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THE UN-HUMAN BEINGS

The Denial of Muslim Migrants' Bodies in India and Poland

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India
islamophobia
migrant
nationalism
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postcolonial
postsocialist
refugee
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This essay traces the political and legal discourses around migrants and refugees in two distinct conditions: the postcolonial and the postsocialist of India and Poland, respectively. The two countries have recently turned to nationalist right-wing politics with an increasingly hostile focus on foreign Others, particularly Muslims. In the context of increased global surveillance and criminalization of Muslims, we show how the bodies of Muslim migrants are dehumanized and constructed as threats, denying their humanity in the process. We do this through the two cases of Ayub and Ameer, two Muslim men navigating their “illegality” in two different contexts in India and Poland. This essay is a contribution to the literature on postcolonial and postsocialist theories and critical debates about the possibilities of dialogue between postsocialist and postcolonial geographies. The examples we use demonstrate that the postcolonial and postsocialist nation-states respond to global phenomena such as migration and Islamophobia in ways that have discernible traces of their histories and are constituted distinctively from the western metropolises.

Introduction

There is a danger here. We have seen cases of dangerous disease not seen in Europe for long ... all sorts of parasites that might not be dangerous in these people's bodies, but can be dangerous here. (Speech by Prawo i Sprawiedliwość [PiS] leader during the 2015 General Elections in Poland)

Infiltrators are like termites in the soil of Bengal ... A Bharatiya Janata Party government will pick up infiltrators one by one and throw them into the Bay of Bengal. (Speech by a Bharatiya Janata Party [BJP] leader during the 2019 General Elections in India)

This essay puts under the lens the processes of exclusions around the recognition of Muslim foreigners as refugees and/or asylum seekers in India and Poland. It also brings out slippages in this process as a result of ambiguities in the legal and policing mechanisms, which inordinately work against Muslim foreigners. The politics of the two countries took a nationalist turn when in 2014 and 2015 the Bharatiya Janata Party (BJP) and the Prawo i Sprawiedliwość (PiS), respectively, came to power and consolidated their hold over the polity. Hindutva nationalism (Anand 2005) and Polish Catholic nationalism (Pankowski and Kornak 2013; Jaskułowski 2019; Janion 2011) are at the foundation of the post-independence making of the two countries (Narkowicz and Kumar 2021). The Polish ruling party is now reviving the legacy of past right-wing ideologues such as Roman Dmowski to reimagine Poland as a European bastion of Christianity and whiteness. Similarly, the Hindutva political ecosystem is drawing upon a long tradition of conservative thinking that emerged in the colonial period (Dasgupta 2019; Dubey 2019). Although anti-Muslim sentiments were already pronounced, an increasingly hostile focus on Muslim Others has been noticeable in both countries, further solidified by the introduction of new legislation (Werleman 2021; Jaskułowski 2019). These include a new Polish Migration Policy and the Indian Citizenship Amendment Act, both disproportionately focusing on Muslims.

In this essay, Poland and India are brought into analysis together with the aim to tease out connections across postsocialist and postcolonial conditions in response to global phenomena of migration and Islamophobia. Therefore, rather than seeking exact comparisons, or focusing too much on the specificity of each national context, we instead bring the different contexts together to recognize the complexity of interconnections across the “geographies of postness” (Drnovšek Zorko 2021, 1).

This choice of India and Poland is based on a commitment to a dialogue between postcolonial and postsocialist conditions (Kumar and Narkowicz 2021). Scholars of migration governance and securitization in Eastern Europe have pointed out that the region's distinct histories and experiences

tend to be overlooked in the European academic context (Klaus 2020). Thus, by placing Poland in conversation with India, we attempt to answer Chari and Verdery's call to "restore research connections that should never have been separated" (2009, 12). Scholars have expanded on historical connections between Eastern Europe and the Global South (Mark et al. 2019; Baker 2018), echoing the sentiment that these contexts deserve to be thought about together. Yet there is still a lack of robust conversation. The postsocialist and the postcolonial shared a lot but, being asynchronous, the two discourses "were not always able to...hear each other's voices" (Koobak, Tlostanova, and Thapar-Björkert 2021, 2). Often, the growing critical literature on Eastern Europe engages with the Global South theoretically yet lacks actual engagement with the region. The potential interlocutors in the Global South, on the other hand, do not necessarily see Eastern Europe as distinct from the European core. Speaking specifically from the Indian context, Nivedita Menon argues: "We in India need first to see East Europe as marginal to the Europe we imagine when we use the term, only then would such dialogues become possible" (Menon, Thapar-Björkert and Tlostanova 2021, 114). This essay is a contribution to the literature on postcolonial-decolonial and postsocialist theories that strive to think between the posts (Chari and Verdery 2009; Baker 2018; Karkov 2019; Kuus 2004; Mark et al. 2019; Tlostanova 2012; Drnovšek Zorko 2018; Gržinić 2019; Nigam 2020; Koobak, Tlostanova, and Thapar-Björkert 2021). This literature, applying post- and decolonial theoretical insights into the regions of the Global East¹ (Müller 2020), has been gaining prominence in the last few years.

1 Agreeing that the East is often overlooked by both western and Global South academia, it is also essential not to ignore, as Tichindeleanu et al. (2020) argues in his response to Müller (2020), the wealth of knowledge production in the European East, rooted in local histories, that often happens outside what is "visible" to western-oriented academia and thus is ignored by it.

Another "Ground of Comparison" (Culler and Cheah 2003) between the Indian and Polish conditions is the project of "inverting the telescope" following the path suggested by Benedict Anderson, which displaces Europe as the central methodological principle for comparison between different geographical regions (Cheah 2003, 13). Postsocialist Poland on the frontiers of Europe and India as a postcolonial nation-state provides a vantage point for a comparative analysis that challenges the felicity of comparison within and between Western Europe.

The research presented in this essay is based on a combination of textual interpretation and ethnography. Our essay investigates Islamophobia and the removal of "foreign" bodies through an intertextual reading of texts emerging from the political contexts of India and Poland supplemented by an ethnographic analysis of court proceedings in India and textual analysis of letters written by defendants in Poland. We do a close reading of the legislative and legal documents to make legible the construction of foreigners and refugees. In the Polish case, we discuss in detail a 2019 draft of the government's new migration policy titled *Polityka Migracyjna Polski* (Polish Migration Policy), focused particularly on Muslim immigrants. In the

Indian case, we use texts of judgements delivered by various local courts on cases of paperless Rohingya immigrants. The choice of this method closely resembling that of literary criticism is deliberate. The attempt is to transform these statist documents saturated and determined by penal and disciplinary powers with a claim to justice into social and cultural texts. This literary method strips the ritualistic powers ascribed to these texts, making them vulnerable to interpretative acts of reading deliberately divergent and in opposition to the legal experts. Bruno Latour in his study on Conseil D’Etat relates the making of legal texts and their ambiguities as a result of negotiations and bickering among experts and administrators (2010, 67). However, before we make bodies legible through reading, it is important to understand how living bodies confront the leviathan of law that reduces their bodies and lives into legal textual codes. In the Indian context, this is done through an ethnographic description of the ways in which the “illegal” immigrant is brought in front of the court. The researchers accompanied the lawyers of Human Rights Law Network, West Bengal. This organization was providing legal aid to the immigrants who were arrested after crossing international borders and were without legally admissible documents. Although access to the undertrial was not possible, access to the courtroom, along with conversations with the trial lawyers, provided the researchers with insight into how legal codes play out in the real time and space of the courts. In the Polish context, we did a secondary analysis of reports from the ground by organizations and activists in Poland (especially Razem and Kolektyw Reaktor). The analysed documents were mainly in Polish with some translated to English. This intertextuality of legal texts and experiences is at the foundation of the postcolonial-postsocialist dialogue in the essay. We open this essay with the cases of Ayub and Ameer, two Muslim men navigating their “illegality” in two different contexts in India and Poland. Their bodies, although legal, nevertheless are rendered criminal and dehumanized.

Life’s Encounter with law: Ayub and Ameer

Ayub

2 All names in the Indian case study have been changed to protect the identity of refugees who have got bail or are undertrial. Also, the case numbers are not referred to in the text.

In a district court in West Bengal, in Eastern India, Mohammed Ayub² awaited decision on his bail application. Ayub, a Rohingya Muslim fleeing Myanmar, was apprehended by the police along with his relatives under the Foreigners Act, 1946. This act is the chief instrument of legal action in India against people whom it deems as “foreigners” under its provisions. India is not a signatory to the 1951 Refugee Convention and the 1967 Protocol based on the explicit stance that these conventions and protocols

It is advised to get in touch with Human Rights Law Network, West Bengal to get the detail of the cases.

were created and came into effect as a result of the peculiar historical experience of Europe in the aftermath of the Second World War. As such, the convention and the protocol does not consider the unique experience of colonialism, anticolonial resistance, and making of nation-states and contentious forms of citizenship as a result of partitions of the Indian subcontinent. As a result of these twin legal and political structures in the Indian regime of control over refugee movement, every case of a person apprehended under the act becomes a discrete exercise of power by a range of state and non-state actors over the legally unrecognized “refugee” as a recalcitrant foreigner. It is within the competing intersections of the police, the court, and the legal experts that the “refugee” not recognized as such is made legible as a foreigner. Every result, whether punishment or exoneration, thus, is an individual act of state power over the person.

Such arbitrariness in the exercise of police and judicial power in the case of “foreigners” is evident in the fact that the female relatives of Ayub who were accompanying him had obtained bail earlier in the first hearing, but he failed to secure it with them. According to his lawyer, this was a result of a discrepancy between his refugee card issued by the UNHCR and an inadvertent slip he made in a statement about his citizenship status in the court. As a result, the court directed the legal representative of Ayub to get the UNHCR card verified by its office in New Delhi. It was at this juncture of legal and human uncertainties that we saw Ayub on a humid August afternoon of 2019 in the district court.

The setting of the court of the Chief Judicial Magistrate (CJM) was formidable in its dilapidation. There was a cage-like structure for the undertrials on the right of the platform where the CJM sits. On the left, the steel cupboards and rows of dust-laden files gave the impression of both timelessness and stillness to the entire courtroom, despite the restless bustle of lawyers, relatives and friends of undertrials, and the usual busybodies entering and leaving the room. By the time Ayub’s turn came for the hearing, the cage was filled by other undertrials awaiting verdicts. We were told by the lawyer that, in all probability, Ayub will be granted bail as the UNHCR has verified his refugee card. Ayub was brought to the courtroom and let inside the cage as his turn came. Dressed in a white full-sleeved shirt and a *lungi* (wrap-around commonly worn by men), Ayub looked unusually calm. It may have been because the lawyer had already told him that his bail application had a high chance of being accepted and that he might be released by the next day after the paperwork was completed. Ayub was granted bail and he was free to join his relatives in Delhi where they had gone to live in the makeshift camp for Rohingyas either with valid refugee cards or whose documentary status remains uncertain. Looking at him with other “Indian” undertrials in the cage, we could not help but think about the untrammelled capacity of power to mark its victim. The stereotype of lungi-wearing

Bangladeshi and Rohingya goes together with the rhetoric of them being “termites” and potential jihadists. Yet, in that cage, even the Foreigners Act could not prevent a symbolic equivalence between the Citizen and the Foreigner. This equivalence between a citizen and a foreigner is a result of branding a person as criminal through the exercise of police and juridical power. However, this equivalence of criminality between a citizen and a foreigner before the office and the letter of the law is valid only within the spatial boundaries of the court.

In the immediate aftermath of obtaining bail, a foreigner, unlike the citizen-criminal who remains a “suspect” and not a guilt-proven convict, is neither a convict nor merely a “suspect.” The guilt of being a foreigner in the case of Ayub has not only been proved in the court within the definition of national laws, but also affirmed by the international body of the UNHCR. Yet the “foreignness” of Ayub does not automatically provide him with the status of a “refugee” within the national territory of India. He remains a foreigner “unrecognized as a refugee” by the government of India. This space which Ayub resides between being “a foreigner and not-a-refugee” is even more dire than that of the illegal immigrant waiting to be revealed, arrested, and prosecuted by the police and juridical power. The illegal immigrant has escaped the mesh of juridical and police power and entered the realm of politics, where she becomes the negative subject of politics which needs to be expelled from the body politic of the nation-state. Ayub, on the other hand, is in a saturated legal space identified both as a criminal and a foreigner and like the illegal immigrant a negative subject of nationalist political power. In other words, he is simultaneously a subject both of the state of normal as well as exceptional exercise of biopolitical power. We will return to this theoretical point later in the essay when we examine Giorgio Agamben’s concept of “bare life” (1998). We now turn to Poland.

Ameer

3 Because this case is widely known in Poland and Ameer has decided to speak publicly, we use his real name.

Ameer Alkhawlany³ was on his way to his university campus in Kraków when five men approached him on a busy street as he was crossing to catch a tram. The 30-year-old Iraqi was reading for his PhD at the Jagiellonian University and living in a student dormitory with his brother. The men who approached Ameer were dressed in civilian clothing. Stepping on to the pavement with him they asked for his passport and resident card and searched his belongings. Despite showing them his documents, the men instructed Ameer to get into a car with them. They drove a long way, Ameer recalls, through a forest to what turned out to be a detention facility where he was to be interrogated. There, Ameer was subjected to a medical

check, his fingerprints were taken, and he was led to an interview room where he had to sign documents in Polish. He could not understand what the documents said but he thinks that they were about the rights of people placed in detention centres. During this time, he had not been told what he was accused of, despite asking from the moment he was approached in Kraków's city centre. The men who interviewed him told him that he was going to be placed in a "guarded centre" while awaiting trial. Ameer was to be taken to a detention centre in Przemyśl, over 200 km from Kraków. When he enquired about the place, he was told that it is a place where people with no legal right to stay in Poland were kept. This came as another surprise for Ameer who, as a PhD student funded by the Polish government, had a legal right to stay in Poland. His legal status was rendered meaningless when he heard that the accusation towards him was that he posed a danger to Poland's security and therefore had to be deported back to Iraq. In a dazzling interview room, memories started emerging to Ameer.

He recalled that on his last visit to Warsaw he got a phone call from a man who told him that he wanted to know about Iraqi people who were living in Poland.

Ameer was approached again about a month before the 2016 World Youth Day (Krytyka Polityczna 2016). Organized by the Catholic Church, the World Youth Day is a global event attracting millions of young people and taking place every few years in a different country, and with a visit from the Pope. In July 2016 it was held in Kraków. The interest of the security forces towards Ameer did not have clear links to the Catholic event; instead, Ameer was asked to spy on the Muslim community. Initially, he was asked by the ABW (Internal Security Agency) to gather information about the Muslim community in Kraków through visiting mosques and finding out about "intended actions, addresses and even sources of income of its members" (Krytyka Polityczna 2016). Being an atheist himself he refused, saying that he would not even know what to do in a mosque. Following his first refusal, the secret services approached Ameer again with a request for him to travel across Poland and obtain information about people from the Middle East. Crucially, the agents suggested that if Ameer did not cooperate, his stay in Poland could be threatened. And indeed, he was arrested, charged, and finally excluded without knowing the evidence against him.

In court, Ameer was trying to understand why he was arrested but was told that it was classified information. The use of secret evidence in counter-terrorism trials is already established in other countries, such as the UK, where evidence is heard in the Special Immigrations Appeals Commission (SIAC) (Kapoor and Narkowicz 2019). In SIAC, suspicion alone is enough for disciplinary action, which can include deportation (Kapoor 2018). When terrorism-related court hearings go through closed-procedure trials, any evidence that might have been used to underpin the suspicion is not

available to the accused or their legal advisors. This also happened in Ameer’s case. His trial lasted a few minutes, after which the court ruled that Ameer would be transferred to a different, more secure, detention centre where he was locked in a room pending his deportation. In a bid to avoid deportation, Ameer then applied for refugee status, which the Office for Foreigners (Urząd do Spraw Cudzoziemców) rejected, based on purported secret evidence. Ameer was deported to Iraq in April 2017 without full knowledge of the grounds for his exclusion. In fact, a District Court in Przemyśl overruled Ameer’s detention, arguing that there were no grounds for his arrest in the first place. However, by then the state had already excluded Ameer from Poland (Figurski and Sidorowicz 2017). Adam Bodnar, the Commissioner for Human Rights of the Republic of Poland, summarized Ameer’s case as a “Kafkaesque process” (TVN24 2016), again echoing similar cases where the exclusions of racialized subjects are justified by secret evidence in other countries (El-Enany 2020). Ameer suspects that his deportation was a consequence of his refusal to cooperate with the Polish secret service. This, again, has been found to be a reason for naturalization refusals for Muslims in other countries (Kapoor and Narkowicz 2019). The Muslim population in Poland, similarly to other Central and Eastern European⁴ countries and in contrast to other Eastern European countries with sizeable or majority-Muslim populations such as Bosnia and Herzegovina or Albania, is very small and largely settled with few migrants and refugees. Still, the techniques of surveillance and expulsion of Muslim bodies post-9/11 are becoming increasingly coherent and follow similar patterns across the globe, governing Muslims within the nation and extending to the space of immigration control (Kapoor 2018).

4 The term Central Eastern Europe, although contested, is used here to discern the specificity of the CEE region in relation to its Muslim population that differs from many other Eastern European states. For a critical overview of the genealogy of the term CEE to distinguish countries “closer” to Western Europe to its Eastern neighbours, see Janion (2006).

Following Ameer’s exclusion, his lawyer is appealing what he believes was a deportation that goes against the European Convention of Human Rights (Figurski and Sidorowicz 2017). Ameer’s inclusion in the Polish nation thus hinged on his willingness to spy on other Muslims in the country. His nationality as Iraqi marked him as a Muslim and thus questioned his allegiance to the Polish nation, something Muslims across Europe have been experiencing increasingly since 9/11 (Fekete 2004). Ameer is not among the first generation of Muslims who arrived in Poland as students. During Communism, students from Arab countries including Iraq and Syria were not an unusual sight, and many settled in Poland as part of strong relations with Arab countries pre-1989 (Narkowicz and Pędziwiatr 2017; Knopek 2006). This was part of wider international connections between non-western countries, and particularly the former Communist bloc and countries in the Global South, that has not received much scholarly attention (Mark et al. 2019; Baker 2018). During Communism, the Muslim population in Poland had distinctive identities. There were the Tatars who were considered “indigenous” Muslims living in Poland for centuries, then the students and

the Muslim refugees who predominantly came from Chechnya. In the current context of the War on Terror, such diverse – and sometimes conflicting – identities are not afforded to Muslims in Poland, as they are merged together into one homogenous symbol of threat and undesirability, a figure that plays an important role in upholding the sanctity of the national body (Puar and Rai 2002).

Textualizing living bodies

The first strategy of border governance is an exclusion strategy to contain and expel using walls, detention centers, and deportations. Governance through exclusion works to fortify territorial control, solidify a racialized nationalist identity, and criminalize migrants and refugees as “undesirables” and “trespassers”. (Walia 2021, 79)

In the cases of Ayub and Ameer, a whole gamut of power was mobilized to render them legible as subjects at the intersection between criminality, body, religious identity, and nationalism. This was done through a series of bureaucratic, legal, policing, and discursive practices as demonstrated above. In this section, we analyse the manner in which the discursive power of legal and policy texts is used to identify and criminalize subjects as illegal, and a threat to the body politic of the nation-state. We also bring out the obfuscation, slippages, and ellipses within these texts which betray their conservative and reactionary political assumptions in order to define the other that needs to be governed in a manner which is distinct from that of the imagined notion of an ideal national citizen.

From the case studies, it is clear that racialized refugees and migrants in India and Poland actually are recognized, unrecognized, and derecognized through a complex mechanism of discursive practices. While Ayub is initially recognized by the police as a foreigner, he only later had his status confirmed as refugee, which granted him some rights (even if these were never realized). Ameer was derecognized as a foreigner once his legal status as overseas student was suspended and then failed to gain refugee status.

Both Ayub and Ameer’s first encounters with the police are those of recognition as foreigners and simultaneous derecognition as humans who have rights. We start with the Indian case, where we are using the text of the judgements delivered by various courts relating to the cases on Rohingyas who have crossed into Indian territory without documents. We then continue with the Polish case, where we use various legal and policy documents relating to Muslim immigrants and refugees. These discursive meshes of power are

decisive in the identification and inclusion-exclusion of the migrant/refugee within the territory of the nation-state.

India

The most interesting aspect of the legal document pertaining to persons arrested under the Foreigners Act is the sheer ambiguity of the circumstances in which the foreigners and the police confront each other. In one of the judgements delivered by the Fast-Track court of an Additional District and Session Judge, this is how the first moment of capture of the foreigner is related:

At about 22:10 received a telephonic information ... that some persons gathered in the waiting hall of... Railway Station are suspected to be B D (Bangladesh) National. Accordingly the complainant along with other force [*sic*] had been to ... Railway Station at 23:15 and found those persons sitting in the waiting hall of platform No. 1. On being asked they *disclosed their names and address of Myanmar*. They stated that they entered into Bangladesh from Myanmar 10 days before and ... they have crossed ... Indo Bangladesh Boarder [*sic*]. On demand they failed to produce any valid passport or documents to enter into India form Myanmar vis [*sic*] Bangladesh. Accordingly, they were arrested U/s 41 Cr.P.C at about 00:25 ... It is learn [*sic*] further that those persons were proceedings [*sic*] towards Delhi for *want of job as they are unable to maintain livelihood at Myanmar* ... The police took up the investigation and after completion of investigation submitted chargesheet against ... the accused persons U/s 14–A of Foreigners Act. (Emphasis added)

This excerpt provides interesting insights into the working of established police procedures, which are not always laid out clearly. The text does not get into any details or descriptions on the basis of which there was a suspicion that the group comprised Bangladesh nationals. In this case, the instinct of the officer was proved to be erroneous, as the group turned out to be from Myanmar. The first incident report mentioned that the reason why the group crossed the border was economic. Absent in this report is any mention that they were Rohingyas or were fleeing Myanmar because of persecution. The case police made was that they were found without valid documents and were foreigners. Interestingly, the accused pleaded not guilty. It is during the arguments that the contradiction in what the police filed and the prosecution argued came to the fore. This is how the judge summarized the arguments of the public prosecutor:

Admittedly the accused persons are the Foreigners [*sic*] and entered into India without any valid paper. It is further argued that though the accused persons are claiming themselves that *they were proceeding towards Delhi to obtain the status of Refugee* but their entrance towards the Indian Border is not in accordance with law and they failed to produce any document at the time of their detention. (Emphasis added)

There is a distinct divergence in the police version and the arguments of the public prosecutor. The police deemed the accused as “economic migrants” from Myanmar based on their own admission, while the public prosecutor identifies them as persons travelling to seek refugee status in India through the UNHCR. The judge, glaringly, does not point out the discrepancies in the two versions of the state authorities who were seeking conviction of the accused. The defence lawyer’s arguments are registered as follows:

Admittedly the accused persons are the Foreign National [*sic*] and ... they have entered into India to save their lives. It was not possible for them to carry any valid documents ... as they were in fear of their lives ... In such circumstances, Section 14–A of the Foreigner’s Act should not be imposed to the accused persons. It is argued that the rule of *Jus Prudence* may apply as they can apply for the status of Refugee only after entering into India but they were arrested before doing so ... 14–A of the Foreigner’s Act shall of apply [*sic*] only in case of migrants and not to the Refugees ... They had no criminal intention to enter into India ... After arrest they obtained the status of Refugee from UNHCR.

The case firmly identifies the accused as seeking refugee status. However, the judge goes on to state that the “onus of proving that a person is or is not a Foreigner lies upon the accused” and that the “accused persons have admitted that they are not the [*sic*] Indian Citizen.” What follows is the tragedy of being stateless and the banality of the judgement captures the melancholy of not being recognized:

Though, the prosecution has stated that they are Myanmar National but it cannot be presumed that they are Myanmar National unless there is a strict proof of their Citizenships of that Country. In absence of any cogent evidence that the accused persons are Myanmar National, this court cannot put a mark or hammer to hold that the accused persons are Myanmar National. But it is well established that they are also not an Indian Citizen.

The only certainty that the judge can muster is the negative fact that the accused are not Indian citizens. The affirmation of the accused as living human beings is in the denial of their identity as a citizen of India. There is no positive political ontology of those who were accused. All the accused

were finally convicted. After hearing the sentence, a man in the group appealed to the court to provide for work after his sentence was over: “Sir, Amar Saja Hoyejawa Por Baire (Delhi) Berawar Byawastha Kara Hole Bhalo Hoy” (Sir, after my sentence is over, it would be better if you could arrange for some work for me in Delhi). Ironically, this was the reason given by the police officers who arrested this group before it turned out that they were persons seeking asylum.

Political philosophy has examined the chasm between sovereign power and life in different ways. Agamben’s (1998) concept of “bare life” is one of the most influential in the context of examining the exercise of sovereign power over living bodies. However, in the case of Agamben, this power lies in its ability to decide on exception producing subjectivities at the border of a political community. In the above case, by not treating foreigners as refugees, the legal texts produce subjects who are brought into the mesh of penal power through usual criminal penal codes. In that sense, the illegal immigrant identified as a foreigner under the act is hardly different from the citizen-criminal. It is what is left unsaid in the judgement texts that is more interesting. The verdicts never mention or direct the authorities on what should happen to the prisoners once they have completed their sentence. Whether they are to be deported or they will be allowed to stay under restrictions according to the provisions laid down by the Foreigners Act. It appears that the ambiguities inherent in the “normal” laws of exclusion of foreigners *de-identified* as refugee allow apparatuses of disciplinary and governmental powers to exercise “exceptional” power. By *de-identification*, we mean that exercise of power by the juridical apparatuses that renders an illegal immigrant as foreigner but does not grant her the protection as a refugee or asylum seeker. We want to claim through this analysis that *de-identification* is at the core of how sovereign power constitutes itself by defining its relation with the putative citizen and the illegal immigrant as a foreigner but not a refugee. If, in the case of India, it is the legal document and juridical processes that implicate and produce the living and textual body of the foreigner *de-identified* as refugee, in the case of Poland the legal foreigner is de-identified as illegal immigrant that is subsequently deported via extra-legal measures. Next, focusing on Poland, we discuss a Muslim ban at the height of the “refugee crisis” in 2015 and a subsequent 2019 draft of the Polish government’s new migration policy.

Poland

Shortly after coming to power in 2015, the Prawo i Sprawiedliwość (PiS) government took steps to block entry for Muslim refugees by refusing the previously agreed EU quota on the number of refugees to be accepted into

Poland (Newsweek.pl 2016; Narkowicz 2018). It also adopted an anti-terrorism law that was heavily criticized by human rights organizations and the Polish Human Rights Commissioner (Panoptikon Foundation 2016). The idea that if Muslim foreigners are kept out, Poland will also be terrorist-free was instrumental to the electoral success of the PiS party. When Polish right-wing politician and MEP Dominik Tarczyński was interviewed on Al-Jazeera he said that a refusal to receive Muslim refugees and migrants was about “safety” and “common sense” (2019). In this view, it is commonsensical to fear and refuse Muslims even if that goes against the current legal obligations of Poland, such as EU policy or the Refugee Convention. Although terrorist attacks by radicalized Muslim immigrants have not taken place in Poland, recent years have seen terrorist attacks by Poles, including the murder of the mayor of Gdańsk Paweł Adamowicz by a radicalized Polish “lone wolf” (Pikulicka-Wilczewska 2020). And yet the security arguments are frequently weaved in with more openly racialized comments about refugees. For example, in the quote opening this essay the leader of the Law and Justice party Jarosław Kaczyński issued a statement where he warned of the danger of disease that could be brought in with the refugees (Rettman 2015).

Since 2013 the number of refugees has gone up in Poland, although overall it still remains low in comparison with other European countries (Górny et al. 2017). This has been linked to increased numbers of asylum applications from post-Soviet countries including Armenia, Georgia, Russia, Ukraine, and Afghanistan. Among these, the largest group for a while now have been the Chechens. This trend intensified in 2013 due to the political situation in Russia (Szczepnikowa 2014). Most Chechens who come to Poland do not stay long and often it is a route to other countries in the EU (Szczepnikowa 2014). The total number of Chechens in Poland is disputed but it ranges anywhere between 5,000–10,000. Despite living in Poland for decades, the intensification of a moral panic towards Muslims in recent years also impacted the Chechens. Even if the Chechen refugees are predominantly Muslims, they were not narrated as Muslims until recently, when the shift in the country marked an intensified focus on Muslims with growing Islamophobic attitudes (Narkowicz and Pędziwiatr 2017). In a refugee centre in Łomża, for example, the local population in the town reportedly thought of the Chechen refugees inside the centre as evoking feelings of fear and constituting a threat to the local population (Bilewicz et al. 2012). Discourses of threat run throughout Polish society, from public attitudes to media stories and government policy. Migrants, refugees and Muslims (often treated as a homogenous threat) are frequently represented through orientalised discourses of a Muslim invasion (Kotras 1998).

Polish immigration policy has in recent years increasingly focused on securitization of borders, immigration and Islamic radicalization. In June 2019, a

draft of the government’s new migration policy titled “Polityka Migracyjna Polski” (Polish Migration Policy) was leaked by the NGO Association for Legal Intervention (Klaus 2019). The policy, prepared by the Polish Ministry of the Interior and Administration, is a 70-page document outlining a migration policy that focuses on filling a demographic gap in the country by selecting desirable migrants and limiting access to Poland for those groups considered undesirable, those who come imbued with the potential of radicalization:

The policy aims to define areas where there is need for enhanced state security, especially concerning illegal immigration, and in cases of an influx of economic migrants and the ever-growing risk of their radicalization. (MSWiA 2019, 2)

Similar to the Indian case study, the boundaries between legal and illegal migration are blurry and when the individual is a Muslim man, it seems that their proximity to violence (here, radicalization) is already assumed. All the mentions of terrorism within the migration policy are linked to Islam and Muslims. Konrad Pędziwiatr (2019) observes that the new migration policy mentions Islam almost 50 times and “always in the context of security threats, terrorism, and fundamentalism,” while Muslims are “presented as non-integrating radicals” and “future terrorists.” Christianity and Judaism are only mentioned in the context of Islam’s threat to a “Judeo-Christian tradition” (MSWiA 2019, 50) and Christians are described as the world’s most persecuted community (64). While acknowledging Poland’s demographic crisis and recognizing the need for migration from outside Poland to fill the demographic void, the policy also makes a clear distinction between good and desirable migrants (mainly from the neighbouring countries) and undesirable migrants from further afield that are considered a potential threat. There is particular mention of the need to “control inflow of migrants” from “Africa and some Asian countries,” betraying here the preference for “whiter” immigrants, even if these are Chechens who are Muslims and not Christian.

The policy stresses the need of migrant assimilation, portraying migrants, particularly Muslims, as culturally alien and religiously different to Poles:

It seems that there are particular difficulties with the admission and integration of Muslims. Muslims are often *not capable* of integration, because they emphasize their separateness and superiority over the local population and as result, they are building segregated communities. (MSWiA 2019, 48, emphasis added)

As the Polish migration policy suggests, the idea of Muslim difference is so strong that Muslims are automatically deemed a potential threat. Overall, the leaked document has been critiqued heavily for being xenophobic and dangerous (Klaus 2019).

The increasingly punitive politics towards racialized bodies signify both a sign of a growing “global right” present in the USA, Brazil, the UK, and India (Enloe et al. 2018) and a response that is specific to the postsocialist context and serves both liberal and illiberal interests. After decades of discourses of postsocialist transition, the current narrative of Polish Catholic sovereignty is attractive to those who have been disenchanting with the never-ending journey of “catching up” with western modernity.

Conclusion

Islamophobia emerges through our discussion as a very specific mode of governing the minority population within and beyond the borders of the nation-state. The form of governmentality which this essay uncovers is a careful and deliberate deployment of technologies of power directed at immigrant Muslim bodies which reinforces, reiterates, and reproduces the Muslimness of these subjects. In fact, Muslim bodies are made into political subjects through a synthesis of a racial, gendered, and oriental discourse around Islam available historically both in India and Poland and the apparatus of material as well as discursive powers of bureaucracy, judiciary, law, and media. In the cases of Ayub in India and Ameer in Poland, we show this dialectical operation of power. This is also confirmed through other studies of Islamophobia as governmentality (Fekete 2009; Kaya 2011; Tyrer 2013).

India and Poland have departed from their historically more inclusive and diverse politics under pressure from a form of populism based on a rhetoric of nationalism which constructs itself through complex governmentalizing processes of racializing and en-gendering the religious other. In juxtaposition to this nation-state driven vision of exclusive nationalism operational in the two countries, this essay wants to envisage a dialogic relation based on the “grounds of comparison,” a “beyond” of postcolonial and postsocialist conditions. It does this methodologically through providing alternative comparative frameworks for a searing critique of sovereign and governmental powers of the nation-state. Politically, this move to a “beyond” is based on the project of reviving oftentimes forgotten yet shared ties of a vision of emancipatory politics inhering in postcolonial-postsocialist conditions allowing for a formidable community to come into being.

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