan, was a Mexican government initiative launched in 2001 to address migration flows from Central America. It involved increased border enforcement and deportations of undocumented migrants, particularly at Mexico's southern border with Guatemala. The plan aimed to reduce illegal migration and improve border security, but it also raised concerns about human rights and the treatment of migrants.

[11] "Venceremos 2001", a border enhacement program emerged as Guatemala took steps to enhance its border control, following the United States' "Plan Sur" which shifted the focus of border policing from the U.S.-Mexico border to the Mexico-Guatemala border.

The state's ambition of identifying undesirable non-citizens and removing them is further demonstrated by how the state aims to stop migration from happening in the first place. The restrictive visa policies of developed countries that have the stringiest scrutiny for nationals from the Global South[12] or the immigration practices such as Operation Tarmac[13] can be read as an extension of border control practices as well as immigration policing.

Nonetheless, deportation as a concept and a practice stand in contrast to the principles of liberal democracies. The basis for deportation continues to be the normative division of the world into geographically defined "sovereign" nation-states and the pervasive division within these states between comparatively rightless non-members (aliens) and more or less "rightful" members (citizens).[14] Hence, deportation becomes both a disciplinary action and a tool for the state to practice the allocation of individuals to their designated territories, often becoming a way for the state to signal the effectiveness of its own sovereignty.[15] The fundamentals of nation-state imagination largely deal with its capacity to be aware of its citizens, exclude outsiders and control the borders, which is what the majority of citizenry abides by. Deportation of non-citizens, therefore, occupies a vital space in law and order. Yet, forcible expulsion of non-citizens can be taxing in many ways. It calls for full powers of the state against an individual, it is expensive, and it is frowned upon on humanitarian grounds.[16] The government's detailed aims and targets for such removal are hardly achieved, proving the whole endeavour to be ineffective in many countries.[17]

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[12] Mau, Steffen & Gülzau, Fabian & Laube, Lena & Zaun, Natascha. (2015). The Global Mobility Divide: How Visa Policies Have Evolved over Time. *Journal of Ethnic and Migration Studies* 41. 1191-1213. 10.1080/1369183X.2015.1005007.

[13] Launched after 9/11 attack, Operation Tarmac detects and prosecutes any sort of defaulter immigrants at the airports in the US as a mode of tightening security.

[14] Peutz and De Genova, *The Deportation Regime*, 7.

[15] Ibid, 11.

[16] Matthew J. Gibney and Randall Hansen, *"Deportation and the Liberal State: The Forcible Return of Asylum Seekers and Unlawful Migrants in Canada, Germany and the United Kingdom,"* Working Paper No. 77, UN High Commissioner for Refugees (UNHCR), February 2003.

[17] Ibid.

In the context of India and Bangladesh's irregular migrants, the lack of separate immigration departments taking charge of irregular foreign national prisoners, and the direct intervention of the judiciary makes things complex.[18] Given the issue of long-drawn judicial delay in court trials, those who are waiting to be convicted/ acquitted and subsequently released have a long queue ahead of them. Chapter 4 pointed out that the prisoners were more concerned about their court dates, receiving their sentences, and navigating the legal system with a lawyer who would explain their cases to them than they were about being in prison or fearing the shame they would face upon returning home. One of the main reasons for such anxiety was the state of the Indian judiciary. Indian judiciary is infamous for the long-drawn pendency of cases at the court over the past few years, with things getting worse each year. In December 2023, the then Law Minister of India reported to the Lok Sabha that there were over 61.7 lakh cases pending in the high courts and 4.4 crore cases in district and subordinate courts, making up for over five crore pending cases in the courts of India.[19] Another report stated that on July 1, 2023, among the over four crore pending court cases, around 1 lakh cases were more than 30 years old.[20]

Most of the respondents of this study were undertrials, barring a few who were either convicted and serving their sentence or were waiting for their deportation after the completion of their sentence. Out of 27 women, 21 were undertrials, 2 were convicts, and four had completed their sentence and were waiting for deportation.

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[18] India does not have a specific department responsible for managing the detention and deportation of irregular immigrants. Instead, irregular and undocumented immigrants who are charged under criminal law in India are detained in prison while their cases are pending in Indian courts. After the judgment, depending on whether they must serve a sentence or are acquitted, they are deported through a bureaucratic process that involves both India and the immigrants' home country.

[19] "Over 5 Crore Court Cases Pending: Government Tells Lok Sabha,", *The Times of India*, December 29, 2023, https://timesofindia.indiatimes.com/india/over-5-crore-court-cases-pending-government-tells-lok-sabha/articleshow/106032857.cms. Accessed on June 12, 2024.

[20] "Over 4 Crore Cases Pending in Trial Courts, More Than 60 Lakh Backlogs in High Courts: Law Ministry," *Live Law*, July 29, 2023, https://www.livelaw.in/top-stories/over-4-crore-cases-pending-in-trial-courts-more-than-60-lakh-backlogs-in-high-courts-law-ministry-233926. Accessed April 15, 2024.

Table 5.1 Number of undertrials and convicts in Indian prisons over the last ten years

Year	Convicts			Undertrials			Overall Total
	Male	Female	Total	Male	Female	Total	
2013	2192	161	2353	3905	448	4353	**6706**
2014	2308	187	2495	3063	513	3576	**6071**
2015	2154	199	2353	3276	579	3795	**6148**
2016	2070	296	2366	2787	471	3258	**5624**
2017	1912	315	2227	2013	237	2250	**4477**
2018	1811	297	2108	2202	409	2611	**4719**
2019	1867	304	2171	2534	445	2979	**5150**
2020	989	151	1140	2928	539	3467	**4607**
2021	901	178	1079	3505	633	4138	**5217**
2022	979	202	1181	3911	780	4691	**5872**

Source: Prison Statistics of India

5.2. Judicial Delay and Overcrowding in Indian Prisons

The judicial lag in India has been an ongoing crisis for decades now. This puts undertrials in an extended state of judicial limbo where they are jailed regardless of whether they are guilty or not, with an additional lack of necessary jail amenities, infrastructural and medical deficit and more than often, their period of incarceration exceeding the punitive degree of the offence. Based on the Prison Statistic Report of 2022, the total percentage of undertrials in Indian prisons in the year 2022 was 75.8%, whereas the percentage for convicts stood at a mere 23.3% of total prisoners. In the state of West Bengal, the percentage of undertrials stood at 82.3% of the total prisoner population across the state. The percentage of undertrials by the duration of their confinement is given below.

Table 5.2: The percentage of undertrials by the duration of their confinement.

	Up to 3 months	3-6 months	6-12 Months	1-2 years	2-3 Years	3-5 Years	Above 5 years
National	32.1	19.7	17.2	14.6	7.8	6.0	2.6
West Bengal	32.1	14.0	14.6	14.6	9.7	9.2	5.8

Source: Prison Statistics of India, 2022

The same report showed that a total of 1902 Bangladeshi undertrials were lodged in the prison in India, with West Bengal accounting for 1354 of this number for the year 2022.

The low judge-population ratio and lack of sufficient legal aid is a driving factor. In India, the judge-to-population ratio is much less at 13 judges for every one million, making for an incredibly poor ratio, whereas in developing countries, it is 50 judges for every million.[21]

[21] *The Guardian*, *"India's Long Wait for Justice: 27 Million Court Cases Trapped in a Legal Logjam,"* May 5, 2016, https://www.theguardian.com/world/2016/may/05/indias-long-wait-for-justice-27-million-court-cases-trapped-in-a-legal-logjam. Accessed on 12 May 2024.

Vijay Raghavan identifies three major issues with the Indian judiciary[22]. The first is the lack of quality legal counselling for the accused, especially those who are poor and cannot afford good lawyers. Second, is the system that demands the depositing of bail bonds and surety for bail, which, again, cannot be afforded by the poor, implying that they have to remain in prison until the end of the trial. Third, is the long time taken by court trials, mostly due to the first issue, i.e. lack of good legal counselling. In the context of the Bangladeshi women of this study, the prisoners are greatly affected by the first and the last issues. The lack of good legal aid and counselling about the legalities and the court trials of their cases makes these women have a disproportionately harder experience navigating the judiciary of India. Also, the pendency of court trials, often taking months even before the first visit happens in prison, further extends the stay of these prisoners as well as amplifies the anxiety regarding the length and result of their incarceration.

In an interview, a senior advocate in Kolkata High Court told the researcher that the pendency of court cases need not always be due to lack of proper management but many times are due to lack of pressure from various institutions such as government offices, concerned authorities, courts that fail to deliver efficient criminal justice.[23] The trials of high-profile crimes or white-collar crimes are often carried out promptly, whereas petty crimes committed by the poor are left in an indeterminate state for years sometimes.[24] It exposes the ways in which class and caste structure act as crucial factors in accessing laws that are equal for all. The National Crime Records Bureau (NCRB) 2022 reported that over 70 per cent of undertrials

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[22] Vijay Raghavan, "Undertrial Prisoners in India: Long Wait for Justice" in *Economic and Political Weekly* 51, no. 4 (23 January 2016).

[23] Interview conducted on 10 December 2022 between 10am to 12 pm at the lawyer's residence in Naktala, Kolkata. Name of the speaker undisclosed to maintain anonymity.

[24]MachangLalung, a resident of the northeastern state of Assam, was sentenced to 54 years in prison for grievous injury—a crime for which the maximum term is 10 years—in one of the longest cases ever documented. He was checked into a mental health facility following a year of incarceration. After sixteen years, medical professionals declared him to be "fully fit" and cleared for release. However, Lalung was sent back to prison in Guwahati, the capital of Assam, rather than returning home. Lalung's case remained unsettled for fifty years. Upon his eventual release in 2005 at the age of 77, not a single individual from his village was able to identify him.
See Vidhi Doshi, "Undertrial and Error," *World Policy Journal* 33, no. 3 (Fall 2016): 86–92.

belonged to Scheduled Castes, Scheduled Tribes and Other Backward Classes across religions. Also, over 80 per cent of the undertrials had been waiting for their trials for over 3 years. In many cases, people are jailed for offences that come under acts which don't prescribe for imprisonment. A recent campaign conducted by the National Legal Services Authority (NALSA), based on interviews carried out with women prisoners, shows that their level of ignorance and unawareness about their cases and the workings of the law was astounding.[25] This situation makes them more vulnerable to the plights of pre-detention and more likely to spend more time in prisons as undertrials. There is often an additional reluctance to spend money on women cases as they are mostly seen as non-earning members of the family even though high levels of societal pressure and stigma are handed out to them.[26]

Given such conditions, it is not unexpected for prisons to be overcrowded. Based on the NCRB data, as of December 2022, India's prison capacity was for 4,36,226 prisoners, but it had detained 5,73,220 making for an occupancy of 131.4 % of the total prison capacity. Likewise, in West Bengal, the occupancy was 134.1% of the total prison capacity as the prisons in the state had 28,789 prisoners against a capacity of 21,476 prisoners. Overcrowding does not only mean a space deficit but simultaneously implies medical and infrastructural deficit. The Prison Statistics of India Report, which is compiled by the NCRB, highlights that 1775 prisoners died in custody due to various illnesses, including heart, lung, liver, and kidney-related ailments, as well as tuberculosis and cancer in the year 2019.[27] The same report shows that West Bengal prisons had only six resident Medical Officers against the sanction number of 40. Similarly, there were three psychiatrists against 8 sanctioned and 14 pharmacists against 41 sanctioned for the state. Prison understaffing is still a significant issue. As of December 31,

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[25] National Legal Services Authority. *A campaign for enhancing Legal Services to Women prisoner and their accompanying children in prisons,3.*
[26] Ibid.
[27] National Crime Records Bureau, *Prison Statistics India 2019* (New Delhi: Ministry of Home Affairs, Government of India, 2020).

2020, the country's authorised prison staff strength was 87,961, although the actual prison staff strength was 61,296. In other words, despite an escalating problem of overcrowding, jails were operating with only 70% of the authorised staff strength. This was before COVID had knocked on our doors[28]. After COVID-19, the occupancy rate increased further beyond the capacity of the prisons, thereby weakening the issue of understaffing.

5.3. *Jaankhalash*

Criminal courts typically decide cases brought against Foreign National Prisoners (FNP) in accordance with the 1973 Code of Criminal Procedure[29]. Navigating the judiciary, an arduous task for citizens themselves becomes cumbersome for non-citizens who do not necessarily understand the legalities and the nuances of law. Almost all respondents had lawyers representing their cases in court, and most of the lawyers were hired by their families. For those who couldn't afford or arrange for a lawyer, the state provided them with state-sponsored legal aid. The paralegal volunteer and lawyer mentioned at the beginning of this chapter were such legal aid who visited the prison for counselling. However, these women's experiences with the lawyers were not always promising. Many of the lawyers took large sums of money for the court cases but still had not arrived at a conviction. *Sapna's* sister had arranged for a lawyer who had been paid up to 1,00,000 INR, but since he was 'useless', they got a new lawyer instead.[30] For instance, *Rumpa's* family in Howrah, *Fatima's* brother in Habra, *Amina's* family in Bangladesh, and *Shilpa's* uncle, among many others, had arranged for a lawyer. There were also cases where the respondents had got hold of a lawyer in varied circumstances. In the

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[28]In March 2020, Supreme Court heard a Suo moto to urgently decongest prison to avoid Covid-19 infections. Most states set up committees to devise plans to implement this. Many undertrial prisoners accused of relatively less serious crimes and undertrials who had already served more than 50 percent of the maximum sentence of their offence were released on bail and parole.

[29] Although in certain states such as Assam, Foreigner Tribunals, make decisions regarding individual cases involving nationality as per The Foreigners (Tribunals) Order, 1964, The Foreigners (Tribunal) Amendment Order 2012. Currently, 100 of these tribunals have been established in Assam.

[30] Interview conducted on 18 July 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

case of *Reshma*, who was wrongfully charged under the Arms Act and whose lawyer had told her she would go to jail for a long time. After seeing her visibly distressed at the court, an Indian man offered to help her with a lawyer. *Reshma* stated,

> "He fought my case in the court, and the judge ruled, "You have done no wrong. Crossing the border is not a crime" and gave me bail. But the jailer said since I came to India illegally, I need to be deported, and hence they sent me to this prison for that."

Similarly, many of the Bangladeshi prisoners interviewed for the study took the help of a government lawyer.

The lack of resources to retain the services of qualified solicitors and not enough knowledge of the legal system have a further negative influence on such inmates' incarceration periods. They are frequently duped by lawyers into accepting a guilty plea without realising what this means. When there is no contact with family members or consular access, their ignorance is further taken advantage of. Many of the women whose lawyers were arranged by their families did not know how much money or fees was paid to the lawyer. They also often did not feel allowed to know the status of their case, many times because of their position as criminalised non-citizens[31] and many times because of how the lawyers interacted with them. *Amina's* lawyer, who was paid an amount of 10,000 INR at the time of the interview, would tell her that her conviction was soon to follow but had not managed to get a single court visit in the five months of her imprisonment (at the time of the interview)[32]. *Amina* does not blame the lawyer as she says, "the system is slow". *Alifa*[33], who had been in prison for three months at the time of the interview, sought assistance from the lawyer of her case partner[34]. At that

[31] See Chapter Four, Section 4.4. Negotiating Ideas of Honour and Dignity.

[32] Interview was conducted on 03 August 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity. Amina was arrested on 02 April 2022 at Balti Border.

[33] Interview conducted on 18 August 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

[34] Alifa was arrested with a woman she was crossing the border with her friend, who was also her case partner. However, she did not participate in this study.

time, her trial had not yet started. Similarly, *Rupa*, who was arrested a month prior to the interview, had also not begun her trial and was assigned a state lawyer.[35] *Asha*[36] had nine court visits but had not received a sentence, just like *Baby*[37] and *Chanda*[38] , who had also had 10 court visits each but were still undertrial at the time of the interview. *Sameena,* who has been given a state lawyer, has not even had a chance to talk with them.[39] *Khaleeda's* lawyer, arranged by her sister, failed to show up in two court visits. As she expressed her concern regarding the delay and his absence at the third visit, the lawyer shouted at her.[40] *Mandira*, who had been in prison for a month, still had no lawyer assigned at the time of the interview.[41] All these lawyers failed to provide answers to the respondents about the delay in court cases and arriving at the conviction. Many times, the women were also taunted by their lawyers for crossing the border illegally, further making them believe the legal support they were receiving was more than they deserved.

These predicaments amplify the anxiety of these women who are already worried about having to navigate foreign judiciary as they also witness how Bangladeshi women have been in jail for years. Coupled with the anxiety of seeing these women are the tales doing rounds in their circles of how cases at a particular court (where most cases in this study are registered) take a lot of time. These conversations about court trials and cases showed glimpses of how these women have their own shared perceptions and experiences to help them through the

[35] Interview conducted on 27 July 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[36] Interview conducted on 24 August 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[37] Interview conducted on 01 September 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[38] Interview conducted on 24 August 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[39] Interview conducted on 06 September 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[40] Interview conducted on 24 August 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[41] Interview conducted on 06 September 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

judiciary limbo, which was also riddled with anxiety regarding the Indian judiciary. Besides, the prisoners seldom receive consular access to the embassy they are entitled to, which also becomes a huge problem during their repatriation. Many times, the prisoners do not have any sort of correspondence with their families, who have no idea about their whereabouts.

All these issues become poignant in the case of Bangladeshi prisoners, who also must bear the brunt of the system. The overcrowding, lack of medical and sanitary supplements, absence of good legal aid, lack of space and hygiene, and long-drawn trials at the courts all contribute to them having more difficult time as incarcerated foreigners. These factors also cause further extension of their stay in the prisons, which is already overcrowded. Amidst such conditions of overcrowding and lack of space, the non-citizens are often pushed to the bottom of the power structure, not only taunted for being present in a prison not designed for them but also bullied into further suppression by other prisoners.[42] Therefore, what further lengthens their already extended stay is also the tedious bureaucratic process of deportation, which requires the intervention of both states.

Ideally, the identification process should start at the admission and repatriation process of the prisoner should start six months before the completion of the sentence of a Foreign National Prisoner.[43] A time-bound Standard Operating Procedure that outlines a reliable system guaranteeing the prompt repatriation of FNPs should be drafted by the Ministry of Home Affairs. It should outline the responsibilities of each process participant and, if at all feasible, set deadlines to avoid undue delays.[44] India also has a provision for transferring its foreign prisoners to their country of origin, where they can serve the remainder of their sentence according to the Repatriation of Prisoners Act 2003. However, while talking to the Chief

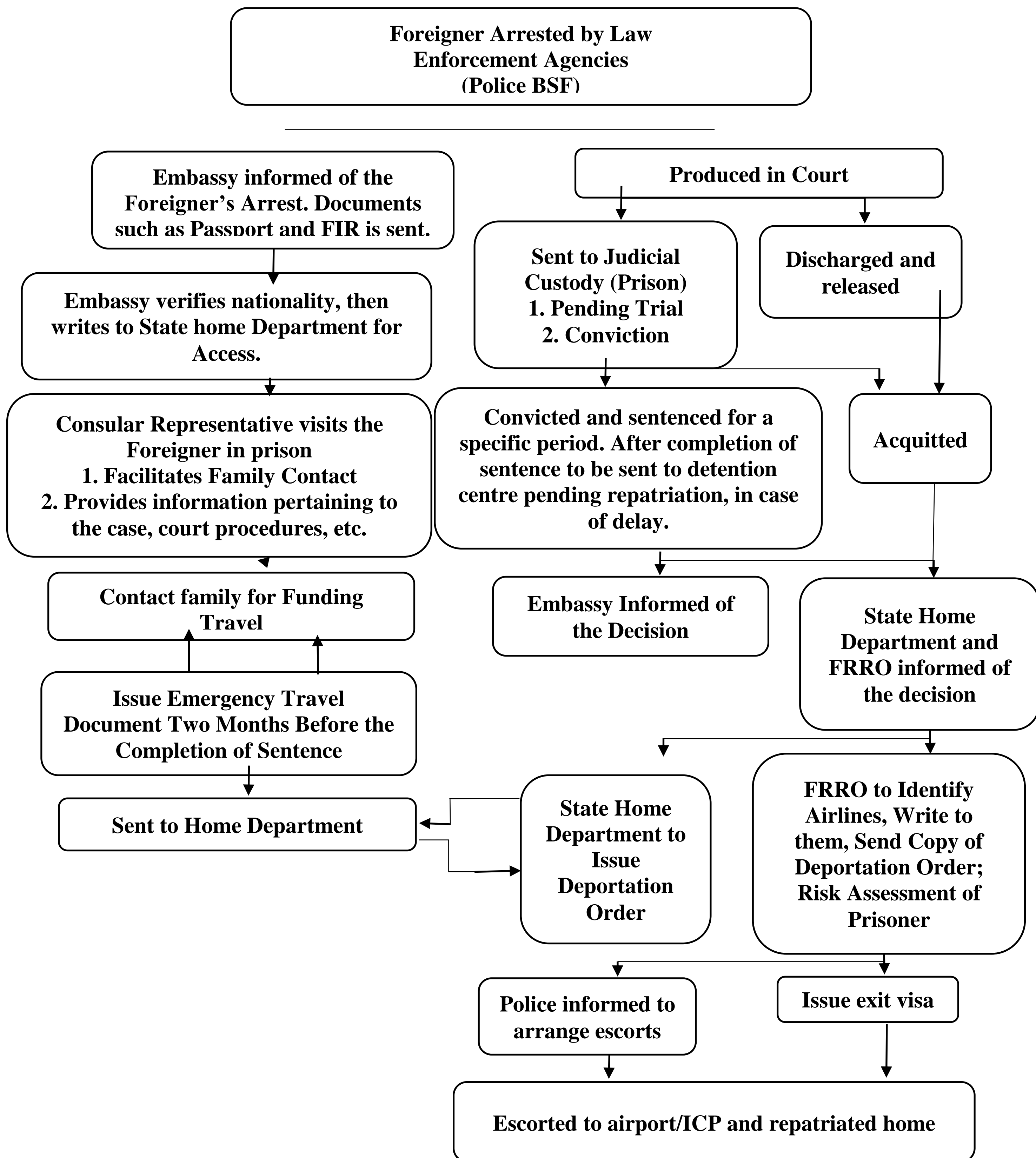
[42] See chapter 4 Section 4.4. Negotiating Ideas of Honour and Dignity.
[43] Commonwealth Human Rights Initiative, *Strangers to Justice: A Report on Foreigners in Indian Prisons* (New Delhi: Commonwealth Human Rights Initiative, 2019), 47.
[44] Ibid, 47.

Controller of the prison[45], who looked after the deportation of the prisoner, the researcher was informed that the process for identification as well as deportation only starts once the prisoner had completed their sentence.

The current prisoner repatriation/deportation process calls for the cooperation of numerous parties at different governmental levels in both India and the prisoner's home country. This frequently leads to a drawn-out process of document preparation and permission-seeking. A foreign prisoner's repatriation necessitates the cooperation of both the federal and state governments, namely the following: the Foreigners Division of the Ministry of Home Affairs (MHA) and State Home Department; the Home Secretary or Jail Secretary; the Bureau of Immigration (BoI) and Foreign Registration Regional Officer (FRRO) of the state; the Criminal Investigation Department (CID), Intelligence Bureau (IB); the Superintendent of Police of the district where the prisoner was take into custody and the prison facility where the prisoner is being detained. A similar process, is also in place in the prisoner's home nation and is used to conclude an individual's nationality verification procedure.

[45] Interview conducted on 12 April 2022 between 12 pm to 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

Figure 5.1: Standard Operating Procedure for Deportation of Foreign National Prisoners



Source: CHRI, *Strangers to Justice*, 15.

However, the procedure as laid out by the Controller to the researcher was slightly different than the official SOP. According to the Controller, once a convict completes their term, the Bangladesh High Commission is contacted for identification verification. Once the identity of the prisoner is verified, the jail is informed. Then, the prison informs the Home Department/ Special Secretary of West Bengal about the deportees, and once the documents are approved by the office, they are sent to the Inspector General of Police for further approval. On both approvals, the approved paperwork is now sent to the Commissioner of Police, as the Police Department handles the transportation of the deportees. Lastly, a letter is then finally sent to the Commandment of BSF or the respective border where the deportation will happen. The Repatriation/ Deportation process should ideally not take longer than one month, but it gets delayed since the prison must wait for orders from several authorities.

There were wide-ranging reasons for the overstaying of this category of people beyond their sentence if one were to only focus on this SOP. Firstly, the bureaucratic process of repatriation involving both nations takes a long time, as could be seen by the flowchart as well as the Controller's account of the procedure. With multiple agencies involved, the process needs to go through every step when the paperwork is assessed thoroughly. However, the most time-consuming step of the process happens to be the verification from the High Commission of Bangladesh, which is also the most common reason for the delay in deportation. The process of identifying a prisoner becomes difficult when the said persons are arrested without any sort of Bangladeshi identification documents on their person, as was observed with almost all the respondents in this study. The crossers, mostly wary of the BSF, often carry fake Indian identification proof that does not help them at all in the identification process, which again starts only after the end of their term. Many respondents had fake Aadhaar cards on them during their arrest. Additionally, the legal aids suggested that Bangladeshi prisoners do not plead

guilty for varied reasons, which go on to delay their court trials and subsequently, delays the verification processes.[46] There are also instances where the documents of these women carry different names, or as in the case of *Ruby* (chapter 3), the women end up giving wrong details out of fear of intimidation and harassment by the BSF or Police. There are also cases when the prisoner refrains from giving out their real address for verification. This could be either because they cannot properly state their correct address, or they do not want the state to reach their doorsteps. The reason for not wanting the state to meet their families could be for various reasons. Either they are wary of the state harassing their family back home, or they want to make sure their folks back home do not come to know of their incarceration as it carries meanings of honour and indignation.[47]

Therefore, identifying the prisoner as a Bangladeshi national becomes the focal point of any deportation process after the criminalisation process, since the Foreigners Act 1946 puts the onus of proof on the accused. However, it is this very verification of the prisoner as Bangladeshi nationals that further lengthens their detention as well as delays their deportation. So, they end up living as prisoners even when they have completed their sentence and are technically free persons. This group of people are called *jaankhalash* in West Bengal. Rimple Mehta explains how *jaankhalash* meant living in a prison-like "free public", broadly signifying the end of their life as prisoners, but on another level, the moment they finish serving their term as a Bangladeshi, their identity becomes ambiguous, belonging to neither India nor Bangladesh. Mehta states,

[46] As informed by the legal aid and Social Welfare Officer of the prison during the interview. They mentioned a case of a Bangladeshi woman, Rinku (Name changed). Rinku was arrested at the border when she was on her way to Bangladesh from Hyderabad where her brother worked. On enquiring about the local address given by Rinku of her relatives in Hyderabad, the prison officials and the police could not any correspondence. Rinku refuses to plead guilty under Foreigners Act 1946 because according to her she is an Indian but has no documents or family to prove so. her trial has been going over a year at the courts since she doesn't plead guilty.
Interview conducted on conducted on 13 March 2022 between 11 am to 12 pm at a correctional facility in Kolkata. Name and location of the speakers undisclosed to maintain anonymity.
[47] Mehta, *Women, Mobility and Incarceration*, 88.

"The Bangladeshi women said that *jaankhalash* meant they were living in the prison-like "free public"; but ironically, *jaankhalash* means "the end of life". It could signify that their life as a prisoner has ended. At another level, it could imply that so far, by virtue of being in prison, they had a definitive status of being Bangladeshi, but the moment when they finish serving their sentence, their identity becomes ambiguous. They are neither Bangladeshi nor Indian."[48]

Uma Mondol, who was still living in the prison, had been a *jaankhalash* for the past three years (at the time of the interview), making her experience in the prison not any different than other respondents of the study who were undertrials or convicts.[49] *Uma* came to India in 2018 with the help of an agent. She managed to cross the border but was caught in Kalna while on her way to visit her relatives in Bishnupur. She had been told by the agent that there was a job waiting for her in a 'factory' but soon abandoned her at the railway station. Besides her Aadhaar card, *Uma* had no documents on her. She was charged under the Foreigners Act 1946 and was given a sentence of three months after pleading guilty. But *Uma* was still in prison during the time of the interview—four years after the completion of her sentence as one of the many *jaankhalash* in the prison. Her continuing status as a criminal despite the completion of her sentence was also clear by how the prison officials clubbed her with the rest of the prisoners whose sentences were not over. Like *Uma*, *Reshma* was also a *jaankhalash* who was sent to this prison after having completed her sentence in a district prison for her deportation.[50] Similarly, *Meher* and *Roma*, friends and case partners were also waiting for their deportation after having completed their jail term. The Commonwealth Human Rights Initiative (CHRI)

[48]Rimple Mehta, *Women, Mobility and Incarceration: Love and Recasting of Self across the Bangladesh-India Border* (London: Routledge, 2018), 87.
[49] Interview conducted on 27 July 2022 between 12 pm – 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.
[50] Interview conducted on 27 July 2022 between 12 pm – 1 pm at a correctional facility in Kolkata. Name and location of the speaker undisclosed to maintain anonymity.

report' Strangers to Justice' reported that in the year 2019 out of 871 *Jaankhalash* they had recorded, 522 belonged to the category "persons whose nationality is not provided".

This predicament can be seen in the light of how women were more worried about this uncertainty than the idea of them transgressing boundaries and inviting indignation from folks back home in Bangladesh because the idea of spending time in jail without knowing when it would end surpassed other kinds of anxieties.[51] *Uma's* experience of such prolonged post-sentence detention not only put her in a state of limbo but also simultaneously acted as a reminder to all these women about the uncertainty of time to be spent in prison. The state of *jaankhalash* meant a state of limbo of many kinds. Firstly, one's status in prison, where one is not a criminal anymore but treated as one, making their identity as a person who served their term and is free to go, null. Another limbo is their citizenship, which is not determined, making them a non-citizen not just in India but in a more general context, as Mehta puts it. The delayed deportation, coupled with delayed court trials and convictions, meant that the prisoners ended up serving far longer than their actual sentences. This was also one of the reasons why the women stated how the punitive nature and the duration of the detention, for them, far outweighed the nature of the crime.

It is here against such unique judicial logjams and bureaucratic speed breaks that the foreign national prisoners in India end up staying for longer durations in prisons which are already overcrowded. This inadvertently causes a burden on the already overloaded judiciary as well as the prison system in India. This leads to a contradiction in terms of the logic that seeks to criminalise irregular/illegal non-citizens because these individuals end up staying a long time in prisons that take up a lot of state resources. As mentioned at the beginning of this chapter, the instant action characteristic of most Western countries displays the swift removal

[51] Chapter 4 Section 4.7 Indignation of Imprisonment.

of irregular immigrants or unqualified asylum seekers from their territory. However, this stands in stark contrast to the situation in India, where the desire for the removal of non-citizens is not absent but is rather superseded by the need to criminalise and punish individuals for their illegal entry or stay. Hence, a form of contradiction arises in such a situation where the state's action and ambition to remove non-citizens is deterred by the very mechanism designed to do so, due to several factors mentioned above. This situation is rather unique in the context of India and Bangladesh, primarily due to the high frequency of cross-border activity, which remains largely unchecked. There also exists a necessity to monitor this activity through the arrest of a fraction of perpetrators, although this enforcement is unpredictable, as highlighted by the respondents in Chapter 3, concerning how fate influences their interactions with the state.

Nonetheless, the criminalisation of border crossers, where individuals migrating for reasons such as kinship are treated as criminals, symbolises the performative nature of borders. This performance is evident in the spaces where the state and non-citizens coexist. This could be at the border, at the site of the arrest, at prisons, at courts and then at the various offices where the identification of these persons is carried out, all becoming sites to mark them as non-citizens. All these spaces also simultaneously become a site for exclusion as well as expulsion of these persons from the citizenry, sometimes in practice and sometimes in imagination.

5.4 Contested Citizenship of Indians Charged Under Foreigners Act 1946

It was during one of the field visits at a border district court that the researcher had a chance to go through the case files of individuals who were charged under the Foreigners Act 1946, much like the Bangladeshi women interviewed during this study.[52] Inside a dusty room, the researcher found huge piles of court files that lay wall to wall. The researcher was welcomed

[52] The said district court had lodged cases of most of the respondents of the study. The court was situated in North 24 Parganas district. Name of the court undisclosed to maintain confidentiality.

by the Grievance Redressal Officer (GRO), which was unlike any of her previous experience where she was required to carry permissions from higher authorities or some sort of reference. Although the researcher had a reference for this visit, making it a very formal meeting, the GRO's demeanour was pleasant, contrary to her expectations. He even helped the researcher with more files than she had expected. The GRO at no point showed any sign of caution or curiosity about the kind of study that was being conducted, perhaps because he represented the legal system, and it was his knowledge about the law that gave him confidence. This stood in contrast to most interactions that the researcher had with state actors during her field study until that point;[53] be it at the borderlands or the prison, there existed a lack of clarity and consistency in how these personnel perceived their work and notions about criminality. The clarity regarding structural functions of the court were clear in the meeting with the GRO, which was not necessarily the case at the borders, where the significance of borders as a container of modern states[54] gives the state a structured yet arbitrary form in its functioning. This becomes more pronounced because the case files that were handed to the researcher showed the arbitrariness of such practices at the border, reflecting the discontents in the process of identification and categorisation of its subjects by a state as most of those who were charged for being a foreigner were in fact citizens of India.

As discussed in Chapter 3, the borderlands absorb the politics of the fence, thereby each movement inviting vigilance, scrutiny and suspicion. Hordes of cases that charged local villagers under Foreigners Act 1946 for making movements stand as a testament to this fact.

[53] Field visited on 17 April 2024 between 11 am- 4 pm.

[54] John Agnew critiques the notion of borders as simple containers for modern states through his concept of the "territorial trap." He argues that traditional international relations theories often rely on three key geographical assumptions: first, that states are fixed units of sovereign space; second, that there is a clear domestic/foreign divide; and third, that states function merely as containers for societies. Agnew challenges these assumptions by emphasizing that borders are not static; rather, territoriality must be understood within historical and geographical contexts. See John Agnew, "The Territorial Trap: The Geographical Assumptions of International Relations Theory," *Review of International Political Economy* 1, no. 1 (1994): 53–80.

The section shall not go into details of the court cases individually but will glance at the various patterns of such incriminations by taking one such case.

These case files, which consisted of the Person Query Report (PQR)[55] of these arrests, started with the BSF stating that the detained were Bangladeshi nationals. In most of the cases, these persons had come to India with their parents when they were young and had remained in India for decades. Like the in the case of one *Kishan Lal Kundu*[56], who was held at the border. *Kundu* came to India with his father in 2001, twenty-one years ago. His father settled in a village in North 24 Parganas district. Kundu later married an Indian woman and had all Indian documents made. In his PQR, he stated around 10-15 Bangladeshi families lived near his residence in his village.

[55] Person Query Report in the context of First Report Information (written document prepared by police about a crime that had occurred) is a section indicating the details of the person who is reporting the incident, nature of the question and the report itself. Here, 'P' refers to the person, in this case Kishan Lal Kundu, 'Q' refers to the nature of the incident i.e., the act of crossing the border and 'R' is the report itself.
[56] Name changed to maintain anonymity.

Kundu was booked under three charges: 188 IPC[57], Section 12 of the Passports Act 1967[58] and Section 14 of the Foreigners Act 1946[59] , which meant bail was not permissible.

The following court visits had Kundu produce multiple pieces of paperwork to prove that he was, after all, an Indian citizen. These included his Aadhaar Card, Ration Card, Voters Card, PAN Card, bona-fide letter from the local municipality, the deed of the land he had previously owned, bank passbook, certificate of his marriage with his wife, death certificate of his father, LPG (gas cylinder) registration letter, LPG passbook and Electricity receipt. Sahana Ghosh's article "Everything Must Match" throws light on the fallacies of the state's effort to fix and verify identities in the borderlands. The indeterminacies of identity, the scrutiny of movement, and continuous negotiations of belonging and claim-making with the state make

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[57] Section 188 IPC states
Disobedience to order duly promulgated by public servant.—
Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
This implies that it is not required for the offender to have the intention to cause harm or to consider their disobedience as potentially harmful. It is enough that they are aware of the order they are violating, and that their disobedience causes, or is likely to cause, harm.

[58] Section 13 off Passports Act 1927
(1)Whoever—(a)contravenes the provisions of section 3; or(b)knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or(c)fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or(d)knowingly uses a passport or travel document issued to another person; or(e)knowingly allows another person to use a passport or travel document issued to him; shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.(1A)Whoever, not being a citizen of India,—(a)makes an application for a passport or obtains a passport by suppressing information about his nationality, or(b)holds a forged passport or any travel document, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees.(2)Whoever abets any offence punishable under sub-section (1) or sub-section (1A) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence.(3)Whoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made thereunder for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.(4)Whoever, having been convicted of an offence under this Act, is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence.

[59] Refer to chapter 2, footnote n.16.

borderland residents an unstable category of citizens. Owing to the cut-off date of 1971 and a history of people coming before and after that, the religion of the crossers determines how they are situated in the dichotomy of refugee and infiltrator[60]; how the impending fear of being outed as a non-citizen surpasses these categories and cut-off date remains at the core of border management and negotiation between the state and the borderland residents. Ghosh says the process of fixing identity is not only technological but also has other social, affective and embodied forms.[61] There are two ways of looking at this contradiction as follows:

Credibility of documents: The foremost issue is that of determinacy or the lack of it when it comes to citizens living in the borderlands and what essentially constitutes citizenship. Kundu, who had lived for over two decades in India, had married an Indian and had made a life in India living as a citizen, was declared as a Bangladeshi in the PQR statements. What separates him from any other citizen living in the same village as him and living a life not very different from his is difficult to determine. This is difficult not only if we look at it sociologically but also politically. With all the documents he possessed, there was absolutely no way of knowing if he had come from Bangladesh at some point in his life and if he still made visitations over to the other side through illegal border crossings. The kind of documents he produced demonstrates the likeliness of him living the ordinary life of a citizen by participating in electoral votes, being a landowner, paying electricity bills, having access to subsidised food grains and gas connections and so on. If he were to be a non-citizen, as declared by the BSF, it raises questions about the credibility of documents and the guarantee or lack thereof possessed by such documents. If the documents were to be made through counterfeit means, it further reaffirms the presence of networks that facilitate the production of such identities, which are

[60] This implies the meanings attached to the binary of a post-Partition Hindu refugee and a Muslim infiltrator.
[61] Sahana Ghosh, "Everything Must Match: Detection, Deception, and Migrant Illegality in the India-Bangladesh Borderlands," *American Anthropologist* 121, no. 4 (2019): 870–883.

indistinguishable prima facie. It also juxtaposes the exclusionary process of citizenship with the existence of the means that negate them, thereby making such projects an unfinished and perhaps always an unfinished task. However, if the documents are not counterfeit and are real, then Kundu being charged under the Foreigners Act 1946 also raises questions about the same act of identity-making at the borders and how criminality of mobility at the borderlands is pronounced. The point is that the declaration of being a Bangladeshi is negated by the surplus of documents being produced and if the documents are not a credible marker for citizenship, then there is no way of knowing who a citizen is.

As documents go on to embody identity and modern states go on to increasingly depend on it to identify their members in a larger infrastructure of citizenship, immigrants seek such forms of documentation of citizenships, thereby not just becoming full members of the society but also subverting the very act of gatekeeping carried out by the state. Kamal Sadiq called this *documentary citizenship*.[62] This gatekeeping is a crucial part of nation-building, where a nation aims to be in control and cognizant of who resides in its territory, especially in a country as multi-ethnic and diverse as India. The practice of documentation is also an extension of border control practices. Here, the border becomes a fluid entity and a practice rather than a fixed line. These practices make the category of citizen a rather unstable category as there is an extended practice of claim-making and proving of citizenship that happens in cases of being booked under the Foreigners Act 1946. This claim-making not only pertains to such situations where one needs to assert or prove that they belong to the citizenry but also extends to instances where a person seeks citizenship through naturalisation by claiming that they are eligible and deserving of the citizenship.[63] This can also be observed in the cases of Bangladeshi women

[62] Kamal Sadiq, *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries* (Oxford: Oxford University Press, 2008), 102.
[63] Ibid, 109.

married to Indian men, where though they can apply for citizenship after seven years of being a resident of India, many continue to be booked under the Foreigners Act 1946.

Surplus of documents: However, the surplus of documents in such cases is what also trivialises the claim of citizenship which is the second contradiction of cases such as Kundu. Kundu had submitted a total of twelve different documents to prove he is a citizen of India. This was not unique to Kundu's case. Most borderland residents charged under the Foreigners Act 1946 had submitted similar documents to prove their citizenship. Many of the accused had also submitted school certificates and marksheets of their ward. Proving oneself as a citizen becomes far more formidable than it appears when the situation involves marginalised citizens living at the margins of the nation. What is required to achieve is loads of paperwork and documentation citing one's nationality, the strongest and most preferred one being the Passport.[64] However, according to a report furnished by the Ministry of External Affairs of India, as of May 2022, only 7 per cent of the total population held passports, making for a tremendously small faction, excluding not just rural demography but urban mobile strata as well. Under such conditions, to assume that border residents would possibly own a passport may come across as foolish. The Unique Identification Authority of India, UIDAI (more commonly known as Aadhaar), which is pushed as an important document of registration by the Indian state is not considered as a credible document at the border or courts due to rampant forgeries. The Voter Card issued by the Election Commission of India happens to be another document that is accepted but there must be additional documents to support the Voters Card. Now, these additional documents usually produced by the arrested persons were deeds of their land, letters from the panchayat, school certificates of their children, death certificates of their relatives and so on.

[64] As stated by the BSF officers and the lawyers who participated and were interviewed for this study.

However, this poses a dilemma in the Indian context due to what Sadiq calls *blurred membership*, a result of conditions where there is an absence of proof of citizenship as well as the presence of fraudulent documents among the people who inhabit the territory of a nation. [65] Such situations bring forth difficulties as well as complexities in determining the members of a state. The well-known shortcomings of India's administrative capacity, combined with the likelihood that millions of impoverished and illiterate citizens may struggle to provide acceptable documentation, create an especially challenging scenario.[66] However, in this case, such contradictory existence of documents or the lack thereof makes the process of claim-making rather arduous, especially if the people in question are marginalised in socio-economic, political, religious, or locational forms. Although Kundu could produce twelve documents to support his claim, there were many other cases where the accused could not produce much paperwork to substantiate their claim, like the case of Bhim Mondal,[67] who, besides his voter's card and his son's voters' card did not have any other document submitted at the time his file was assessed.

The said case files were replete with cases of borderland residents held for making cross-border movements, with their trials still underway in the court. The reason for the usage of the term 'citizen' even if they aren't acquitted is because of the amount of paperwork these files carry submitted by the families of the accused. These documents ranged from land certificates to death certificates of relatives to panchayat letters. Some also had school certificates of the children of those jailed. These case files also had the PQR statements of these people confessing to being Bangladeshi to the BSF. The discrepancy in these confessions and the paperwork they produce also makes the nature of these interrogations questionable. However, the surplus of documents in this case and the suspicion regarding each of them when

[65] Sadiq, *Paper Citizens*, 72.
[66] Niraja Gopal Jayal, *Citizenship Imperilled: India's Fragile Democracy* (Ranikhet: Permanent Black in association with Ashoka University, 2021), 31.
[67] Name changed.

it comes to borderland residents or border crossers stands in stark contrast to the emphasis on documentation expected to prove one's nationality. One can never be adequately certain that the documents they produce guarantee them bail as there is always the existence of document forgery that has occupied a large space in disrupting the state's effort to identify its people. This further reinforces the precarity of identity and national ascription in the borderlands. The long pendency of court cases in India adds to the woes of those jailed, and the crisis goes on to affect Foreign National Prisoners, too.

Claim of citizenship: The fact that the citizens of the country are not entirely bereft of being charged under the Foreigner Act 1946 under the suspicion of being a foreigner has significance now that the Citizenship Amendment Act 1955 has been passed. Although CAA is beyond the scope of the thesis, the criminality of mobility does bring more discussions to the table, which perhaps can be looked at over time. With the Citizenship Amendment Act, there are more debates about who a citizen is and who can claim citizenship. Individuals like Kundu in such situations have more dire consequences to face when questioned about their citizenship. The hinge point can be said to be in the Citizenship Amendment Act 2003, in which Indian citizenship transitioned from *jus soli* to *jus sanguinis*. Here, two major changes happened- first, the recognition of the category of the overseas citizen in law and second, limiting Indian citizenship to those whose parents were Indian citizens or one of the parents was an Indian citizen, and the other was not an illegal migrant. With this amendment, the discourse of illegal migrants made its way directly as National Population Register (NPR) and Citizenship Amendment Bill (CAB) emerged.[68] NPR subsequently gave birth to the National Registry of Citizens (NRC), which made things more complex in the state of Assam than in other states.[69]

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[68] Anupama Roy, "The Citizenship (Amendment) Bill, 2016 and the Aporia of Citizenship," *Economic and Political Weekly* 54, no. 49 (2016): 28-34.
[69] Ibid.

Another pivotal point from the 2003 Act was CAB 2016, which sought to extend Indian citizenship to minorities from Bangladesh, Pakistan and Afghanistan, these minority communities being Hindus, Sikhs, Buddhists, Jains, Parsis and Christians. Consequently, the communities identified in the CAB 2016 are not to be charged as illegal migrants under the Passport (Entry into India) Act 1920 and Foreigners Act 1946. However, this bill lapsed with the Sixteenth Lok Sabha and was later introduced with slight alterations on December 4, 2019, and was passed on December 11, 2019.

The result of the NRC likewise showed that undocumented nationals could be deprived of citizenship status. The reliance on paper citizenship in a country like India, visited by natural calamities as well as generations of people remaining undocumented, gave a worrisome picture.[70] This number very well included Hindus in contrast to the anxiety of illegal Muslim immigrants in the discourse of those championing NRC.[71] With CAA excluding Muslim persons from availing of Indian citizenship, it could be read as a hitherto religion-neutral law being reframed as openly exclusionary towards Muslims.[72]

The process of criminalising mobility at the borders becomes important since it is not just directed towards non-citizens but also citizens who could be making possible border crossing or other sorts of movements near the borders. The surplus of documents and suspicion with each of them make the documents a very unreliable source of information and dependence in such cases. This also meant that many groups which did not identify with the mentioned minorities in CAA were also excluded from the act, such as Adivasis, Dalits, Atheists and so on. These communities historically marginalised in society are often poor and not always able to keep their documentation up to date or even made.

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[70] Jayal, *Citizenship Imperilled*, 19
[71] Ibid, 20.
[72] Ibid, 25.

Understanding CAA in the context of the respondents: At no point during the interview or during their court hearings did any of the respondents ask for Indian citizenship. Barring the cases where the women were married to Indian men, there was a clear absence of ambiguity about belonging and nationality in most of these cases. These women clearly asserted their identity as Bangladeshi nationals who wanted to go back to Bangladesh after their jail term. In fact, one of the overarching anxieties was about the uncertainty regarding their deportation. Even when there were instances where the women showed their desire of returning to India, like in the case of *Sameena,* who expressed her ambition of returning to India in the pursuit of freedom, or *Sehada Bibi,* who hoped to keep her job, they did not show any such intention of wanting to become an 'Indian' citizen.

However, had there been any such demands seeking citizenship then the women who belonged to the minorities were at an advantage, whereas those who were not could avail it through CAA. For instance, *Nasima,* who had lived in India for 19 years owing to her identity as a Muslim, could not get citizenship. But *Chanda,* a Hindu woman who had also moved for similar reasons, could apply for citizenship as there existed a scope for her to become an Indian citizen. Almost all these women belonged to similar social classes, had crossed the border for similar reasons and had similar motivations in their lives, but clearly, if they were to be considered for granting citizenship, then only those who belonged to certain religions could get it. Here one can read the bias in the codified law that is the Foreigners Act 1946 and the Passports Act 1927, especially after the 2016 amendment.[73] Here religion makes an indirect passage into an Act which has no mention of religion in its original framing. Therefore, even in the case of these respondents, criminality can be tweaked depending on what religion they belong to.

[73] See Appendix.

5.5. Conclusion

This chapter explores the process of deportation as the last leg of the criminalisation of unauthorised transnational movements. By foregrounding the legal and bureaucratic processes surrounding the deportation of Bangladeshi women incarcerated in India, the chapter examines how deportation functions as an extension of border control, reinforcing the criminalisation of mobility. Additionally, it discusses the judicial delays in Indian courts and how this delay is related to the issues of *jaankhalash* prisoners who have completed their sentences but remain detained due to delays in repatriation. However, the chapter takes the discussion on the criminality of mobility at the India-Bangladesh border further by investigating how citizenship is contested at the India-Bangladesh border, particularly in the context of legal frameworks such as the Foreigners Act (1946) and the Citizenship Amendment Act (2019). By looking at the case of an Indian citizen charged under the Foreigners Act 1946, the chapter showed how the process of identifying and categorising individuals by means of documents is an unfinished task in a borderland riddled with past and present mobilities.

The chapter then critically examines the significance and implications of being charged under the Foreigners Act 1946, which becomes a tool for criminalising any sort of mobility at the borders in the aftermath of the implementation of the Citizenship Amendment Act (2019), which grants a pathway to Indian citizenship for non-Muslim migrants from Bangladesh, Pakistan, and Afghanistan.

Chapter 6

Summary and Conclusion

6.1 Introduction

In February 2025, the Supreme Court questioned the government of India about the prolonged detention of Bangladeshis in India even after being convicted under the Foreigners Act 1946. The case was initially registered under Calcutta High Court and was later transferred to the top court that sought to know why the government had not deported the Bangladeshi immigrants and had not complied with its own guidelines that stated any illegal Bangladeshi immigrants need to be deported within 30 days of being found living in an unauthorised manner. The same order raised how around 850 illegal immigrants were detained in correctional homes despite serving their sentence under the Foreigners Act 1946. It is to be noted that the case pertained to West Bengal.[1]

On June 5, 2024, Bangladesh re-established the job quota that researched 30 per cent of civil services to children and grandchildren of Freedom fighters of the Bangladesh Liberation War, followed by a series of student protests in July. The students' protest spread across the country, leading to the death of six students on July 16, 2024. Over the next month, Bangladesh saw a series of violent crackdowns on protestors as well as a series of violent persecutions of minorities, leading to widespread unrest and the eventual resignation of Sheikh Hasina in August 2024. Nobel laureate Muhammad Yunus was appointed as the head of an interim government to stabilise the country. The uprising known as the 'July Revolution' became important as the border changed in the aftermath of the 2024 uprising in Bangladesh. The leadership transition in Bangladesh has significantly impacted border relations with India,

[1] Ananthakrishnan G, "Why Detain Illegal Bangladeshis Indefinitely? Supreme Court Asks Govt," *Indian Express*, February 4, 2025, https://indianexpress.com/article/india/why-detain-illegal-bangladeshis-indefinitely-supreme-court-asks-govt-9815954/. Accessed on 5 February 2025.

prompting a closer look at recent developments along their shared boundary. Since August 2024, the interim government under Muhammad Yunus has expressed intentions to reassess previous "uneven" agreements concerning the India-Bangladesh border, emphasising Bangladesh's sovereignty. This stance appears to stem from growing anti-Indian sentiment within Bangladesh, where many feels past negotiations have been unfavourable to their nation. Additionally, the Yunus administration has called for the return of former Prime Minister Sheikh Hasina, while India remains focused on safeguarding the rights of minorities in Bangladesh. These differing priorities have added complexity to the bilateral relationship.

After the development of the events of the July Revolution, the BSF was instructed by the Ministry of Home Affairs to tighten the security at the border, although reports show that there was no significant increase in interception at the borders. The 2024 uprising that saw violence on Hindu minorities in Bangladesh has not only affected the borders but also how Bangladeshis are perceived in the popular discourse, amplifying the stereotype attached to Bangladeshis as a threat to the nation. Furthermore, the Bangladesh military also sought to make border policing more stringent, blaming the Sheikh Hasina government for being slack when it came to border management.

Therefore, the crossings at the border continue to gain newer meanings with changing political landscapes in any of the countries. The significance of the study also lies in the fact that understanding the criminalisation of mobility in the context becomes even more important with changing times, leaving scope for more discussion in the future.

6.2 Summary and Findings

The first chapter begins with a brief look at the history of movements across India and Bangladesh after the Partition of 1947. The history reveals how the perception of Bangladeshis has evolved with time, from individuals separated by the process of nation-making to

increasingly being seen as a detainable and deportable subject of the current times. The Indian government organised army-assisted evacuations on the western border, while population exchanges on the eastern border proved impractical, resulting in significant long-term displacement. Over time, the narrative shifted from "homecoming" to "infiltration," particularly targeting Bengali Muslims, labelled as infiltrators in the 1980s as anti-Bangladeshi sentiment intensified, framing migrants as threats to national security. The chapter moves forward by finding the location of women in this discourse and finding how women have been imagined in the nation-making process, mostly as passive subjects who symbolise national honour and identity, while men actively engage in nation-building. Similarly, gender significantly influences their experiences and societal perceptions as women become migrants. It then moves further into looking at the Bangladeshi female labour migration, as most of the respondents of the study belong to this category. It is observed that Bangladeshi women increasingly seek overseas work, driven by economic necessity. Although they contribute significantly via remittances, they face poor working conditions, low wages, and vulnerability, particularly in India, where undocumented migrants form an informal workforce.

The latter half of the chapter delves into the methodological aspects of the dissertation by highlighting the problem that it seeks to address, i.e., the criminalisation of the discussed migration through narratives. Narratives as a source of information in social science have often been questioned for their validity and reliability in a study. However, narratives reflect larger structures and meaning-makings of the study in terms of how it is constructed, produced, and consumed. Although there lie ethical dilemmas when using other people's narrative in research, narratives are also about self-representation that cannot be abandoned in research. In these narrations, the Bangladeshi women have a chance to justify their actions, make them look not as immoral and present them in a positive light, thereby also obtaining validation from the audience or from the peers who might be sitting next to them hearing their accounts. Especially

in a place like a prison, where women are continuously questioned about their morality, these interviews became a place for the women to assert themselves as moral and righteous women, which can be observed during this research. Narratives are also important in this research because the women are getting a chance to explain themselves—an act that they rarely get a chance to do after being caught and imprisoned. Both as women and as a criminalised being, being able to speak for themselves is a rare opportunity. Besides the narratives of the incarcerated Bangladeshi women, state actors and non-state actors were also interviewed to understand cross-border mobility as well as border control practices. The dissertation looks at the process of criminalisation of mobility in India through the trajectory of the process, that is, from being arrested to being incarcerated to being deported. Hence, the chapters move from the border to the prison to the courts.

The second chapter starts by looking at the India- Bangladesh border as the first site of criminalisation of mobility in the context of the study through field study and various interactions with the border guards and border villagers. The chapter starts with a brief introduction to the India-Bangladesh border and the Indian Border forces stationed in the borderlands. It then tries to interrogate the symbolic meanings that fences carry and the strategies of policing at the border. Lastly, the chapter delves into the narratives of interaction between the border forces and the respondents of the study at the time of their arrest. Border fencing has occupied a pivotal space in both scholarship and state discourses, where it shows how border fencing becomes a space for the state to exercise and uphold the sovereignty of the space, and fences are instrumental in doing so. The border in context is the West Bengal - Bangladesh border, which is known for its everyday violence and increasing militarisation. Visiting the fenced areas becomes even more restricted with limited authorisation for visitations, be it for the villager or an outsider. Border villages are under surveillance and what this leads to is the village itself absorbing the politics of the fence. Criminalising mobility at

the national frontiers, therefore, captures the complexities of nation-states, where this process is both targeting and protecting, and therefore emanating both hope and fear at the same time. In such borderlands, the citizens submit to the state by specifically submitting to the authority of the border guards as modern nation-states expropriate what John Torpey calls legitimate 'means of movement,' leading to the detention and criminalisation of border crossers. Such militaristic and hyper-masculine nature of border control influences which bodies are permitted to cross, reinforcing gender dynamics: women are viewed as needing protection while men are seen as threats, making the border a complexly gendered space. The chapter also looks at the interaction between Bangladeshi border crossers and border forces under such conditions as the border becomes the point where most respondents met the state. Most respondents moved for work or due to kinship ties. While many women reported not being mistreated by the Border Security Force (BSF), they felt intimidated and often pleaded for leniency. Some were prepared to evade arrest with fraudulent Aadhaar cards or explanations claiming Indian identity. However, there also existed accounts of harsh treatment, including humiliation and hostile behaviour. A notable distinction emerged in interactions; the border police were perceived as less hostile than the BSF. The BSF sought greater power and authority, while the border police advocated for stricter laws. This difference illustrates the BSF's perception of entitlement due to their role at the borders, contrasting with the police's position within the legal-judicial system.

As the chapter traces the narratives of Bangladeshi border crossers, the border villagers, and the border forces, what unravels is the absence of uniformity in the approaches and the perspectives of the state actors. In this case, the border officers, be it the BSF or the Border police. This lack of uniformity is explained in two steps. The first is through the act of discretion, which becomes rather important in the context of the study. Detection becomes challenging without clear physical markers, so border guards often rely on discretion and

intuition, which makes border control practices unpredictable. Hence, the interactions with various border guards revealed that many factors affected how they perceived and enacted border control, such as the nature of the border in question. While the border outpost (BOP2) with less activity appeared quieter, so did the border guards, who came across as calmer. Another border outpost (BOP3) in the same district, infamous for its high frequency of cross-border activity as well as the hostility of the BSF, was chaotic from the very entry point with multiple checkpoints and closed-ness of the border guards while talking to the researcher.

Second is through the interaction of the women with the border guards, which was different at different borders. For instance, the experience of these women with the state actors depended on which border they were arrested at. Additionally, their interaction with the border police was different than that of their experience with the BSF, which also showed how state actors stationed at the same region of the same border can vary in their perceptions, functioning, and temperaments. Some saw border crossings to sustain life since India was a greener pasture for Bangladeshi women, while some saw it as a criminal activity meant to be harshly punished.

The third chapter takes in from the second chapter on the border to look at the mobility at the border as at the criminalisation of it. It explores why women in the study chose to cross the West Bengal-Bangladesh border illegally despite having access to passports and visas, often facing high fees, exploitation, and deception. It connects this issue to broader theories of transnational networks, labour, kinship, and criminality. The chapter interrogates how Bangladeshi women understand and conceptualise their criminalise against three recurring themes that occurred in the interviews: the role of cross-border networks in facilitating crossings and the normalisation of cross-border mobility amid rampant border crossings, the experiences of non-citizens working in Indian urban areas, and the complexities faced by Bangladeshi women married to Indian men regarding their citizenship status when jailed.

From the conversations, what was observed was that cross-border movement, despite being criminalised, remained a routine and normalised activity for many. The fact that there existed longstanding border networks in the form of border touts, contractors' and people who enabled document forgery showed how the dynamics of border crossings entail a range of agents besides the respondents of the study, be it the crossers or the guards. Some respondents had crossed multiple times with the help of border brokers or *dhurs,* whereas some did not take any assistance, which displayed the seamlessness of the border where one nation flows into another, making such cross-border movements rather unremarkable. It is often in making these unremarkable movements visible that the state exercises criminality of mobility in such an active border region that lacks any sort of estimable data on cross-border movements. As the long-established networks and functioning of the brokers or *dhurs* showed the ordinariness of negotiations of resources at the border, it also meant that the women often saw border-crossing as an ordinary event rather than a criminal offence. Therefore, the arrests at the border amidst such mundanity of the border crossings perplexed the women about the criminal nature of it.

Furthermore, in examining the economic migration of women, all respondents who had worked in Indian cities confirmed that their native employers were aware of their Bangladeshi identity and had no issues with it. This finding challenges the notion that immigrants create problems for residents. In West Bengal, particularly in Kolkata, much of this acceptance can be attributed to a shared history before the partition. Bangladeshis are often viewed as either former refugees or newcomers. Additionally, this acceptance is likely because Bangladeshi migrants bring with them low bargaining power and offer cheap, flexible labour. However, this context led the Bangladeshi women to view their work as less illegal and more licit; even when they could see their presence as illegal at times, they failed to see their labour as one.

Likewise, the longstanding kinship networks and exchanges between India and Bangladesh, particularly marriages, influence border mobility and complicate citizenship

definitions. Bangladeshi women marrying Indian men often see themselves as belonging to the nation of their husbands, but as the study shows, many end up facing arrest and deportation due to legal and bureaucratic frameworks. Their experiences highlight the gap between legal frameworks and lived realities, leaving them uncertain about their citizenship—caught between their birthplace in Bangladesh and their husbands' home in India. Marriage migration challenges traditional norms and crosses national borders, but nation-states play a crucial role in shaping these movements and settlement processes. The movement of brides should be understood within the context of national borders and practices, influencing not only entry and residency but also the broader notions of belonging. This conundrum of belonging and belonging can be traced to how a woman is ideally imagined as a citizen, her identity largely attached to her role as a passive appendage to her male family members.

This brings one to the blurring of the difference between illegality and criminality in the context of unauthorised border crossing. While authorised irregular crossings are labelled as crimes in legal terms, the underlying motivations and experiences of the crossers, as discussed, complicate this view as women who often cross for work or marriage fail to see the criminality of their action, which appears as licit. Through their narratives, these women questioned the legitimacy of their criminalisation even when they knew about the legal way of moving across the border. The existence of this slim difference between perceiving the act as illegal but not criminal becomes important. Illegal and criminal have often been represented as the same since illegal has often been perceived as criminal. But what the women, as well as state actors, foreground through their narrative is the fact that the illegal act of crossing the border does not constitute a crime primarily because it does not harm anyone. It is in this space of negotiating ideas of criminality that there exists a continuum between legal and licit, as what may not be legal may still be licit, and the reliance on legal mechanisms to criminalise migrants neglects the social factors driving their mobility.

The fourth chapter moves from the border to the prison, which acts as the site for criminalisation as well as punishment in the context of the study. The chapter examines the experiences of incarcerated non-citizens, particularly Bangladeshi women, within the prison system of West Bengal. It explores how these women negotiate their identity, honour, and labour in a carceral space primarily designed for the punishment of citizens. The chapter situates their experiences within broader debates on punishment, sovereignty, and gendered migration. It argues that the criminalisation of mobility extends beyond borders into the prison system, where non-citizens are subjected to surveillance, discipline, and exclusion.

Prisons are traditionally seen as masculine spaces, leaving Bangladeshi women to navigate a double marginalisation as 'foreign women' in these spaces. Many women who travel alone face assumptions of being at risk for sex trafficking, prompting them to assert that they have not been violated during their journeys. They're often categorised within a binary of victimhood or criminality, either viewed as trafficked individuals needing protection or as immoral border-crossers. State officials, including police and prison staff, frequently perceive this category of prisoners through a dual lens of protecting as well as policing, thereby reinforcing the binary of victim and criminal, presuming they are sex workers or trafficking victims. However, these women, while feeding into the statist notions of female mobility and female bodies, also often challenge these in myriad ways, such as the fact that Bangladeshi women refuse to plead under the Immoral Traffic (Prevention) Act (ITPA) to avoid being labelled as trafficked, choosing instead longer sentences under the Foreigners Act. But more than this gendered notion of morality, what the women had to negotiate was their dignity as non-citizens, too. Their identity as jailed foreigners made them particularly vulnerable to mistreatment by Indian prisoners arrested for more serious crimes. This demonstrates how citizenship shapes ideas of belonging and power distribution. In a foreign prison, the women find their un-belonging is evident both in leaving their homelands and entering a carceral space

and this makes female foreign prisoners more visible as both criminals and non-citizens. Here, punishment, much like borders, generates political identity, morality, and societal structures, suggesting that penal institutions reflect and extend the meanings of borders.

This exclusion and othering of non-citizens was also visible in how the foreign prisoners sold their labour in the prison. Since foreign national prisoners cannot avail of paid labour in the prison, they often relied on working for other prisoners, mostly Indians, to manage for essentials that are not provided by the prison management. Such roles mirror the vulnerabilities faced by undocumented migrants in India's informal economy. Despite marginalisation, these women build informal support networks, creating a "community of outsiders" that helps them resist exclusion. Through shared experiences, they develop a collective identity, aiding each other in navigating prison life and consistently sharing resources like menstrual products due to insufficient supplies. Additionally, experienced inmates provide guidance to newcomers, reinforcing their communal resilience and compensating for the lack of institutional support.

A prior notion attached towards women in prisons is the idea of shame and indignation attached to female bodies and mobility. There were instances when the respondents showed signs of worry about their folks back home coming to know about their incarceration and how they would sometimes be relieved about the lack of communication with their families because that meant no one knew about their imprisonment. However, there were more respondents who were more concerned about getting back home and sought to contact their families in Bangladesh. Many times, the women stated it was their families and folks who suggested they cross the border for work. However, it was the uncertain nature of the imprisonment, with pending court hearings and overdrawn sentences, that worried the women more as they failed to comprehend why a harmless act of crossing the border for work warranted such long imprisonment.

The fifth chapter takes in from the anxiety of the incarcerated women, as discussed towards the end of the fourth chapter and interrogates the process of deportation as the final phase of the criminalisation of mobility. A key focus of the chapter is the prolonged judicial process that foreign national prisoners (FNPs) must endure. Many of the respondents in the study were undertrials—individuals awaiting conviction or acquittal—rather than convicted criminals. Legal proceedings in India are notoriously slow, exacerbated by an overwhelmed judiciary and inadequate legal representation. It is often due to the pendency of court trials as well as long bureaucratic processes that the women end up overstaying their time in prison. Such prisoners, called *jaankhalash,* are no longer legally defined as criminals, yet they continue to be treated as such due to their unresolved legal status. The uncertainty surrounding their identity—neither fully Bangladeshi nor recognised as Indian—puts them in a limbo state where their nationality remains undefined. At the same time, the prolonged imprisonment of foreigners in the country contradicts the state's ambition of promptly removing foreigners from its territory.

Until this point of the dissertation, the Foreigners Act 1946 was understood as a legal act designed for foreigners and any sort of unauthorised stay or entry pertaining to these foreigners. However, during one of the field visits to a local district court, what emerged was the existence of court cases where many individuals claiming to be Indian were charged under the Foreigners Act 1946. Under these cases, these said individuals had provided ample documentation proof to support their claim of citizenship. However, it is because of the nature of the Foreigners Act 1946 that puts the onus of proof on the accused, that the said individuals had to remain in judicial custody until they were acquitted by the court. The surplus of documents, as well as the existence of forgery of documents, often trivialises citizenship

claims, reflecting Kamal Sadiq's concept of documentary and blurred citizenship.[2] Such contested citizenships question the idea of documents as proof of citizenship as well as demonstrate how the task of identifying citizens becomes an unfinished task, emphasising the inadequacy of documents as reliable markers of citizenship.

This becomes more crucial in the aftermath of the Citizenship Amendment Act which makes its way into the Foreigners Act 1946, as to make this religion-neutral act religion-biased. The Citizenship Amendment Act 2019 (CAA) states that Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Pakistan, Afghanistan and Bangladesh would be exempted from both the Passports Act 1920 and Foreigners Act 1946. Hence, a person who does not belong to any of these religions would be more vulnerable to being charged under the Foreigners Act 1946, which, as displayed by the cases, becomes a tool against marginalised citizens as well.

This also becomes important to note in the context of the respondents. CAA does not directly influence the cases of the Bangladeshi women participants of the study since they at no point had raised claims for Indian Citizenship and sought to return to their country. Therefore, there was a clear absence of any sort of ambiguity regarding nationality as well as citizenship in the cases of the Bangladeshi participants. However, had there been any sort of claim making of citizenship or appeal for one, only those respondents who belonged to any of the six minority religions mentioned in the CAA could avail the provisions for citizenship.

6.3. Limitation and Scope for Future Research

The study strictly limits itself to women border crossers from Bangladesh. The primary reason for focusing only on women's mobility is that women's mobility is intertwined with honour, sexuality, and morality, which are concepts that the study investigates. Men crossers are

[2] Kamal Sadiq, *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries* (Oxford: Oxford University Press, 2008).

vulnerable to the hazards of crossing a heavily militarised border and have their unique experiences. However, concepts of morality are not as deeply ingrained in male mobility as they are in female mobility. Since the study does not delve into Bangladeshi male migration at any point, it does not offer any sort of comparative study between the male and female migrations either.

The interactions with the state actors and the Bangladeshi women were limited to their border movements and their perception of the criminality of border crossings. Thus, the study does not offer deep insights into the personal lives of any of the respondents. This was largely due to space and time-based constraints set post Coronavirus pandemic. Also, the study focuses on the process of criminalisation of mobility and the idea of criminality as perceived by the women. However, there is an acknowledgement of the fact that doing more study into the personal lives of these crossers would provide more insights into the questions that the study poses, which leaves scope for future investigation into similar questions.

The study focuses mainly on the class aspect of the Bangladeshi respondents and not so much on the caste or religion. Class seemed to be the most decisive factor in female border crossing experiences and criminalisation experiences concerned, as far as the responses of the women show. Religion certainly forms a very important index in understanding border crossing in South Asia, especially post Citizenship Amendment Act (CAA) and in the context of the current political turmoil in Bangladesh. However, since the research is based entirely on the responses of the prisoners, it kept itself restricted to the aspects which the respondents themselves focused on, i.e. class, and not so much religion. Also, since the women do not claim to be Indians or ask for Indian citizenship at any point of the study, their cases or predicament are not directly affected by CAA. Nonetheless, it remains a major limitation of the study, which could be looked at in the future.

The study delves into juridical difficulties regarding the court cases of the respondents but does not actively follow their case during or after the fieldwork. This was because the researcher was not provided with the case details of the participants. Therefore, the study does not to address for how long the respondents spent their time in the prison after the interviews.

Although the scope of the study in its current form is limited, there is room for more discussions in future academic endeavours.

6.4 Concluding Remarks

States, governments and institutions prefer categorising individuals as it becomes easier to monitor and govern its subjects through this process of defining them. The categories that have emerged against the backdrop of the current illegal immigration scenario are that irregular or illegal immigrants have been perceived through the lens of refugees, unwanted migrants and trafficked victims. These categories also make their way into the context of the study since women who cross the borders illegally are bracketed as either criminals who break the law or those who are trafficked. Hence, women's mobility is tied to their bodies, as seen at multiple points in the study, often stated by the Bangladeshi women, by the state actors and by other civil actors who participated in the study. The state emanated both the idea of protecting the category of women the respondents belonged to, whereas also policing the same women and their bodies when moving across the border. Thus, it becomes important to note how, under the framework of criminology of mobility, these illegal foreign bodies become the site for both kinds of action, one which requires them to be seen as a risk and the one that sees them at risk. Against such preconditions attached to the body of female illegal migrants, morality becomes entwined with her mobility, something that male bodies are free from, showing gendered mobility goes hand in hand with gendered morality. Although the evolving discourse of criminology of mobility does delve into how female bodies are seen as a site of honour and

morality, and their experiences in detention centres entwined with this notion, this research shows the scope for interrogating further into how the state is also riddled with a duality of protecting/policing the category of female illegal migrants.

Existing scholarship on Bangladeshi women in prisons shows that the idea of honour originating from the patriarchal conditioning of women continues to shape their idea of mobility-transgression of boundaries and how prison went on to become a site for further impositions of codes and conducts of femininity and morality on women prisoners through everyday prison practices. The study also showed how women often fed into the statist notion of morality through acts of refusing to plead under laws that would free them of imprisonment by establishing them as trafficked victims and how women who were arrested with their husbands had less claim-making to make. However, the findings of this study also show that there exists a subversion of these notions at the same time, and this subversion has largely emerged from women's ideas of labour, belonging and illicitness. The near nonchalance stance of someone like *Nasima,* who outrightly denied feeling any sort of remorse for her actions of crossing the border, stands as a challenge to these notions, where she went on to challenge the idea of shame attached to her illegal presence and her work as a waste sorter in the city. So did *Sameena,* who boldly declared to her fellow prison-mates and to the researcher that she would come back to India even after she was deported because she sought freedom, and she felt like there was nothing to stay back for in Bangladesh. A more subtle resistance to this idea of gendered morality attached to a woman's rootedness in her native place was also registered in the quiet, wishful thinking of *Sehada Bibi*, who, despite being in jail with her two children, still hoped that she would be able to keep her three jobs in Dumdum where she worked as a domestic help, thereby silently resisting how modern nation-states go on to assign people to territories. In such everyday negotiations of one's aspiration for freedom or one's hope to be able to keep their jobs, these women try to break away from the categories designed for them, that of

unwanted criminals or hapless victims. This subversion of internalisation of patriarchal norms was also seen when women sought to return to their homes more than being worried about being indignant back home or carrying some form of shame borne out of imprisonment. So, most of the Bangladeshi participants of this study had taken the help of a lawyer arranged by their family. And the ones who did not have any sort of correspondence with their family, though mildly relieved of the fact, sought to connect with their family. Again, in these motivations and actions towards justice, the women break away from the mould that seeks to make them feel ashamed of their imprisonment.

Next is how the ordinariness of the border movement goes on to shape how women understand their movement, less as a crime and more as a means of sustenance. The ordinariness of these movements across the border is often overlooked as a given, so much so that in the absence of any estimate of cross-border frequency, these arrests stand out as an anomaly. However, it is in this ordinariness that a practice is established that is more licit than illegal. Itty Abraham and Willem van Schendel describe how social licit often go on to overrule what is formally legal.[3] In many of the conversations with the Bangladeshi women, state actors as well as NGO workers, the motivation for border crossings lessened the perceived criminality of it. Abraham and van Schendel say that borderlands become spaces for such overlaps of the concept of licit over illegal, where routine practices carry different meanings in the borderlands.[4] Therefore, crossing the border was an ordinary act, carried out rampantly, giving the crossers an idea about the rampancy and the mundanity of the movement and giving them insights on how to navigate militarised borderlands. All these practices make borders a space where state authority is contested and qualified in everyday life. This contestation of formally defined definitions of crime and legal extended onto spaces beyond the border, making its way

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[3] Itty Abraham and Willem van Schendel, *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization* (Bloomington: Indiana University Press, 2005), 22.
[4] Ibid, 23.

into the cities where Bangladeshi migrants work. As observed in the study, the Bangladeshi women were confounded by the illegality and criminality of their presence because their experience as workers did not reflect that. Labour made cross-border mobility licit even though their entry into the country was illegal. This binary of legal and licit becomes crucial in this space where women perceive their illegal presence in the country as licit. It becomes important to note that this perception exists, as does the knowledge about the illegal nature of crossing the border. However, there emerges the slim but important difference between illegal and criminal. The perception of crime depends on the moral conduct of a society and the legal definitions as per the law. But in this indeterminate space created between illegal and licit, the Bangladeshi women could see their border crossing as an illegal act but still failed to see it as a crime, thereby showing how illegal does not equate to crime, even when the law defines it to be.

Mobility across borders encompasses experience and the forces that shape moving. The border has symbolic meanings that extend beyond the territorial limits. It creates subjectivities, communities, experiences and differences. However, the border is also performative, transcending the geography and seeping into everyday experiences. Border is performed regardless of who is performing and on whom it is performed because of the internalisation of the meanings that it carries, making it not just limited to the state. This was observed in the narratives of the non-state actors. *Amir,* in the second chapter, announced that the "Bangladeshis are different", and even though he lived in a borderland, he could always separate a Bangladeshi from an Indian despite the absence of a clear physical marker for separation. This echoed the thought of a BSF company commander, who said that they could separate a Bangladeshi from an Indian through their body language. Similarly, in the prison, Bangladeshi women stated that Indian prisoners treated them poorly because they had crossed the border illegally. In a space such as a prison, where people can be detained for crimes of

various degrees, this performance of border stands out since the prisoners themselves are carrying out this process of categorising and othering. The performance of the border on the Bangladeshi women was also internalised by them since they felt they had no rebuttal to these mistreatments.

Amir's statement could be seen via the viewpoint of his location and the meanings that borders carry. It could be read as an act of self-policing as well as claim-making of allegiance and citizenship done by an unstable category of citizen[5]. However, in a carceral space, this process of bordering mirrors the unequal distribution of power in civil spaces, reflecting the broad strokes of exclusion and stereotypes existing in popular nationalist discourses and the prisoners take it upon themselves to perform. This was also visible in how Bangladeshi prisoners were made to carry out most of the prison chores or in how the Bangladeshi prisoners, devoid of paid labour, worked for Indian prisoners. This also reflects the unequal distribution of power at the prison that situates illegal foreigners at the bottom of the structure. Therefore, borders continue to be performed in everyday negotiations of space and labour, if not through larger statist methods of identification, at spaces beyond the border.

Lastly, the study foregrounds how the Foreigners Act 1946 becomes a tool to criminalise any sort of movement at the border, regardless of who is carrying it out or where it is directed. The instances of women arrested while exiting the country or individuals with Indian citizenship charged under the Act show how the criminalisation of mobility in the India-Bangladesh border is carried out in the most rudimentary form. Hence, any type of movement can be booked. However, such measures and possibilities of arresting anyone, including citizens, show that the documents become tricky, especially in the context of the study. Documents are observed as the most credible marker for citizenship, although the qualifier

[5] See Sahana Ghosh, "Everything Must Match: Detection, Deception, and Migrant Illegality in the India-Bangladesh Borderlands," *American Anthropologist* 121, no. 4 (2019): 870–883.

keeps changing with time. However, as seen in the study, many individuals remained in jail at the time their case files were assessed despite producing tons of documents to support their citizenship. This showed the fault lines in the process of criminalisation of mobility as well as in the reliance on documents. The large scale of document forgery, again forming an illicit core border practice across the borderlands, goes on to challenge the very act of categorising people and assigning them to territories, making the documents themselves an unreliable marker for citizenship. This shows that identifying citizens, policing movements and people and assigning people to territories will perhaps be an unfinished task.

Besides all the state's ambition and the perception of Bangladeshi women as illegal migrants, one cannot help but observe this problem through the duality of seeing the Bangladeshi women as criminals or innocent. One may also question the statist logic of criminalising historical and generational movement of people from one nation to another that encompasses cultural exchange, kinship relations and labour migration. However, as pointed out early in the dissertation, the research aims to move away from these binary ways of perceiving state as well as women's mobility. Rather, through these interventions, what emerges is how identity, belonging, notions of criminality, and performance of border are mediated, performed, and negotiated by women through their mobility.

Hence, all these findings direct to more questions. How does the state function at the border, and what are the ways in which border crossers mediate with the state at the border? Since apprehensions at the border are the deviation and most crossings go undetected, as was observed in the narratives of the women, how does the state function, and what role does discretion play in such modalities? If documents become a marker for citizenship, then how are documents assessed against an enduring existence of fraudulent documents? And lastly, there lies scope for interrogating how male crossers experience the process of criminalisation

of mobility. How do male crossers experience the process of criminalisation of mobility, given male bodies are largely perceived as risky bodies?

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Appendix

Profile of Bangladeshi Respondents

Mode of research: In-depth interviews.

Duration: Between February 2022 to September 2022.

Place: Central Correctional facility in Kolkata. Name undisclosed to maintain confidentiality.

Sl. No.	**Name**	**Age**	**Sex**	**Religion**	**Marital Status**	**Occupation**	**Hometown (Bangladesh)**	**Place of Stay (India)**	**Duration of stay in India**	**Criminal Status**
1	Sapna	21	Female	Not known	Widowed	In search of job	Khulna	On the way to Hyderabad	Arrested on entry	Under trial
2	Rumpa	24	Female	Muslim	Married	House wife	Khulna	On the way to Howrah	Arrested on entry	Under trial
3	Fatima Khatun	18	Female	Muslim	Unmarried	Student	Khulna	Habra	17 years	Convict
4	Sehada Bibi	30	Female	Muslim	Widowed	Domestic Help	Saatkhira Kadamtala	Dumdum, Kolkata	Some years	Under trial
5	Reshma	21	Female	Muslim	Separated	In search of job	Noargila	On the way to Hyderabad	Arrested on entry	Jaankhalash
6	Uma Mondol	25	Female	Not known	Separated	In search of job	Dusnoapara	On the way to Bishnupur	Arrested on entry	Jaankhalash
7	Amina	27	Female	Muslim	Married	House wife	Dhaka	Mumbai	9 years	Under trial
8	Shilpa	20	Female	Not known	Married	Student	Khulna	On the way to Mumbai	2 Months	Under trial

9	Puja	22	Female	Hindu	Married	In search of job	Khulna	On the way to Kolkata	Arrested on entry	Under trial
10	Arifa	35	Female	Muslim	Married	Construction worker	Saatkhira	Mumbai	3 years	Under trial
11	Mumtaz	30	Female	Muslim	Married	In search of job (Garbage Sorting)	Not mentioned	On the way to Bongaon	Arrested on entry	Under trial
12	Parveen	Not known	Female	Muslim	Married	In search of job (Domestic Help)	Khulna	On the way to Mumbai	Arrested on entry	Under trial
13	Alifa	24	Female	Muslim	Unmarried	Domestic Help	Sonardanga	Barasat	2 years	Under trial
14	Sabina	35	Female	Muslim	Separated	Domestic Help	Not mentioned	Mumbai	Some years	Under trial
15	Amrita Bala	48	Female	Hindu	Widowed	House wife	Not mentioned	Not known	Not Known	Under trial
16	Asha	Not known	Female	Muslim	Married	House wife	Not mentioned	Delhi	3 years	Under trial
17	Chanda Ghosh	Not known	Female	Hindu	Married	In search of job (Domestic Help)	Saatkhira	On the way to Hasnabad	Arrested on entry	Under trial
18	Khalida	Not known	Female	Muslim	Married	Worked in Bangladesh	Naogoan Zilla	On the way to Mumbaii Mumbai	Some months	Under trial

19	Baby	25	Female	Not known	Married	Garbage Sorter	Koira Thana , khulna	City Centre Busty, Kolkata	3 years	Under trial
20	Nasima	Not known	Female	Muslim	Separated	Garbage Sorter	Koira Thana, khulna	City Centre Busty, Kolkata	19 years	Under trial
21	Nargis Begum	Not known	Female	Muslim	Married	In search of job	Khulna	On the way to Chennai	Arrested on entry	Convict
22	Sameena	Not known	Female	Muslim	Separated	Domestic Help	Comilla	Howrah	6 months	Under trial
23	Ruby	26	Female	Muslim	Married	House wife	Dhaka	Kolkata	5 years	Under trial
24	Mandira	20	Female	Not known	Unmarried	Trafficked	Dhaka	Not known	Arrested on entry	Under trial
25	Meher	25	Female	Muslim	Unmarried	Unemployed	Not mentioned	Mumbai	6 months	Jaankhalash
26	Husna	Not known	Female	Muslim	Unmarried	Unemployed	Not mentioned	Mumbai	6 months	Jaankhalash
27	Meena	Not known	Female	Not known	Not Known	In search of job	Not mentioned	On the way to Mumbai	Arrested on entry	Under trial

DCS-16014/1/2020-SECTION(DCS)-DCS
GOVERNMENT OF WEST BENGAL
DIRECTORATE OF CORRECTIONAL SERVICES
JESSOP BUILDING, 1ST FLOOR
63, N.S. ROAD, KOLKATA - 700001
E-mail: dgigcs.dcs-wb@gov.in

Memo. No. 65/ DCS-16014/1/2020 Dated: 03.02.2022

To,
Smt. Mrinalini Subba,
PhD Scholar of Centre for Studies in Social Science, Calcutta,
e-Mail ID : mrinaliniarch@gmail.com

Sub: Permission to visit [redacted] and interact with Bangladeshi Women for a time period of 06(six) months for academic research.

Ref: Her e-mail dated 27.12.2021.

With reference to the above, the undersigned is directed to inform you that ADG & IG of Correctional Service, WB has accorded following permissions to visit [redacted]al Home and interact with Bangladeshi Women for a time period of 06(six) months for academic research on socio-economic historical aspects of their migration :

i) Permission is given in restricted manner by maintaining all COVID protocol duly vaccinated and without affecting the security of the Correctional Home.
ii) Interview of the inmates is not allowed inside the Correctional Home.
iii) Interview of the Superintendent and officers may be allowed inside the Correctional Home office only.
iv) You are allowed to talk with the concern branch officer once in a week, as and when the superintendent feels suitable to fix the date after mutual discussion.
v) In case of any queries, questionnaires etc., you will take the approval from the Director of RICA & DIG of CS (Dumdum).(e-mail ID: digcswb.ddc-wb@gov.in)

For ADG & IG of Correctional Services, WB

Memo. No.65/1(3)/ DCS-16014/1/2020 Dated: 03.02.2022

Copy forwarded for information to the:

1. DIG (Presidency) of CS,WB
2. DIG (Dum Dum) of CS,WB
3. Superintendent, [redacted].

For ADG & IG of Correctional Services, WB

No. 1060/G/Adm/NGO/FTR-SB /2022/2527-29

भारतसरकार, गृहमंत्रालय
Government of India, Ministry of Home Affairs
मुख्यालय दक्षिणबंगालसीमांत
Headquarters, South Bengal Frontier
सीमा सुरक्षा बल
Border Security Force
(सामान्य शाखा)
(General Branch)

Administrative Block-II/ E-1
Action Area, New Town
Rajarhat, Kol- 700161

Dated, the 16 Sep'2022

To

Miss Mrinalini Subba
PhD Scholar (Gender Studies)
Centre for Studies in Social Sciences, Calcutta

Through Email ID-mrinaliniarch@gmail.com

Subject : **PERMISSION TO VISIT THE BORDERLANDS OF THE SOUTH BENGAL REGION.**

Kindly refer to your mail No. nil dated 29/08/2022.

02. It is to inform that, as per your request Competent Authority has permitted to you for visiting the borderlands of SHQ BSF Kolkata conditionally under the supervision of DC(G) Kolkata.

03. You are bound with the condition that you will not publish any content during or after research/ PhD which portrait BSF in poor manner in any way. The details of DC(G) Kolkata are as under :-

Name- Sh. Avinash Kumar, DC(G) FGT Kolkata
Contact No. –9937747755, 9644248666

04. You are also bound to not to interact with BSF troops on the matter related with security/operations.

05. You may decide date and place of visit during your research is consultation with DC(G) Kolkata and intimate to this office in advance.

16/09/22

(प्रभात रंजन शर्मा/PRABHAT RANJAN SHARMA)
द्वितीय कमान अधिकारी (सा0) / 2IC(G)
वास्ते उप महानिरीक्षक / For DIG(G)
सीमान्त मुख्यालय सीसुबल द0बं0 / FTR HQ BSF SB

Copy to:-

1. DC(G) FGT Kolkata :- for info and n/a please.
2. SHQ BSF Kolkata :- -do-

APPREHENSION OF INDIAN, BDN AND ROHINGYA

YEAR	IND					BDN					ROHINGYA				
	IN	OUT	M	F	C	IN	OUT	M	F	C	IN	OUT	M	F	C
2016	288	630	673	192	53	1139	1361	1742	576	182	06	20	16	6	4
2017	140	463	444	117	42	531	698	796	313	120	31	76	33	29	45
2018	126	316	336	76	30	640	971	783	558	270	30	136	50	39	77
2019	172	561	600	94	39	995	1180	1141	763	271	32	22	23	20	11
2020	184	518	586	78	38	909	2145	1197	1282	575	31	05	14	11	11
2021	260	597	676	134	47	980	1056	1094	721	221	22	36	17	20	21
2022 (Upto 31.07.22)	193	404	414	131	51	661	610	710	414	147	24	23	13	17	17
G/TOTAL	**1363**	**3488**	**3729**	**822**	**300**	**5855**	**8021**	**7463**	**4627**	**1786**	**176**	**318**	**166**	**142**	**186**

GOVERNMENT OF INDIA
HOME AFFAIRS
LOK SABHA

UNSTARRED QUESTION NO:4569
ANSWERED ON:21.04.2015
CRIME BY ILLEGAL BANGLADESHI IMMIGRANTS
Adityanath Shri Yogi;Patel Smt. Anupriya Singh;Thota Shri Narasimham

Will the Minister of HOME AFFAIRS be pleased to state:

(a) the number of illegal Bangladeshi immigrants residing in the country, State/UT-wise;

(b) whether there are reports of the said immigrants being involved in criminal activities in the country;

(c) if so, the details of such cases reported in the country during the last three years and the current year, Sfate/UT-wise; and

(d) the measures taken by the Government to check the infiltration and illegal stay of Bangladeshi immigrants in the country?

Answer

MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI KIREN RIJIJU)

(a): There are reports of Bangladeshi nationals having entered the country without valid travel documents. Since entry of such Bangladeshi nationals into the country is clandestine and surreptitious, it is not possible to have accurate data of such Bangladeshi Nationals living in various parts of the country. A number of Bangladeshi nationals who have entered into India on valid travel documents have been found to be overstaying. In absence of an authentic/ exhaustive survey, no authentic data of illegal immigrants currently staying in the country is available. However, during 2012-2014, approx. 18,000 Bangladeshi nationals were arrested in India for violating provisions of Immigration Control Rules & Regulations and under various sections of the Foreigners Act. In the bordering areas, during the year 2012-2014 (upto Novem- ber), 986 Bangladeshi nationals were apprehen- ded by Border Security Force for crossing over to Indian territory wherein 689 Bangladeshi nationals were found innocent and handed over to Border Guard Bangladesh whereas 297 Bangladeshi nationals handed over to concerned Police station for further legal action against them,,

b) & (c): Instances of violation of the law and involvement in activities by such Bangladeshi nationals have been reported. Registration of cases and action thereon comes within the purview of State Governments/ Union Territory Administrations concerned. Statistical data of this nature are not centrally maintained. Law enforcement agencies are instructed to maintain a strict vigil OT the activities of such Bangladeshis in the country and take appropriate action.

(d) : Central Government Is vested with powers to deport a foreign national illegally staying in the country under section 3(2)(c) of the Foreigners Act, 1946. The powers to identify and deport such illegally staying foreign nationals have also been delegated to the State Governments/ Union Territory Administrations.

A number of steps have been taken by the Government of India to manage the Indo- Bangladesh border. These include construction of border fence and border roads in strategic land border areas. A revised procedure for detection and deportation of illegal Bangladeshi immigrants has also been set out and circulated to State Government/ Union Territory Administrat- ions In November, 2009, which has been partially modified En February, 2011, and further modified in February, 2013. The procedure includes sending back then and there, the illegal immigrants who are intercepted at the border while entering India unau- thorisedly. Thirty six (36) Foreigner Tribunals are set up for detection of foreigners/illegal immigrants in the State of Assam. Besides, additional 64 numbers of Foreigners Tribunals have been sanctioned by Ministry of Home Affairs for speedier disposal of cases pending with the Tribunals

Human Rights Violation by Indian Border Security Force (BSF) against Bangladeshi Citizens: 2000 - 2021									
Years (s)	**Killed**	**Injured**	**Abducted**	**Missing**	**Rape**	**Snatching/ Looting**	**Push in**	**Other**	**Grand Total**
2021	17	12	0	0	1	0	0	1	**31**
2020	51	27	7	0	0	0	0	0	**85**
2019	41	40	34	0	0	0	0	0	**115**
2018	11	24	16	0	0	0	0	0	**51**
2017	25	39	28	0	0	0	0	0	**92**
2016	29	36	22	0	0	0	0	0	**87**
2015	44	60	27	1	0	0	0	0	**132**
2014	35	68	99	2	0	0	0	5	**209**
2013	29	79	127	0	1	77	41	0	**354**
2012	38	100	74	1	0	9	0	16	**238**
2011	31	62	23	0	0	0	0	9	**125**
2010	74	72	43	2	0	1	5	0	**197**
2009	98	77	25	13	1	1	90	3	**308**
2008	61	46	81	0	0	3	20	0	**211**
2007	118	82	92	9	3	5	198	0	**507**
2006	155	121	160	32	2	9	0	0	**479**
2005	88	53	78	14	3	4	0	0	**240**
2004	72	30	73	0	0	5	0	0	**180**
2003	27	41	120	7	2	8	0	0	**205**
2002	94	42	118	30	0	12	0	0	**296**
2001	84	29	55	0	1	10	0	0	**179**
2000	31	17	106	0	2	13	0	0	**169**
Grand Total	**1253**	**1157**	**1408**	**111**	**16**	**157**	**354**	**34**	**4490**

Human Rights Violation by Indian Border Security Force (BSF) against Bangladeshi Citizens: 2009 - 2024			
Years (s)	**Killed**	**Injured**	**Grand Total**
2024	24	29	53
2023	28	28	56
2022	18	21	39
2021	17	12	29
2020	51	27	78
2019	41	40	81
2018	11	24	35
2017	25	39	64
2016	29	36	65
2015	44	60	104
2014	35	68	103
2013	29	79	108
2012	38	100	138
2011	31	62	93
2010	74	72	146
2009	98	77	175
Grand Total	**593**	**774**	**1367**

The Foreigners Act, 1946

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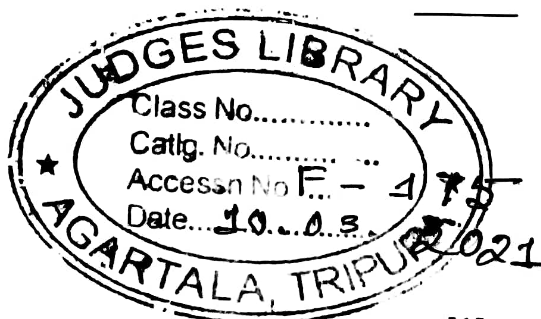

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The Foreigners Act, 1946

[Act 31 of 1946]

[23rd November, 1946]

An Act to confer upon the Central Government certain powers in respect of foreigners

Whereas it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into [1][India], their presence therein and their departure therefrom;

It is hereby enacted as follows:—

Statement of Objects and Reasons.—"At persent the only permanent measures governing foreigners specifically are the Registration of Foreigners Act of 1939 and the Foreigners Act, 1864. The Act of 1939 provides for the making of rules to regulate registration of foreigners and formalities connected therewith, their movement in, or departure from, India. The Act of 1864 provides for the expulsion of foreigners and their apprehension and detention pending removal and for a ban on their entry into India after removal: the rest of the Act which provides for report on arrival, travel under a licence and certain incidental measures can be enforced only on the declaration of an emergency. The powers under this Act have been found to be ineffective and inadequate both during normal times and during an emergency.

The needs of the war emergency were met by the enactment of a Foreigners Ordinance in 1939 and the promulgation under it of the Foreigners Order and the Enemy Foreigners Order. Even at that time the need for more satisfactory permanent legislation was recognised but it was decided to postpone consideration of such a measure until after the war. The Ordinance was, therefore, repealed by the Foreigners Act, 1940, the life of which was to expire on the 30th September, 1946, but has recently been extended by the Foreigners Act (Amendment) Ordinance, 1946. up to the 25th March, 1947.

Meanwhile the question of permanent legislation, more or less on the lines of the Act of 1940 has been examined, in consultation with the Provincial Governments. All Provincial Governments agree that such permanent legislation in repeal of the Act of 1864, is necessary. The Bill in the main reproduces the provisions of the Foreigners Act of 1940".— Gazette of India, 1946. Part V, page 361.

Statement of Objects and Reasons of Amending Act 42 of 1962.—"In view of the present emergency, it is necessary that powers should be available to deal with any person not in Indian origin who was at birth a citizen or subject of any country at war with, or committing external aggression against, India or of any other country assisting the country at war with or committing such aggression against India but who may have subsequently acquired Indian citizenship in the same manner as a foreigner. It is also necessary to take powers to arrest and detain and confine these persons and the nationals of all such countries under the Foreigners Act, 1946, should such need arise.

2. Since the Parliament was not in session and immediate action had to be taken in the interest of national security an Ordinance called the Foreigners Law (application and Amendment) Ordinance, 1962, was promulgated on 30th October, 1962, to take the above powers. The object of the Bill is to convert this Ordinance into an Act of the Parliament."

1. Short title and extent.—(1) This Act may be called the Foreigners Act, 1946.

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1. *Subs.* for "British India" by Act 38 of 1947, S. 2.

(2) It extends to the whole of [2][India] [3][* * *].

2. Definitions.—In this Act—

[4][(*a*) "foreigner" means a person who is not a citizen of India;]

(*aa*) [5][* * *]

(*b*) "prescribed" means prescribed by orders made under this Act;

(*c*) "specified" means specified by direction of a prescribed authority.

CASE LAW ▸ "Foreigner".—In 1953 a person born within His Britannic Majesty's Dominion was not a "foreigner" and could not, therefore, have committed a breach of Paragraph 7 of the Foreigners Order, *Fida Hussain* v. *State of U.P.*, AIR 1961 SC 1522.

Person who had opted for and had gone to Pakistan in 1947 was a foreigner if he came back on a Pakistani Passport for a short visit, *State of Assam* v. *Jilkadar Ali*, (1972) 2 SCC 320 : 1972 SCC (Cri) 662.

3. Power to make orders.—(1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into [6][India] or their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

(*a*) shall not enter [7][India], or shall enter [8][India] only at such times and by such route and at such port or place and subject to the observation of such conditions on arrival as may be prescribed;

(*b*) shall not depart from [9][India], or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(*c*) shall not remain in [10][India] or in any prescribed area therein;

[11][(*cc*) shall, if he has been required by order under this action not to remain in India, meet from any resources at his disposal the cost of his disposal the cost of his removal from India and of his maintenance therein pending such removal];

(*d*) shall remove himself to, and remain in, such area in [12][India] a may be prescribed;

(*e*) shall comply with such conditions as may be prescribed or specified—

2. *Subs.* for "British India" by Act 38 of 1947, S. 2.
3. The words "except the State of Hyderabad" *ins.* by the A.O. 1950 were *omitted* by Act 3 of 1951, S. 3 and Schedule.
4. *Subs.* by Act 11 of 1957, S. 2 (w.e.f. 19-1-1957).
5. Cl. (*aa*) *omitted* by Act 3 of 1951, S. 3 and Sch.
6. *Subs.* for "British India" by Act 38 of 1947, S. 2.
7. *Subs.* for "British India" by Act 38 of 1947, S. 2.
8. *Subs.* for "British India" by Act 38 of 1947, S. 2.
9. *Subs.* for "British India" by Act 38 of 1947, S. 2.
10. *Subs.* for "British India" by Act 38 of 1947, S. 2.
11. *Ins.* by Act 38 of 1947, S. 4.
12. *Subs.* for "British India" by Act 38 of 1947, S. 2.

(*i*) requiring him to reside in a particular place;

(*ii*) imposing any restrictions on his movements;

(*iii*) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(*iv*) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;

(*v*) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;

(*vi*) prohibiting him from association with persons of a prescribed or specified description;

(*vii*) prohibiting him from engaging in activities of a prescribed or specified description;

(*viii*) prohibiting him from using or possessing prescribed articles;

(*ix*) otherwise regulating his conduct in any such particular as may be prescribed or specified;

(*f*) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;

[13][* * *] and make provision [14][for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

[15][(*g*) shall be arrested and detained or confined;]

[16][(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (*e*), [17][or clause (*f*)] of sub-section (2).]

Case Law ▸ Constitutional validity.—Foreigners Act, 1946 (31 of 1946) is held to be valid, *Hans Muller of Nuremberg* v. *Supdt., Presidency Jail, Calcutta*, AIR 1955 SC 367.

Procedure under Foreigners Act, 1946 and Foreigners (Tribunals) Order, 1964 is just, fair and reasonable and does not offend any constitutional provision, *Sarbananda Sonowal* v. *Union of India*, (2005) 5 SCC 665.

▸ Natural justice.—Where foreigner failed to show that in case of issuance of notice to him, he could have produced relevant material in support of his claim for acquisition of citizenship, non-affording of opportunity of hearing would not vitiate the expulsion order, *Louis De Raedt* v. *Union of India*, (1991) 3 SCC 554 : 1991 SCC (Cri) 886.

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13. The brackets, letter and words "(*g*) shall be arrested and detained or confined;" *omitted* by Act 11 of 1957, Section 3 (w.e.f. 19-1-1957).
14. *Ins.* by Act 38 of 1947, S. 4.
15. *Ins.* by Act 42 of 1962, S. 3.
16. *Ins.* by Act 38 of 1947, S. 4.
17. *Sub.* for "clause (*f*) or clause (*g*)" by Act 11 of 1957, S. 3 (w.e.f. 19-1-1957).

▸ **Validity of order.**—Competent authority is Central Government and where decision is taken by Central Government and Superintendent of Police merely executes it by issuing the order then order not vitiated, *Louis De Raedt* v. *Union of India*, (1991) 3 SCC 554 : 1991 SCC (Cri) 886.

Order restricting movement made as per Section 3(2)(*e*) is not preventive detention nor did it violate rights guaranteed under Articles 14 and 21 of foreigners, *Premavathy* v. *State of T.N.*, (2004) 2 CTC 10.

▸ **Order prohibiting entry.**—No notice/opportunity of being heard be given to a foreigner before passing order prohibiting his entry into India. Regulating or banning entry of any foreigner into India, is absolute and unfettered discretion of Central Government [*Hans Muller* v. *Supdt., Presidency Jail Calcutta*, AIR 1955 SC 367, followed]. Expulsion of foreigner is different. If order under challenge is in nature of expulsion of foreigner from India, notice should be given by Central Government to foreigner to afford an opportunity to make representation, *R.I. Jebaraj* v. *Union of India*, (2009) 3 CTC 572.

▸ **Constitution of Tribunals.**—Subsequent to the decision in *Sonowal (I)*, (2005) 5 SCC 665, instead of implementing the directions therein, the Central Government in exercise of its power under Section 3 of the Foreigners Act, 1946 ("the 1946 Act") made an Order known as "the Foreigners (Tribunals) Amendment Order, 2006" ("the Amendment Order"), which amended the Foreigners (Tribunals) Order, 1964 ("the 1964 Order") principally making the same inapplicable to the State of Assam, and instead notified the Foreigners (Tribunals for Assam) Order, 2006 ("the 2006 Order"). It is an attempt by way of subordinate legislation to nullify the mandamus issued by the Supreme Court. The parent Act remains in force and applicable, *Sarbananda Sonowal (II)* v. *Union of India*, (2007) 1 SCC 174.

▸ **Question of fact.**—The question whether the respondent is foreigner is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence. A proceeding under Article 226 of the Constitution would not be appropriate for a decision of the question, *Union of India* v. *Ghaus Mohd.*, AIR 1961 SC 1526.

▸ **Functions of Central Government.**—Functions of Central Government entrusted to the State Government under the provision are lawful, *Anwar* v. *State of J&K*, (1971) 3 SCC 104.

▸ **Repatriation of foreign nationals.**—It is unfortunate that 37 Pakistani prisoners who have served out their sentence and are not required under the Indian laws have been kept in jail because their nationality has not been confirmed by the Pakistan High Commission. Their continued imprisonment is uncalled for. In no way, can these 37 Pakistani prisoners be treated as prisoners once they have served out their sentence. It is true that unless their nationality is confirmed, they cannot be repatriated and have to be kept in India but until then, they cannot be confined to prison and deprived of basic human rights and human dignity. They have to be formally released from jail immediately and be kept at appropriate place with restricted movements pending their deportation/repatriation. The places where they are to be kept—detention centres or by whatever name such places are called—must have basic facilities of electricity, water and hygiene. Twenty-one persons out of these 37 persons who are mentally challenged, on release, have to be given proper medical help/assistance or treatment in suitable government hospitals or the hospitals/clinics run by NGOs, *Bhim Singh* v. *Union of India*, (2012) 13 SCC 471 : (2012) 4 SCC (Cri) 307.

▸ **Nature of order restricting movement of person.**—An order directing a person to stay in a Special Camp with a restriction cannot be construed as a detention or confinement as envisaged under Section 3(2)(g) of the Foreigners Act, *State* v. *G. Karunairaj*, 2013 SCC OnLine Mad 3541 : (2014) 1 CTC 113.

[18][**3-A. Power to exempt citizens of Commonwealth countries and other persons from application of Act in certain cases.**—(1) The Central Government may, by order, declare that all or any of the provisions of this Act or of any order made thereunder shall not apply, or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to—

(*a*) the citizens of any such Commonwealth country as may be so specified; or

(*b*) any other individual foreigner or class or description of foreigner.

(2) A copy of every order made under this section shall be placed on the table of both Houses of Parliament as soon as may be after it is made.]

4. Internees.—[19][(1) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under clause (*g*) of sub-section (2) of Section 3, directing that he be detained or confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.]

(2) Any foreigner (hereinafter referred to as a person on parole) in respect of whom there is in force an order under clause (*e*) of sub-section (2) of Section 3 requiring him to reside at a place set apart for the residence under supervision of a number of foreigners, shall while residing therein be subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.

[20][(3) No person shall—

(*a*) knowingly assist an internee or a person on parole to escape from custody or the place set apart for his residence, or knowingly harbour an escaped internee or person on parole, or

(*b*) give an escaped internee or person on parole any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee or the person on parole.

(4) The Central Government may, by order, provide for regulating access to, and the conduct of persons in, places in India where internees or persons on parole are detained or restricted, as the case may be, and for prohibiting or regulating the despatch or conveyance from outside such places to or for internees or persons on parole therein of such articles as may be prescribed.]

5. Change of name.—(1) No foreigner who was in [21][India] on the date on which this Act came into force shall, while in [22][India] after that date, assume or

18. *Ins.* by Act 11 of 1957, S. 4 (w.e.f. 19-1-1957).
19. *Ins.* by Act 42 of 1962, S. 3.
20. *Subs.* for sub-sections (3) and (4) by Act 42 of 1962, S. 3.
21. *Subs.* for "British India" by Act 38 of 1947, S. 2.
22. *Subs.* for "British India" by Act 38 of 1947, S. 2.

use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said date.

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style, other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not having been in [23][India] on the date on which this Act came into force, thereafter enters [24][India], sub-sections (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which this Act came into force there were substituted a reference to the date on which he first enters [25][India] thereafter.

(4) For the purposes of this section—

(*a*) the expression "name" includes a surname, and

(*b*) a name shall be deemed to be changed if the spelling thereof is altered.

(5) Nothing in this section shall apply to the assumption or use—

(*a*) of any name in pursuance of a [26][* * *] licence or permission granted by the Central Government; or

(*b*) by any married woman, of her husband's name.

6. Obligations of masters of vessels, etc.—(1) The master of any vessel landing or embarking at a port in [27][India] passengers coming to or going from that port by sea and the pilot of any aircraft landing or embarking at any place in [28][India] passengers coming to or going from that place by air, shall furnish to such person and tin such manner as may be prescribed a return giving the prescribed particulars with respect to any passengers or members of the crew, who are foreigners.

(2) Any District Magistrate and any Commissioner of Police or, where there is no Commissioner of Police, any Superintendent of Police may, for any purpose connected with the enforcement of this Act or any order made thereunder, require the master of any such vessel or the pilot of any such aircraft to furnish such information as may be prescribed in respect of passengers or members of the crew on such vessel or aircraft, as the case may be.

(3) Any passenger on such vessel or such aircraft and any member of the crew of such vessel or aircraft shall furnish to the master of the vessel or the pilot of the aircraft, as the case may be, any information required by him for the purpose of

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23. *Subs.* for "British India" by Act 38 of 1947, S. 2.
24. *Subs.* for "British India" by Act 38 of 1947, S. 2.
25. *Subs.* for "British India" by Act 38 of 1947, S. 2.
26. The word "Royal" *omitted* by Act 11 of 1957, S. 6 (w.e.f. 19-1-1957).
27. *Subs.* for "British India" by Act 38 of 1947, S. 2.
28. *Subs.* for "British India" by Act 38 of 1947, S. 2.

furnishing the return referred to in sub-section (1) or for furnishing the information required under sub-section (2).

[29][(4) If any foreigner enters [30][India] in contravention of any provision of this Act or any order made thereunder, the prescribed authority may, within two months from the date of such entry, direct the master of the vessel or the pilot of the aircraft on which such entry was effected or the owner or the agent of the owner of such vessel or aircraft, to provide, to the satisfaction of the said authority and otherwise than at the expense of Government, accommodation on a vessel or aircraft for the purpose of removing the said foreigner from India.

(5) The master of any vessel or the pilot of any aircraft which is about to carry passenger from a port or place in India to any destination outside India, or the owner or the agent of the owner of any such vessel or aircraft shall, if so directed by the Central Government and on tender of payment therefor at the current rates, provide on the vessel or aircraft accommodation to such port or place outside India, being a port or place at which the vessel or aircraft is due to call, as the Central Government may specify, for any foreigner ordered under Section 3 not to remain in India and for his dependents, if any, travelling with him.]

[31][(6)] For the purposes of this section—

(*a*) "master of a vessel" and "pilot of any aircraft" shall include any person authorised by such master or pilot, as the case may be, to discharge on his behalf any of the duties imposed on him by this section;

(*b*) "passenger" means any person not being a *bona fide* member of the crew, travelling or seeking to travel on a vessel or aircraft.

7. Obligation of hotel keepers and others to furnish particulars.—(1) It shall be the duty of the keeper of any premises whether furnished or unfurnished where lodging or sleeping accommodation is provided for reward, to submit to such person and in such manner such information in respect of foreigners accommodated in such premises, as may be prescribed.

Explanation.—The information referred to in this sub-section may relate to all or any of the foreigners accommodated at such premises and may be required to be submitted periodically or at any specific time or occasion.

(2) Every person accommodated in any such premises shall furnish to the keeper thereof a statement containing such particulars as may be required by the keeper for the purpose of furnishing the information referred to in sub-section (1).

(3) The keeper of every such premises shall maintain a record of the information furnished by him under sub-section (1) and of the information obtained by him under sub-section (2) and such record shall be maintained in such manner and preserved for such period as may be prescribed, and shall at all times be open

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29. Sub-sections (4) and (5) were *inserted* and the original sub-section (5) *renumbered* as (6) by Act 38 of 1947, S. 5.
30. *Subs.* for "British India" by Act 38 of 1947, S. 2.
31. Sub-sections (4) and (5) were *inserted* and the original sub-section (5) *renumbered* as (6) by Act 38 of 1947, S. 5.

to inspection by any police officer or by a person authorised in this behalf by the District Magistrate.

[32][(4) If in any area prescribed in this behalf the prescribed authority by notice published in such manner as may in the opinion of the authority be best adapted for informing the persons concerned so directs, it shall be the duty of every person occupying or having under his control any residential premises to submit to such person and in such manner such information in respect of foreigners accommodated in such premises as may be specified; and the provisions of sub-section (2) shall apply to every person accommodated in any such premises.]

CASE LAW ▸ Nature and Scope.—Section 7 mandates to give correct information, *Som Chai Sri Chawla* v. *State*, (2009) 110 DRJ 211.

▸ **Illegal migrant.**—If foreign national staying in India without obtaining residential permit on or before January 5, 1960 then he is guilty of an offence under the Act and the rule as he had the requisite mens rea, *Delhi Administration* v. *Mohd. Iqbal*, (1970) 3 SCC 498 : 1971 SCC (Cri) 104.

[33][**7-A. Power to control places frequented by foreigners.**—(1) The prescribed authority may subject to such conditions as may be prescribed, direct the owner or person having control of any premises used as a restaurant or as a place of public resort or entertainment or as a club and frequented by foreigners—

(*a*) to close such premises either entirely or during specified periods, or

(*b*) to use or permit the use of such premises only under such conditions as may be specified, or

(*c*) to refuse admission to such premises either to all foreigners or to any specified foreigner or class of foreigner.

(2) A person to whom any direction has been given under sub-section (1) shall not, while such direction remains in force, use or permit to be used any other premises for any of the aforesaid purposes, except with the previous permission in writing of the prescribed authority and in accordance with any conditions which that authority may think fit to impose.

(3) Any person to whom any direction has been given under sub-section (1) and who is aggrieved thereby may, within thirty days from the date of such direction, appeal to the Central Government; and the decision of the Central Government in the matter shall be final.]

8. Determination of nationality.—(1) When a foreigner is recognised as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality if any is to be ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected:

Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case,

32. *Ins.* by Act 38 of 1947, S. 6.
33. *Ins.* by Act 38 of 1947, S. 7.

be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognized as entitled to protection by the Government of the country whose nationality he has so acquired.

(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any Court:

Provided that the Central Government, either of its own motion or on an application by the foreigner concerned, may revise any such decision.

CASE LAW ▸ **Illegal migrant.**—Declaration under 1983 Act that appellant was illegal migrant, revoked and matter remanded to Foreigner's Tribunal as Appellate Tribunal under Illegal Migrants (Determination by Tribunal) Act, 1983 had ceased to exist by orders of Court, *Mohd. Harun rashid* v. *Union of India*, (2017) 11 SCC 501.

9. Burden of proof.—If in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.

CASE LAW ▸ **Jurisdiction of Civil Court.**—Enquiry by the Central Government under Section 9(2) of the Citizenship Act is not necessary, where the case of the detenu is that he did not acquire the citizenship of any foreign country. Civil courts have no jurisdiction to adjudicate as to whether the acquisition of foreign citizenship by an Indian was done voluntarily or otherwise, *Syed Safiullah Quadri* v. *State of A.P.*, (1996) 2 AP LJ 78 (SN).

▸ **Burden of proof.**—Burden of proof, is on alleged foreigner to show that he is not one, *Sarbananda Sonowal* v. *Union of India*, (2005) 5 SCC 665.

The Illegal Migrants (Determination by Tribunals) Act, 1983 does not contain any provision similar to Section 9 of the Foreigners Act, 1946 regarding burden of proof. On the contrary it is conspicuously silent about it. In such circumstances a very heavy burden is cast upon the authorities of the State or the applicant to establish that a person is an illegal migrant as defined in Section 3(1)(*c*) of the Illegal Migrants (Determination by Tribunals) Act, 1983 and is liable for deportation, *Sarbananda Sonowal* v. *Union of India*, (2005) 5 SCC 665.

Only because burden of proof is on proceedee, same by itself would not mean that the procedure is ultra vires Article 21 of Constitution. Article 21 would not be offended if the procedure is fair and reasonable, *Sarbananda Sonowal (II)* v. *Union of India*, (2007) 1 SCC 174.

Suspected foreign national if claiming Indian citizenship then burden of proof is on him to establish that he is an Indian citizen, *Salam Dewan* v. *Union of India*, (2010) 87 AIC 463 (Gau).

Burden is on the proceedee to prove that he is an Indian citizen and not a foreigner. Non-appearance of the proceedee before the Tribunal amounts to failure to discharge the statutory burden under Section 9 of the Act. Tribunal would be justified to decide the reference against the proceedee, *Asan Ali* v. *Union of India*, 2016 SCC OnLine Gau 843 : (2017) 2 Gau LR 166.

▸ **Declared foreigner incorrectly.**—Foreigner's Tribunal after finding discrepancy in name of grandfather, and fact that grandfather and father later lived in different villages, declared appellant to be a foreigner, which was held to be not sustainable by the Supreme Court, *Sirajul Hoque* v. *State of Assam*, (2019) 5 SCC 534.

▸ **Procedure for determining citizenship status.**—Burden of proof under Section 9, is just, fair and reasonable. It is duty of Central Government under Article 355 of the Constitution to protect the State against "external aggression". Word "aggression" in Article 355 of the Constitution is of very wide import and includes influx of foreigners who had illegally migrated, *Abdul Kuddus* v. *Union of India*, (2019) 6 SCC 604.

10. Power to exempt from application of Act.—[34][* * *]

11. Power to give effect to orders, directions, etc.—(1) Any authority empowered by or under or in pursuance of the provisions of this Act to give any direction or to exercise any other power, may, in addition to any other action expressly provided for in this Act, take, or cause to be taken such steps and use, or cause to be used, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power, as the case may be.

(2) Any police officer may take such steps and use such force as may, in his opinion, be reasonable necessary for securing compliance with any order made or direction given under or in pursuance of the provisions of this Act or for preventing or rectifying any breach of such order or direction.

(3) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

12. Power to delegate authority.—Any authority upon which any power to make or give any direction, consent or permission or to do any other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation be deemed to be the authority upon which such power is conferred by or under this Act.

13. Attempts, etc., to contravene the provisions of this Act, etc.—(1) Any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that contravention.

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34. *Omitted* by Act 11 of 1957, S. 7 (w.e.f. 19-1-1957).

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves [35][India] in contravention of any order made under, or direction given in pursuance of, Section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

[36][**14. Penalty for contravention of provisions of the Act, etc.**—Whoever—

(*a*) remains in any area in India for a period exceeding the period for which the visa was issued to him;

(*b*) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

(*c*) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act,

shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (*f*) of sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting court why such penalty should not be paid by him.

Explanation.—For the purposes of this section, the expression "visa" shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920).]

CASE LAW ▸ Nature of Conventions.—The conventions are not made enforceable by governing against itself nor does the act gives a cause of action to any party for the enforcement of conventions. There is only an obligation to respect the convention regarding the treatment of civilian population but there is no right created in favour of protected persons which the Court has been asked to enforce.

Annexation occurs when the occupying power acquires and makes the occupied territory as its own. It means that there is not only possession but uncontested sovereignty over the territory.

The occupying power must apply the convention even when it claims during conflict to have annexed the occupying territory, *Rev. Mons Sebastiao Fransisco Xavier Dos Remedios Monterio* v. *State of Goa*, (1969) 3 SCC 419.

▸ **Determination of status.**—Determination of status by Central Government cannot have retrospective effect, *State of U.P.* v. *Rehmatullah*, (1971) 2 SCC 113 : 1971 SCC (Cri) 463.

▸ **Person without passport.**—Persons coming to India without passport or valid visa have to be identified, detained and deported from the country but they cannot be enlarged on bail, *Janarajan Alias Krishnamurali* v. *State of T.N.*, (2005) 5 CTC 762.

▸ **Basis of conviction.**—Hearsay evidence that the accused was a man of Bangladesh cannot be the basis of conviction under Section 14 of the Foreigner's Act, *Sk. Rejaul* v. *State of W.B.*, (2008) 2 CHN 1018.

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35. *Subs.* for "British India" by Act 38 of 1947, S. 2.
36. *Subs.* by Act 16 of 2004, S. 2.

Prosecution of a person on ground that he has lost citizenship by acquiring a citizenship of a foreign country can be initiated only after termination of his Indian citizenship, *Mohd. Elahi* v. *State of W.B.*, (2009) 74 AIC 747 (Cal).

▸ **Proof of offence.**—Offence under this section is proved against accused as he was arrested in Srinagar without any passport or visa and he is admittedly a Pakistani national, *Chandra Prakash* v. *State of Rajasthan*, (2014) 8 SCC 340 : (2014) 3 SCC (Cri) 457.

▸ **Illegal immigrants.**—As a result of the huge influx of illegal migrants from Bangladesh into Assam, periodic clashes have been taking place between the citizens of India and these migrants resulting in loss of life and property, sounding in a violation of Articles 21 and 29 of the Constitution of the Assamese People as a whole. Not only is there an assault on the life of the citizenry of the State of Assam but there is an assault on their way of life as well. The culture of an entire people is being eroded in such a way that they will ultimately be swamped by persons who have no right to continue to live in this country, *Assam Sanmilita Mahasangha* v. *Union of India*, (2015) 3 SCC 1.

[37][**14-A. Penalty for entry in restricted areas, etc.**—Whoever—

(*a*) enters into any area in India, which is restricted for his entry under any order made under this Act, or any direction given in pursuance thereof, without obtaining a permit from the authority, notified by the Central Government in the Official Gazette, for this purpose or remains in such area beyond the period specified in such permit for his stay; or

(*b*) enters into or stays in any area in India without the valid documents required for such entry or for such stay, as the case may be, under the provisions of any order made under this Act or any direction given in pursuance thereof,

shall be punished with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees; and if he has entered into a bond in pursuance of clause (*f*) of sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting court why such penalty should not be paid by him.]

[38][**14-B. Penalty for using forged passport.**—Whoever knowingly uses a forged passport for entering into India or remains therein without the authority of law for the time being in force shall be punishable with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees.]

[39][**14-C. Penalty for abetment.**—Whoever abets any offence punishable under Section 14 or Section 14-A or Section 14-B shall, if the act abetted is committed

37. *Ins.* by Act 16 of 2004, S. 2.
38. *Ins.* by Act 16 of 2004, S. 2.
39. *Ins.* by Act 16 of 2004, S. 2.

in consequence of the abetment, be punished with the punishment provided for the offence.

Explanation.—For the purposes of this section,—

(*i*) an act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the offence;

(*ii*) the expression "abetment" shall have the same meaning as assigned to it under Section 107 of the Indian Penal Code (45 of 1860).]

15. Protection to persons acting under this Act.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

16. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Registration of Foreigners Act, 1939, the Indian Passport Act, 1920[40], and of other enactment for the time being in force.

17. Repeals.—[*Repealed by the Repealing and Amending Act, 1950 (35 of 1950), Section 2 and Schedule I.*]

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40. **Ed.** Renamed the Passport (Entry into India) Act, 1920 by Act 15 of 1967, S. 25.

(*b*) either of his parents is, at the time of his birth, in service under a Government in India:

Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003, a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,—

(*i*) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003, whichever is later; or

(*ii*) with the permission of the Central Government, after the expiry of the said period:

Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1-A) A minor who is a citizen of India by virtue of this section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.]

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section (1), [9][any person] born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

5. Citizenship by registration.—[10][(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:—

(*a*) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

(*b*) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(*c*) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(*d*) minor children of persons who are citizens of India;

(*e*) a person of full age and capacity whose parents are registered as citizens of India under clause (*a*) of this sub-section for sub-section (1) of Section 6;

9. *Subs.* for "any male person" by Act 39 of 1992, S. 2(b).
10. *Subs.* by Act 6 of 2004, S. 5(*a*).

रजिस्ट्री सं॰ डी॰ एल॰—(एन)04/0007/2003—19 REGISTERED NO. DL—(N)04/0007/2003—19

असाधारण
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 12*th December,* 2019/*Agrahayana* 21, 1941 (*Saka*)

The following Act of Parliament received the assent of the President on the 12th December, 2019, and is hereby published for general information:—

THE CITIZENSHIP (AMENDMENT) ACT, 2019

NO. 47 OF 2019

[12*th December,* 2019.]

An Act further to amend the Citizenship Act, 1955.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Citizenship (Amendment) Act, 2019.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 2.

2. In the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in section 2, in sub-section (*1*), in clause (*b*), the following proviso shall be inserted, namely:— 57 of 1955.

"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (*c*) of sub-section (*2*) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;". 34 of 1920. 31 of 1946.

Insertion of new section 6B.

3. After section 6A of the principal Act, the following section shall be inserted, namely:—

Special provisions as to citizenship of person covered by proviso to clause (*b*) of sub-section (*1*) of section 2.

'6B. (*1*) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (*b*) of sub-section (*1*) of section 2.

(*2*) Subject to fulfilment of the conditions specified in section 5 or the qualifications for naturalisation under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of naturalisation under sub-section (*1*) shall be deemed to be a citizen of India from the date of his entry into India.

(*3*) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him:

Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section:

Provided further that the person who makes the application for citizenship under this section shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application.

(*4*) Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873.'. Reg. 5 of 1873.

Amendment of section 7D.

4. In section 7D of the principal Act,—

(*i*) after clause (*d*), the following clause shall be inserted, namely:—

"(*da*) the Overseas Citizen of India Cardholder has violated any of the provisions of this Act or provisions of any other law for time being in force as may be specified by the Central Government in the notification published in the Official Gazette; or";

(*ii*) after clause (*f*), the following proviso shall be inserted, namely:—

"Provided that no order under this section shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard.".

Amendment of section 18.

5. In section 18 of the principal Act, in sub-section (*2*), after clause (*ee*), the following clause shall be inserted, namely:—

"(*eei*) the conditions, restrictions and manner for granting certificate of registration or certificate of naturalisation under sub-section (*1*) of section 6B;".

Mrinalini Subba

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- Small Matches (less than 14 words)

Match Groups

- **136** Not Cited or Quoted 4%
  Matches with neither in-text citation nor quotation marks
- **0** Missing Quotations 0%
  Matches that are still very similar to source material
- **0** Missing Citation 0%
  Matches that have quotation marks, but no in-text citation
- **0** Cited and Quoted 0%
  Matches with in-text citation present, but no quotation marks

Top Sources

- 4% Internet sources
- 2% Publications
- 3% Submitted works (Student Papers)

Integrity Flags

0 Integrity Flags for Review

No suspicious text manipulations found.

Our system's algorithms look deeply at a document for any inconsistencies that would set it apart from a normal submission. If we notice something strange, we flag it for you to review.

A Flag is not necessarily an indicator of a problem. However, we'd recommend you focus your attention there for further review.

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20/5/25

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