Illegal but licit: transnational flows and permissive politics in Asia

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Publication date
2013

Document Version
Final published version

Published in
IIAS Newsletter

Citation for published version (APA):
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TRANSNATIONAL FLOWS are regularly studied in the social sciences ‘from above’, focusing on the power of states to regulate, facilitate or hinder the movement of people across borders. The research project ‘Illegal but Licit’, while sharing with other studies an emphasis on the changing role of states in shaping transnational flows, ventured into the exploration of flows that may avoid or sidestep points of resistance. First, the project treated the state, however important, as just one source of authority among many, which mobile subjects potentially deploy. Second, the project championed ethnographic methods for getting at a better understanding of the aggregated ‘big picture’ of state authorities and transnational flows.

Conducted over the course of five years, from 2006 to 2011, the project included eight studies of transnational movement in various societies across the vast continent of Asia. Two of the case studies examined a long distance migration in female domestic workers from Kerala to the Gulf States, and male construction workers from rural China to Israel; while two other case studies focused on movement in borderlands: between Bangladesh and Northeast India, and between Afghanistan and Northwest Pakistan. The insights that the ‘Illegal but Licit’ project generate have benefited, in addition, from close collaboration with many other scholars working in Asia on transnational movement.

The project resulted in a number of journal articles, an edited volume and a doctoral dissertation. It also led to a policy dialogue held in Katmandu, between academics, civil-society activists and policy makers from different countries in Asia. In what follows, I will focus on and highlight some of the project’s main empirical findings and analytical perspectives.

Thinking mobile, thinking multiple

Political order is commonly associated with the regulatory authority of states. This is not surprising in view of the fact that states are one of the few known to project an image of exercising full authority within national territories. According to the formal model, states enjoy a monopoly over the use of violence, the right to tax the population and the power to sanction offenders. Staying close to such a formal understanding, it is easy to conceptualise state authority in a binary fashion: either there is state law and order, or there is a lack of authority and thus anarchy.

Our empirical evidence shows that the sway of formal state authority is often complicated, and, crucially, that we should not understand this as a ‘lack’ of authority or as being detrimental to the establishment of order. Our findings point to the multiple authorities that complement (or compete with) the regulatory authority of states. For example, time-honoured ways of doing things can be more powerful in shaping people’s practices than new regulations drafted in a government ministry. Religious, ethnic or commercial elites can exercise as much, or more, control over the establishment of order. Our findings show, however, that state categories often fail to capture the very phenomena they manifestly aim to order. For example, in both Israel and the Gulf States the category of ‘guest workers’, which is supposed to describe a secure relationship of employment under standardised working and living conditions during an agreed period, turns out to be something else entirely. In practice it describes a relationship in which employers enslave workers and which does not provide even basic legal protection against employer violations of signed contracts. For these migrants, paradoxically, legality turns into a liability. "Indian domestic workers in Dubai, and Chinese construction workers in Tel Aviv, who deliberately opt to become ‘runaway’ workers or undocumented labourers, find themselves in a surprising position. They are better off than their ‘legal’ counterparts who are tied to binding contracts, excessive exploitation and extreme social isolation. Under these circumstances abscording or fleeing a legal contract becomes a means of ‘countering subjugation’ rather than ‘subjugation itself’.

Permissive borders

Geographic proximity and trade links generate further transnational regimes of licitness. For example, in the border between India and Bangladesh, customary pathways and historic trade routes may persist in spite of more recently erected state borders. The habitual practices of inhabitants in borderlands lead them to perceive the crossing of state borders, on a daily basis and without formal permits, as unproblematic. State officials, on the other hand, may well consider such practices to be a dangerous subversion of state sovereignty, economic insubordination, or a potential security threat. But formal rules and stereotypical images may be neglectable, for example when state actors become deeply involved in facilitating unauthorised cross-border trade, or when they legalise ‘smuggling’.

Our studies advance that borders accommodate a vast range of informal flows, for example, in the Bangladesh-India borderland, the gendered nature of the local regime of permissiveness is pronounced. Here women traders and commuters easily navigate the high-security borderland amidst the construction of a new fence and increased patrolling, while men have to purchase a passage. State agents do not consider women traders, and the small quantities of goods that they carry, as a risk to either state. The presence of these women as permissible foreigners, illustrates how certain categories of mobile people may partially escape territorial and exclusionist discourses.

Finally, to people engaged in transnational flows in borderlands and beyond, authority does not radiate outwards from centres of power: strong at the centre and weakening towards the periphery. The findings of our contributors do not support that view. It shows that to mobile people, authority is embodied in persons and objects and therefore is movable. Authority is not restricted to a particular territory and may materialise in unexpected places. For example, there is no necessary link between being territorially peripheral or geographically isolated and being free from state regulation (or, put differently, being excluded from the state). To people who are mobile, regulatory authority appears as a fluid property that can move about, expand and retract.

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