Construction of Migrant Illegality:
Techniques and Discourses

Abstract

The rise of moral panic, stigma and illegality that accompanies human migration is a recent phenomenon. This is in part made up by the increasing regulatory focus on extralegal migration; in part, by the bureaucratic ideology; in part, by the rhetoric of the accompanying moral panic; in part, by the migration flow itself. It is a potent mixture. In brief, immigrant illegality as we now see is a construct – produced and patterned by society. The following essay will try to trace three factors that construct migrant illegality. Firstly, it will analyze how jurisprudence manufactures the category illegal migrants. Secondly, it will look at the role played by government agencies. Thirdly ,howthe way we perceive borders produces illegality of certain migrants. In doing so, the essay will make references to the illegal migration issue in Assam, India.

Keywords: *Assam; Bangladeshi migrants; borders; char-chapori; migration.*

Why [has] the state always seemed to be the enemy of 'people who move around', to put it crudely... Nomads and pastoralists, hunter gatherers, Gypsies, vagrants, homeless people, itinerants, run-away slaves, and serfs have always been a thorn in the side of states.

James C. Scott, *Seeing Like a State*

On January 7, 2011, Felani Khatun, a fifteen year old girl, was shot by a Border Security Force (BSF) guard when she was attempting to cross the India- Bangladesh border—her corpse laid hanging on a barbed wire fence for days before authorities responded. Felani was traveling with her father from New Delhi, where the family had been living and working, to be married in Bangladesh where they hailed from.[1] In 2013, an Indian trial court acquitted the BSF constable Amiya Ghosh, who was charged with murdering her.[2] When the case came up for hearing again, in 2015, before a special court constituted by the BSF, the decision was upheld, raising a number of important questions about 'people who move around' as 'enemies of the state' who are liable to be surveilled and shot.[3]

What was Felani's crime apart from crossing the border? One answer might simply be that she was an 'illegal' immigrant—a discourse that is framed around people moving across bounded, sovereign nation-states as criminals—forming a particular paradigmatic example of 'people who move around' that Scott does not explicitly mention in his aphorism. The politics of migration has produced the illegal immigrant as a legal category that is *de facto* accepted as the only possible way of framing (im)migration policy, often ignoring the gross violations of 'human rights'. This idea of labeling migrants as

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[1]Odhikar, Teenage girl Felani killed by the BSF firing at Anantapur border under Kurigram district, Odhikar Report (2011)http://odhikar.org/teenage-girl-felani-killed-by-the-bsffiring- at-anantapur-border-under-kurigram-district/. Date of access: 10 March 2017

[2]Madhuparna Das, BSF Jawan Acquittal: Family Says Justice Denied, THE INDIAN EXPRESS (September 13, 2013) http:// indianexpress.com /article/cities/kolkata/bsfjawan- acquittal-family-says-justice-denied/ Date of access: 10 March 2017

[3]Garga Chatterjee, Borders, Murders and Good Human Beings, DAILY NEWS & ANALYSIS (July 8, 2015) http://www.dnaindia.com/analysis/column-borders-murders-and-goodhuman-beings-2102580. Date of access: 10 March 2017

illegal is rooted in, what Mouffe (2000) has termed as 'constitutive outside'—the making of the 'us' and 'them' as collective political identities. The 'us' is delimited to only include the rightful bearers of citizenship, and the 'them' makes up the large swaths of the population whom the state anoints illegal migrants, not deserving the rights and privileges associated with citizenship because their identity acts as a marker of not belonging to the nation-state.

This rise of moral panic, stigma and illegality that accompanies migration, however, is a marker of the twenty-first century (Menjivar and Kanstroom 2014). At the outset of the twentieth century, migration was in fact in the process of becoming 'legalized'; it took place largely without the framework of migration laws, fostered instead by the legal structures of colonial empires and the image of great unpopulated spheres of the globe. In contrast, with the legalization of migration that took place at the outset of the previous century, this century is currently witnessing the 'illegalization' of migration. This is made up in part of the increasing regulatory law; in part, by the rhetoric of fear and moral panic developed by government agencies; ad in part, by the way we perceive the borders. In short, illegal migration as we now see is a social construct – produced and patterned by the society.

This paper seeks to examine how immigrant illegality is constructed, defined, redefined and maintained. The paper, however, will not in any way try to talk about(im)migration policy debates regarding admissions, removals, state enforcement, or legalization plans conclusively. Instead, by making references to the issue of migration in Assam, the paper will make an attempt to understand how at the intersections of three factors - jurisprudence, government agencies and border - migrant illegality is produced, (re)defined and maintained. In doing so, the paper is divided into three sections. The first section will look into how, through law, migrants are made

illegal. The second section will focus on how ideologies of the government create illegality. This will be done by looking at two themes: first, theme will deal with how the government agencies behave as high order of moral authority - as guardians of the nation. The second theme will analyze how these agencies degrade and delegitimize the target population it seeks to control. The final section will examine the relation of border(s) and construction of illegality. It will look at the role played by border(s) in the causation, justification, performance, and effects of illegaliiy; in particular reference to Assam-Bangladesh border.

Legally illegal: how law constructs migrant illegality?

The law defines the parameters of its own operations, engendering the conditions of possibility for 'legal' as well as 'illegal' practices. 'Illegalities' are constituted and regimented by the law—directly, explicitly, in a manner that presumes to be more or less definitive and with a considerable degree of calculated deliberation. This section will look at how law produces migrant illegality, with special reference to migration issues in Assam.

In order to understand the legal production of illegality, it is important to first underline the socio-legal history of migration and citizenship issue in Assam. So the *story* goes as: legal skirmishes regarding legal and illegal citizenship in Assam was brewing right from the colonial period; the problems however multiplied as India attained Independence.[5] It reached the peak

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[5]It was after India's Independence that the illegal migration issue in Assam took a legal turn, and hence the paper is looking at the post Independence era, particularly from the period of Assam movement and Assam Accord. For understanding, the issue during the colonial period one can refer to SanghamitraSarma's (2014) 'Reflections on the Politics of (im)migration Problem in Assam: A Historical Perspective.'

during 1979 to 1985, when Assam erupted with *AsomAndolon* or Assam movement[6] against the foreigner, citizens against the non-citizens; indigenous against the foreigners. This six year long agitation ended with signing of The Assam Accord[7], a memorandum of settlement signed in 1985 between the Rajiv Gandhi led Government of India and the leaders of the Assam movement; that aimed at saving the natives from the illegal migrants, had legally defined the categories of legal and illegal migrants and also had details of how and when the illegal migrants were to be deported. Interestingly in the middle of the agitation, the IM(DT) [Illegal Migrants (Determination of Tribunal)]Act was (exclusively) passed in Assam in 1983.[8] This Act placed the onus of proving the illegal status of an accused on the accuser, which thereby made it very difficult to detect and ascertain the illegal migrants. There was a general consensus among the people of Assam regarding this Act; that the Act was

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[6]The agitation was building up since long; it got its final momentum when 'non-citizens' from the then East Pakistan were inappropriately included in the 1954 electoral rolls. The agitators called it as Assam's last struggle for survival against the cultural, political and demographic transformation of Assam by the onslaught of unchecked migrants from erstwhile East Pakistan (present day Bangladesh) which threatened to reduce the indigenous to minorities in their own land.

[7]The main points of the Assam Accord were- all those foreigners who had entered Assam between 1951 and 1961 were to be given full citizenship; including the right to vote; the entrants between 1961 and 1971 were to be denied voting rights for ten years but they would enjoy all other rights of citizenship; those who had entered after 1971 were to be deported. See, Assam Accord. 15th August 1985. Accord between AASU, AAGSP, Central and State Government on the Foreigner Problem Issue) MEMORANDUM OF SETTLEMENT. Annexure 10.

[8]While the rest the country followed The Foreigner Act, 1946 in accordance to (im)migration laws; this period also saw the passing of the curious Illegal Migrants (Determination of Tribunal) or IM (DT) Act (1983) only in Assam to detect illegal migrants. The difference between the two Acts is that in case of IM(DT) Act, 1983 the onus of proving the illegal status of a accused lies on the accuser, whereas in the case of the Foreigner's Act, 1946 the responsibility to prove his citizenship lays on the accused himself.

serving as an advantage to the illegal migrants, as any proceedings initiated against them almost entirely ends in their favor, enables them to have a document having official sanctity to the effect that they are not illegal migrants. Secondly, by saving the migrants, they(people of Assam) believed that the Congress government was trying to play a vote-bank politics – use illegal migrant vote for elections (Sarma2014). With all of this, the passing of the IM(DT) acted the final trigger towards the signing of the Assam Accord. This was followed by another legal measure undertaken to mark out the illegal from legal residents of Assam - the reversal of the electoral rolls in 1985.[9] The most recent legal attempt to (re)define illegal migrants was made by the amendment of the Citizenship Bill in July 2016, which allowed illegal migrants belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian religious communities coming from Afghanistan, Bangladesh or Pakistan to *not* be imprisoned or deported.[10] On the basis of this amendment, the legal definition of 'illegal' migrants in Assam changed – unlike, earlier where *all* migrants who came from Bangladesh after March 25, 1971 were deemed illegal, now with the amendment only the Muslim migrants who came past the base date are to be considered illegal. One can very well notice the idea of

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[9]House to house enumeration was conducted. Then Electoral Registration Officers were asked to prepare two separate lists of the names. List I was to contain 'the names of those persons enumerated whose linkage with 1971 electoral rolls could be established directly or through their parentage'. List II was to contain the names of persons whose linkage with the1971 rolls was not established. The names of List II were thus all suspect. Patwaris, amins and junior police officials were asked to submit reports as to the whereabouts of these persons prior to 25March 1971. If the report was favorable the name of the person concerned was to be included in list I, and if not, the name was to be dropped. The government announced that more than two lakh names were dropped out by this procedure (Sarma 2014).

[10]The citizenship (Amendment) Bill, 2016. Bill No. 172 of 2016

'infiltration vs. homecoming[11] 'being smartly tucked in this latest amendment. Interestingly, this amendment also overrules the Assam Accord which rendered all migrants – irrespective of religion – to be illegal if she/he has migrated post 25 March 1971.

The constant use of legal procedures, be it Assam Accord[12], the IM(DT) Act or the Citizenship Amendment Bill expresses a fetishization of law – it shows that the category of migrant illegality (and legality) is a legal construction. (Im)migration related laws by restricting the movement of some individuals and allowing the admission of others, are creating and unmaking legal, illegal, documented, undocumented (Calavita 1998; Ngai 2004 in Menjivar and Kantsroom2014), and quasi-documented migrants. As such, (im)migration laws today creates a new axis of stratification that, like other forms of stratification, significantly shapes life chances and future prospects of the migrants – legal as well as the illegal (Menjivar 2006a, 2006b).

Bureaucratically illegal: how the government agencies create immigrant illegality?

This section will analyze the role of government agencies and ideologies in constructing illegality of migrants. Here, I take as my premise that government agencies while dealing with (im)migration control, do not operate as objective, regulatory

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[11]The discourse of 'infiltration vs. homecoming' is slowly gaining popularity in migration politics. It differentiates migrants into two categories: those who come to harm the state (infiltrators) and those who are returning to their original land (homecoming). Muslim migrants in India as such are 'infiltrators', and all Hindu migrants are 'homecomers' to India, for India is supposedly 'The Holy Homeland' for Hindus (Shamshad2008).

[12]Assam Accord. 15th August 1985. Accord between AASU, AAGSP, Central and State Government on the Foreigner Problem Issue) MEMORANDUM OF SETTLEMENT. Annexure 10.

bodies, but as social actors that can, and do, promote negative perceptions of target populations for public consumption. In an Althusserian sense (1971), these practices of social construction can be viewed as the producing of ideology[13] to advance certain organizational goals. Here, the organizational principle is 'othering' the migrants and thereby portraying them as illegals.

Such is the nature of government agencies dealing with issues of unauthorized migration across different countries. A case in point, closer home is the steady attempts by the Bharatiya Janata Party (BJP) in the 2016 Assam election to point out that their main agenda is to protect the 'indigenous Assamese' from the illegal migrants. In order to further define the imagery of the illegal migrants, the BJP government went on to use the 'infiltration vs. homecoming' discourse, where the Muslims are the infiltrating illegal migrant, while the Hindu are legal migrants who are coming back to their homeland. And so, it is India's duty to help the home comers. BJP promised that if they come to power they would provide citizenship to the Hindu migrants from Bangladesh. Thus, by using a preconceived notion to label the migrants[14] and put forward the 'homecoming vs. infiltration' discourse, we can see how the ruling party in India is constructing the category of illegal migrants. It is also important to note here that these often fictive and biased bureaucratic imageries, not only dismisses other form of understanding and (counter) narratives but also goes on to legitimize coercion and violence if and when it becomes necessary to maintain that dominant narrative. It is perhaps, for

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[13]For Althusser (1971), ideology is a representation of an imaginary modality by which men live their relation to the (absent) totality of their conditions of existence.

[14]Althusser (1971) terms this identity formation based on some preconceived ideology as interpellation.

this reason the 1984 Nellie Massacre in Nagoan (Assam) was not prevented by the government, despite the prior indications of the impending violence.[15]

While it is clear that government agencies use certain ideology to create immigrant illegality, it is important to know what kind of ideologies are being propagated. The remaining part of this section will address and elaborate on two ideological themes used by government agencies while dealing with the problem of Assam. First theme, deals with how the government agencies behave as high order of moral authority - as guardians of the nation. The second theme analyses how these agencies degrade and delegitimize the target population it seeks to control.

(a) Moral authority and guardianship

The message of moral authority is that the government is empowered by the population that it serves and that its actions are aimed at protecting the population and its state. As coercive as they may become, the enforcement actions of the government should be seen as being conducted on behalf of the 'national' interest and welfare. Once again, 2016 BJP election speech in

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[15]On February 15, 1983, a wireless message went out from the officer in charge of the Nagaon police station in Assam. It read:

'INFORMATION RECEIVED THAT LAST NIGHT ABOUT ONE THOUSAND ASSAMESE PEOPLE OF SURROUNDING VILLAGES OF NELLIE ARMED WITH DEADLY WEAPONS ASSEMBLED AT NELLIE BY BEATING OF DRUMS (.) MINORITY PEOPLE ARE IN PANIC AND APPREHENDING ATTACK AT ANY MOMENT (.) SUBMISSION FOR IMMEDIATE ACTION TO MAINTAIN PEACE.'

Three days later, the crowd moved in. On the morning of February 18, Nellie and 13 nearby villages were surrounded by mobs wielding country guns and machetes. For more than six hours, between eight in the morning and three in the afternoon, they killed around 1,800 people. The victims were mostly East-Bengal rooted migrants The unofficial toll counts 3,000 dead. It has been described as one of the worst pogroms since World War II (Hussain 2009).

Assam stands out as a good example of how state agencies are invoking high order moral authority and guardianship to 'solve' unauthorized migration – and in the process, define and construct illegality of the migrants. Excerpts from one rally speech: 'People will have to come out this time [to for us] if they want the *Axomiyajati* (the ethnic Assamese) to survive. Or else we will become foreigners in our own land' (Roy 2016).

One of the functions that this ideological posturing serves is to preempt or deflate criticisms against the coercive bureaucracy when enforcement activities, or actions of bureaucratic agents, become excessive and lead to the deaths of unauthorized migrants. Because the bureaucracy has constructed a strong moral image of itself, whatever goes wrong from enforcement activity – including the deaths of migrants – should never be thought to be a nefarious or malicious action, as the bureaucracy casts itself as incapable of such action. Examples involving this characterization includes the numerous cases in which BSF (Border security forces) jawans have shot unarmed Bangladeshi intruders.[16] Moreover, if enforcement activity appears extreme (e.g., when hundreds of suspected individuals are dumped into detention camps) it must be interpreted as collateral damage in carrying out essential duties.

(b) Delegitimize and degrade migrants

It is not enough to advance ideas of high moral authority and guardianship for state bureaucracies to promote the actions of coercive enforcement targeting a large populace. (Im)migration enforcement agencies also delegitimize and degrade the identity of the targeted migrants for public consumption. This involves promoting the unauthorized migrants as inferior beings to persons worthy of respect and dignified treatment. In doing so,

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[16]http://zeenews.india.com/news/nation/four-bangla-intruders-killed-in-meghalaya-assam_16811.html Date of access: 1 March 2017

the bureaucratic agencies create the image of a section of migrants as dangerous, illegitimate illegal beings. In the US history of coercive border enforcement, delegitimizing concepts used against unauthorized migrants include such terms as illegal aliens, invaders, muds, and wetbacks (Menjivar and Kanstroom 2014). In Assam, too terms like *miya, bidexi* are used to refer to the migrants, both by the locals and the government agencies to refer to the migrants from Bangladesh. While *miya* and *bidexi*, are not literally demeaning words (*Miya* means respectable person in Urdu and *Bidexi*means foreigner in Assamese), the way they are being used to address the migrants is derogatory.

Interestingly, the importance of delegitimizing unauthorized migrants as regular people is not to punish them for crossing the borderline without permission, but to prepare them for processing by the thousands, that is, to be pursued, arrested, detained, and removed. For the government, the assembly-line motion of this process works more effectively when the human qualities of the migrants are reduced through delegitimizing concepts and the remaining bodies amount to commodities to be shifted around (Menjivar and Kanstroom 2014, 73). In his book *Categorically Unequal*, Douglas Massey (2007) elaborates how at a fundamental level of perception U.S. citizens perceive undocumented migrants as outsiders, which increases the tendency to treat these migrants with harshness and cruelty. One way is that it marks migrants as 'illegals' if not criminals, thereby enabling enforcement agents to handle migrants with a reduced sense of care for the migrants. This outlook also helps the enforcement agencies to expedite the processes of arrest and detention and ultimately removal. The message is that the agents are not handling community members (regular people), but illegal migrant. A second way in which the concept and label 'illegal migrant' helps the work of the enforcement agencies is that it helps to promote their work in the enforcement environment. It helps to promote the view that the government agencies must become energetic in their work of coercive

enforcement because the presence of illegal migrants in local environments requires a response by the state.

In an ironic twist, it is precisely the ideological labeling of unauthorized migrants by government agencies that promotes their attraction in the lowest rungs of the labor market – why they continue to be a sought-after workforce (Menjivar and Kanstroom 2014, 79). The ideological branding of unauthorized migrants as outlaws and their running from coercive enforcement strips many of them of all resistance to exploitation – much to the benefit of the many employers who hire unauthorized migrant workers. As coercive enforcement drives unauthorized migrant workers into the underground labor market, these workers are left to survive on whatever wages their employers are willing to offer, with little opportunity to resist even when employers refuse to pay at all – a condition now commonly called 'wage theft' (Heyman 2014).

So, one of the most important impacts that this kind of ideological biasness of state bureaucracies plays out on the larger societal plane is that it diminishes the reflective powers of individuals as they take on a greater identity with their society. As Herbert Marcuse (1964) explains in *One-Dimensional Man*, the outcome of ideological change in advanced industrial society is not the end of ideology but its penetration of mass production, distribution and consumption that diminishes individual reflectivity and resistance. While Marcuse (1964) is concerned with the ideological power of industrial culture, one can propose that state institutions contributes in the same way to develop the hegemonic ideology that diminishes the reflective powers of an individual and defines her/his identity – in this case the state by overlooking many forms of counter-narratives goes on to construct the category of illegal migrant.

Borders and migrant illegality

While in the post-colonial and post-modern aftermath, the

boundaries between what is one's place and what is the place of another, where a rightful boundary can be drawn between self and others, between home and away are getting blurred, there is on the other hand a very little reduction of claims on space and spatial fixations. According to Bauman (1998, 2000) and Urry (2000), this has led to rise of a new paradoxical situation – a society which is getting porous and tenable, but at the same time there is a re-strengthening of the claiming of space, which is making illegal a particular group of the migrants. Re-phrasing an expression of Benedict Anderson (1991), it is possible to say that any boundary looks outwards to reunite a social group, and inwards to separate it and its territory from neighbors. Borders are designed to separate the space controlled by members of a social group or a territorial community and to limit the rights to this territory of those who do not belong to the group. In doing so, borders acts as partitions that divide social and geographical space, as well as cultural forms and their representations. Within this perspective, the border shifts in form and meaning from a physical notion of geographical and social space to a discursive notion of the border as fluid. For example, according to bell hooks (1989), the idea of a border incorporates particular kinds of lifestyles and habits of being. By legitimizing certain kind of being and shared ideas over others, borders create the 'other' and the'illegal'. For de Certeau (1984), this othering is a kind of 'spatial strategy;' one that presupposes a place which can be circumscribed as one's own, and that can serve as the base from which to direct relations with an exteriority consisting of targets or threats such a clients, enemies and strangers. The recent talks about border security escalation in the Indo-Bangladesh border by using latest technologies[17] serves a good

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[17]In addition to human surveillance by the BSF and Assam Rifles, new technologies of pontoon bridges, sluice gates, high-resolution cameras infra-red sensors and airships is going to be used to plug the riverine borders.http:// www. theshillong times .com/2016/06/15/pontoons-airships-to-plug-indo-bangla-border-in-assam and http:// indiatoday.intoday .in/story /assam-border-to-be-sealed-by-year-end-ram-madhav /1/ 681333.html. Date of access: 14 March 2017

example to de Certeau's (1984) 'spatial strategy'. So, what this kind of territorial strategy does is to classify space, communicate a sense of place and enforce control over a place. In doing so, territorial strategy reifies power, displaces others, neutralizes, fills and contains space (Sack 1986 in Nail 2013).

In all of these governmental strategies one can also see the characteristics of what Foucault (1997 in Nail 2013) attributes to sovereign power. Sovereignty, Foucault says, creates a territorial pact, and guaranteeing borders is the major function of it (Foucault 1997 in Nail 2013). Sovereign power is then exercised within the borders of a territory. In doing so, sovereign power through borders create a binary division, between those who are included in it and those who are excluded. This totalizing language of the sovereign borders and border security agencies is as impressive as much as it is paranoiac: to prevent allun-lawful entries, by any means necessary. The enforcement of sovereign border in this case expresses the direct and unmediated violent characteristic of sovereign power, like the bulldozing of waterways, open firing at those trying to enter[18] and displacing hundreds of people from the *char-chaporis*.[19] Sovereign power, thus, creates and secures a territory, a border, and displays the truth of its strength on the condemned migrant bodies.

In addition to sovereign power, there is also the element of disciplinary power attached to borders which further goes on to construct the illegality of migrants. They are designed to create

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[18]https://www.thestar.com/news/world/2013/04/01/hundreds_of_banglade shis_getting_killed_at_border_with_india.html and https:// www.hrw.org /news/2010/12/09/india/bangladesh-indiscriminate-killings-abuse-border-officers Date of access: 15 March 2017

[19]The mid-channel bars are an integral part of the fluvial process of the river Brahmaputra and its tributaries in Assam. The extremely braided channels of the river along with its suspended particles and bed load combine together during floods to give rise to 'almond' shaped alluvial formations known as chars. These places are considered as ghettos of the illegal Bangladeshis.

an obedient, docile, permanently surveilled, and criminalized body. Although the initial journey to the border itself does not in every way follow the close temporal articulation of bodily movements that Foucault discusses in nineteenth century prisons (Foucault 1979), the actual process of crossing the wall does to some degree. The way one must dress, look, speak, etc. when presenting a false I.D. is extremely precise and disciplining - one must discipline oneself to become 'normal' and 'legal'. Even when one crosses the fence outside of town or river there is a very carefully orchestrated activity of waiting in silence for the time in the middle of the night. Disciplinary power, in the case of the border enforces conformity to the following normalized model of subjectivity: one will be prepared to be deported at any time, to be potentially watched under lights and cameras 24 hours a day, one will be content with lesser wages despite working more, endure detention and abuse, and be silent in one's endurance. And despite the fact that being in the India without authorization is a civil infraction and not a criminal one, migrants are repeatedly disciplined, surveilled, arrested, processed, and detained for long periods of time as if they were criminals and through this they are actually criminalized. Legally unauthorized migrants are not criminals, but become so as an effect of disciplinary strategies. Stump (2006) refers to this phenomenon of inter-mixing the two identities - illegal migrants and criminals - as 'crimmigration'.[20]

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[20]There are studies (Sampson, Morenoff, and Raudenbush 2005; Ried, Weiss, Adelman, and Jaret 2005; Wadsworth 2010; Ousey and Kubrin 2009) which points that the migration-crime duality is a paradox. These studies show that immigrants are actually less likely to engage in violent behavior than non-immigrants, with first generation immigrants being the least likely to commit crime as compared to second or third generation immigrants. They also show that areas with high proportions of immigrant residents are associated with lower levels of neighborhood violence and drug-crime when compared to similar neighborhoods with fewer immigrants. This association is best explained by the increases in social organization — culturally-based buffers like strong familial and neighborhood ties — and the associated economic gains stimulated by the influx of immigrants.

But, borders are not merely a physical barrier, or even just part of a disciplinary series, it is also part of a larger process of managing uncertain populations. The main idea underlying this need to manage the migrant population is economic in nature. Since the migrants are source of cheap laborers[21] (as already mentioned), ending migration would in fact destroy the surplus labor market. Thus, the question is not how to stop migration but how to 'optimally' manage the security environment through the circulation of what is structurally an unpredictable and unstoppable flow of migrants. In other words, border enforcement policy is a well-designed mechanism to produce an optimally sized, timed, and located exploitable labor force (Nail 2013, 123). The 'border mechanism' model requires that enforcement is fine tuned enough to allow a continued flow of labor appropriate to employment demand while being strong enough to create exploitability effects. This is a careful balance; too much enforcement would close off the labor supply, too little enforcement would reduce the exploitability of labor passing through the border region. Infact, there is a kind of 'revolving door' (Cockcroft 1986 in Menjivar and Kantsroom 2014) phenomenon going on with respect to borders and migrants; because the migrants are on one hand banned from entering or deported and on the other hand, they are brought in as cheap laborers.

Finally, the borders come to be constructed as something pure – a place where there is a clean categorization of the inside/ outside and insiders/outsiders. But such an innocent take is problematic as it erases the struggles and facts of the ordinary liminal life that illegal migrants live – as someone staying and

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[21]They are illegal workers, and unlike the legal workers are not entitled to the government decided wage rate. Also, due to their illegal nature they are unable to form unions and thereby demand better wages.

working in a place but by being politically and legally invisible. Borders, in reality are therefore places of 'incomplete exclusion'– a place of creation and continuation of a people as both insiders and outsiders at the same time or at different times. Maitrayee Chaudhuri (2005) perhaps hinted at this idea of incomplete exclusion, when she described the ambiguous and stigmatized identity with which the Bengali migrants in Delhi slums had to lead their lives in new their homes. Their ambiguous identities were marked by a sense of being at risk, unwanted, and disempowered outsiders, except for small sheltered places and communities, including workplaces. This sense of incomplete exclusion, increases furthermore in the case of those residing in the border areas (*char-chaporis* in Assam) more so because they are physically located on edge of two countries – neither here nor there. But then there is also flip side to this picture, because unlike the illegal migrants scattered in the urban areas of Assam, the *char-chapori* dwellers (who despite, being repeatedly castigated as illegal migrants) have a sense of solidarity because they are staying close to one another, which in turn helped them to take collective a stand against their 'imperfect exclusion' and atrocities of the state. In doing so, they are seen undertaking new discursive means of resistance in the form of *miya* poetry[22], in addition to the usual modes of confrontation – *dharnas*, peace marches and like.

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[22]The roots of this genre of poetry lie in a 1939 poem titled A Charuwa's Proposition by MaulanaBande Ali. Although Ali did not use the word Miya, his poem is considered the first example of someone within the community asserting their identity. Here, is an excerpt of a Miya poetry : "Write/I am a Miya/I turn waste, marshy lands/To green paddy fields/To feed you./I carry bricks/To build your buildings/Drive your car/For your comfort/Clean your drain/To keep you healthy./I have always been/In your service/And yet/you are dissatisfied!/Write down/I am a Miya,/A citizen of a democratic, secular, Republic/Without any rights/My mother a D voter,/Though her parents are Indian".Source: http://sunflowercollective.blogspot.in/2016/12/poems-miyah-poetry-series-curated-by.html. Accessed on 13/4/2017 Date of access: 10 April 2017

Conclusion

Migrant illegality, as we have seen in this paper, is a social construct – produced and patterned through various factors like law, government ideologies, border(s) and like. By drawing instances from the illegal migration issue in Assam, this paper focused on three factors that construct migrant illegality. First, the essay analyzed the role played by jurisprudence. By tracing the few important socio-legal events that govern the lives of migrants in Assam, this section demonstrates the power of law in constructing the illegal migrant. In doing so, the law make them (illegal migrants) suspect in the eyes of others, lead them to accept their self-depreciation as normal, and create conditions for migrants to impose categories of domination on one another. The second section discussed the role played by bureaucratic agencies and ideologies in understanding the construction of migrant illegality. It has outlined two themes by which constructs illegal migrants. The first one deals with how the government agencies act as a high order of moral authority and as guardians of the nation. The second one explains how these agencies delegitimize the targeted migrants for public consumption. Finally, the essay analyzed how borders contribute in producing illegality. This section explained how borders are not mere physical boundaries dividing regions, but rather acts a site of producing illegality of migration through different practices like surveillance, disciplining and like. This section also briefly looked at the idea of imperfect exclusion that border generates, against the imagery of perfect exclusion. In the process, the section looked at how the *char-chapori* dwellers of Assam are brewing a new kind of protest tool – the *miya* poetry.

While the aforementioned three factors are not the only way through which migrant illegality is constructed, they are indeed the most pressing factors when we look at the migration issue in the context of Assam. Secondly, this paper is not the first one to call attention to the 'constructedness' of the category of' illegality'

as a whole. But having said this, the paper is an (relatively) early attempt to undertake the lens of constructedness to analyze the migration issues in Assam; in the sense, that not much have been done yet to explore the migration issue in Assam from this perspective. There still remains a lot to discover and deconstruct when dealing with the concept of 'illegal migrant'in Assam from the constructednesslens – like, why the word *bidexi* (foreigner) and *miya* (miyah) is used illegal migration discourses in Assam, when the word could have been precisely *oboidhyokhoronarthi (illegal migrant)*; or study *miya* poetry as a form of resistance that the *char-chapori* dwellers are using to resist the label of illegality, but these again are beyond the scope of this paper. Future research in these areas (suggestive) will help us to critically engage further with this complex theme of constructedness of illegal migration, which this paper has briefly tried to highlight and analyze.

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