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India, the United Nations Human Rights Commission, and the 1979 Virginity Testing Scandal

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Abstract

This article looks at India's complaint at the United Nations Human Rights Commission in 1979 about the 'virginity test' performed on a migrant Indian woman at Heathrow. It examines the use of arguments about race and racial discrimination by India to compel Britain to discuss immigration on a bilateral basis. The article argues that the pivot to a race-based argument was deliberately patriarchal and India's main concern in these negotiations was the impending British Nationality Act of 1981, which would prevent men from moving to Britain in search of an overseas wife. Using the virginity testing scandal, the article re-examines the changing role of discourses about race in postcolonial institutions of global governance.

Keywords: India; United Nations Human Rights Commission; Race; Britain; Immigration

Introduction

On 24 January 1979, Mrs K, a school teacher aged thirty-five arrived at Heathrow Airport accompanied by her husband-to-be.¹ At the time, only fiancées were permitted to enter the United Kingdom to be married within three months and did not require an entry certificate (visa) to do so. However, the Immigration Officer on duty believed that she was already married to Mr K and therefore should be in possession of this certificate.² To ascertain this the Immigration Officer referred the case to the Medical Officer at Heathrow who then performed a gynaecological examination. Contradicting the argument of the Home Office that the Medical Officer had undertaken 'no internal examination', the first-hand account from Mrs K in *The Guardian* newspaper detailed the circumstances of her ordeal.³ Her request for a dressing gown was denied, she was asked to disrobe completely and her further request for a female doctor was turned down.⁴ An interpreter translated a consent form which she signed in fear of being sent back to India.⁵ This form required migrant women to 'agree to a gynaecological examination which may be a vaginal if necessary' and to agree that the statement had been 'fully understood' after being translated and relayed to them in their 'own mother tongue'.⁶ On 1 February 1979, after Mrs K had taken her story to the Indian Workers' Association (IWA) and the Joint Council for the Welfare of

¹It should be noted that at this stage Mrs K was not married, but no written record of her maiden name exists. Her marital status is important, because we will later demonstrate that it was her status as a fiancée rather than a wife that was under question as a consequence of Britain's policy of introducing 'entry certificates.'

²Marinella Marmo and Evan Smith, *Race, Gender and the Body in British Immigration Control: Subject to Examination* (Basingstoke: Palgrave Macmillan, 2014), 147.

³'Statement by the Home Office', 2 February 1979, PREM 16/2100, The National Archives, London (hereafter TNA).

⁴Lok Sabha Debates, 'Reported Virginity test on an Indian woman at Heathrow Airport' (hereafter 'Reported Virginity test'), 21 February 1979, Lok Sabha Secretariat, Parliament of India: New Delhi.

⁵Melanie Phillips, 'Virginity Tests on Immigrants at Heathrow', 1 February 1979, *The Guardian*.

⁶*Ibid.*

Immigrants (JCWI), the news of her ordeal became public through an article in *The Guardian*. National and international disgust erupted. Under pressure, the Home Office initially argued that examining her was legitimate since it was ‘suspected that [Mrs K] might already be married’ and her ‘written consent’ had been obtained.⁷ In response to the growing public furore over the case the Government announced that no further testing was permitted. On 2 February 1979, the Home Office issued a statement declaring that the Home Secretary had provided instructions that Immigration Officers ‘should not ask the medical inspector to examine passengers with a view to establishing whether they have borne children or have had sexual relations’.⁸ A statement was made in the House of Commons conveying ‘deep regret’ over this incident and a letter of regret was sent to the High Commission of India assuring Indians that this practice would never recur.⁹

In India, the case resulted in an enormous domestic outcry and galvanized its nascent feminist movement.¹⁰ Less well known, however, are India’s next diplomatic steps: India took the matter to the United Nations Human Rights Commission (UNHRC) in Geneva and argued that this was a case of racial discrimination against India and Indians. Between 1979 and 1982 this issue remained an annual feature of the Commission’s agenda on India’s insistence, before both Britain and India agreed to bury it and discuss issues of immigration and race on a bilateral basis. On the face of it, India had won a diplomatic victory and diasporic activists were euphoric that their voices had finally been heard.

This incident has been studied either as another example of legally sanctioned discriminatory bordering practices focussed on the body of South Asian migrants,¹¹ or seen through the lens of South Asian activism in Britain.¹² It has also been used to highlight the evolution of ‘medicalized’ borders in Britain,¹³ and to examine the racialized nature of postcolonial British immigration law.¹⁴ This episode can thus further be placed within the larger historiography of postcolonial immigration regimes in the West that focussed on the perceived bodily transgressions of migrants.¹⁵ Acknowledging these existing frameworks, this article focusses on the Indian response to the incident and places it within the context of a demand for a world of racial justice, albeit one which deliberately elided the gendered nature of border crossing and prioritized a more limited national imagination of the ideal Indian migrant, who ought to be allowed unfettered access to metropolitan territory. In doing so, we place our work within the more recent literature on India’s broader engagement with international institutions on questions of race. Reflecting the growing interest in questions of race and racial hierarchies within International Relations literature,¹⁶ this

⁷Statement by the Home Office’, 2 February 1979.

⁸News Release: ‘Medical Examinations at Ports - Statement by the Home Office’, 2 February 1979, FCO 418/29, TNA.

⁹Lok Sabha Debates, ‘Reported Virginity test’, 21 February 1979, Lok Sabha Secretariat, Parliament of India: New Delhi, 21 February 1979, 223.

¹⁰Sujata Gothoskar, Vithubai Patel, Vibuti Patel, and Carol Wolkowitz, ‘Documents from the Indian Women’s Movement’, *Feminist Review* 12 (1982): 92-103. For its impact in terms of British South Asian women and their organizing around labour and feminist issues, see Sundari Anitha and Sukhwant Dhaliwal, ‘South Asian Feminisms in Britain: Traversing Gender, Race, Class and Religion’, *Economic and Political Weekly* 54, no. 17 (April 2019): 37-44.

¹¹Amrit Wilson, *Finding a Voice: Asian Women in Britain*, 2nd ed. (Quebec: Daraja Press, 2018).

¹²Parita Trivedi, ‘To Deny Our Fullness: Asian Women in the Making of History’, *Feminist Review* 17 (1984): 37-50; Nadia Swaby, ‘“Disparate in Voice, Sympathetic in Direction”: Gendered Political Blackness and the Politics of Solidarity’, *Feminist Review* 108 (2014): 11-25.

¹³Roberta Bivins, ‘“Suspect” Screening: The Limits of Britain’s Medicalised Borders, 1962-1981’, in *Medicalising Borders: Selection, Containment and Quarantine since 1800*, ed. Sevasti Trubeta, Christian Promitzer, and Paul Weindling (Manchester: Manchester University Press, 2021), 227-55.

¹⁴See for example Nadine El-Enany, *(B)ordering Britain: Law, Race and Empire* (Manchester: Manchester University Press, 2020).

¹⁵See Bivins, ‘“Suspect” Screening’; Alison Bashford, ed., *Medicine at the Border: Disease, Globalization and Security, 1850 to the Present* (London: Palgrave Macmillan, 2007).

¹⁶See for example the essays in Alexander Anievas, Nivi Manchanda, and Robbie Shilliam, eds., *Race and Racism in International Relations: Confronting the Global Colour Line* (London and New York: Routledge, 2014) and the articles in Jasmine K. Gani and Jenna Marshall, eds., ‘Race and Imperialism in International Relations: Theory and Practice’ [special issue], *International Affairs* 98, no. 1 (January 2022).

body of work challenges the previously held belief that decolonized nations simply fitted into Western norms of international relations¹⁷ and argues for a deeper dive into how Indian diplomats of the 1950s vied for a more decolonized and de-racialized world order.¹⁸ Thakur and Davis have argued that these diplomats creatively deployed arguments about racial discrimination to combat stereotypes about overseas Indians and to argue for more lenient immigration rules in countries where even after decolonization immigration regimes remained hostile towards non-white immigrants.¹⁹ We use this episode to reflect on the ways in which this global order of injustice was challenged by India at the United Nations in the late 1970s and early 1980s, but in deliberately narrow, nationalist, and patriarchal ways. While the case itself was emblematic of the disparities in the treatment of migrants at metropolitan borders, the eventual resolution of the case was also reflective of the tussle between sovereignty and universal rights that characterized the development of a post-war regime of human rights and global justice.²⁰ As immigration laws of former colonial countries in the post-Second World War period became restrictive and discriminatory towards their previously colonized subjects, newly decolonized countries were keen to highlight the discrepancy between their entry into international institutions as full members, and the lived reality of the injustices faced by their citizens at Western borders.²¹ This discrepancy was symptomatic of a world where although political decolonization was almost complete, the disjuncture between former colonies and metropole was felt acutely when former colonial subjects were either disbarred from entry or subjected to humiliation at the borders of the metropole.

The 'virginity testing' scandal was then more than just a diplomatic rift between two countries. It was used by different historical actors to articulate their discomfiture with the evolution of postcolonial regimes of international governance. It is in this context that the United Nations became the place where these fraught relationships stemming from postcolonial accusations of racial injustice were played out, and where the limitations of postcolonial nationalist imaginations were unveiled. Historians such as Mark Mazower have pointed out that there was little possibility that the UN could function as a vessel for anticolonial claims in the 1950s, as it was deeply enmeshed in imperial ideals including on questions of immigration.²² Others have highlighted the limitations of international institutions and meetings, such as those at Bandung, to articulate a global vision of non-Western solidarity²³ that encompassed both broader claims about postcolonial inequalities and more specific concerns about discrimination.²⁴ As Adom Getachew has argued, the national and the international promises of the postcolonial world

¹⁷See for instance, Raphaëlle Khan, 'Sovereignty After Empire and the Search for A New Order: India's Attempts to Negotiate A Common Citizenship in the Commonwealth (1947-1949)', *The Journal of Imperial and Commonwealth History* 49, no. 6 (2021): 1141-74; Martin Bayly, 'Lineages of Indian International Relations: The Indian Council on World Affairs, the League of Nations, and the Pedagogy of Internationalism', *The International History Review* 44, no. 4 (2021): 1-17.

¹⁸Alanna O'Malley, 'India, Apartheid and the New World Order at the UN, 1946-1962', *Journal of World History* 31, no. 1 (2020): 195-223; Daniel Gorman, 'Britain, India, and the United Nations: Colonialism and the Development of International Governance, 1945-1960', *Journal of Global History* 9 (2014): 471-90;

¹⁹Alexander E. Davis and Vineet Thakur, 'Walking the Thin Line: India's Anti-Racist Diplomatic Practice in South Africa, Canada, and Australia, 1945-55', *The International History Review* 38, no. 5 (2016): 880-99.

²⁰For a historical summary see Jack Donnelly, 'State Sovereignty and International Human Rights', *Ethics and International Affairs* 48, no. 3 (2014): 225-38.

²¹The journal *Race Today* carried frequent accounts of such harassment suffered at Western borders and embassies. See also James Vernon, 'Heathrow and the Making of Neoliberal Britain', *Past and Present* 252, no. 1 (2021): 236-8.

²²Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton: Princeton University Press, 2009).

²³Naoko Shimazu, 'Diplomacy As Theatre: Staging the Bandung Conference of 1955', *Modern Asian Studies* 48, no. 1 (2004): 225-52; Amitav Acharya, 'Studying the Bandung conference from a Global IR Perspective', *Australian Journal of International Affairs* 70, no. 4 (2016): 342-57.

²⁴Christopher J. Lee, *Making a World After Empire: The Bandung Moment and Its Political Afterlives* (Athens, OH: Ohio University Press, 2015).

had to be read in tandem.²⁵ While her influential work focusses largely on economic independence, she argues that, for anti-colonial nationalists, decolonization did not easily translate into meaningful emancipation. It was in this context that some saw the possibility of postcolonial change in the Indian complaint about the treatment of overseas Indians in South Africa from the 1940s onwards.²⁶ Given that this stance was broadly contradictory to its overall policy about overseas Indians in general, it was possible to see that moment as one where India's position on the question of South Africa promised the creation of an anti-racist platform at the United Nations.²⁷ However, as this article explores, India's response to Mrs K's case between 1979-82 failed to challenge evolving postcolonial and racialized hierarchies of border control, and remained enmeshed in existing patriarchal ideas about the rights of conjugality for Indian men.

A singular case at Heathrow then became emblematic of everyday border injustices and the sheer horror of Mrs K's case provided a moment of global solidarity from Solihull to New Delhi against a barbaric practice. Yet, this solidarity was not galvanized by India to argue for a racially just world. In order to explain why, we examine the collision of race and gender within the story of international migration, and particularly how the category of 'race' was deployed as a negotiating tactic. For India, these racialized arguments were firstly part of a diplomatic move to insist upon public conversations with Britain about immigration and discrimination. India was willing to use the UN and its agencies to advocate for a more racially equitable world where border crossing for specific groups was not a discriminatory process. However, India equally remained a keen proponent of the value of sovereignty, particularly in light of the refugee influx of 1971 and specifically and repeatedly privileged a racialized argument over a gendered one.²⁸ Until the 1960s, India actively collaborated with immigration regimes in Britain to allow primarily upper caste, Hindu males to emigrate.²⁹ As a corollary, India took this a step further through this case to safeguard the rights of Indian male fiancés whose conjugal rights would be impacted by the 1981 British Nationality Act. India's own conception of global justice for its citizens during this case was thus entirely ephemeral. It was limited to those it deemed worthy of representing its own idealized vision of itself to those in the West, and Britain's attempts to limit access to its borders through the newer immigration rules of the new British Nationality Bill would have excluded such a migrant: the upper caste, single, Hindu man in search of a wife settled overseas. Hence, a critical version of a globally just world of border crossing was ultimately sacrificed for a more superficial desire to support the interests of a particular kind of migrant whose worldview conformed with India's vision of itself. The logic of the bodily examination of female migrants was never questioned and India's eventual agreement to drop the case permitted normal diplomatic relations to resume, while never fully challenging the assumptions of the biopolitical evolution of the surveillance state.³⁰

Recent studies of racial discrimination have extended to examining both immigration policy and practice and their intersections with the body of the migrant. In their pioneering work on the controversy, Evan Smith and Marinella Marmo discuss the overarching role of race within British immigration policy and the bodily framing of such laws using 'virginity tests', x-rays, and even DNA.³¹ As Smith and Marmo have further demonstrated, Britain remained wary of the

²⁵Adom Getachew, *Worldmaking After Empire: The Rise and Fall of Self-Determination* (Princeton: Princeton University Press, 2019).

²⁶Lorna Lloyd, "'A Most Auspicious Beginning': The 1946 United Nations General Assembly and the Question of the Treatment of Indians in South Africa", *Review of International Studies* 16, no. 2 (1990): 131-53.

²⁷Raphaëlle Khan and Taylor C. Sherman, 'India and Overseas Indians in Ceylon and Burma, 1946-1965: Experiments in Post-Imperial Sovereignty', *Modern Asian Studies* 56, no. 4 (2021): 1153-82.

²⁸Bidisha Biswas, "'You Can't Go to War Over Refugees": The Bangladesh War of 1971 and the International Refugee Regime', *Refugee Studies Quarterly* 42, no. 1 (2023): 103-21.

²⁹Kalathmika Natarajan, 'The Privilege of the Indian Passport (1947-1967): Caste, Class, and the Afterlives of Indenture in Indian Diplomacy', *Modern Asian Studies* 57, no. 2 (2022): 1-30

³⁰See for example Smith and Marmo, *Race, Gender and the Body*, 8-12.

³¹*Ibid.*

international repercussions of the incident.³² This wariness aligned with the actions of other white settler states like Canada and Australia, who too remained cautious of their racially discriminatory immigration policies being scrutinized and were instrumental in framing Article 2(7) of the United Nations charter.³³ A similar argument could also be made about the United Kingdom's reluctant embrace of the international refugee regime, in a bid to prevent a close examination of its colonial policy on border crossing.³⁴ This episode reminded Britain that decolonization remained an ongoing process rather than a singular political moment and hardening its border regimes could instigate the very real possibility of postcolonial embarrassment on a global stage. For former colonial states, the fear that their bordering practices could be subject to international scrutiny meant that Britain's response involved finding new ways to challenge and threaten the legitimacy of the Indian complaint. In that context we examine how Britain responded to this controversy by attempting to belittle and dismiss race-based allegations and by threatening to use India's own human rights record to embarrass it at the UNHRC.

Immigration rules remain a source of global tension today and this topic has reared its head multiple times in Indo-British discussions.³⁵ This tension reflects the clashes between a postcolonial understanding of sovereignty, the rise of identarian politics at the margins of most decolonized nations and the West's attempt to deny that its border control regimes remain soaked in imperial nostalgia and prejudice.³⁶ Studying this singular case matters because it first provides us with an opportunity to look at how international institutions could be used by postcolonial nations to navigate a new world of immigration restrictions and racial distinctions. Simultaneously, this case constitutes a microcosm for the limitations of a vision of a postcolonial racially just world when such causes become subverted by narrower questions of identity. It raises the question of whether a truly decolonial world can be achieved through a nationalist project. As Getachew has argued, the 'worldmaking' capacity of anti-colonial nationalists ought to be seen as envisaging an egalitarian world order that was ultimately limited not just by the failures of the postcolonial nation building project, but equally by the post-imperial world that would have sustained this.³⁷ This article argues that the response of the many actors involved highlighted how these universalisms were ultimately thwarted by a more domesticated, patriarchal vision of citizenship that subsequently travelled across postcolonial borders.³⁸ Dubious medical examinations for fiancées and dependants continued to be practised in the subcontinental British High Commissions of New Delhi, Islamabad, and Dacca and elicited little comment or protest from the Government of India.³⁹ The body of the migrant woman was used and then ultimately abandoned for an anti-racist cause that remained profoundly patriarchal in its assumptions.

³²Ibid., 142-5.

³³Paul Gordon Lauren, 'First Principles of Racial Equality: History and the Politics and Diplomacy of Human Rights Provisions in the United Nations Charter', *Human Rights Quarterly* 5, no. 1 (February 1983): 1-26. For a comprehensive account of Article 2(7) see Ruth B. Russell, *A History of the United Nations Charter: The Role of the United States, 1940-1945* (Washington DC: Brookings Institution, 1958), 900-10.

³⁴Lucy Mayblin, 'Colonialism, Decolonisation, and the Right to be Human: Britain and the 1951 Geneva Convention on the Status of Refugees', *Historical Sociology* 27, no. 3 (2014): 423-41.

³⁵The British Home Secretary's recent comments that Indians constituted the 'largest group of people who overstay' their visa led to strong backlash. See for example <https://www.theguardian.com/politics/2022/oct/06/suella-braverman-speaks-out-against-likely-uk-trade-deal-with-india> [Accessed 19 February 2023].

³⁶El-Enany, (*B*)*ordering Britain*, 175-218.

³⁷Getachew, *Worldmaking After Empire*.

³⁸Ratna Kapur, 'The Citizen and the Migrant: Postcolonial Anxieties, Law, and the Politics of Exclusion/Inclusion', *Theoretical Inquiries in Law* 8, no. 2 (2007): 537-70.

³⁹Although tests were undertaken in all three countries, we have chosen to focus on Indo-British relations as India had registered the protest with the UNHRC.

India's response: privileging race versus gender

Questions of race and racial discrimination were central to Indian foreign policy even before India achieved independence. Mazower argues that the end of the 1940s marked the end of a European era at the UN and a shift away from Empire and Eurocentrism, locating this particularly first in the rise of Japan and then India.⁴⁰ India participated in the drafting of the Universal Declaration of Human Rights, and India's complaint to the UN about the treatment of Indians in South Africa marked it out as a preeminent spokesperson on the question of race on a global stage and the 'leading anti-colonial voice in world politics'.⁴¹ However, the anti-racist language that was championed at the San Francisco Conference by India, Egypt, Mexico, Panama, Brazil, and Cuba was resisted by a number of white settler colonies such as New Zealand, Australia, and Canada.⁴² For Indian High Commissioners in South Africa, Canada, and Australia during the 1950s, this meant having to navigate the limited bilateral avenues afforded to them to discuss racial discrimination, particularly on questions of immigration and family reunification.⁴³

In a similar vein, the Indian High Commission in London frequently raised questions about the fate of Indian immigrants with their British counterparts. Vernon argues that through the late 1960s and early 1970s, as politicians resorted to increasingly inflammatory language about migrants, the discretionary powers granted to immigration officers at Heathrow meant that racialized harassment was common.⁴⁴ Enoch Powell's infamous speech had singled out dependents as posing a particular threat to Britain, and many immigrants complained of the racist language used by immigration officers.⁴⁵ In 1978 there were 390,000 persons of Indian origin in Britain and the High Commission was particularly concerned about the 'discourtesy, delay, detention and denial of entry' of Indians landing in Britain.⁴⁶ Arguing that the attitude of immigration officers was often 'unduly hard and somewhat arbitrary', they focussed their efforts on 'stopping harassment and detention of genuine visitors'. The most vocal complaints about the mistreatment of visitors were about prominent men, including the journalist Sunanda K. Datta Ray who chronicled his misfortunes at Heathrow,⁴⁷ or the complaint filed by the Indian High Commission about the treatment meted out to the eminent historian and subsequent Governor of West Bengal, Professor Nurul Hasan.⁴⁸ For the Indian High Commission, there was a clear link between this harassment at the border and the new Nationality Bill being proposed, which would make it 'increasingly difficult for persons from the Indian subcontinent and other non-white people to acquire British nationality'.⁴⁹ It was this anxiety about who would be allowed into Britain and on what terms under the new Conservative government that quickly became the focus of the Government of India's foreign policy vis-à-vis the United Kingdom. This new focus on immigration and race relations equally alarmed the British, who felt that it was a 'growing threat to good Indo-British relations' particularly as a consequence of the extensive media coverage of particular incidents.⁵⁰

⁴⁰Mark Mazower, 'The End of Eurocentrism', *Critical Enquiry* 40, no. 4 (2014): 298-313.

⁴¹Manu Bhagavan, 'A New Hope: India, the United Nations, and the Making of the United Nations Declaration of Human Rights', *Modern Asian Studies* 44, no. 2 (2010): 311-47; Alanna O'Malley, 'India, Apartheid, and the New World Order', 197.

⁴²Neville Meaney, 'White Australia Policy: The end of 'White Australia' and Australia's Changing Perceptions of Asia, 1945-1990', *Australian Journal of International Affairs* 49, no. 2 (2008): 171-89.

⁴³Davis and Thakur, 'Walking the Thin Line'.

⁴⁴Vernon, 'Heathrow and the Making of Neoliberal Britain', 236.

⁴⁵*Ibid.* Vernon argues that despite the hostility faced at Heathrow, it became a significant source of employment for the South Asian community and later a source of race and labour based activism.

⁴⁶Annual Reports for the year 1978 from the HCI London and AHC Birmingham, HI/1011/45/79/, National Archives of India (henceforth NAI).

⁴⁷Sunanda K. Datta Ray, 'Through Heathrow Without Courtesy', *Race Today*, May 1970, 6-7.

⁴⁸Complaint by Indian High Commissioner about Treatment at London Airport, 1970, HO38/348, TNA; Complaints about treatment of Indian nationals at British Immigration Control, 1972-1974, HO 344/349, TNA.

⁴⁹*Ibid.*

⁵⁰Letter from the British High Commissioner in New Delhi to the FCO, 12 July, 1978, FCO 50/648, TNA.

In light of these existing conversations about the treatment of Indians in Britain, the story about Mrs K then broke in the media. A month after the original incident it was a topic of protracted debate and discussion in both the Lok Sabha and the Rajya Sabha. A close analysis of these debates provides us with some preliminary clues as to why race rather than gender became the axis along which India chose to protest about this case. It also provides us with some additional clues as to why India's international engagement on the issue did not follow the sustained trajectory that it did on the question of apartheid in South Africa.

Indian Parliamentarians were quick to point out that Mrs K may not have been the only victim of such degrading medical tests. The Joint Council for the Welfare of Immigrants (JCWI) had its origins in anti-racist activism around egregious cases involving dependent women and children who had been denied entry into Britain.⁵¹ In 1969, Vishnu Sharma of the JCWI had compiled a dossier of five girls who had been 'tested' at Heathrow, but the Home Office had insisted that 'the immigration authorities do not ask and would have no reason to ask the Port Medical Officers to make this kind of check'.⁵² The MP Bhupesh Gupta pointed out that he too had corresponded with the Indian Workers' Association in Britain in the late 1960s and that they had repeatedly complained to him about such testing. He noted the cases of two women from Gujarat, aged twenty-four and twenty-seven, residing in the London Borough of Brent who had confided in their social worker that they had been subjected to such testing upon their arrival in Britain.⁵³ The IWA had raised the matter with the Indian High Commission, but the women were reluctant to take the issue further and it was dropped.

Other MPs had similar tales to tell. Sitaram Kesari, the MP from Katihar, provided details of several such cases including that of a pregnant woman who was subject to a gynaecological examination, and who consequently gave birth to a baby girl who died.⁵⁴ M.V. Chandrashekhara Murthy raised the question of eight women who were allegedly victims of 'virginity testing' in 1968. Accusations that these practices were well known and that neither the High Commission of India (HCI) in London, nor the Ministry of External Affairs (MEA) had stepped in earlier, were levelled at Foreign Minister Atal Bihari Vajpayee. In the words of Jyoti Basu, 'this practice has been in existence for more than six to seven years . . . they should have protested against it and seen to it that it is abolished . . . why did they sleep over the matter all these years?'⁵⁵

In his response, Vajpayee admitted that the practice was not limited to Mrs K alone nor to Heathrow. He suggested that the 'medical border' extended to the subcontinent itself, and alleged that in 1978 there were '34 cases in New Delhi alone where the British High Commission requested medical opinion on the marital status of women applicants from a lady doctor'.⁵⁶ He also cited the Commission for Racial Equality, which purported that Mrs K's case was not unique as 'there had been comparable cases in recent years'.⁵⁷ Vajpayee's admission incensed those who continued to ask why the MEA and the HCI had not done anything about them: 'Does the Indian High Commission lack adequate machinery of its own to collect and compile and pursue matters relating to the interests of Indians living in Britain? Does this not amount to incompetence and inefficiency of the High Commission as a whole?'⁵⁸ It is in Vajpayee's response to these accusations of neglect and incompetence that we can find the contours of the argument that India would make before the UNHRC. He was keen to avert any discussion of the manner in which the

⁵¹Vernon, 'Heathrow and the Making of Neoliberal Britain', 237.

⁵²'Virginity Test Row at Airport', *The Sunday People*, 11 May 1969, 11.

⁵³Rajya Sabha Debates, 'Calling Attention to Matter of urgent Public Importance reported virginity test conducted on Indian women immigrants at Heathrow Airport in London and Government's reaction thereto' (hereafter 'Calling Attention'), 21 February 1979, Rajya Sabha Secretariat, Parliament of India: New Delhi, 210-211.

⁵⁴*Ibid.*, 207.

⁵⁵*Ibid.*, 228.

⁵⁶*Ibid.*, 191.

⁵⁷*Ibid.*, 197.

⁵⁸*Ibid.*, 194.

practice of gynaecological examinations, sanctioned by the Home Office for those awaiting entry clearance, had moved the hypothetical border from Britain to India. Instead, he highlighted that within a day of *The Guardian's* article a strong protest had been lodged with the British in both Delhi and London and that this had borne fruit in the form of the Home Secretary's instructions that there was to be an immediate end to such examinations. He tried to evade the question of Mrs K's treatment by pointing to the larger question of race and racial discrimination in Britain.⁵⁹ Dismissively referring to Mrs K's gynaecological examination as 'certain obnoxious practices which were resorted to by the British in the name of controlling immigration', he further argued that what India wanted was 'true racial harmony . . . whereby people of Indian origin can live in peace and honour in that country and visit Britain without fear of harassment and embarrassment'.⁶⁰

This pivot from the question of what might be seen as a case of sexual assault to one that was about racial discrimination in Britain was critical to how the debate subsequently unfolded. Linking this discrimination to the longer humiliation of imperial rule, it was suggested that 'most of the officials in the Immigration Department are known for their racial fanaticism.'⁶¹ As Kanak Mukherjee, an MP from West Bengal, thundered:

This is not only an insult to an individual, not only discrimination to Indian people, but this is a great discrimination towards all Asiatic countries . . . are they thinking that they are still our rulers and we are still people of the colonies where the Britisher used to indulge in the export and import of women for the entertainment of soldiers?⁶²

Another MP raised a similar question about whether only Indian women had been the victims of gynaecological examinations or whether European or American women had been victims of the same tests. The peculiar implication of such a query was that if other women too had been tested then perhaps this was simply a measure of immigration control and not one specifically directed at South Asian women. Later that year in bilateral talks between foreign policy officials, the British deduced that as long as they demonstrated 'sensitivity to Indian interests in race relations in Britain, the Indian Government is generally unconcerned about our immigration policy so long as it does not appear to be racially discriminatory'.⁶³ A visit from Home Office officials to the subcontinent later in 1979 suggested that this opinion was more broadly held, and that 'there is a belief that the controls applied to nationals of these countries are not applied to other foreign and Commonwealth citizens seeking entrance to the United Kingdom'.⁶⁴ These arguments suggested that both India and Britain were mutually and primarily concerned with *who* was the focus of these techniques of immigration control, rather than the actual rules. For India in particular, this episode was not about the humiliation suffered by Mrs K herself, but a reminder that her citizens were relegated to second class status even when attempting to legally enter Britain.

Whilst framing this discourse to highlight the racialized nature of the harassment faced by Indians, Vajpayee simultaneously had to evade and deflect charges of incompetence and accusations that the MEA had not tackled these cases for a decade. To do so, he shifted the discourse to highlight immigration issues that predominantly affected male migrants and focussed his ire on the British Nationality Bill that was being debated in Westminster, which would have a particular effect on fiancés who had not met their prospective spouses who were settled in Britain

⁵⁹Ibid.

⁶⁰Lok Sabha Debates, 'Reported Virginity test', 21 February 1979, Lok Sabha Secretariat, Parliament of India: New Delhi, 225.

⁶¹Rajya Sabha Debates, 'Calling Attention', 21 February 1979, Rajya Sabha Secretariat, Parliament of India: New Delhi, 196.

⁶²Ibid, 225.

⁶³FCO 37/2165, TNA.

⁶⁴David Stephen, 'Immigration Control Procedures at Delhi and Dacca, Report on my Visit', 9 March 1979, FCO 50/662, TNA.

and who would then be ineligible to enter Britain without an entry certificate.⁶⁵ Natarajan has argued that India's foreign policy regime has consistently sought to privilege the upper caste, male migrant as the 'ideal' and through its passport scheme sought to ensure that those of a lower caste or a lower class would not be seen as India's representatives abroad.⁶⁶ To move the discussion away from the gendered dimension of the complaint to racialized immigration control, Vajpayee sought to vindicate the Government of India's non-intervention on behalf of the women who had complained earlier. He argued that 'the whole difficulty is that those who are subjected to this test are asked to give written consent and in their anxiety to seek entry into the United Kingdom, they have been allowing themselves to be subjected to this practice'. He posited that these women could have avoided this by simply 'refusing to enter England if she is asked to be subjected to such type of treatment'.⁶⁷ Belying the economic and racial vulnerability of the women, Vajpayee suggested that the primary fault centred on the desire of the women themselves to emigrate, and that they possessed the agency necessary to refuse immigration officers at Heathrow. As scholars like Kimberlé Crenshaw have argued however, viewing discrimination from a single vis-à-vis intersectional lens precludes understanding the full extent of subordination that women may be subjected to in particular circumstances.⁶⁸ Here, Vajpayee's argument formed part of the broader pattern of logic that the practice of such tests to monitor borders themselves was not problematic, and that the women ought to have raised a fuss at the border itself and not willingly signed the documents presented to some of them. Moreover, by arguing that 'this practice has been there since long but we know, Indian women are modest and the prospective brides would never like this to be publicised', Vajpayee further suggested that these vulnerable women had had ample time and capacity to withstand the pressure of bodily scrutiny at a foreign border, and deflected from the race and gender power hierarchies inherent within this bordering arrangement that were facilitated by the Indian Government's own reified stereotypes of the chaste, Indian woman.⁶⁹

Vajpayee's insistence that this was a case of racial rather than gender discrimination, and his reassurances that the High Commission had been discussing the question of race for some time, was only partially sufficient to appease Indian MPs however. Recognising India's clout within the Commonwealth, several argued that India ought to either use it as a platform to humiliate Britain or withdraw from it completely. Jagjit Singh Anand railed against the Commonwealth, arguing that it was useless 'if its platform cannot be used to discipline the Whites in the Commonwealth and they continue to practice discrimination against non Whites alone'.⁷⁰ Others suggested that protests lodged with the British by the HCI in London and the MEA were inadequate, thus India needed 'to take some serious action like our disassociation from the Commonwealth' and that in India's absence '... there will be no Commonwealth'.⁷¹ India's relationship with the Commonwealth had always been of importance to the British because it was a test case whereby a country, committed to being a republic, had been allowed to join an institution predicated upon loyalty to the British monarch.⁷² India's membership had paved the way for other colonies to join, and had demonstrated that the Commonwealth was a flexible institution. In the negotiations that followed the 'virginity testing' scandal, India could envisage using its diplomatic clout within the Commonwealth to negotiate entry and exit into Britain. Nevertheless, any such re-negotiation had to be carried out within the parameters of Indian conceptions of sovereignty, and by 1971 India

⁶⁵Annual reports for the year 1978 from the HCI London and AHC Birmingham, HI/1011/45/79, NAI.

⁶⁶Natarajan, 'The Privilege of the Indian Passport'.

⁶⁷Rajya Sabha Debates, 'Calling Attention', 21 February 1979, 204.

⁶⁸Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics', *University of Chicago Legal Forum* 168 (1989): 139-68.

⁶⁹Rajya Sabha Debates, 'Calling Attention', 21 February 1979, 197.

⁷⁰*Ibid.*, 216.

⁷¹Lok Sabha Debates, 'Reported Virginity test', 21 February 1979, 239.

⁷²Michael Brecher, 'India's Decision to Remain in the Commonwealth', *The Journal of Commonwealth and Comparative Politics* 12, no. 1 (1974): 62-90.

was more wary of challenging the status quo on sovereignty following the influx of ten million refugees into eastern India from East Pakistan.⁷³ Vajpayee was cognizant that medical tests *per se* were not illegal, and that Britain would argue that it had sovereignty over its own immigration laws. Thus, given the public outcry and protests in Birmingham, London, and New Delhi, India could use this moment to harness such disquiet into a broader argument about race relations and immigration laws, and the treatment of mostly male visitors to the United Kingdom. Raising the issue at the UNHRC as a matter of racial discrimination at a time when the apartheid question in South Africa was equally prominent on the agenda would be an ideal avenue to place British laws under the spotlight. These debates in the Lok Sabha and the Rajya Sabha indicated how Indian parliamentarians saw this scandal: as an act of racial discrimination by a former colonial power, and evidence of bureaucratic mismanagement by their own government. The Indian response from this point onwards would coalesce around harnessing and responding to these two factors.

A cover up: the United Nations Commission on Human Rights and the British response

While Vajpayee dismissed quitting the Commonwealth as a potential retaliatory move in response to the humiliating treatment suffered by Mrs K, this moment opened up diplomatic possibilities for India that had hitherto been closed off. Restrictions on the free movement of non-white British subjects had a long history that extended beyond the shores of Britain to Australia, South Africa, and Canada (which had refused entry to Indian migrants who were British subjects that arrived on the *Komagata Maru*).⁷⁴ However, the British had always resisted the idea that the theme of racial discrimination and particularly its own immigration laws were available for international discussion. During the debates that led to the founding of the UN, they had repeatedly expressed their concerns about the implications of human rights provisions. Eventually, the Foreign Office had prepared a special memorandum entitled 'World Organization: Racial Equality and Domestic Jurisdiction', which argued that any internal immigration policy would not come under scrutiny because of the inclusion of Article 2(7) of the UN Charter.⁷⁵ Former colonial states such as Britain and France, alongside white settler states, organized themselves on principles of racial hierarchy and were publicly and privately resistant to any prospect of institutionalizing regimes of governance that would question how such hierarchies operated.⁷⁶

During his visit to India in 1980, Lord Carrington, the Secretary of State for Foreign and Commonwealth Affairs, thus echoed the British line that Her Majesty's Government unequivocally sought to 'promote harmonious race relations' for those who were 'legally settled' and such people had 'no reason to fear compulsory repatriation'.⁷⁷ Aware that the new Conservative government's manifesto on immigration had aroused consternation in the subcontinent, the British were keen to argue that immigration law was not discriminatory. However, Mrs K's treatment threatened to torpedo that argument. India now had a cause that was both morally just, and one that could be used to assert that Britain's immigration laws were now not immune to external debate. Britain responded by arguing that India's insistence on raising this issue in the international arena, despite an apology, was irrational and overblown. By painting India as an immature international actor, the British tried to suggest that what they perceived to be a minor fracas could now disturb a mutually beneficial relationship. The British were keen to

⁷³Antara Datta, *Refugees and Borders in South Asia: The Great Exodus of 1971* (London: Routledge, 2013).

⁷⁴Sukanya Banerjee, *Becoming Imperial Citizens: Indians in the Late-Victorian Empire* (Durham; London: Duke University Press, 2010).

⁷⁵'World Organization: Racial Equality and Domestic Jurisdiction', FO 371/4632, TNA. Also see Lauren, 'First Principles of Racial Equality', 19.

⁷⁶This was true not just for immigration regimes, but also for refugees. See Edwin O Abuya, Ulrike Krause, Lucy Mayblin, 'The Neglected Colonial Legacy of the 1951 Refugee Convention', *International Migration* 59, no. 4 (2021): 265-67.

⁷⁷Brief for the Secretary of State's Visit to India, FCO 37/2167, 1980, TNA.

deflect attention from their immigration laws, and prepared a robust response to the claim that ordinary Indian visitors were disproportionately being harassed at Heathrow by citing Home Office figures to suggest that merely 0.5% of Indian visitors were turned away. Citing these figures to dismiss Indian claims of a pattern of racial harassment was an attempt to downplay any accusation that such harassment was systemic and a reflection of inequalities in global migration processes. Thus, by assuaging India's concerns over these specific issues, and simultaneously suggesting that broader questions of racial discrimination were merely consequent to the 'hysterical' coverage of Mrs K's case, Britain and India could eventually find common ground by 1982.

The long history of India raising questions about racial discrimination at the UN was pivotal to both the British and Indian responses to this incident. As Gorman has argued, India had used the UN as a forum to challenge imperialism within the international system, and the British resistance to this centred on the argument that any remaining colonial affairs in the 1950s were an 'internal' matter.⁷⁸ Throughout the 1940s and 1950s, India had pursued an annual UN resolution on the racialized treatment of Indians in South Africa and against apartheid. For white settler-states that were at the receiving end of India's trenchant critiques on race, there was a desire to circumvent the argument that racism was a global issue. Their response was to delegitimize India's critiques by dismissing them as 'irrational', 'emotional', or even 'imperialist'. Britain's response echoed that of South Africa, Canada, and Australia who countered India's anti-racist agenda at the UN in the 1950s by arguing that it came from a place of deep emotion and was therefore 'irrational', and that it was perhaps an imperialist disguise for India to create its own 'Brown Empire'.⁷⁹ While the British were willing to admit that gynaecological examinations were abhorrent, they asserted their right to control their own borders, and repeatedly referred to immigration laws as an 'internal' issue. In a similar vein, Indian complaints were sought to be downplayed as an overreaction to a reasonable request from an immigration official.

The first official line of defence was that an 'examinees consent is implied unless he or she objects', and that between 1971-79 there had been four examinations of women from which two women (who had said they were fiancés) were found to be pregnant.⁸⁰ It was argued that an internal examination had been carried out only 'to confirm pregnancy in any examinee where suspicion of pregnancy had been aroused from external clinical examination', but it was suggested, somewhat absurdly, that this was necessary as Heathrow lacked the facilities to carry out a simple urine dipstick test to detect pregnancy. Thus, an invasive medical examination, that was not backed by any relevant British medical authority,⁸¹ was justified on the grounds that women 'particularly from certain cultural backgrounds' would not have pre-marital sex and if they were found to be non-virgins, or pregnant, then such women were either wives or imposters and could be refused entry without the relevant entry certificates.⁸²

Speaking in the House of Commons on 19 February 1979, the MP Jo Richardson argued that while Mrs K's ordeal was of course unfortunate, 'it does not follow that it was unreasonable for the officer concerned to have suspicions'. She then proceeded to blame this on the 'evasion of immigration rules by such girls claiming to be unmarried and dependent when they were in fact married to their Indian husbands and were thus not eligible to settle in the UK with their parents'.⁸³ The women in question, ranging from fiancés to wives and dependants, were infantilized through such language and simultaneously portrayed as capable of complex deception over immigration laws. Richardson's remarks reflected the power relations that informed the

⁷⁸Gorman, 'Britain, India, and the United Nations'.

⁷⁹Davis and Thakur, 'Walking the Thin Line'.

⁸⁰Aspects of Medical Examination of Migration, 16 February 1979, FCO 58/1735, TNA.

⁸¹Paul Gordon, 'Medicine, Racism and Immigration Control', *Critical Social Policy* 3, no. 7 (1983): 15.

⁸²Note of Meeting Held at Alexander Fleming House on 15 February 1979 to Discuss Aspects of the Medical Examination of Immigrants, HO 344/390, TNA.

⁸³Debate on 'Immigration Procedures at Ports of Entry to the United Kingdom and Overseas', FCO 58/1735, TNA.

interrogation, humiliation, and intimidation involved in immigration encounters at airports and her argument further underscored the power relations that characterized such aspects during immigrant encounters at airports. Such encounters would have been both an assertion of state sovereignty and a reminder to the migrant woman of their vulnerable and subordinate status. This would have been reinforced by subjecting certain migrants, in this case South Asian women, to greater scrutiny than others.⁸⁴

The original British response had thus been to reassert the legality of their actions and to remain dismissive of Indian complaints. With a session of the UNHRC looming however, word began to filter through that the Indian delegation was considering raising the issue under Item 20: 'Implementation of the Programme of the Decade to Combat Racism and Racial Discrimination.' Adding to British anxieties was the identity of India's representative at the UN. Vijaya Laxmi Pandit, the formidable sibling of India's first Prime Minister, Jawaharlal Nehru, was a seasoned diplomat whose first foray in international diplomacy had been a series of searing and successful interventions on the question of race in South Africa.⁸⁵ During the UN talks in San Francisco, her 'electric presence' was noteworthy enough to be picked up by the American press, and she was revered and known as a diplomat of renown. Additionally, India had played a critical role in the creation of the UNHRC itself, using it as an 'engine through which to drive such hope' of a possibility when 'older paradigms could be rejected and the world could be fashioned anew'.⁸⁶ India's role on the South Africa question had also allowed the Commission to think beyond the lens of national sovereignty and accorded it greater power and scope than originally envisaged. This historical context and the presence of Pandit naturally made British diplomats in Geneva particularly nervous.

On 23 February 1979, Mrs Pandit made a speech before the UNHRC on the question of 'virginity testing'. Referring to the 1978 World Conference on Racial Discrimination and its references to immigration, she highlighted the 'gross indignity' suffered by 'an Indian immigrant lady at Heathrow Airport in London'.⁸⁷ Having outlined what happened to Mrs K, Pandit asked, 'are we living in this year of grace 1979 or in some dark age when proof of virginity was a pre-requisite for marriage and is now extended to entry into a foreign country!' Pandit argued that 'though there is nothing overtly discriminatory in the Immigration Act, the actual working of the immigration system is such that a racially discriminatory bias against people from the Indian sub-continent is built into the whole system.' Having digressed from highlighting the treatment of Mrs K, Pandit was now free to raise broader concerns about the discriminatory aspects of British immigration law. Quoting MP Jo Richardson from the Parliamentary adjournment debate, Pandit repeated her line that, 'If an Australian girl had been asked to prove she was a virgin by an Immigration Officer, she would have hit the bloke across the ear.' Pandit was careful to assert that Britain had the right to frame its own immigration policies, but she argued that they needed to be concomitant with 'human dignity' and the 'elimination of racial discrimination'. In particular she wanted to raise the question of x-rays for determining the age of applicants carried out, she alleged, by 'airport employees...not qualified to operate the machines'. This question was sufficient to 'warrant a charge of racial discrimination' and India was going to ask the Commission to collect information 'on the treatment of immigrants, not only by British immigration authorities, but also by those of other countries who receive immigrants'.⁸⁸

Pandit then tabled a draft resolution and asked the Secretary General to ask the Sub-Commission on the Prevention of Discrimination and Protection of Minorities to examine the

⁸⁴Paloma E. Villega, 'Moments of Humiliation, Intimidation and Implied "Illegality": Encounters with Immigration Officials at the Border and the Performance of Sovereignty', *Journal of Ethnic and Migration Studies* 41, no. 12 (2015): 2357-75.

⁸⁵Bhagavan, 'A New Hope', 315.

⁸⁶*Ibid.*, 325.

⁸⁷35th Human Rights Commission: 'Virginity Tests': Relevant Extract from the Indian Statement, 23 February 1979, FCO 58/1735, TNA.

⁸⁸*Ibid.*

issue and to report back the following year.⁸⁹ India began pushing for a vote on the issue and Britain was now equally desperate to avert this from happening. It was clear that Sir James Murray, Britain's representative at the UNHRC, would have to personally intervene.

The British tried to deflect from the growing criticism before the vote by mirroring language that had been used in debates about race and racial questions in the UN by white-settler states. They attempted to suggest that this was a minor question, a one-off incident that had been blown out of proportion and was being manipulated by those with a vested interest in embarrassing Britain. They further suggested that Indians were 'particularly sensitive' about immigration issues in light of the incident at Heathrow⁹⁰ and that the complaint at the UN was an example of where 'they [India] had over done matters'.⁹¹ Conscious that any discussion about immigration would zero in on the new immigration rules being proposed by the then Conservative Party in opposition, the British continued to suggest that the issue was one that was being raised simply to 'excite the media and immigrant lobbies'.⁹² By using language that was dismissive of the deeply racial connotations of the incident, the British were keen to emphasize that given the apology in the Commons, India's action was simply an 'emotional human rights initiative' that had been forced by parliamentary and public opinion.⁹³ Echoing the diplomats from the 1940s and 1950s, the aim of such patronising language was to imply that India's complaint, emerging from the emotional, irrational East and a product of their anti-colonial distrust of the West, could not be taken seriously.

Britain's second line of defence was to argue both that such medical examinations were legitimate, and that 'what happened at Heathrow can hardly be described as a practice, let alone a practice that was racially discriminatory against Asian women'.⁹⁴ Thus, not only was the immigration officer simply trying to ascertain whether or not Mrs K had borne children, but the number of attempts 'to abuse the Immigration Rules by married daughters claiming to be unmarried' rendered it legitimate to carry out such investigations. In fact, the defence went a step further to claim that in the absence of 'comprehensive and reliable' evidence about births, deaths, and familial relationships in India, medical tests were justified in lieu of such documentary evidence.⁹⁵ Such a rationale proposed that this was *not* a case of racial discrimination and simply a matter of internal immigration regulations. Moreover, it was further deemed entirely legitimate to examine migrant women from the subcontinent to enforce these immigration rules, because it was also argued that they came from a unique community and 'culture in which childbirth would be a good indication of marital status'.⁹⁶ The circularity of using gendered and racist tropes to justify these immigration practices to evade charges of racism was particularly stark.

Underlying the threats and dismissive attitude of the British was the very real concern that what would surface was that the practice of gynaecological examinations was not simply a one-off. For long there had been complaints about the gendered nature of questioning that took place in British High Commissions in South Asia. Questions such as 'How long did you spend with your husband on the wedding night?' were common and any answer perceived to be mendacious would result in refusal of entry.⁹⁷ However, interrogations at these High Commissions were not just verbal in

⁸⁹UN Commission on Human Rights: Medical Examination of Asian Women Problem', 28 February 1979, FCO 58/1735, TNA.

⁹⁰Immigration Controls at Heathrow Airport, 8 September 1979, FCO 50/663, 1979, TNA.

⁹¹Telegram from New Delhi to FCO, 9 February 1979, FCO 37/2161, 1979, TNA.

⁹²Brief on Medical Examinations in the Immigration Context 24 October 1980, FCO 58/2143 1979, TNA.

⁹³Revised Immigration Rules, 5 February 1980, FCO 58/2142, 1980, TNA.

⁹⁴Brief no 23 on Immigration, 'Virginity Tests', Medical Examinations and X rays, Migration and Visa Department 27 February 1979, FCO 37/2163, 1979, TNA.

⁹⁵*Ibid.*

⁹⁶*Ibid.*

⁹⁷Pratibha Parmar, *Gender, Race, Class: Asian Women in Resistance* (London: Routledge, 1982). An account of a similarly humiliating encounter can be found in 'Immigration Policy: Keep Dependents Out', *Race Today*, September 1975, 204.

nature. In a memorandum from the High Commissioner stationed in New Delhi, it was admitted that the practice 'took place on a larger scale than we have so far admitted'. Referring to Vajpayee's insistence that there were at least thirty-four cases of such examinations at the High Commission in New Delhi in 1978, the British tried to suggest that in these cases 'not all such examinations would have been intimate' and while British-approved doctors may have examined women for signs of childbirth, these would not necessarily have been vaginal tests.⁹⁸ Though the British were willing to privately admit that the practice was more widespread, their tactic in public was to be dismissive of India's argument. This left open the possibility that India could use this as the basis of their complaint at the UNHRC.

Having found an opportunity to raise questions that had been repeatedly sidestepped by the British in the preceding decades as irrelevant to any bilateral debate, India perceived this as an opportunity to force the British to put race and race relations on the common agenda. By creatively deploying the more global language of race to circumvent the argument that immigration laws were an 'internal' matter, the Indians were also aware that in order to win a diplomatic victory they might have to dilute the more aggressive language deployed by Pandit. These amendments would help to counter the claim of a mere, irrational overreaction from a politically sensitive postcolonial nation. The Indian Prime Minister at the time, Morarji Desai, was more circumspect about why the matter was of importance,⁹⁹ and admitted that the case at the UN 'was simply a ploy to calm public opinion and reassure them that the Government had Indian interests at heart... Nothing would come of it... the incident was finished'.¹⁰⁰ This more moderate approach suited the British as well who tried to negotiate with Pandit to see if the Sub-Commission that reported on immigration procedures could be persuaded not to vote on the Indian resolution. Simultaneously, it was suggested that Sir James Murray would make a speech in Geneva where he would express regret, but not apologize for the incident, and rebut the allegation that it 'demonstrates a systematic practice of discrimination in the application of our immigration policies'.¹⁰¹ Emboldened by the message from New Delhi about Desai's reluctance to push the case, Murray approached Pandit to ask that the Indian resolution not be put to vote.¹⁰²

Within a few days, Pandit was willing to accept the possibility of removing any specific reference to the UK in the resolution, as long as the Indians could have access to the Home Office rules on how their immigration officers operated.¹⁰³ The British remained reluctant to provide the Indians with any confidential instructions however. A brief stalemate had been reached. India sought reassurance about the broader question of racial harassment at the British border, and was willing to threaten to revert to the 'tougher text' of the old resolution to force the British to comply. It was at this point that the Swedish delegation stepped in to broker a consensus and India withdrew the proposal for an 'inquiry into the indignities and hardships suffered by non-white immigrants in Britain'. In return, Murray's speech contained a more fulsome apology to Mrs K, and both sides agreed to have a 'forthright exchange of information and facts' before the next session in 1980.¹⁰⁴ This conclusion meant that the question of race relations could now be placed more regularly on the bilateral agenda, which fulfilled the diplomatic victory that India was seeking. Meanwhile, having the diplomatically embarrassing episode at Heathrow erased in favour of milder language was equally satisfactory for the British.

Despite Britain's dismissal of India's position as 'hysterical', events in Geneva in 1979 demonstrated how the potential for racial embarrassment at the hands of a former colony prompted them into a more conciliatory negotiating position. The episode also demonstrated that

⁹⁸*Ibid.* See also HO 344/389, TNA.

⁹⁹Telegram from New Delhi to FCO, 28 February 1979, FCO 58/1735, TNA.

¹⁰⁰*Ibid.*

¹⁰¹Letter from the UN Department to South Asia Department, 28 February 1979, FCO 58/1735, TNA.

¹⁰²Telegram from UN Mission to the South Asia Department, 1 March 1979, FCO 58/1735, TNA.

¹⁰³Telegram from the UN Department to New Delhi, 5 March 1979, FCO 58/1735, TNA.

¹⁰⁴*Ibid.*

India's anti-racist agenda in the global sphere could be creatively re-deployed for diplomatic purposes in a different manner from the South Africa episodes of the 1940s and 1950s. In the late 1970s and early 1980s, India's goals had now shifted, just as the world had. While race and ideas about racial norms could be utilized as political tools to negotiate items on a bilateral agenda, they had to transcend the experience of a single woman at Heathrow Airport. The universalizing language of race constituted an attempt to both embarrass Britain, and to achieve the more immediate goal to halt certain provisions of the 1981 British Nationality Act (BNA). Meanwhile, the British were embarrassed and troubled by the possibility that their immigration rules might become the source of an annual discussion in Geneva. Behind the scenes it was noted that following the 'deplorable speech by the Indian delegation', Britain should take stock and prepare 'prophylactic measures' including deterrence in the form of 'collecting a fat dossier of information about violations of human rights in India, starting with the caste system and debt bondage', which was deemed a 'relevant' question as the Indians had paired immigration and human rights.¹⁰⁵ The goals moving forward would be to meet the Indians halfway, while continuing to find ways to embarrass them in the UNHRC in return.¹⁰⁶

India, the UNHRC and the British Nationality Act, 1981

If the 1979 session of the UNHRC had seen India dilute its outrage over virginity testing at Britain's borders, the issue would then slowly disappear from the Commission's agenda over the next three years. For India, the key to any negotiations at the Commission was the pending Nationality Bill in the UK, the possible curtailment of the rights of male migrants from India to move to Britain as fiancés, and the availability of South Asian women. The political use of race constituted a veneer through which a broad complaint addressing the 'treatment of non-white immigrants' was tactfully narrowed to protect the immigration experiences and rights of a particular group of migrants.¹⁰⁷ India used the negotiations prior to the 1980, 1981 and 1982 sessions of the UNHRC in Geneva to ensure that their objections to the new Nationality Bill would be aired.

As these new Immigration Rules, which would eventually become part of the British Nationality Act of 1981, were being debated in Britain, politicians and officials of the Home Office were acutely aware that the international ramifications of the changes could be significant. Framed as restrictions designed 'to curtail the exploitation of marriage as a means of primary immigration', the White Paper that outlined the changes stated that 'if the parties to the marriage have not met' then they would not be permitted entry, even if the women in question were UK citizens by birth.¹⁰⁸ Civil servants were aware that since the rule that admitted Commonwealth citizens who had a UK-born grandparent had not been altered, there would be little complaint from the 'old Commonwealth', i.e. Australia, Canada, and New Zealand, but this rule would disproportionately affect South Asian women born in the UK who were part of arranged marriages where they had not met their fiancés, and where the marriage was both consensual and legal.¹⁰⁹ Given that this violated the right to family life, some feared that the rules could be challenged in European courts, as occurred in cases concerning East African South Asians in 1973, or equally worse in the Human Rights Commission.¹¹⁰

¹⁰⁵Letter from Martin Reith, UN Human Rights Commission - Immigration', 14 March 1979, FCO 58/1736, TNA.

¹⁰⁶*Ibid.*

¹⁰⁷After the draft resolution was adopted, India did not address the reservations expressed by the representatives of Jordan and the Syrian Arab Republic that the terms 'non-white' and 'immigrants' overshadowed the issue being one of 'nationality rather than colour'. See 'Commission of Human Rights, Thirty-Fifth Session: Summary Record of the 1506th Meeting', 8 March 1979, FCO 58/1736, TNA.

¹⁰⁸Draft White Paper, the Immigration Rules, FCO 50/665, 1979, TNA.

¹⁰⁹'Proposed New Immigration Rules', 6 September 1979, FCO 50/665, TNA.

¹¹⁰Letter from FCO to William Whitelaw, MP, 19 September 1979, FCO 50/665, TNA.

By early 1980, these new immigration rules were the chief focus of bilateral discussions between Britain and India.¹¹¹ The Indians as ever were quick to acknowledge Britain's sovereignty over its own borders and its right to introduce 'whatever legislation on immigration thought necessary', but admitted that there were misgivings about the discriminatory aspects of such proposals. Narasimha Rao, India's Foreign Minister, raised the question of the 'right of entry for male fiancés for women born in Britain and those not', and proposed bilateral talks to discuss race and immigration.¹¹² As scholars like Nadine El-Enany and Devyani Prabhat have identified, the 1981 BNA both 'brought preferential Commonwealth migration to a complete halt' and grounded citizenship on the right of abode and settlement, thus depriving those without a paternal connection of the automatic acquisition of citizenship by birth through parentage.¹¹³ As both scholars have further argued, the 1981 BNA formed part of a longer trajectory of nationality and immigration legislative changes from the 1960s which 'created demographic changes within the UK through a process of successive and exclusive cumulative exclusion', vis-à-vis demarcating 'a clear territorial decolonisation', effectively implying Britishness as commensurate with whiteness through the territorial nation-state.¹¹⁴ In the subsequent debates at Geneva, India thus utilized race and racial discrimination as a veneer to argue for more lenient immigration rules for Indian men going overseas in search of a British wife.

As the next session in 1980 approached, the British continued to maintain the defence that the practice of virginity testing was 'appalling and indefensible', but again simply a one-off that was unreflective of wider immigration policy.¹¹⁵ Simultaneously however, they remained worried that the next session in Geneva would be dominated by discussions of Britain's immigration policies such that 'virginity tests may be dragged willy nilly into a wider debate'. Senior officials had warned that it would be difficult to let the issue of 'virginity testing' drop, but argued that there was 'little doubt' that if the immigration rules were laid down during the UNHRC session, then 'the Indians will renege and will launch an emotional human rights initiative, probably on the husbands and fiancés issue'.¹¹⁶ There were frantic attempts behind the scenes by civil servants to stop the new nationality rules from being tabled in Westminster before this session.¹¹⁷ There were also fears that the Indians, who had been previously persuaded to drop the more aggressive language about the British, would see this new legislation as a 'slap in the face'.¹¹⁸ It was determined that the matter would now be referred to as the 'allegations of so-called "virginity testing"' to emphasize that these were simply allegations and that the tests were not to test for virginity, but rather to determine marital status.¹¹⁹ If gynaecological examinations were not of significant concern for the Indians, who were primarily worried about harassment faced by businessmen and tourists, the new immigration laws affecting fiancés, and x-ray testing, then the British hoped that the original matter could now be said to have been dealt with and the Indian complaint abandoned, by responding to these, specific concerns.¹²⁰ By the time the session ended in 1980, the Indians were persuaded by the British to agree to a statement that said that the 'two governments are continuing their consultation' with the hope of a more favourable outcome in the

¹¹¹Secretary of State's Discussions with the Indian Foreign Minister, 17 January 1980, FCO 60/681, March 1980, TNA.

¹¹²*Ibid.*

¹¹³Devyani Prabhat, 'Unequal Citizenship and Subjecthood: A Rose by Any Other Name...?', *Northern Ireland Legal Quarterly*, 71, no. 2 (2020): 189; Nadine El-Enany, (*B*)*ordering Britain*, 126. See also Rieko Karatani, 'Britishness Reconsidered: Interplay Between Immigration and Nationality Legislation and Policymaking in Twenty-First-Century Britain', *The Journal of Imperial and Commonwealth History*, 47, no. 5 (2019): 1021-42.

¹¹⁴Prabhat, 'Unequal Citizenship', 191; El-Enany, (*B*)*ordering Britain*, 126.

¹¹⁵Revised Immigration Rules, 1 November 1979, FCO 58/2143, TNA.

¹¹⁶'British Immigration Practices', 22 January 1980, FCO 50/681, TNA.

¹¹⁷Letter from Migration and Visa Department to FCO, 5 February 1980, FCO 58/2143, TNA

¹¹⁸Telegram from New Delhi to FCO, 21 January 1980, FCO 50/681, TNA.

¹¹⁹Letter from South Asia Department to Migration and Visa Department, 14 January 1980, FCO 50/675, TNA.

¹²⁰Record of plenary session of talks between the Secretary of State for Foreign and Commonwealth Affairs, 17 January 1980, FCO 58/2142, TNA.

thirty-seventh session.¹²¹ For another year, Britain had avoided humiliation in Geneva by deflecting attention from the original case.

By 1981 the British were even more confident that the matter would be dropped.¹²² In the end this suited both the Indian and British interests. An enquiry by Sir Henry Yellowless, the Chief Medical Adviser, had been unequivocal about gynaecological tests and instructed that ‘under no circumstances were medical advisors to be asked for an opinion as to whether a woman had borne children or had sexual intercourse’.¹²³ This gave greater heft to the British claim that the practice had been eradicated and that Mrs K’s case had been a one-off, hence it was necessary to move this from an international discussion to the bilateral realm. The final outcome of both the 1980 and 1981 sessions led to the matter being kicked forward to the next sessions and returned to the arena of bilateral debate, thus evading any discussion of potentially discriminatory immigration legislation.

Simultaneously, India’s new government under Indira Gandhi was keen to repair relations with Great Britain and avoid international scrutiny of the Emergency era, particularly as her democratic detour had hurt India’s image.¹²⁴ By 1982, a plan was thus made to visit Britain, revitalize cultural diplomacy by organizing the Festival of India in Britain, and undertake discussions about nuclear technology.¹²⁵ In a moment of national crisis for Mrs Gandhi, the lofty internationalist agenda of the original complaint—Mrs K and the bodily integrity of migrant women—could be sacrificed for more limited political goals. The British too were more belligerent by 1982 and suggested that they wanted to give New Delhi an incentive to drop the case because ‘otherwise we risk a situation where our immigration practices remain an annual subject of attention by the Human Rights Commission’.¹²⁶ With the visit from Indira Gandhi looming in March 1982 at around the precise time that the UNHRC would meet again in Geneva, the British were keen to minimize the discussion around race and immigration, while pointing fingers at the Indians and their own flawed human rights record both in Bihar¹²⁷ and concerning issues that were already on the UN’s radar, including violations of child labour.¹²⁸ The Indians stressed that though the issue could be brought to its conclusion, the final text would be more ‘saleable’ (*sic*) to Indian Ministers if it explicitly referenced the points that they outlined, including ‘the British Government’s commitment to a multi-racial society and to a non-discriminatory immigration regime’ and the assurance that virginity testing would not recur.¹²⁹

The language of the Indian text that was proposed at this point is worth considering in some depth. It read:

The British government has explained that it has taken measures to ensure that there should be no repetition of the incident which gave rise to the Indian government’s original reference to the Commission. The British government has also reiterated its commitment to a multi-racial society in Britain providing equal treatment and equal opportunity to all people resident there, irrespective of their race, colour or creed and has explained that there is an explicit requirement in the rules governing immigration into the UK that they should be

¹²¹Indian Complaint to the UN Human Rights Commission, 13 January 1981, FCO 37/2520, TNA.

¹²²Letter from Migration and Visa Department to the Home Office, 14 January 1982, FCO 58/3021, TNA.

¹²³Telegram from New Delhi to FCO, ‘The UN Commission on Human Rights: Immigration’, 5 January 1981, FCO 37/2520, TNA.

¹²⁴Christophe Jaffrelot and Pratinav Anil, *India’s First Dictatorship: The Emergency, 1975–77* (New York, Oxford University Press, 2021).

¹²⁵Smriti Sawkar, ‘Exporting Culture: Festival of India 1982’, *Contemporary South Asia* 27, no. 3 (2019): 407–21.

¹²⁶Letter from AJ Coles, South Asia Department to New Delhi, 22 January 1981, FCO 50/702, TNA.

¹²⁷This is a reference to the ‘Bhagalpur Blindings’. See <https://www.washingtonpost.com/archive/politics/1980/11/29/indians-claim-police-blinded-them-with-needles/99426218-fdad-41b6-9b8a-4f44e266dca9/> [Accessed 24 July 2022].

¹²⁸Letter from South Asia Department to the Migration and Visa Department, 8 December 1981, FCO 50/702, TNA.

¹²⁹*Ibid.*

applied without regard of considerations of race, colour or religion . . . the Indian government has emphasised its desire to see that the immigration laws of Britain are applied in a non-discriminatory and humane manner, so as to avoid any undue hardship to non-white immigrants.¹³⁰

This language made evident that the Indians were echoing a narrative that chimed with what the British desired, while also asserting that they were going to keep an eye on how these immigration laws were being enforced. During the South Africa debates, the use of race as a political category for diplomatic purposes had been part of a larger conversation about decolonization and the rights of overseas Indians. This was influenced by perceptions of the UN as a forum whereby a 'more equitable relationship between North and South' would come to fruition through questions on decolonizing territories and Apartheid.¹³¹ By the late 1970s and early 1980s however, when political decolonization was almost complete, 'race' as a political emblem embodied different meanings when compared to its previous deployment. Here, 'race' was more about the *afterlife* of decolonization. In particular, India was concerned with how the global order remained deeply discriminatory for these newly decolonized countries, how immigration laws within the Commonwealth were emblematic of such discrimination, and more self-interestedly how its own domestic constructions of the ideal migrant and advocacy concerning the rights of male migrants could be internationalized. The British were in fact marginally unhappy with the language, because it suggested that India might (legally) be able to intervene in the application of immigration laws under Britain's jurisdiction. Eventually the text said that '...the two governments have agreed that they would continue to hold such bilateral consultations as may be necessary. They are therefore of the view that no further action is necessary by the Commission in regard to Resolution 7'.¹³²

The championing of a deracialized world of border controls might have seemed progressive on India's behalf, particularly as the language of Pandit's speech in 1979 had arguably reinvigorated India's historical position as a champion of anti-racism measures at the UN. Yet, the final text of the resolution demonstrated that India was wary of its own human rights record being examined. India's willingness to drop the case was reflective then of the limitations of a nationalist project aiming to create a decolonial world. In the decades since Independence, critics had pointed out that India under Indira Gandhi had opened up the political space to right wing Hindu majoritarianism¹³³ while any hopes of a feminist revolution had been thwarted by legislative changes that remained gendered.¹³⁴

India's treatment of Mrs K in the aftermath of the UNHRC case was reflective of such an approach - despite how the trauma of her experience influenced her return to India, there is no evidence that any legal help was offered to Mrs K.¹³⁵ In contrast to her disappearance from much of the archival record, Mr K visited India in February 1982 and spoke to multiple newspapers about how his wife had temporarily deserted him after her humiliation at Heathrow, alongside how he and his wife were seeking compensation from the Home Office. However, when confronted in Parliament on whether the Government of India would support the 'thousands of

¹³⁰Telegram from New Delhi to FCO, 12 February 1982, FCO 58/3021, TNA.

¹³¹O'Malley, 'India, Apartheid and the New World Order at the UN', 219, 222.

¹³²Telegram from Geneva to FCO, 2 March 1982, FCO 58/3021, TNA.

¹³³Sumantra Bose, 'Hindu Nationalism and the Crisis of the Indian State: A Theoretical Perspective', in *Nationalism, Democracy and Development: State and Politics in India*, ed. Sugata Bose and Ayesha Jalal (Oxford: Oxford University Press, 1997), 104-64.

¹³⁴Rajeswari Sunder Rajan, *The Scandal of the State: Women, Law, and Citizenship in Postcolonial India* (Durham and London: Duke University Press, 2003); and Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (Urbana: Permanent Black, 2004).

¹³⁵Helena Wray, *Regulating Marriage Migration into the UK: A Stranger in the Home*. (London and New York: Routledge, 2011), 121.

British women' who would support Mrs K's claim in the High Court,¹³⁶ Narasimha Rao retorted that Mrs K's case was 'particular' and that Britain had provided an 'unconditional' apology.¹³⁷ These declarations sharply contrasted with Rao's response concerning Mr K's case, where he revealed that he had 'made available to him through the Ministry whatever material we had with us'.¹³⁸ Rao's willingness to offer legal help to Mr K to indirectly secure compensation for his wife's desertion was incongruous with his dismissal of Mrs K's case as a singular instance, thereby eliminating the possibility that India would aid any women with similar complaints thereafter. His willingness to help Mr K, a British national and businessman, to seek compensation for his experiences of his wife's ordeal further echoed colonial constructions of gendered privileges that permitted the legal decree of 'restitution of conjugal rights' within Indian domestic law, while Mrs K herself had been erased from public debate through a process of state sanctioned forgetting.¹³⁹ Additionally, Rao's comments deflected from the fact that tests continued, and were documented, at subcontinental High Commissions. Though the exact numbers of migrant women who underwent virginity tests will never be able to be quantified, Smith and Marmo argue that it 'was far from an isolated practice'.¹⁴⁰ By 1982, Indira Gandhi had indicated to her diplomats that the complaint should be dropped at the UN, and these numbers were also brushed under the carpet by the Indians who were happy to accept the British argument that while these examinations were not the basis for immigration decisions, they could accelerate the process of entry clearance. Any woman who was choosing to see a doctor at a High Commission in the subcontinent for such examinations was thus doing so of her own volition. By the time that both countries had told the UNHCR that a resolution to Mrs K's case had been found, it was apparent that India's initial resolution had thus centred more on protecting the perceived conjugal rights of a particular type of migrant, as opposed to championing gender justice when faced with discriminatory immigration policy and practice.

Conclusion

The 'virginity testing' case exposed two parallel contradictions. The first contradiction arose from the hypocrisies inherent in Western immigration regimes that both sought to exclude migrants from former colonies, and deny that these initiatives were racially informed. In a world where political decolonization was almost complete, the inequality between the West and the rest was possibly most starkly felt when migrants from Asia and Africa tried to cross borders and enter the metropole. Their humiliation and the continued tightening of British immigration restrictions highlighted the limitations of a postcolonial vision of a just global system. Having failed to persuade the British to discuss race relations, the scandal about the treatment of Mrs K came at a time when India was beginning to worry about the fate of overseas Indians, particularly following events in East Africa. This context enabled India to internationalize the question and humiliate Britain, but it simultaneously highlighted the inconsistencies inherent in her own gendered approach to border control.

At the same time, India's response demonstrated the limitations of nationalist projects in trying to imagine a decolonial world; in a clash between a global vision of a decolonial world and national

¹³⁶Official Debates of Rajya Sabha, 'Indian women required to undergo Virginity Tests at Heathrow Airport', 26 February 1982, Rajya Sabha Secretariat, Parliament of India: New Delhi, 2, 4.

¹³⁷*Ibid.*, 6.

¹³⁸*Ibid.*, 2.

¹³⁹For example, Section 13 of the Hindu Marriage Act (1955) states that a divorce will be sanctioned if 'there has been no restitution of conjugal rights as between the parties to the marriage [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]. See <https://indiankanoon.org/doc/1284729/> [Accessed 2 September 2022].

¹⁴⁰Smith and Marmo, *Race, Gender, and the Body*, 106-7. There were apparently further cases of 73 gynaecological examinations in New Delhi, 10 in Bombay, 40-60 in Dacca, and an unknown number in Islamabad and Karachi.

imperatives, it was the latter that triumphed. The more radical vision of a decolonial world of the 1940s/1950s had been sacrificed for a more instrumentalist use of racial politics by the 1980s. On the one hand, India's creative use of 'race' as a political category indicated its willingness to build on its existing, historical image as a global champion of anti-racist politics within the United Nations for its own diplomatic goals. On the other hand, internal pressures regarding border crossers and a more restrictive view of citizenship emerging domestically meant that India ultimately colluded with Britain in facilitating a compromise at the UNHRC. Central to this compromise then was India's concern about the rights of male migrants and their ability to cross borders as new immigration rules emerged. As long as India could continue to advocate for these rights of male migrants, it was ultimately willing to privilege the category of race and forego any sustained discussion about the gendered nature of the techniques of immigration control being deployed both in the UK and in the subcontinent.

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