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Paper Rights: The Emergence of Documentary Identities in Post-Colonial India, 1950–1967

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***Abstract:** This essay contextualises the emergence of a document regime which regulated routine travel through the deployment of the India–Pakistan Passport and Visa Scheme in 1952. It suggests that such travel documents were useful for the new Indian state to delineate citizenship and the nationality of migrants and individual travellers from Pakistan. The bureaucratic and legal mediations under the Scheme helped the Indian state to frame itself before its new citizens as the sole certifier of some of their rights as Indians. In contrast, applicants for these documents viewed them as utilitarian, meant to facilitate their travel across the new borders. The contrast and contestation between such different perceptions helps us to understand the continued significance of documentary identities in contemporary India.*

Keywords: passports, visas, Muslim citizenship; Hindu citizenship, India, border, Partition, post-colonial, migration, Pakistan; Bangladesh

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In the summer of 1955, N. Basar Khan and his wife, Amirunnissa, residents of Madras, applied to the Ministry of Home Affairs (MHA) in India for Indian passports. They planned to visit Basar Khan's ailing mother in Peshawar in Pakistan.¹ They applied for the India–Pakistan passport that had specifically regulated travel between India and Pakistan since October 1952. Although the Khans' applications were routine requests for travel, they were denied. The MHA, in consultation with the Ministry of External Affairs (MEA),² determined that Khan and his wife were not Indians but Pakistanis, and therefore ineligible to hold Indian passports. They noted that although Khan's birthplace, Peshawar, had been part of British India when he was born in 1923, it had become part of Pakistan in 1947. The officials reasoned that this made Khan a Pakistani. If Khan was a Pakistani, then his wife (who was born in Madras) had become a Pakistani as well by virtue of her marriage.³ Other considerations, such as Khan's residence in Madras since 1943, his employment there as a driver for a local import-export company, or a recommendation from the local authorities that he be given a restricted passport for travel, mattered little.⁴

Why and how did Indian authorities determine that Khan and his wife were Pakistanis? The couple indicated no desire to migrate to Pakistan, nor was their application meant to recognise national status. How did the travel request, temporary by definition, confirm nationality and formal citizenship? This article suggests that in the 1950s, as the newly-independent Indian state debated the different criteria for citizenship

¹ Grant of an India–Pakistan passport, Shri N. Basar Khan and his wife, 1955, MEA, 41(61) 55-PSP, National Archives of India (hereafter NAI).

² The MHA and MEA were the key central ministries in India tasked with determining various policies regarding international travel, national security and citizenship.

³ Until the Citizenship Act of 1955, women's nationality transferred to their husbands' nationality on marriage.

⁴ Grant of an India–Pakistan passport, Shri N. Basar Khan and his wife, 1955.

of India, the movement of individuals and families across India's borders with Pakistan became essential to such deliberations. While scholars have argued that Partition refugees were central to citizenship debates,⁵ I shift focus to those who sought to move temporarily, either to maintain contact with their extended families, now in a different country, or to navigate the uncertainties of the post-Partition moment.

This article directs attention to such intermittent and often casual movement to highlight it, rather than Partition-related migration, informed debates around Indian citizenship in the decades after Independence. In the 1950s, such routine movement came under official scrutiny through the imposition of documents such as passports, visas, Emergency Certificates, No Objection Certificates, repatriation and migration certificates. I argue that, through the imposition of what I call a documentary regime on what previously had been unrestricted movement, the Indian state (and the Pakistani state) sought to establish themselves as sole arbiters on the issue of movement beyond their borders. A well thought-out plan to impose documentary control over mobility, I argue, also helped Indian authorities differentiate between travellers, migrants, citizens and non-citizens, and extend certain rights of formal, if not legal, citizenship on those who carried these documents. These documents guaranteed certain 'paper rights' to their holders: the right to exit and return to the nation-state; and implied some others: the right to residence, domicile and work; the right not to be deported; and in some cases, the right to be naturalised as Indian citizens under the Citizenship of India Act of 1955. Further, such a documentary regime was not an automatic response to becoming a territorial nation-state. Instead I suggest that such a regime borrowed from previous genealogies of documentary

⁵ Joya Chatterji, 'South Asian Histories of Citizenship, 1946–1970', in *The Historical Journal*, Vol. 55, no. 4 (2012), pp. 1049–71; and Niraja Gopal Jayal, *Citizenship and Its Discontents An Indian History* (Cambridge, MA: Harvard University Press, 2013).

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identities, and evolved slowly as a process through the complex interactions between the state's legal system, its bureaucrats and politicians, and ordinary people who consistently tested the regulatory intentions.

A central artefact of this evolving documentary regime was the India–Pakistan Passport and Visa Scheme (hereafter the Scheme), which in October 1952 proposed a specific passport system between India and Pakistan. The Scheme emerged out of a need to standardise the post-Partition permit system that had, from 1948, regulated Partition migration between India and West Pakistan. Under the Scheme, travellers between India and Pakistan would now be required to obtain the India–Pakistan Passport and apply for travel to the other country before embarking on their travels. Further, it sought to delineate the reasons for travel—work, family visits, and permanent migration—in order to categorise movement. The Scheme established a direct link between the new Indian nation-state and its inhabitants. The process of applying for these documents required travellers to answer a set of predetermined questions, and engage with the bureaucratic regimen of the new state. These questions led to lengthy inquisitions and investigations, and sometimes court appearances, in order to prove residence and national allegiance. Such documents were at the forefront of certifying nationality, so creating a link between the abstract nation-state and its citizens.

In essence, passports and visas introduced a new notion of documentary identity into a relatively paperless and non-literate society. The booklet, *India–Pakistan Passport and Visa Scheme*, guaranteed the ‘right to return’ to India and, consequently, implied inclusion within the nation-state. Passport identities quickly became nationalised identities. Those who held these passports could clearly be identified as nationals of India

or Pakistan, and they now had documentary proof of their national allegiance. Non-ownership of these papers or unsuccessful applications for the Indian passport exposed a person to the possibility of being officially marked as an infiltrator, or a Pakistani national, and often both. It also exposed one to the possibility of deportation or incarceration.

The imposition of passports and visas⁶ incorporated and deployed a range of bureaucratic and legal apparatuses and personnel. The Indian state emerged as the sole guarantor of the rights of nationality and citizenship.⁷ The central ministries—the Ministry of External Affairs and the Ministry of Home Affairs—and legal institutions such as High Courts and the Supreme Court, the local district magistrate and the police, were brought in to help in implementing the Scheme. While passport operations in British India had been similar in their aim to control mobility, the Scheme differed because it had a restricted mandate to control mobility between India and Pakistan only. It was also new in its specific relationship with the movement of, and consequent ascriptions of legal status of, Muslim minorities in post-Partition India. Time and again, the documentary regime was informed and influenced by cases of Muslims, such as Bashar Khan, which not only received additional scrutiny, but were open to contextual interpretation. Mobility of Muslim men was taken as evidence of disloyalty to the Indian nation and pro-Pakistan sentiments.⁸ The India–Pakistan Passport thus became material proof of a desire for an

⁶ These documents are part of a larger ongoing process of documenting identity through ration cards, caste certificates, citizenship certificates and, most recently, the biometric Aadhar card.

⁷ Adam McKeown argues that the process of creating nation-states created new identities by removing people from traditional social identities that were determined by who knows or vouches for a person, and redefined people into bureaucratic categories. Adam McKeown, *Asian Migration and Globalization of Borders* (New York: Columbia University Press, 2008).

⁸ In the post-Partition context, this was not new and several scholars have noted the prevalence of automatic assumptions of disloyalty regarding Muslims in India. See Gyanendra Pandey, ‘Can a

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alternative nationality. Furthermore, Muslims like Basar Khan, who were born outside the new territories of independent India, were often identified simply as ‘Pakistanis’ and told to apply for Pakistani passports. Taylor Sherman, in a recent essay on Hyderabad in 1949, has shown that resident Afghans, Pathans and Arabs, some of whom were money-lenders or petty traders, began to be regarded as ‘Pakistani’ and that such everyday understandings of citizenship became tied to being ‘Muslim’.⁹

In the period when legal understandings of citizenship had yet to become clear, the India–Pakistan Passport became more than a travel document in the eyes of the Indian state. The right to mobility was one of the first ways in which Indian citizenship and claims of belonging would be defined and then contested. Thus Basar Khan’s residence in Madras did not raise claims to Indian nationality and the authorities remained unconcerned with his living in India. It was only when Khan required permission to travel to another country that his nationality became debatable. That the Indian authorities focused on his place of birth rather than his continued residence and domicile in India in determining Khan’s nationality highlights how, in the case of Muslims, routine interactions with the Indian state often had to negotiate demands of citizenship and loyalty.

This article is divided into three sections. The first traces a genealogy of the India–Pakistan passport through its colonial avatar, the British Indian passport, and links it to the emergence of the permit system in 1948. The British Indian passport had a

Muslim be an Indian?’, in Tan Tai Yong and Gyanesh Kudaisya (eds), *Partition and Post-Colonial South Asia: A Reader* (London: Routledge, 2008) Vol. 3, pp. 59–82; Chatterji, ‘South Asian Histories of Citizenship, 1946–52’, pp. 1049–71; and Taylor Sherman, ‘Migration, Citizenship and Belonging in Hyderabad (Deccan), 1946–1956’, in *Modern Asian Studies*, Vol. 45, no. 1 (2011), pp. 81–107.

⁹ Sherman, ‘Migration, Citizenship, and Belonging’, p. 107.

history of surveillance, verification and guaranteed passage within and outside the British Empire for specific groups of people. The permit system, instituted after Partition, drew upon some of these pre-1948 links between documenting identity and mobility established by the colonial predecessor. The Scheme had an earlier history informed by colonial understandings of mobility and identity, as well as by communal logic in the immediate aftermath of Partition. As we will see, the Scheme inherited some of these facets but also brought into sharper focus the contextual aspects of documenting identity. The second section examines the processes surrounding the implementation of the Scheme in 1952. It shows that even though the regulations under the Scheme appeared to be detailed and comprehensive, its official passage was plagued by inter-Dominion wrangling and its implementation was uneven. It explores the piecemeal, contextual, and often protracted technologies of implementing a document regime that turned routine border-crossers into spies, dissidents and infiltrators. The third section focuses specifically on Muslims whose applications for an India–Pakistan passport raised questions regarding their citizenship and helped link travel documents with rights of belonging and residence.

I would like to add an initial caveat about the scope of this article. The ability of the Indian state to enforce the documentary regime that it conceived proved very limited due to lack of resources, the ethno-linguistic similarities of the border-crossers,¹⁰ and the volume of migrants, especially between India and East Pakistan. More people remained ‘undocumented’ when they crossed the border than those who crossed carrying India–

¹⁰ Willem Van Schendel’s excellent work on the Bengal borderland clearly indicates the inability of India and Bangladesh to control the border, especially smuggling and the movement of people living in the borderland, and the consequent ongoing border disputes. See Willem van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia* (London: Anthem Press, 2005).

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Pakistan passports. These undocumented travellers and migrants become more visible via the numbers estimated and published in official press reports, in the arrest records of border police files, and as faceless yet collective groups in the debates surrounding the India–Pakistan passport. This article focuses primarily on non-paradigmatic cases that left a paper trail in official files, legal cases, police verification reports, and contemporary news accounts. These cases help illuminate the limits of statecraft in the 1950s, the foundational decade of post-colonial state formation; and the actions of those who acquired documents in the hope of gaining ‘paper rights’. In that sense, the goal of the paper is to turn our attention to the continuing links between documentary and legal identity in contemporary India.

Genealogy of a Document

Passports and Certificates of Identity by themselves were not something new to the Indian subcontinent. Documents regulating travel can be traced back to the mid nineteenth century when the English East India Company issued documents guaranteeing consular protection. Later documents regulated travel for Hajj pilgrims,¹¹ indentured labour, and migration to Australia, the Caribbean, Mauritius and eastern Africa¹² throughout the late nineteenth and early twentieth centuries. The incorporation of technology such as fingerprinting and photography helped define the carriers of these

¹¹ Radhika Singha provides an interesting description of the implementation of the pilgrim passes and ‘return’ tickets for Hajj pilgrims. See her ‘Passport, Ticket, and India-Rubber Stamp: ‘The Problem of the Pauper Pilgrim’ in Colonial India (c. 1882–1925)’, in Ashwini Tambe and Harald Fisher Tiné (eds), *The Limits of British Control in South Asia: Spaces of Disorder in the Indian Ocean Region* (London: Routledge, 2009), pp. 49–83.

¹² Such documents included coolie agreements for the sugar colonies, passbooks for Mauritius etc. See Marina Carter, *Servants, Sirdars, and Settlers: Indians in Mauritius, 1834–1874* (Delhi: Oxford University Press, 1995); and Hugh Tinker, *A New System of Slavery; The Export of Indian Labour Overseas, 1830–1920* (London: Oxford University Press, 1974).

documents as individuals with a fixed identity, thus removing people from their traditional social identities and redefining them in bureaucratic and legal categories.¹³ In the case of British India, as Radhika Singha has shown, constructing new identities which could be verified through cross-referenced files was already underway not only for indentured labour, but also for various castes and ‘Criminal Tribes’. Individuals had to reproduce their recorded identities to gain access to military service, pensions, land grants, indenture contracts, and similar interactions with the colonial state.¹⁴

While a number of different kinds of travel documents co-existed to control travel and migration in British India, in 1912 the British Indian passport emerged; it attested that its holder was a British subject of ‘certain means and respectability’.¹⁵ On one level, as Radhika Mongia suggests, its emergence, foregrounded in the debates on the fate of Indian migrants in Canada and South Africa, ‘nationalized bodies along racial lines’.¹⁶ On another level, it allowed the colonial government to claim it maintained ‘international

¹³ Several scholars have shown how new technical and bureaucratic identities emerged with the adoption of forensic scientific practices and their use in migration control by the state. See Jane Caplan and John Torpey (eds), *Documenting Individual Identity: The Development of State Practices in the Modern World* (Princeton, N.J.: Princeton University Press, 2001). Also relevant here is the discussion of the United States passport by Craig Robertson. He makes the argument that this document soon became shorthand for the identity of its holder. Craig Robertson, *The Passport in America: The History of a Document* (New York: Oxford University Press, 2010).

¹⁴ Radhika Singha, ‘Settle, Mobilize, Verify: Identification Practices in Colonial India’, in *Studies in History*, Vol. 16, no. 2 (2000), pp. 151–98.

¹⁵ Radhika Singha, ‘The Great War and a “Proper” Passport for the Colony: Border-Crossing in British India c. 1822–1922’, in *Indian Economic and Social History Review*, Vol. 50, no. 3 (2013), p. 313.

¹⁶ Singha argues that the demand for an Indian passport by the Dominions suggests that the category of ‘British subject’ was available for division and differentiation based on the rules of colonial difference. Radhika Viyas Mongia, ‘Race, Nationality, Mobility: A History of the Passport’, in *Public Culture: Bulletin of the Project for Transnational Cultural Studies*, Vol. 11, no. 3 (1999), p. 529.

standards', so appeasing Indian nationalists' outrage at the prevalence of a 'colour bar' in international migration.¹⁷

The British Indian passport was, in some respects, no different from its counterparts in post-World War I Western Europe and the United States.¹⁸ John Torpey shows that in these regions, passports functioned as documents that guaranteed the right to travel, but also whose possession differentiated law-abiding travellers from those whom the state did not deem suitable to acquire passports. More importantly, passports delineated nationality, controlled entry and exit from one country to another, and in the process produced 'hard-edged' nation-states.¹⁹ The British Indian passport similarly mandated regulations on travel and emigration, and required adherence to the now-established practices of forensic identification. By 1917, as World War I continued, all Indians, other than indentured labourers and Hajj pilgrims, were required to carry the British Indian passport if proceeding outside India.²⁰ The Indian Passport Act of 1920, on the other hand, made the passport a requirement for entry into India, but not for exiting the region. After 1918, the colonial state sought to retain certain wartime measures, arguing that the threat of Bolshevism required stricter controls on mobility. After the passing of the 1920 Act, passport applications were often used by the colonial state as a

¹⁷ Singha, 'The Great War and a "Proper" Passport for the Colony', p. 291.

¹⁸ John Torpey's work on the appearance of passports in post-First World War Europe and America discusses the emergence of passports due to a need to secure borders. John Torpey, *The Invention of the Passport: Surveillance, Citizenship, and the State* (Cambridge: Cambridge University Press, 2000).

¹⁹ Torpey argues that the states were not fully effective in controlling or enforcing such a system. Rather, they only monopolised the authority to restrict movement vis-a-vis other potential claimants such as private economic or religious entities. *Ibid.*, p. 5.

²⁰ Defence of India Act, 1915, cited in Singha, 'The Great War and a "Proper" Passport for the Colony', p. 292.

surveillance mechanism to selectively restrict the mobility of certain people.²¹ Furthermore, deportations became *de rigueur* even in cases of technical violations of passport regulations.

After 1947, both India and Pakistan began the transition to creating national passports to reflect their changed political status. Initially, the British Indian passport was re-named the Commonwealth passport, which marked its holders as British subjects. By July 1948, India had drafted a new 'Indian' passport which had two fundamental changes: the description now read 'India' instead of 'Empire of India'; and the head of state was noted as the 'Rashtrapati' in Hindi and 'President' in English, instead of the 'Governor-General of India'. Furthermore, the Indian passport would no longer be printed in French. There was a cautionary warning from officials in the Constituent Assembly: 'The term "India" cannot however be treated as final until the Constituent Assembly itself has adopted it';²² until then, no definition of nationality or citizenship could be associated with the Indian passport. The new Indian passport controlled international movement, but special permits controlled mobility between Portuguese and French territories within India. Citizens of Tibet and the Maldives could get travel passes to India, while residents of Nepal and Bhutan were not required to carry any documents. In Pakistan, Kashmiris travelling from Pakistan to their hometowns were required to obtain special permits.²³ Pilgrim passes continued to govern the travel of those Indians who wanted to make the Hajj pilgrimage.

²¹ *Ibid.*, pp. 308–13.

²² CA/105/Comm/48, 1948, Constituent Assembly, Constitution Section, NAI.

²³ The India–Pakistan Passport and Visa Scheme would specify further regulations and restrictions after 1952 for this group of travellers. See 10(10)-K/53, Ministry of States 1953, NAI.

Still, such travels paled in comparison to the post-Partition mass movements across India's and Pakistan's borders. Both countries quickly developed specific sets of documents to regulate these movements. In July 1948, India adopted a permit system across its western border with Pakistan to curb what it perceived to be the 'one way traffic' of Muslim refugees. Under the Influx from Pakistan (Control) Ordinance, entry into India would now require a permit. Pakistan followed suit in October with the Pakistan (Control of Entry) Ordinance, claiming the need for internal security. However there was no permit system on the eastern border between West Bengal, Assam, and Tripura on the Indian side, and East Pakistan.²⁴ The differing policies on the eastern and western borders stemmed from the Indian state's understanding of the Partition experience in divided Bengal, where Partition migration was viewed as unwarranted and not significant.²⁵

In its goal to regulate specific mobility, i.e., post-Partition movement between India and Pakistan, permits discarded the idea of the 'civic credential' intrinsic to the British Indian passport, yet continued the requirement for signatures and photographs in order to identify border-crossers and, more importantly, violators of permit regulations.

²⁴ Before the India–Pakistan passport came into being, East Pakistan residents were often required to produce tax certificates to prove domicile, while Indian residents were restricted to 15 days stay in East Pakistan. In that sense, there was some documentary control, however haphazard. *Hindustan Standard* (28 April, 1948), p. 1.

²⁵ Several scholars have highlighted this difference in understanding. See Haimanti Roy, *Partitioned Lives: Migrants, Refugees, Citizens in India and Pakistan, 1947–1965* (Delhi: Oxford University Press, 2012); Joya Chatterji, "'Dispersal" and the Failure of Rehabilitation: Refugee Camp-Dwellers and Squatters in West Bengal', in *Modern Asian Studies*, Vol. 41, no. 5 (2007), pp. 995–1032; and Jashodhara Bagchi and Subhoranjan Dasgupta (eds), *The Trauma and the Triumph: Gender and Partition in Eastern India* (Kolkata: Stree, 2003). In another recent article, Joya Chatterji argues that these differing policies in the eastern region indicate a secularisation of bilateral politics between India and Pakistan. Joya Chatterji, 'Secularisation and Partition Emergencies, Deep Diplomacy in South Asia', in *Economic & Political Weekly* (14 Dec. 2013), pp. 42–50.

Five kinds of permits were issued from diplomatic representatives of India and Pakistan²⁶ located in Bombay, Jullundhar, Karachi and Lahore.²⁷ In true bureaucratic fashion, these permits were printed in triplicate, bound as booklets, and serially machine-numbered. One copy was housed with the issuing authority, another with the superintendent of police at the destination, and the third was given to the border-crosser. Photographs were *de rigueur* to connect these slips of paper to the authorised holder.²⁸

While such permits represent, at one level, the desire for bureaucratic order amidst the chaos of Partition-generated displacement and violence, at another level, as Vazira Zamindar argues, permits began the process of ‘giving shape to unresolved questions of citizenship’, especially the citizenship of Muslims in India.²⁹ In Zamindar’s view, the Indian state differentiated between Hindu and Muslim refugees, requiring the latter to apply for a permit for ‘permanent return’ to India, while the former could get permits for ‘permanent resettlement’ and access to the state’s rehabilitation programs.

Zamindar’s argument about permits, that they were a first step in crafting post-colonial citizenship, can be pushed further. The permit system, while unpopular with border-crossers, provided Indian authorities with an initial template to test its jurisdictional powers in regulating mobility, and to ascribe certain rights to those who resided within its borders. This is one of the first instances when the Indian state had full

²⁶ These were a permit for a temporary visit, for resettlement (for Hindus from Pakistan), for permanent return (for Muslims returning from Pakistan), for repeated travel and for transit travel between East and West Pakistan.

²⁷ Residents of Pakistan who wanted to travel to India applied to the High Commission in Karachi or Lahore. See S.K. Mustafa, *A Commentary on the Influx from Pakistan (Control) Act, 1949, with Exhaustive Notes, Up to-Date Rules and Case Law; Also Containing Useful Information About Passports, Visas and Pilgrim Passes, Etc.* (Lucknow: Peoples Law Book House, 1952), p. 86.

²⁸ *Ibid.*, p. 69. Photographs were required only for the male head of the family.

²⁹ Vazira Zamindar, *The Long Partition and the Making of Modern South Asia. Refugees, Boundaries, Histories* (New York: Columbia University Press, 2007), pp. 102–3.

authority to decide who was free to move and how to regulate what previously had been ‘free travel’.³⁰

The unpopularity of permits, jurisdictional needs after the promulgation of the Indian Constitution in 1950, and the need to standardise the control of mobility on their western and eastern borders, prompted both India and Pakistan to adopt the India–Pakistan Passport and Visa Scheme in October 1952.³¹ The Scheme introduced a special India–Pakistan passport that would exist alongside each country’s general passport. While the latter would regulate international travel, the former would concern itself only with travel between India and Pakistan. Together, these documents represented the initial steps towards sovereign nationhood, in line with international law.³² As well, it was hoped that a proper passport system would control and inhibit smuggling, and better enforce trade regulations between the two countries.³³ However popular understanding saw them as a singular stopgap measure to curb the ongoing migration of Hindu Bengalis from East Pakistan to India. A cartoon which appeared one day before the start of the Scheme showed Nehru drowning in water marked ‘Growing West Bengal Population’, while he valiantly tried to stop more water pouring through the border wall with a tiny stopper marked ‘Passport’ (Figure 1).³⁴

³⁰ For details on how the permit system operated in India and Pakistan, see *ibid.*, pp.79–117.

³¹ Permits themselves lingered within the document regime. For example, residents of enclaves such as Dahagram along the eastern border were required to obtain permits for transiting through Indian territory. Permits are also used to control movement between Jammu and Kashmir, Goa and Tibet.

³² *The Times of India* (5 May 1952), p. 1.

³³ *Dawn* (6 and 8 Sept. 1952), p. 1.

³⁴ *Amrita Bazar Patrika* (14 Oct. 1952), p. 5.



Place Figure 1 hereabouts

Figure 1. 'Please, Just One Month'. Source: *Amrita Bazar Patrika* (14 Oct. 1952), p. 5.

The Scheme emerged against the backdrop of two events that impacted upon East Pakistan and eastern India. The first was in East Pakistan, the Khulna Barisal riots of 1950 that were echoed in Calcutta, and engendered the region's largest cross-border migration of Hindus in its aftermath. Attempts by the East Pakistan police to control communist peasant activists were quickly interpreted in communal terms. Mimetic riots, which soon spread to eastern India, forced India and Pakistan to conclude the Delhi Pact which urged migrants to return home.³⁵ While evoking images of post-Partition riots, still fresh in the public memory, the Khulna Barisal riots also questioned the legitimacy of

³⁵ For more details see Haimanti Roy, *Partitioned Lives*, esp. Chap. 5.

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Pakistan's viability as a new nation-state.³⁶ The language riots in Dhaka, in early 1952, provided the second impetus. Rioting occurred on demands that Bengali, in addition to Urdu, be designated as Pakistan's official language. As the East Pakistan state worked to quell both the demands and the rioters, they often alleged that an 'Indian Hand' was responsible for inciting violence. Consequently, East Pakistani authorities urged for closed borders on the grounds of national security.

Not surprisingly, in response Pakistan announced in 1952 that it would impose passport regulations on all its borders with India.³⁷ In a Press Note, Pakistan justified the need for its own passport and visa scheme, claiming the transition from permits to passports was logical given that 'all genuine migrants have already returned to their respective homes and if they have not then they may be assumed to have no intention of returning'.³⁸ Passports would delineate two kinds of movement: that engendered by Partition; and that which was routine and necessitated documentary regulation. For its part, the Indian government quickly agreed to Pakistan's initiative, claiming it would alleviate travel hardship between the two countries. While it was clear that the new passport system would directly curb the continuous and chronic post-Partition migration between India and East Pakistan, authorities stressed the benefits of documentary controls in 'nationalizing' terms. C.C. Biswas, the minister for Law and Minority Affairs, noted that a passport system would 'compel a large number of people who had interests on both

³⁶ Nearly one million Hindus from East Pakistan and Muslims from India crossed the eastern border in 1950. However the Delhi Pact was limited in its ability to ensure the return of Hindu migrants to East Pakistan which India took as a sign that East Pakistan was unable to guarantee the safety and security of its minority citizens. On the other hand, the return of Muslims to India was not discussed given the presumptions that they had 'migrated' to their perceived homeland.

³⁷ Zamindar argues that Pakistan took the lead in order to identify Muslims coming from India as Indian nationals and to deny them any claims on Pakistan. Zamindar, *The Long Partition*, pp. 190–91.

³⁸ Pakistan Government Press Note, *The Times of India* (5 May 1952), pp. 1, 5.

sides of the border to make up their minds as to their *homeland*'.³⁹ Passports finally would situate people and establish the Indian state's sovereignty in tangible ways. A resolution to Partition's ambiguities regarding nationality and citizenship was reached by using terms such as 'Bharati' or 'Pakistani' that became commonplace in officially published documents and policy instructions. For example, a press note issued by the Indian deputy high commissioner in Dhaka stated that those 'Bharati nationals' who wished to remain in East Pakistan after the start of the passport system 'will have to get a Bharati Passport with a proper visa from Pakistan authorities within three months from the date of the introduction of the Pakistan–Bharat passport system or before January 15, 1953'.⁴⁰ Assuring applicants their passport requests would be processed quickly, the press note emphasised the routineness of the process. Moreover, the application process would help authorities determine both choices about mobility and the nationality of the applicant. In this context visas, more than passports, would provide what Aristide Zolberg calls 'control through remote control'.⁴¹ Visas would determine and verify the identities of those who did not belong, even before they began their journeys.

Not everyone saw the benefits of implementing a passport system. Arguments against documentary control came primarily from East Pakistan, which had had 'open' borders with India until 1952. The Scheme's detractors argued that documents would sunder age-old linguistic and cultural ties between East and West Bengal and impede the free movement of minority Hindus and Muslims which had been guaranteed by the Delhi

³⁹ *The Times of India* (23 May 1952), p. 1. Emphasis added.

⁴⁰ *Dawn* (8 Oct. 1952), p. 4.

⁴¹ Aristide Zolberg, 'Matters of the State: Theorizing Immigration Policy', in Charles Hirschman, Philip Kasinitz, and Josh DeWind (eds), *The Handbook of International Migration, The American Experience* (New York: Russell Sage, 1999).

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Pact of 1950.⁴² Some in India saw the Scheme as a ploy to scare Hindu minorities in East Pakistan into leaving their homes.⁴³

Despite such reservations, India and Pakistan decided to proceed with this specific passport system. Representatives met in Karachi between 15 May and 19 May 1952 to establish modalities. Not surprisingly, the two countries found it difficult to agree. The disagreements were followed closely in the press of each country, and reflected the continued build-up of self-reflexive nationalism at its worst. The *Morning News* in Dhaka accused the Indian delegation of deliberately ‘sabotaging’ the conference and planning to ‘paralyse the (Pakistan) government’.⁴⁴ *The Times of India* (henceforth, *The Times*) reported that the Pakistan delegate was ‘uncompromising’, refusing even legitimate requests by the Indian delegates. The moral high ground was claimed for India; *The Times* noted that while Pakistan wanted to start the passport system on 15 August 1952, India had proposed 15 September as the starting date.⁴⁵ India thus portrayed itself as one who sought to give border crossers more time to move freely and thus appear attuned to the people’s needs. The antagonism continued in subsequent meetings as authorities negotiated the finer details of the Scheme. Rather than bring ‘categorical closure’ in defining India and Pakistan, as Zamindar argues,⁴⁶ adopting and implementing the passport system continued and even increased the inter-Dominion diplomatic wrangling,

⁴² *The Times of India* (18 April 1952). Minority Hindu leaders in Pakistan were against the imposition of the India–Pakistan Passport and Visa Scheme.

⁴³ *The Times of India* (5 May 1952). East Pakistan leaders such as Nurul Amin repeatedly tried to assuage the Hindu minorities’ fears about the passport system in major newspapers in India and Pakistan.

⁴⁴ Fortnightly reports from deputy high commissioner for India in Pakistan, Dacca, 9 June 1952, MEA, L/52/1321/202, NAI.

⁴⁵ *The Times of India* (20 May 1952).

⁴⁶ Zamindar, *The Long Partition*, p. 191.

bureaucratic confusion, and contingent contextual interpretations of documentary identities.

Technologies of Travel

The India–Pakistan Passport and Visa Scheme finally started on the mutually-agreed date of 15 October 1952. From that day forward, Indians travelling to Pakistan would have to obtain both a passport from India and a visa from Pakistan.⁴⁷ Furthermore, travellers were required to now pass through officially-sanctioned border checkpoints.⁴⁸ Visas for Pakistanis travelling to India guaranteed free passage, but required visa holders to register at police stations, and restricted the number of days they could stay and the places they could visit in India. Visas helped categorise the purpose of travel and such categorisation was represented by different kinds of visas, ranging from A to F.⁴⁹

Within a month of the start of the passport system, the Indian authorities had received requests for 18,972 visas, 9,607 repatriation certificates, 1,985 migration certificates, and 9,134 passport applications.⁵⁰ Passport officials in the eastern region complained about the considerable hardships and difficulties incurred due to the ‘inevitable delays involved in dealing with a prodigiously large number of applications for visas, repatriation certificates and migration certificates from single visa offices in

⁴⁷ This discussion focuses primarily on how the Indian state and those who travelled to and from India experienced the passport system. Similar processes were implemented in Pakistan.

⁴⁸ The list of border checkpoints was published in all major newspapers in both countries. Interestingly, the list indicated both states’ desire to regulate travel between India and East Pakistan. India published a list of 54 checkpoints, of which 46 were on its eastern border. Similarly, Pakistan’s list contained 36 checkpoints of which only 5 were on its western border. *Amrita Bazar Patrika* (4 Oct. 1952), p. 1.

⁴⁹ Visa regulations paid particular attention to those who might want to visit relatives, properties, or attend to business, access to which had been cut off by Partition.

⁵⁰ Note dated 23 Nov. 1952, MEA, L/52/1321/202, NAI.

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Dhaka and Calcutta'.⁵¹ Despite processing problems, claims for the Scheme's successful and smooth operation were supported by front-page pictures of empty border checkpoints in major newspapers.⁵²

The Scheme was different from its documentary predecessors in a number of ways. It diversified control by placing the responsibility for issuing passports onto the states rather than on central ministries and diplomatic missions. It was heavily bureaucratic both in terms of personnel and paperwork. While the MHA, MEA and the Ministry of Law consulted on and decided about atypical passport applications, the bulk of the day-to-day issuing of passports and visas was delegated to the district magistrate or the regional passport offices. These in turn depended on the state police to investigate the applicants' backgrounds and character references which were pre-requisites for any successful application. Passport conferences between India and Pakistan held at regular intervals sought to make the application procedure easier, but in the process erased 'migration' as a reason for travel.⁵³ Moreover the Scheme oversaw a diversification of travel documents beyond just passports and visas as travel between India and Pakistan became categorised in different ways.

From the perspective of Indian officials, routine and hitherto 'free' mobility now came under the Scheme's requirement for documenting it. For example, cultivators and petty traders who lived in the borderland (defined as 10 miles on either side of the India–Pakistan border) now were required to possess an F visa to pursue their livelihoods in this

⁵¹ Haimanti Roy, *Partitioned Lives*, p. 78.

⁵² *The Statesman* (16 Oct. 1952), p. 1.

⁵³ The second passport conference held at Karachi in 1955 eliminated the requirement to report to police stations, and allowed visits to encompass all of India rather than specific places. The state governments were not very happy with this relaxation of requirements.

region.⁵⁴ To acquire these visas, borderland residents had to submit to the border authorities another set of documents—*khatian* or rent receipts, certificates from a Union Board or Panchayat president documenting residence, and often certificates from authorities across the border verifying legal trade and labour.⁵⁵ These F visas were valid for five years or until the expiry of the holder's passport, at which time the visa holder had to return to the local authorities for renewal. The F visa regulated routine cross-border mobility; but it inadvertently also provided certain documentary 'rights' of residence that would be guaranteed by the Indian state. As well, these documents could, albeit in limited form, act as new forms of legal tender which protected the holders from being identified as 'infiltrators' and so being deported.⁵⁶

Obviously, visas were conditional on acquiring a passport. Passports or *par patra* were put into different categories: the international form, valid for international travel; the India–Pakistan passport for travel between India and West Pakistan, valid for one year; and the India–Pakistan (Eastern Zone) passport for travel between India and East Pakistan, valid for five years. From their inception, passports ascribed nationality to border-crossers and connected the individual to the document and to the issuing authority. The Scheme booklet declared: 'Pakistan nationals visiting India will be required...to be

⁵⁴ *India–Pakistan Passport and Visa Scheme: Passport and Visa System of Regulation of Entry of Pakistan Nationals into India and Facilities for Indian Nationals to Visit Pakistan* (Government of India Press, 1952), pp. 1–2. Note to Mimmy: no place of publication available

⁵⁵ *The Times of India* (17 Oct. 1952), p. 1.

⁵⁶ For example, the three state governments of Assam, Tripura and West Bengal reported in 1963 that since 1952, over 500,000 illegal immigrants had crossed over from East Pakistan. Most of them either had valid documents, or claimed to have lost them if they did not possess them. Press Handout of the Indian High Commission, Karachi, 17 June 1963, Foreign Office Files for India, Pakistan and Afghanistan. Part 1, Online Database accessed April 2011; and *India–Pakistan Relations*, PL/5/6/1, Part C Confidential Government of India. Please give database address. Is the 2nd reference a book or a document? Full citation needed

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in possession of a valid passport duly visaed by an Indian diplomatic mission abroad, or by an official in India authorized by the Government of India to issue visas'.⁵⁷ Those 'Pakistan nationals' in India, with or without passports or permits, were to be given a 3-month grace period, until 14 January 1953, to either acquire the relevant paperwork to remain in India or to return to their homes in Pakistan.⁵⁸ Under the Scheme, successful applicants now would be able to have documentary proof of their nationality in addition to travel permissions. Since only Indian citizens could apply for an Indian passport, and only Pakistan citizens could apply for a Pakistan passport, the Scheme hoped to resolve the existing ambiguities regarding citizenship in the 1950s.

However the Scheme went beyond just drafting regulations on passports and visas; it introduced a host of other documents to categorise travel. For example, members of 'minority communities' in Pakistan could apply for migration or resettlement/repatriation certificates instead of passports and visas. Migration certificates required applicants to express their intention to 'permanently migrate' to India by applying to Indian diplomatic missions in Dhaka, Karachi or Lahore.⁵⁹ Between October 1952 and January 1953, Indian nationals (defined by having residence or family ties in India) in Pakistan could apply for repatriation certificates that would guarantee a one-time journey back to India. Both the migration certificate and the repatriation certificate guaranteed single border crossings for an entire family. The Indian state hoped that single journey certificates would reduce cross-border migration, and officially document that the applicants, families or individuals, had opted to leave Pakistan and become Indian citizens. The Scheme also introduced 'landing cards' for those Pakistani nationals who

⁵⁷ *India–Pakistan Passport and Visa Scheme*, p.1.

⁵⁸ This date was periodically extended until the final deadline of 30 April 1954.

⁵⁹ *The Times of India* (15 Oct. 1952), p. 1.

may have fallen ill while in transit through India, and Nullies or Continuous Discharge Certificates for Pakistani seamen that would allow them to disembark and find employment in India. Under the Scheme, every kind of travel and traveller would be neatly categorised, and Indian authorities would establish not only bureaucratic order, but also legitimise it through such certificates.

This blueprint for documentary order remained limited by rolling timelines, contextual interpretations of ambiguous policies, and insufficient resources and personnel.⁶⁰ For example, confusion arose over the term ‘minority community’ which was the basic criteria for migration certificates. Were Hindus and Sikhs in Pakistan the only groups who came under such rubric? Or did it define everyone who was not Muslim? What about members of Scheduled Castes whom Pakistan claimed were not part of the Hindu community in Pakistan and therefore not minorities? MHA and MEA officials reasoned that although applicants for migration certificates were primarily Hindus and Sikhs, certificates should be issued to all non-Muslim residents of Pakistan.⁶¹

But this decision raised another dilemma; if all Pakistani non-Muslims were, hypothetically, eligible for migration certificates, India could potentially be inundated by the entire non-Muslim population of Pakistan. This would defeat the intention of the Scheme. Consequently, Indian authorities decided that migration certificates would not

⁶⁰ A number of books explaining the rules of entry and exit were published in 1953, and continued to be published to keep up with the changing regulations. Lawyers who tried cases relating to these entries and exits wrote most of the books. See for example, M.A. Malik, *Law of Passport & Visa in India & Pakistan with Law of Foreigners* (Delhi: Federal Law Depot, 1953); B.R. Agarwala, *Law Relating to Entry into and Exit from India; Dealing with the Passports Act, 1967, Passport (Entry into India) Act, 1920, Etc....with Rules, Notifications, and Orders Thereunder; Also Law Regulating to the Stay of Foreigners of India* (Delhi: Metropolitan Book Co., 1970); and Mazhar Husain, Raghunath Prasad Saxena and K.K. Singh (eds), *The Law Relating to Foreigners in India and the Citizenship Laws of India & Pakistan* (Lucknow: Eastern Book Co., 1967).

⁶¹ Note by R.P. Sharma, 23 Jan. 1955, MHA, 1/1/56-FIII, NAI.

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be automatically issued, but would depend on the worth of each application.⁶² Low-level bureaucrats at the High Commissions in Karachi and Dhaka were instructed that ‘facilities for migration should be given in all *genuine* cases but should not be available to every member of the minority community regardless of the merits of the case’.⁶³ Further, those who had landed property or a business in Pakistan were not entitled to procure migration certificates ‘unless there was a danger to their life’, or in cases involving ‘danger to the **honour** of women folk’.⁶⁴ It was not clear how applicants were to proffer evidence to this effect. What was clear was that India’s humanitarian claims had to defer to the economic imperatives of limiting refugee and migrant populations.

The instructions were particularly relevant to Hindu applicants located in East Pakistan as they sought to maintain both family ties in India and residential rights in Pakistan. Thus they would often apply for Pakistani passports and visas for India, which guaranteed them multiple journeys, rather than migration certificates. Having Pakistani passports also helped since, at the ‘time of leaving Pakistan, migrants [were] subjected to special searches and other harassments which persons travelling on Pakistan passports do not have to undergo’.⁶⁵ Acquiring a Pakistani passport could also be used as documentary proof that one was not an evacuee or an ‘intending evacuee’; this allowed people to retain their claims to property that were in danger of falling under, and becoming forfeit to, the

⁶² *Ibid.* The Ministry of Rehabilitation had suggested that migration certificates should have certain qualitative and quantitative restrictions.

⁶³ Memo, 27 Aug. 1956, MHA 1/22/56-FIII, NAI.

⁶⁴ *Ibid.*

⁶⁵ Y.K. Puri, Inter-departmental letter, 2 Jan. 1953, MEA, PV III Branch, FII/53-PSP, NAI.

rules of the Evacuee Property Laws.⁶⁶ Thus the utilitarian benefits of acquiring a passport were clear to the applicants.

However such utilitarian interpretations of travel documents conflicted with the Indian state's conception of the links between documents, travel and citizenship. These conceptions came into sharper focus in discussions about those who had arrived in India with Pakistani passports. Early on, Article 9 of the Constitution of India had clearly linked the passport with citizenship by noting that if one voluntarily acquired a foreign passport, one would automatically lose Indian citizenship.⁶⁷ This generated different sets of discussions depending on the religious identity of those who held Pakistani passports. While Muslims returning to India on Pakistani passports often found it difficult to claim Indian citizenship, Indian authorities debated whether Hindus from Pakistan travelling on Pakistani passports should be treated differently and allowed to become Indian citizens in the future. In a secret circular, MHA officials acknowledged the benefits of Hindu minorities in Pakistan obtaining a Pakistani passport, but also pointed out that there was a 'growing feeling in Pakistan that persons who take Pakistani passports thereby affirm their intention of staying in Pakistan and it is undesirable that this feeling should in any way be discouraged'.⁶⁸ Rather, Hindus with Pakistani passports should be allowed less restricted travel once in India, but directed to retain their Pakistani passports until the

⁶⁶ Hindu minorities in East Pakistan were often regarded by authorities there as potential evacuees who would eventually leave for India. This understanding sometimes translated into pre-emptive declarations of their homes as Evacuee Property.

⁶⁷ Article 9 states: 'Person voluntarily acquiring citizenship of a foreign State not to be citizens. No person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State' [<http://indiankanoon.org/doc/260256/>, accessed 7 August 2014].

⁶⁸ Circular, 12 May 1953, MHA, 1/6/59-FIV, NAI.

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passage of the Indian Citizenship Act which would enable them to be naturalised as Indian citizens.

The cases of Hindus with Pakistani passports who wanted to permanently settle in India created two bureaucratic problems that needed resolution: whether they could renounce their Pakistani nationality by simply surrendering their Pakistani passports; and whether they were legally on the same footing as those Hindus who had arrived in India on migration certificates. Badruddin Tyabji, a lawyer and member of parliament, argued on grounds of intentionality that the two were different:

I would not recommend giving persons who come over to India on Pakistani passports exactly the same facilities as those who come over on Migration Certificates. Some difference must be made between those who leave East Bengal definitely with the intention of migrating to India and becoming Indian citizens irrevocably; and those who come with an unsettled mind on Pakistani passports and wish to keep a foot in both camps. If they find conditions in India more favourable, they would stay on in India; but if they did not they could go back to Pakistan on their Pakistani passports.⁶⁹

Note to typesetter: Please do not indent this sentence For Tyabji, the link between nationality and passports was clear. Those with Pakistani passports should be treated as Pakistani citizens, irrespective of whether they were Hindus or Muslims.

In contrast C.C. Biswas, the minister for Law and Minority Affairs, argued that rather than being an indication of an ‘unsettled mind’, the acquisition of a Pakistani passport was utilitarian: ‘More often than not, this is the safer and easier course which saves the migrant from the “special searches” and “other harassments” to which holders of Migration Certificates are subjected’.⁷⁰ For Biswas, the final intention of both groups—Hindus with migration certificates and Hindus with Pakistani passports—was to

⁶⁹ B. Tyabji, 8 Jan. 1953, MEA, PV III, FII/53-PSP, NAI.

⁷⁰ C.C. Biswas, 19 Jan. 1953, MEA, PV III, FII/53-PSP, NAI.

migrate to India. Intention, rather than documentation, he argued, should determine citizenship and both groups should be treated equally by India.

Y.K. Puri, a high-level MEA diplomat, disagreed on legal and constitutional grounds. He pointed out that Indian authorities had no legal basis to cancel a Pakistani passport and cited the following example:

Suppose that we withdraw or cancel the Pakistan passport and issue the holder an Indian passport for a visit to East Bengal, the government of Pakistan may refuse to recognize the change of nationality, may refuse to permit the person to enter Pakistan on an Indian passport or let him depart from Pakistan once he gets there.⁷¹

Note to typesetter: Please do not indent this sentence Puri agreed that Hindus from East Pakistan were Pakistani nationals, but also suggested that India should provide them with free visa extensions and lift travel restrictions within India.

This discussion, carried out via high-level bureaucratic letters and memos, highlights a significant addition to the mandate of the Scheme. While it would continue to categorise and legitimise inter-Dominion mobility, the multitude of travel documents would further link and determine the nationality of its holders. These documents offered different outcomes regarding nationality, depending on whether the travellers were Hindus or Muslims.

Documenting Muslim Nationality

The Scheme became one of the central mechanisms, along with the Indian Constitution of 1950, the Indian Citizenship Act of 1955 and the amended Foreigner's Act of 1957, in evaluating and determining claims of Indian citizenship. Such claims, while guided by regulations on domicile and birth, were also determined on the basis of

⁷¹ Y.K. Puri, 23 April 1953, MEA, PV III, FII/53-PSP, NAI.

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who could and did hold an Indian passport. For Muslims who had either gone to Pakistan in the aftermath of 1947 and hoped to return home to India, or those who simply travelled to Pakistan to visit relatives or on regular work, an application for a travel document raised intriguing questions of nationality and belonging: Was an application for an India–Pakistan passport (to travel to Pakistan) a confirmation of lack of allegiance to India? Could Muslims who returned to India on Pakistani passports, like members of the Hindu minorities, renounce their passports and be regarded as Indians?

Muslims who worked in Pakistan but maintained families and properties in India were the first major group to anticipate the problematic linkages between residence and citizenship that the India–Pakistan Passport and Visa Scheme failed to resolve. Muslims in India and Hindus in Pakistan who worked in government and military offices had been given the option to work with the government of their choice. Over a thousand such men who worked in the East Bengal Railways resigned in early 1952 in anticipation of the passport system restricting travel to India.⁷² The Scheme mandated that in order to work for the Pakistan government in East Pakistan, Muslims would have to acquire Pakistani passports for travel between their families in India and their work in East Pakistan. Their applications for Indian passports were routinely denied on the grounds that they were not Indian citizens and hence were ineligible. Citizenship in this instance was determined by the Indian Constitution which stated that one needed to be domiciled within the territories of India on 26 January 1950, the date of promulgation of the Constitution.⁷³

⁷² Note, 15 Sept. 1952, MEA, L/52/1321/202, NAI.

⁷³ Domicile would primarily be determined by birth or permanent residence. A declaration of domicile and a certificate guaranteeing that declaration could be obtained from particular government offices in India and specific consulates outside of India. Memo, 15 March 1950, Ministry of Law (Constitution Branch), 27/50-C, NAI.

Tridip Kumar Chaudhuri, a Lok Sabha MP from Murshidabad, took up the case of some of these workers in the Indian parliament. He argued that refusal of an Indian passport was unconstitutional since these men were registered to vote in India.⁷⁴ In response, Anil Chanda, the MEA deputy minister, argued that domicile rather than voting rights determined one's citizenship. According to Chanda, those without domicile in India on 26 January 1950 were 'migrants' and were deemed to have 'migrated to Pakistan. Thus they were not Indian nationals and were ineligible for Indian passports'.⁷⁵ To ensure the ability to travel and visit their families, these men and others like them had no option but to apply for Pakistani passports. However, this automatically disqualified them from claims to Indian citizenship as per Article 9 of the Indian Constitution, a disqualification that was reiterated in the Indian Citizenship Act of 1955.

The links between the India–Pakistan passports and Indian citizenship became clear in the well-known case of a minor, Wajid Alam.⁷⁶ Alam, who had lived with his mother Bibi Sahar Bano in Gaya, Bihar, had moved to East Pakistan in 1952 when he was 12. Around mid 1954 he had decided to return home to Gaya, but realised he had missed the deadline to procure a repatriation certificate from the Indian embassy in Dhaka. His only option to return home was to get a Pakistani passport. He arrived in India on a short-term visa with this passport. He continued to live in India, requesting visa extensions until 1956, when the Bihar authorities refused to grant an extension and

⁷⁴ *Parliamentary Debates Official Report, Volume VI, No. 8* (New Delhi: Government of India, 12 December 1952), pp. 2142–3.

⁷⁵ *Ibid.*, p. 2148.

⁷⁶ *Bibi Sahar Bano vs. The State of Bihar and others*, Petition no. 643 of 1956 in the High Court at Patna, MHA, 13/16/57-IC, NAI. Scholars such as Anupama Roy have used Alam's case and later cases to trace a shift in the understanding of Indian citizenship from one based on *jus soli*, where rights of citizenship depended on birth within the territory of India, to *jus sanguinis* in which citizenship primarily became associated with blood ties and descent. See Anupama Roy, *Mapping Citizenship in India* (New Delhi: Oxford University Press, 2010).

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requested him to leave India and apply to the Indian High Commission in Karachi for the next extension. At this point his mother, Bibi Sahar Bano, decided to contest the denial and brought a writ petition against the Bihar government.

In her petition, Bibi Sahar Bano made two critical arguments in disputing the claim that her son's Pakistani passport made him a Pakistani national: (1) her son did not need an Indian visa since he was an Indian citizen; and (2) his travel to East Pakistan was not 'voluntary' because he was a minor at the time. Furthermore, her son had 'obtained the Pakistan passport merely as a device to come back to India and that he had not the intention of becoming a citizen of Pakistan'.⁷⁷ Therefore, in 1954 Wajid Alam had had no intention of becoming a Pakistani national, nor had he had the legal capability to make such a decision. The Pakistani passport, the petition argued, was a travel document, a utilitarian device to enable him to return to his home in India.

Beyond the deliberations of the Patna High Court, the case received much attention from authorities at the ministries of Home Affairs and Law.⁷⁸ The latter's response to Alam's case is worth noting. The Law authorities disputed Bano's petition on two grounds: first, they argued that Wajid Alam had 'migrated' to East Pakistan and had acquired the Pakistani passport voluntarily. To support this claim, they argued that Alam was not a minor since the India-Pakistan passport was only issued to adults.⁷⁹ They argued that even though Pakistan might have a lower age limit for recognising an adult, the fact that he had been regarded as an adult in Pakistan meant he could not now claim to be a minor in India. Secondly, they argued that if Alam was indeed an Indian citizen,

⁷⁷ *Bibi Sahar Bano vs. The State of Bihar and others*, Petition no. 643 of 1956 in the High Court at Patna, p. 2.

⁷⁸ The Citizenship Rules, 1956 had provided the Central Government with the final say in cases of doubtful citizenship.

⁷⁹ According to the Scheme, one had to be over 15 years of age to get a separate passport.

then he should have made a claim to citizenship immediately upon his return. His claim was being made now only because he had been denied a visa extension. Consequently, there was not sufficient proof of ‘intent’ that Alam wanted to make India his home.

The Patna High Court’s decision in favour of Sahr Bano and its instruction to Alam to apply for Indian citizenship stepped on the toes of the MHA and Law ministry bureaucrats, who noted petulantly: ‘We can of course refuse to register Wajid Alam as an Indian citizen without assigning any reason.... We may also add that application of Wajid Alam for Indian citizenship should not be accepted but should be referred to the Central Government for orders’.⁸⁰ Although it is unclear whether Alam did apply for Indian citizenship or whether his application was eventually approved, the case was significant because it established precedence in legal terms and helped the MHA craft a clear process for subsequent cases.⁸¹ From this point on, the central government became the arbiter in the cases of those who arrived in India with Pakistani passports but claimed Indian citizenship. The number and frequency of such cases in the late 1950s and 1960s highlights the disjunction between official understanding of the India–Pakistan passport as a document certifying nationality, even when it had no legal basis, and the popular perception of the passport as a practical document facilitating travel.

By the time the Indian Citizenship Act came into force in 1955, visas for travel to India had largely become short-term, usually for three months. Consequently, travel had

⁸⁰ Memo, 19 Jan. 1957, MHA, 13/16/57-IC, NAI. It is significant that Alam’s case was the first after the Indian Citizenship Act was enacted. This meant Indian authorities were particularly careful in terms of procedure to set a precedent in dealing with such cases. For more details on how this case generated debates on citizenship, see Anupama Roy, *Mapping Citizenship*, pp. 78–81.

⁸¹ MHA authorities designated their F III and F IV branches to deal with such cases, and noted that copies of these files would no longer be sent to their IC Branch. Circulars were sent to all state governments.

become ‘temporary’ even as passport applications and requests for extensions of short-term visas became commonplace. What also assumed regularity were violations of visa directives, especially for ‘overstaying’ beyond the stipulated period.⁸² Local authorities often served deportation notices on those whose visas had expired. These notices were frequently countered by applications for permanent settlement in India.⁸³ Sometimes they were contested in court via submission of writ petitions under Section 80 of the Code of Civil Procedure.⁸⁴ In both applications for permanent settlement and writ petitions, the usual outcome was an extension of stay for the petitioner. Local authorities in Maharashtra noted: ‘The application for civil suit takes more than year and many times it is dismissed on the ground of want of jurisdiction. This enables them to file a fresh application and thus they prolong their stay in India as much as possible’.⁸⁵ What is apparent from these manoeuvrings is that some travellers had quickly figured out a process by which they could hope to circumvent the Indian state’s controls over their mobility.

For their part, Indian authorities declined petitions routinely. Beyond pointing out that the applicants had returned to India after officially-mandated cut-off dates, and had violated the visa regulations by overstaying,⁸⁶ they often regarded the possession of a Pakistani passport as definitive proof of a Muslim petitioner’s nationality. By 1960,

⁸² Bombay and West Bengal were the primary sites with the most violations. Secret memorandum, 1 December 1954, MHA, Foreigner’s IV, 1/1/56-FIV, NAI.

⁸³ The Ministry of Relief and Rehabilitation was in charge of reviewing these applications since the applicant’s citizenship was not in question, and the authorities needed to verify that the applicant would not seek relief and rehabilitation as a ‘refugee’ or make claims to evacuee property.

⁸⁴ This particular section dealt with writ petitions against the Indian government or officials of the government.

⁸⁵ Inter-departmental letter, 21 Sept. 1961, MHA, 29/5/61-FIV (A), NAI.

⁸⁶ ‘Deportation of Certain Section of Muslims of Bombay-Pakistani nationals’, MHA, 20/30/58-FIII, NAI.

Indian ministry authorities were instructing their state counterparts to immediately report any pertinent writ petitions against the government, popularly known as 80 CPC petitions, so that

Full facts of the case may be collected immediately and furnished to this Ministry (MHA) along with the observations and recommendations of the state government so as to enable the Central Government to determine the nationality within the notice period. After it has been determined that [the] person has ceased to be an Indian citizen, he can straightaway be deported to Pakistan after serving him with an order to leave India without any formalities.⁸⁷

Note to typesetter: Please do not indent this sentence Contesting the legality of deportation notices through civil suits required the petitioner to either find fault with the government on grounds of procedure, or to claim Indian citizenship. The outcomes of such suits involved the regional High Courts and sometimes the Supreme Court of India. After Wajid Alam's case, the New Delhi ensured that it would be the primary arbitrator in such cases of disputed nationality.

The contextual interpretation of citizenship laws and the links between the India–Pakistan passport and national identity became clear in the case of Haroon Haji Shakoor who had petitioned authorities in Bombay for 'permanent stay'.⁸⁸ Like Wajid Alam, Shakoor had been born in India and was taken to West Pakistan as a minor while his parents continued to live in India. In 1956, upon his father's death, Shakoor acquired a Pakistani passport and returned to India. Between 1956 and 1961, he went back and forth between the two countries before finally applying for 'permanent settlement' in India.⁸⁹ In his petition, Shakoor stressed that he was an Indian citizen with no 'love for Pakistan'.

⁸⁷ R.P. Sharma, Express letter, 24 Nov. 1960, MHA, 29/5/61-FIV (A), NAI.

⁸⁸ Petition of Haroun Haji Shakoor, 26 June 1961, *ibid.*

⁸⁹ Most probably by this stage, Shakoor had realised that his petition for Indian citizenship would not be entertained because of his Pakistani passport.

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Local authorities in Bombay disagreed, noting that ‘he would not make good citizenship of India [*sic*]’. Unlike Alam’s case, the MHA sought to disregard the fact that Shakoor was a minor when he first went to Pakistan. Instead, what was significant was that Shakoor had not returned to India immediately upon becoming an adult. Moreover, the ministry determined that Shakoor’s patriotic claims had little merit and his petition was a ruse to extend his stay in India so he could be with his mother.

Denial of Shakoor’s application was almost inevitable. Shakoor’s Pakistani passport was taken as definitive proof of his nationality and the MHA advised authorities in Bombay to ‘issue a deportation order against the Pakistani national for his immediate expulsion from India’.⁹⁰ As a result, both the assumptions made about nationality and the actions that followed found sanction in the documentary proof provided by the India–Pakistan passport. What is also significant is the contrast between common understandings of a passport as a travel document, and the official use of it to prove the ‘Pakistani’ nationality of certain Muslims.

In contrast to Alam’s and Shakoor’s cases, Mohsin Khan’s application for permanent stay had a very different outcome.⁹¹ Seemingly, Khan, a tailor by profession, had a similar trajectory to Alam and Shakoor. He and his family had migrated to Pakistan in 1947, returned to India in 1955 on a Pakistan passport and a short-term Indian visa, and then applied for permanent resettlement. Local authorities in their home state of Uttar Pradesh advised them of their ineligibility and suggested they return to Pakistan and apply for permanent resettlement in India from there. Khan went to Pakistan but returned to India in 1957 on another short-term visa. By 1958, he had ‘overstayed’ and when

⁹⁰ Letter, CID Bombay, 5 Aug. 1961, MHA, 29/5/61-FIV (A), NAI.

⁹¹ R.P. Sharma, Internal MHA letter, 20 Nov. 1962, MHA, 1/105/62-FVI, NAI.

Indian authorities sent him notice to this effect, they discovered that he and his family had ‘disappeared’. Authorities finally located them in Delhi and began legal proceedings for the family’s deportation.

At this point, Mohsin Khan appealed to the chief commissioner of Delhi for clemency, arguing he was a ‘faithful and loyal citizen of India’. Although the chief commissioner had little power in arbitrating such cases, Khan, who had been a tailor to the high-level bureaucrat hoped that such access might help his case. The chief commissioner wrote to the MHA requesting a positive outcome for Khan’s application. The fact that Khan did not own any property in India and had no claims to evacuee property helped further his case. In 1962, the MHA finally decided in favour of Khan’s petition, with the caveat that he would have to retain his Pakistani nationality. Khan’s access to bureaucratic patronage had helped him remain in India, but his Pakistan passport was taken as documentary proof the family had divested itself of any claim of Indian citizenship.

There were many such cases regarding the legitimacy of the movement of Muslim individuals and their contextual relationship with the documentary regime of the India–Pakistan passport during the 1950s and 1960s. During this period the general Indian passport also contributed to framing an understanding of citizenship through documents. Mention may be made here of two writ petitions, one filed by a wealthy, Bombay-based Parsee, K.S. Nagporewalla and his wife in 1959, and the other filed by Satwant Singh Sawhney in 1967, both of which contested the right of the Indian state to deny a passport to citizens whose nationality was not in question. In the Sawhney case, which in a rare feat reached the Supreme Court, the right to free movement both within and outside India

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was argued to be evidence of the ‘personal liberties’ guaranteed by the Indian Constitution. Chief Justice G. Subbarao agreed. He ruled: ‘A person resident in India has a fundamental right to travel abroad and the refusal by the government to issue him a passport is a denial of the rights to personal liberty, equality before the law guaranteed by the Constitution of India’.⁹² Thus, if the personal liberty of an Indian citizen included the right to travel, denial of a passport for no good reason could be linked to an infringement of individual citizenship rights by the state.⁹³

The Passport Act of 1967, brought in in the aftermath of the Sawhney case, sought to merge the India–Pakistan passport with the international one. It clarified that, from this point forward, passports and visas would guarantee travel but nothing else. Furthermore, both the MHA and the MEA delegated most of the authority for issuing passports to five regional passport centres across India. As a document guaranteeing the right to travel, the Indian passport would be available to all Indians and could only be denied under certain conditions. It would seem that the contextual delineation of citizenship under the India–Pakistan Passport and Visa Scheme had finally been put to rest.

Conclusion: Documentary Mandates and Popular Understandings of Paper Rights

Legally, the Indian passport is not a citizenship document; it only guarantees the right of mobility insofar as it guarantees the right to return to India. Nevertheless it continues to

⁹² *The Times* (London) (15 April 1967), p. 14. This case was reported in major Indian and international newspapers, and the judgment itself was seen as controversial and procedurally flawed. For more on the constitutional controversy, see Richard Plender, *International Migration Law* (Leiden: Sitjhoff, 1972).

⁹³ This question came under review again in 1976 in the case of Maneka Gandhi when she was refused a passport to travel outside India [<http://indiakanoon.org/doc/1766147/>, accessed 23 Jan. 2015].

be popularly perceived as a document which can certify one's nationality and right of residence in India. This disjuncture between legal reality and popular perception originated in the ways in which the India–Pakistan Passport and Visa Scheme was implemented in the 1950s and the ways in which the India–Pakistan passport was used differently, to allow and extend citizenship claims to Hindus while denying them to Muslims others.

By shifting focus away from Partition-related displacement to routine mobility in the 1950s and 1960s, I have tried to highlight the disjuncture between state documentary mandates and popular understandings of mobility controls, and provide a basis for understanding the persistent and growing linkages between documents and identities in contemporary India. Through the Scheme Indian authorities in the 1950s and 1960s used travel documents to determine citizenship and nationality. The paper trail of applications, petitions, official memos, and writ petitions also served to introduce the new Indian state to those who wanted to live within its borders. By contrast, individuals applying for India–Pakistan passport documents viewed them as merely utilitarian artefacts that would facilitate their movement between India and Pakistan. But the applicants were also aware of the potential for these documents to mark nationality and guarantee the right to work and remain in India, by either overriding or confirming other legal, bureaucratic criteria such as birthplace, domicile, and property ownership. Bureaucratic and legal interactions between Indian authorities and putative citizens under the rubric of the Scheme thus created the perception that passports certified citizenship. Even though the Passport Act of 1967 completely repudiated this position and clearly designated the Indian passport as

only a travel document, the already-established links between such documents and citizenship would not be overturned.

Subsequent decades have witnessed repeated claims for citizenship on the part of those whose presence in India has come under official scrutiny.⁹⁴ In the absence of ‘paper rights’ or documents certifying citizenship, it is the ‘citizen’ who has learned only too well the important lesson of creating a documentary trail to prove citizenship. Access to travel documents continues to delineate the lines between legal and illegal, between citizens and infiltrators, and between legitimate and illegitimate migration. For example, those residents of north-eastern borderland states, especially Bengali Muslims who are either citizens of India or Bangladesh remain targets of border control; (For example, Indian citizens living in the northeastern borderland states, especially Bengali Muslims, both within India and from Bangladesh, remain targets of border control;) in the absence of documentary proof, they are viewed as ‘infiltrators’ or ‘illegal migrants’. These ‘infiltrators’ continue to proffer the Indian passport and other documents as proof of their citizenship amidst bureaucratic assertions of forgery.⁹⁵ The Indian passport continues to exist beyond its legal scope, acting as a document that promises inclusion (or exclusion) within the contemporary Indian body politic.

Acknowledgements

⁹⁴ In September 2013, the Bombay High Court declared that documents such as birth certificates, passports and Aadhar cards could not be accepted if proffered as proofs of Indian citizenship. *Teelka* (3 Sept. 2013) [<http://www.tehelka.com/passportbirth-proof-not-enough-to-claim-indian-citizenshiphc/>, accessed 25 Jan. 2015].

⁹⁵ The most recent case of large-scale forged Indian passports in the hands of Bangladeshi migrants was uncovered in Thane by the Mumbai police and the State Anti-Terrorism Squad (ATS). *The Hindu* (16 Nov. 2015) [<http://www.thehindu.com/news/national/alarm-over-seizure-of-fake-passports-from-illegal-bangladeshi-immigrants/article7880927.ece>, accessed 16 Nov. 2015].

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