

South Asians in Germany and the Law An overview essay
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1. Introduction

1.1. Rationale for the topic

Official figures show that 136,870 people with South Asian citizenships lived in Germany at the end of 1995. This certainly does not form a major part of the total German population, in fact not even of the foreign population in Germany. So what reason is there to analyse this small segment of the society and its relationship to the German legal system?

In order to understand the rationale behind this, it is necessary to have a closer look at the structure of the South Asian population in Germany. It is constituted partially by asylum seekers from all over the sub-continent and partially by well-established and socially integrated South Asians, who came in the 50s and 60s. Interesting for research is both the comparison between these rather diverse groups and in particular the analysis of the latter.

Established South Asians take in Germany somehow the position of an elite group of foreigners. They are materially well-off, enjoy a rather high social status, can provide their children with a good education and have little experience of crude racism. Analysing their situation makes it thus, first of all, possible, to deal with ethnic minorities in Germany without at the same time encountering features of low class and status, which might make it difficult to accurately define cause and result. One can assume that the well-educated and self-confident South Asians are much better able to deal with the niceties of the German legal system than, for example, the majority of the Turkish 'guest workers', who came at the same time to Germany, but never got the same possibility of learning and dealing with the German language and workings of the administration and courts. Legal problems faced also by the established South Asians, thus indicate, with some exceptions applying only to particular upper middle class issues, general problems for ethnic minorities in Germany. Secondly, the German situation allows an interesting comparison with the development of South Asian diaspora communities in other countries such as Britain and the United States. It can aid in analysing the impact of different influences on community creation and the contact with the host country's legal system.

So far, however, the issue of South Asians in Germany and the law has not been analysed in any systematic way. It is, accordingly, time to start with it, especially as at this point in time, the first members of the second generation migrants enter employments and found families, adding thus a new feature to the topic. Interviews with several South Asian migrants and their children have shown me in the last months, that there is not only an eager interest in the topic, but also an abundance of material to deal with it.

1.2. Material for research

When I started with this project, I was told by many people, that there is hardly any material available on which I can found my analysis. This has not turned out quite true. In fact I was able to find a rather wide variety of different sources, which I will describe briefly in the following.

Firstly, some literature on South Asians in Germany has been published. The basic articles about the Indian community (Punnampambal 1995), the Sri Lankan Tamils (Gottstein et al. 1992) and the Ahmadiya diaspora (Schneider 1995) can be found in the *Handbuch ethnischer Minderheiten in Deutschland*, which is edited by the Berlin Institute for Comparative Social Research (BVIS). This is complemented by two further hand books about ethnic minorities in Germany published by Schmalz-Jacobsen and Hansen (1995 and 1997). Besides several works dealing with particular groups of asylum seekers, which I did not have a chance to consult so far, there are furthermore several books and articles, which either focus on Indians

or Hindus. The most comprehensive is Desai (1993), which provides interviews with many Hindus from quite differing backgrounds and offers an analysis of the distinction between established Indians and asylum seekers. Baumann (1997) and Schweer and Baumann (1997) give further information about the practice of Hinduism in Germany. Pandey (1988) deals with Indo-German families from a sociological perspective and Oesterheld (1997) gives a historical account of pre-independence Indian presence in Germany. Adding to these publications there are several Indo-German journals, especially *Meine Welt* which is edited in Unkel/Rhein, providing since the 70s an account of issues of interest for Indians in Germany, particularly for those from Kerala. The editor of *Meine Welt* Jose Punnampambil (1979, 1980, 1981, ?) has furthermore placed articles on the situation of Indians in Germany in a number of other newspapers and journals. Accounts can also be found in the publications of the Deutsch-Indische Gesellschaft e.V.¹ and in the reports of an annual seminar for second generation South Asians². Finally, Nepal Lodh wrote a book, which I have not been able to get hold of so far, about his personal experiences as an Indian migrant in Germany and Puri (1993) has published a novel about Indians in Germany.

Secondly, with the help of the German law data base *Juris* one can find an account of many court cases involving people from South Asia. Although the majority of these cases are concerned with asylum issues, one also comes across other areas of legal disputes, which display features particular to conflicts of different legal systems, both official and unofficial. The data base offers also reference to journal articles dealing with these cases³, which need to be analysed in the further research. Adding to these descriptions one can find in the law literature also guidelines for administrative purposes, for example Brandhuber and Zeyringer (1992) as well as Schmidt (1992) for registry offices.

Thirdly, the most detailed information both about actual court cases and legal issues, which receive less official notice, can be collected by personal interviews. So far I have interviewed mainly members of the Deutsch-Indische Gesellschaft and Keralite nurses, who all belong to the established group of South Asian migrants and were able to also offer information about other persons unknown to me. The accounts reach from the description of individual migration histories, over every day legal problems in routine matters to a spectacular seventeen year battle with administration and courts about naturalisation⁴.

My research has, thus, provided me already with more material than I can deal with in this essay and there are many more sources, such as an archive of newspaper clippings, the petition committees of the regional parliaments, lawyers and legal experts, etc., which need to be looked into. There is accordingly no limit, other than time and space, for research at the moment.

1.3. Object of this essay

This essay can provide no more than a preliminary overview of the topic, giving an introduction and indicating issues of interest. A general discussion of the situation of ethnic minorities in Germany and especially the effects of the foreigners law will be avoided, as this

¹ For example, in Deutsch-Indische Gesellschaft e.V., Zweiggeseellschaft Berlin (1997/98) and Eckhardt (1997).

² See Evangelische Akademie Bad Boll (1998, 1997, 1996).

³ Spellenberg (1992) is only one example of such a treatment.

⁴ I was able to have a look at the documents of this battle, which highlight many interesting features both of legal regulations and judicial and administrative attitudes to South Asians.

can be found at many other places⁵ and would take the attention too much away from the actual situation of South Asians in Germany. Furthermore the analysis will concentrate on recent South Asian migrants ignoring that of Sintis and Romas, who have experienced a particular migration history and treatment by the law, which can not be dealt with in passing. The latter is also true for the asylum law. Although asylum seekers will be dealt with in this essay, this will not be done from the perspective of this administrative regulation but rather with a view towards the asylum seekers' social and legal situation in Germany and their reactions to this.

The following essay is divided into two parts. It starts with a brief description of the history of South Asian migration to Germany and the presence of South Asian ethnic minorities today in this country. This is necessary as only with this background the legal issues, which will be presented in a preliminary discussion in the second part of the essay, can be properly understood and analysed.

2. South Asian migration to Germany

2.1. Introduction

It has already been said that the number of South Asians in Germany is rather small. - All South Asian citizens together do not even amount to 2% of all the foreign population in Germany and the latter has a share in the total population of just under 9%. - It is now time to have a closer look at the actual figures.

	total	share of women	share in total South Asian population
Bangladeshis	7,156	12.1 %	5.2%
Bhutanis	254	11.4%	0.2%
Indians	34,709	26.9%	25.4%
Maledivians	870	16.0%	0.6%
Nepalis	2,340	18.8%	1.7%
Pakistanis	36,924	28.6%	27.0%
Sri Lankans	54,617	35.4%	39.9%
total	136,870	29.8%	100.0%

source: Schmalz-Jacobsen and Hansen (1997)

These figures depict a rather heterogeneous picture - except may be genderwise, where there is a clear domination of men. The largest group with 2 out of 5 South Asians is formed by the Sri Lankans; in fact it will be seen, that it comprises not generally Sri Lankans but rather mostly Tamil asylum seekers. Furthermore roughly a quarter of the South Asian population is constituted each by Indian and by Pakistani migrants. However, only one of twenty South Asians in Germany has the citizenship of Bangladesh and the figures for migrants from Bhutan, the Maledives and Nepal are even less. Accordingly there is virtually no material to be found about the presence of these groups of migrants and potential legal disputes in Germany. It is thus impossible to analyse them independently.

⁵ Very concisely for example in Schmalz-Jacobsen and Hansen (1995 and 1997).

When looking at these figures it must be kept in mind that they do not represent the size of the respective ethnic minorities as such. For one the latter are not so much formed according to country of origin, but rather by religious, cultural and language criteria, i.e. there is no Sri Lankan ethnic community in Germany, but there is a Tamil one. Furthermore, the statistical selection criterion is citizenship and not the individual's perception about his or her membership to an ethnic minority. Accordingly all South Asians, who have adopted the German citizenship and their children are excluded from the picture as well as all those, who have a third citizenship such as the British.⁶ The figures can thus be considered only as rough indicators.

Before starting off with a description of the different histories of migration another rough overview will illustrate further the heterogeneity of the South Asian migrants.

Table 2. Reasons for migration

	reasons for migration
Bangladeshis	primarily politically motivated in times of political crisis
Indians	primarily economically motivated: employment and education
Nepali	until 1990 often politically motivated furthermore economically due to bad economic conditions
Pakistanis	primarily flight, employment, education, research
Sri Lankans	primarily due to political and ethnic persecution of the Tamil minority furthermore for education and employment

source: Schmalz-Jacobsen and Hansen (1997)

There are two major sources of motivation for coming to Germany. One is founded in the political situation in South Asia. Instability and persecution act as push factors, the formerly rather liberal German asylum law as pull factor. These motives might or might not be linked with economic considerations. Many South Asian migrants came to Europe in order to achieve economic improvement. This, however, can mean very different things, it reaches from poorish people from rural areas, who are sent to finance their families, to materially secure middle class young men, who want to improve their individual employment opportunities. For some of the latter, in fact, the economic motive will be overruled by a quest for academic knowledge and the chance to see more of the world. A further analysis into these motives is of much interest as it cannot only provide an explanation for the perceived heterogeneity, but also can show some little thought of similarities between differing groups such as bogus asylum seekers and student migrants, who both strive for economic ends and are guided by a wish to get abroad.

The following begins with a short description of the presence of Indians in Germany up to the end of the second world war, which sets the whole analysis into a broader perspective and provides an interesting part of Indian history. After that there will be a presentation of recent Indian, Pakistani and Sri Lankan migration to Germany. This categorisation is chosen in order to indicate for each country of origin the different groups of migrants. At the end of the section it will, however be discussed that for analytical purposes other distinctions are more fruitful.

⁶ German official statistics do not collect data on membership to ethnic minorities as this could, as in the Third Reich, form the basis for discrimination and persecution.

2.3. Pre-independence Indian presence in Germany⁷

Although also before 1900 some Indians had gone to Germany, it was only after the turn of the century that their presence in the country began to be considerable. Germany, which had had no part in the colonialisation of India, seemed for many Indian freedom fighters a potential ally in the struggle against the British. Thus already in the first world war an organisation was established in Germany to co-ordinate the activities of Indian nationalists abroad. This was supported by the German government in exchange for the promise of favourable trading conditions in the case of independence. Indian supporters were recruited from the students and the prisoners of war in Germany. By the end of the war, however, the situation for the Indian freedom fighters in Berlin deteriorated, German support was withdrawn and their return to India was prevented by the British. They accordingly were quite frustrated and many left politics. Indian political activities in Germany then started again in the 20s, when M.N. Roy opened an office in Berlin and at the same time also students started to come again. The latter were, however, not drawn primarily by political considerations, but rather by a high regard for German science, culture, technology and industry, which made German universities able to compete with English ones. Good opportunities for Indian students were also perceived by Nehru on one of his trips to Germany and it was probably due to his influence that the Indian National Congress decided to open an Indian Student Information Bureau in Berlin in 1928. Its aims were to inform Indians about the possibilities of studying in Germany, to help them in their first days in the strange country and to inform Germans about India. But with the rise of the Nazis the situation for Indians in Germany, most of whom adhered to the ideas of socialism, deteriorated again. Some were imprisoned, many left the country. This process was reversed somewhat with the arrival of Subhas Chandra Bose, who hoped to find in Hitler an ally against the British. This proved true in so far that a Centre Free India was established with German help in Berlin and both a newspaper and a radio broadcast *Azad Hind* were produced. Furthermore from 1942 onward an Indian legion, which was supposed to fight the British in India, was recruited from Indian prisoners of war. Nonetheless Hitler's support for the Indian cause stayed rather limited and by the end of the war only few Indians were still in Germany.

2.3. Migrants from India⁸

Some Indian students started to come to Germany already immediately after the war, but only by the end of the 50s and the beginnings of the 60s considerable numbers had been reached again. As before the war it was mainly young men who came. Most of them were from West-Bengal, although also students from other parts of the country found their way to Germany, generally they belonged to the upper castes⁹ and most came from a middle class family background, which highly valued education. The individual forms of migration differed somewhat. Some Indians applied to many companies abroad, got an offer from a German one and thus went there. Others got the possibility of receiving a practical training in Germany or went directly to study at an university. Characteristically the decision for migration had been formed individually rather than by the family and only seldom relatives followed on the same path. Most of these Indians started at some point of their stay in Germany to study, many fell

⁷ This presentation draws heavily on Oesterheld (1997), some details can also be found in Punnampambil (1995, 1-2).

⁸ The basis for this section are Desai (1993), Punnampambil (1995), Schmalz-Jacobsen and Hansen (1997) as well as interviews.

⁹ Desai (1993, 10-11) estimates that a third were Brahmins.

in love with Germans, married them and started work in Germany after their graduation. Others married in India, took their wife along to Europe and extended thus their stay there for the time being. There naturally were also many Indians, who went back to India to stay there, and some who chose to migrate to another country, such as Canada or the United States.

Besides this migration on own initiative there was also some as a result of German companies' and organisations' direct recruitment endeavours in India. The Indian workers were needed to reduce the shortage on the German labour market and thus enable further economic growth. The generally unskilled work, which was offered to them, however, did not satisfy all Indians for long, they demanded practical training and often left their employers to go to the university. They thus followed the path of the individual migrants.

One of the areas most in need of employees was the German health sector. Every Indian physician was warmly welcomed and got very good offers. Furthermore, especially the Catholic church started recruitment of young Christian women in Kerala for work in hospitals. Some of these were already trained as nurses, the others were to be educated in Germany. In contrast to the male students the nurses came in groups, were from lower middle class families, whom they had to support, and had after a few years of stay in Germany an arranged marriage with Indians, who then wanted to join their wives. Thus, although many went back to India or migrated further, especially to Canada, a Keralite community developed in Germany.

Common to all the migrants of the 50s and 60s was that, they were welcomed by the German population and that their culture was not despised. Despite some problems of adapting to life in Germany the Indians thus felt rather comfortable in the country, they continually prolonged their stay, founded families and thus transformed, mostly without any clear intention, from sojourners to settlers and established themselves within the German middle class. While the Keralite created their own infrastructure and organisations, most of the others lived a life rather isolated from other Indians. The only major meeting point, which developed was the Indo-German Society (Deutsch-Indische Gesellschaft), which was founded in 1951.

By the 70s, however, German immigration regulations had been much tightened. Basically the only way of coming to Germany was by applying for political asylum and so many young men, especially Sikhs, pursued this path. But from the beginning there was hardly any chance of actually getting asylum. Accordingly, unless the Indians married Germans, they could expect only to stay in Germany for the length of their trial. There was thus no possibility for them to settle down, they had to remain sojourners, who were rejected by the German population. The asylum seekers thus form a totally different group from the earlier migrants.

A further aspect of Indian migration to Germany, which so far seems not to have found any attention, is the adoption of Indian children by white German families, which must have peaked around 1970. These children now reach adulthood and live their own lives, which give rise to totally new issues in need of research.

The approximately 35,000 Indian citizens and 5,000 German turned Indians living in Germany are thus far from forming a homogenous group. One can divide them roughly into three categories:¹⁰

1. The established Indians with their families and the large more or less homogenous sub-group of Christian Keralite.

¹⁰ These categories are taken from Schmalz-Jacobsen and Hansen (1997).

2. Indian students¹¹, professionals and businessmen, who come as sojourners, enter the same social status as the established Indians and intend to leave after a few years again.
3. The asylum seekers, who do not have families, lack a long term perspective and can achieve only a low social status. As contact to the established Indians is low, they develop their own networks.

In general Indians in Germany do not seem to define their identity primarily through their region of origin, their mother tongue, religion or caste, but rather by their status in Germany. Thus while also among established Indians some organisations are based on the Indian categories of differentiation, in general events are open to all and even religious festivals have been transformed to inter-denominational gatherings. This mixture of backgrounds has made it necessary to find some common platform, which often is taken from the German context. So for example in Germany the common Indian language seems to be German.

2.4. Migrants from Pakistan¹²

With the first wave of student and worker migrants from India some came also from Pakistan. It in fact seems that many of these were Mohajirs, who had not been living in Pakistan for a long time and preferred to migrate further. Apart from religion and the previous experience of migration not much distinguished them from their Indian fellows in Germany. They accordingly followed a similar process from sojourners to settlers, with some going back to South Asia and others migrating even further. Just as the Indians many of them, especially those working as physicians will have adopted the German citizenship.

In contrast to the Indians in Germany, however, among the Pakistanis the established migrants do not constitute the dominant group. At the end of 1996 in fact not even a quarter of Pakistani citizens had been staying longer than 10 years in Germany¹³. The biggest externally homogenous Pakistani group are rather asylum seekers of the Ahmadiya religion. This Muslim sect has been declared heretic in Pakistan and faces state persecution. Thus in particular after 1984, when the latter was increased, many Ahmadis fled, in particular to Germany. This was in most cases the result of a family decision and the young men, who first went to Europe, had the task of supporting their families back home. Today the Ahmadiya community, which is split in two and has centres in Frankfurt/Main and Berlin, comprises about 20,000 active members, of whom only 150 are Germans by birth. It has built mosques, provides religious education for children as well as many other community services. Furthermore it pursues its traditional missionary task, which makes the Ahmadis perceive their exile situation not solely as an result of coercion but also one giving them an opportunity for working for their religion.

2.5. Migrants from Sri Lanka¹⁴

As in the case of Pakistani migrants to Germany the majority of Sri Lankans coming are asylum seekers from a persecuted minority, i.e. Tamils. Inofficial estimates suggest that only

¹¹ These normally are about 600-700, some of whom, however, will be members of the second generation migrants.

¹² The analysis of this section is based on Schmalz-Jacobsen and Hansen (1997) and Schneider (1995) as well as interviews.

¹³ The source for this data is the Statistisches Bundesamt.

¹⁴ This relies heavily on Gottstein et al. (1992), Schmalz-Jacobsen and Hansen (1997) and Martini (1995).

5-15% of the Sri Lankans in Germany are Sinhalese, most of whom come probably as sojourners for educational or business reasons. Some of these, who have come in the past may have joined the established South Asians, but there do not seem to be many records about them, they are rather invisible.

Very visible in contrast are the Sri Lankan Tamils, coming to Germany since the 70s. In a first phase until about 1983 it was primarily a migration of individual young men. With the increase of military encounters in Sri Lanka in the mid 80s the numbers, however, drastically increased, reaching their peak in 1985. Due to restriction in immigration possibilities there was then from 1986 to 1988 a reduction in the arrival of Tamil asylum seekers with an accompanying increase in the share of women and children. Despite the restrictions numbers increased again from 1988 onwards, and the share of men decreased further. Tamil migration has thus so far depended both on the development of the conflict in Sri Lanka and on the immigration rules laid down by the German government.

By now a multi-faceted Tamil migrant culture in Germany has developed, with the establishment of temples, newspapers, cultural organisations, etc., which is placed within a transnational context. The Sri Lankan Tamils - those of South Indian origin do not seem to be attracted by it - have thus in Ballard's (1994) terminology constructed their *Desh Pardesh*, a home abroad, within a German society, which they reject for its moral inferiority.

2.6. Discussion

The analysis so far has illustrated, that the heterogeneity among the South Asians in Germany is not so much linked to their different places of origin, but rather has its root in the particular migration history of a group and the status attained within German society. Keeping this in mind one can consider a number of distinction pairs:

sojourners vs. settlers
individual migrants vs. group migrants
established South Asians vs. asylum seekers
married to South Asians vs. married to Germans
member of a community vs. isolated of other South Asians
etc.

The interplay of all these different factors as well as the weight attributed to each contribute in determining both the degree of integration in the German society and that of the construction of *Desh Pardesh*. Each distinction pair on its own, however, offers only limited scope for explanation as none of the thus defined groups displays a sufficient degree of homogeneity. Thus, for example, the student and nurses migrants form part of the established Indians, but the former have not reconstructed their traditional style of life, while the latter have endeavoured to do so as far as possible. In this respect one can thus compare the Keralite nurses and their families rather to the Tamil asylum seekers, but also this has its limits ...

3. South Asians and the German legal system

3.1. Introduction

In Germany the first thoughts one has when discussing ethnic minorities and the law are centred around the foreigners law. Given the absence of a *ius soli* this gains a particular importance in the German context and seems to reduce all non-Germans to subjects or rather objects of the legal system requiring all kinds of permits and facing enduring insecurity. It is accordingly easily forgotten that foreigners have a life also beyond this law and face a far broader set of legal issues. The following analysis will thus concentrate not only on the

foreigners law, although this naturally, as will be seen, has major impacts on the life of South Asians in Germany, but consider at least implicitly also other laws, such as family law, employment law, taxation law, etc. Not only court cases and administrative regulations are investigated, but also the behaviour of the judicial and administrative personnel is taken into account as well as the effect the law has on the South Asians. Accordingly the structure of the following discussion is not determined by that of the legal system, but rather by the perspective of the migrants, i.e. not family law but the families and the law will be investigated, etc.

The analysis will not concentrate purely on the contemporary situation, it rather places it in a historical context and thus shows the dynamics both of migration and law-making involved. It will thus cover a time span at the beginning of which there was a total ignorance about South Asians among German officials and even suitable translators were lacking, and at the end of which the acquired knowledge is primarily directed towards preventing South Asians gaining a right of abode in Germany. Some restrictions, however, have to be made both in time and area of investigation. Everything before 1945, although of quite some interest for Indian history as it mainly concerns the presence of freedom fighters in Germany, will not be dealt with, because a treatment of this period would require a major digression from the main topic of the essay. Furthermore, issues concerned primarily with India, such as the Indian regulations about investments, etc. will be put aside and also the presence of South Asians in the German Democratic Republic will not be considered at this stage.

Necessary to bear in mind for the analysis are the three broad categories of South Asian migrants in Germany, i.e. firstly the established South Asians, who came in the 50s and 60s for economic and educational reasons and their families, secondly students and professionals, who recently have come as sojourners and intend to return to South Asia and thirdly asylum seekers, who have come since the 70s and enjoy only a very insecure status in law and a low one in society. Depending on which group an individual belongs to the legal issues dominantly affecting him or her will differ drastically.¹⁵

3.2. Living in Germany

Life in Germany is for all South Asian citizens, as for other non-Germans, shaped by the foreigners law. It determines the right to stay and work, and thus sets the framework for everything else. The first hurdle a South Asians has to take is to attain a permit to stay. In the 50s and 60s this was not particularly difficult, if one had a place at university, an offer for a practical training or employment. Since the 70s it has become much more difficult and although students still come, most migrants have to apply for asylum in order to have a possibility of entering Germany at all. In the latter case special rules apply, which will be discussed in the next section.

For non-asylum seekers the permit to stay is normally, and has been so for a long time, initially linked to a particular purpose, such as studying, and is valid only for a limited time. Accordingly it has to be regularly extended and especially when the purpose of stay no longer exists, i.e. when for example a student has graduated or a worker has lost his or her employment, extension can or in some interpretations must be refused. With continuing abode in Germany and especially with marriage to a German citizen the security of the permit to

¹⁵ The following analysis is based mainly on facts gained by interviews, from articles of the journal *Meine Welt* and from the German law data base *Juris*, as well as from the interviews presented in Pandey (1988) and Desai (1993). Specific references to these works will always be made when an idea is explicitly taken from there, but not when it originates from an interplay of all the different sources of information.

stay increases, the linkage to a particular purpose and the time limit can be withdrawn. In all but the most secure form, i.e. the *Aufenthaltsberechtigung*, however, criminal offences or reliance on social benefit can result in a withdrawal of the right to stay in Germany. This means, that for almost all South Asian citizens living in Germany has an aspect of insecurity, even though to differing degrees, and is connected with regular visits to the foreigners office, where polite treatment is not the standard. The material gathered so far, furthermore, suggests that most of the South Asians, just like most of the German population, have only a crude notion of the laws applying to them. Accordingly they often both fail to claim every right eligible to them and make procedural mistakes. About the former they are mostly not informed by the administration, while the latter can be and has been used against them.

But these are not the only inconveniences linked to the necessity of obtaining a permit to stay, problems are created also in other areas. Even the securest form of permit, for example, becomes invalid if one stays longer than six months outside Germany. This in particular forms an obstacle for attempting a return to South Asia. Furthermore for South Asian citizens in Germany travelling abroad is connected with many difficulties, especially before the agreement of Schengen, when neighbouring countries were at times very restrictive about issuing a tourist visa. Also the field of employment is restricted, not only is a work permit necessary, in some occupations in fact German citizenship is a precondition. South Asians thus, like most other foreigners in Germany, face many restrictions in their life, which are beyond the imagination of ordinary Germans.

Accordingly, for many South Asians the main aim is to at least keep the legal status once attained and ideally to improve it. This has major impact on their lives as it affects among other things decisions about taking up studies, marrying or returning to South Asia. In some cases migrants also take recourse to illegal acts, such as bogus marriages or adult adoptions by Germans. Another path pursued is to apply for the German citizenship, and the problems faced in this are displayed by numerous court cases. As until recently the administration generally decided about naturalisation applications at discretion, there was little that could be done about it. Administration and courts generally claimed that naturalisation would harm the interests of the German state and could thus not be granted. In the case of students, who had benefited from some form of German funding, as was the case for most students, naturalisation was made dependent on the repayment of the money received. A court held in 1987 (BVerwG 1 C 30.84), that there was no legal basis for this, but until then already many had paid their grants back and since the decision scholarship contracts for students from third world countries explicitly state the necessity of repayment in case of naturalisation. In any case once attained, German citizenship takes much of the insecurity out of the life of South Asian migrants, but it does not solve all problems. Brown skin and alien culture still indicate the foreigner, invite corresponding treatment and many misunderstandings.

To conclude this section a short excursion has to be taken to the question of political participation by South Asians in Germany. Both the literature and my experience suggests that the established migrants, no matter of what citizenship, i.e. independent of their right to vote, hardly engage in politics. The major exception is the mayor of a small town near Berlin Dr. Ravi Gujjula¹⁶ and there are also some other unknown local politicians. But one cannot hear a South Asian voice as such, the organisations of the migrants, especially the Indo-

¹⁶ For an account of his path from migrant student to mayor see Evangelische Akademie Bad Boll (1996, 37-47).

German Society, seem to restrict themselves to cultural and economic objectives and refrain totally from political statements. One reason for this certainly lies in the somewhat insecure status and the lack of electoral rights for the majority of South Asians. But this cannot be the only explanation, as other ethnic minorities in the same situation are politically active. An important reason seems to be that established South Asians perceive themselves as some elite form of foreigners and do not want to be considered as belonging to the same population group as Turks and asylum seekers. Accordingly, they do not want to acknowledge it to themselves nor make their German neighbours aware of the fact, that they face similar problems.

3.3. Asylum seekers

Asylum seekers have the most insecure legal status of all migrants. Once a South Asian (or any other foreigner) has applied for asylum he or she is permitted to stay in Germany until his or her case is decided, which could be several years¹⁷. At the end of this process there is in the extreme the granting of asylum, which comes along with the acquisition of rights rather similar to those of German citizens, or the deportation, which provides security in the sense that a further entry to Germany is basically prohibited. In between there are those people, who are not granted asylum but also are not deported, because the situation in their country of origin prevents this on humanitarian grounds. In this case the insecurity existent before the court decision is prolonged almost indefinitely, as no proper permits to stay are issued and their staying in Germany is only suffered (*Duldung*) for a period of up to six months, after which an extension has to be applied for. This sufferance can be withdrawn at any time depending on the evaluation of the situation prevalent in the country of origin. Furthermore with this legal status it is almost impossible to find a proper employment or suitable accommodation, travels abroad are not allowed, etc.

Among those South Asians, who enter Germany in order to apply for asylum, one can find individuals belonging to any of the four groups described above. Initially all face a long trial, which used to last up to five years and more, but probably is shorter now. At the end of 1995 12.7% of the Indian citizens in Germany and at the end of 1996 29.8% of the Sri Lankan citizens were in this stage.¹⁸ Today once a decision is made about the application, almost all Indians are deported, most members of the Ahmadiya movement from Pakistan are granted asylum and the applications of the Tamils are, unlike in the initial stage of their arrival in Germany, rejected but they are not sent back to Sri Lanka. In fact at the end of 1996 29.8% of the Sri Lankan citizens had this legal status of sufferance. Given this diversity in treatment by the law, the situation in Germany for the different groups of asylum seekers differs considerably.

While they all have to go through the initial stage of insecurity, the Indians know that this will be their only time in Germany. So they try to earn as much money as possible within it, hoping that a decision will not be made too fast and trying themselves to prolong their court case as much as they can. Some will search for a German woman they can marry, as this would provide them with the right to stay¹⁹, others have reapplied after the rejection of their

¹⁷ Recent changes in the asylum law have attempted to shorten these periods and much more important make the right to apply for asylum dependent on the way Germany has been reached, thus giving the possibility of deporting asylum seekers immediately.

¹⁸ Data on Pakistani asylum seekers is not available to me at the moment.

¹⁹ For one example of a court case because of suspicion of a bogus marriage see Spellenberg (1992).

application under another name.²⁰ Indian asylum seekers thus seem to conform to the idea of bogus claimants, independent of the actual state of political persecution they might have faced in India. The Ahmadis on the other hand once they have been granted asylum, have a long term perspective in Germany and can plan their life accordingly. This is not possible for the Tamils, as although they are allowed to stay, they never know for how long. The lacking perspective thus gives them hardly any incentive to find their place in German society, to learn German, etc. In fact it is them, who stick most to tradition and construct the most developed Desh Pardesh of all South Asian migrants.²¹

3.4. Education and employment

In the 50s and 60s, i.e. in the time of the German 'Wirtschaftswunder', the indigenous labour force was too small to satisfy the demand of all the sectors of the economy. There was a lack of basically all kinds of employees, from the unskilled worker to the physician. Thus German employers were not only happy to employ migrants, who had come on their own initiative, but also recruited abroad. In this stage a considerable number of South Asians, mainly Indians, found a warm welcome in Germany, received a good education and/or got satisfying employments. Official or unofficial legal requirements to take up an employment, such as providing transcripts of Indian diplomas and documents or sitting a special exam for becoming a teacher, were not enforced very strictly. The general guideline for recruitment policy was, that it is more important to find an employee than to conform to rules. In fact, to attain this aim everything was done, in particular, to keep qualified people in Germany and they were provided as fast as possible (or faster) with the necessary permits, even if this meant that rules had to be bent somewhat.²² Accordingly the South Asians, who had not fulfilled all requirements, felt in no obligation to do so and more or less forget about them. They felt welcome in Germany and the work place, were happy to stay some time longer and founded families.

By the 70s, however, the situation changed, unemployment in Germany increased and suddenly the foreign employees were not that welcome anymore. Administration handled the new foreigners law from 1965 increasingly restrictive and did not any more easily extend permits to stay or work. Thus, for example, in 1976 the Keralite nurses, many of whom had by that time been in Germany for more than ten years and had families, were informed that they cannot expect to get an extension of their permits. Actual enforcement of this threat differed according to region, but at least in Baden-Württemberg almost all nurses, who were not married to Germans or could find an employment somewhere else in Germany, had to leave the country. This treatment of the highly esteemed Keralite nurses did not only lead to one of the few instances of political action by Indians in Germany, but also to support by many Germans²³, however with little success.

Another way of trying to get rid of South Asian employees was by asking them to comply now, after they had not been asked to do so for many years, with the requirements they had not fulfilled at the time of their recruitment. While the failure to do so did in the most cases probably not provide a sufficient legal basis for dismissal, it gave enough opportunity to harass the South Asian employee, make him or her feel insecure and thus give in to some of

²⁰ For a description of this scenario from a novelist's point of view see Puri (1993).

²¹ For his see, in particular, Desai (1993).

²² Incidences of this kind can be found throughout Desai (1993), especially with reference to physicians.

²³ For one account of this see *Meine Welt*, September 1977.

the employer's requests. After having worked for several years for an employer, the situation within the work place suddenly changed.

While thus today in general the situation on the labour market is little promising for South Asians and hardly any students, who have graduated here, or professionals coming from the sub-continent can find an employment, there are also exceptions to the rule. Whenever there is a scarcity of skilled workers in a particular field, then regulations are again interpreted in a more liberal way. So, for example, at the end of the 80s and beginning of the 90s there was again a lack of qualified nurses. This led the hospitals to think of those, who had had to leave Germany ten years earlier and they send nurses, who had stayed, to rerecruit them. German administration was not too happy with this and gave rights of entry only in exchange for a declaration that family reunion would not be possible for these nurses. In general it has to be stressed that the 'hiring and firing' principle was less one developed by the employers, who in most cases would have been happy to keep their qualified staff, but was a reaction to official handling of the law. From about 1970 onwards both administration and courts regularly claimed that economic interests of both foreigners and German employers could not be put above the interest of the state and that the latter was to prevent Germany becoming an immigration country.

While the above account describes much of the general pattern of treatment in the employment field experienced by South Asians, there are a few more issues which were and are of importance to them. Starting with education there always has been a lack of mutual recognition of diplomas. Nurses who received their training in Germany, for example, had to learn that this did not qualify them to work in India; students, who had already attained a bachelor in South Asia, were and are surprised that they need to start afresh in German universities, etc. At least the latter situation has been improved a bit, by a recent agreement by German and Indian universities about the mutual recognition of degrees. A further problem faced both by South Asians in education and those in employment is that they cannot leave Germany for longer than six months without risking to lose their permit to stay. Accordingly there is put in place a barrier for all sojourns abroad, undisturbed of the fact that these could be of major importance either for the employer or the academic progress of the student. Those non-German citizens, who become unemployed and are not married to a German, face an even greater dilemma. Depending on their legal status the work permit is restricted to one particular employment, when they lose this, the permit expires. This means that they are not eligible for new employment, the latter however is a prerequisite for getting unemployment benefit. Funding could thus come only through social benefits, but receiving them can be a reason for deportation. Accordingly becoming unemployed can mean entering a vicious circle where there is no legal means to get out of it. To maintain oneself, illegal employment is an option. If this, however, is found out consequences can not only be drastic, but also the perception of foreigners living on the cost of 'the Germans' finds support.²⁴ Fraudulent use of the social security system is, however, from the South Asians perspective the main concern about the latter. As many articles in *Meine Welt* show, they are rather worried of not reaping the same benefits from their payments than their German colleagues do. Mostly this fear touches issues concerned with returning to South Asia, so for example there is the question of how much pension one will receive in that case, etc.

²⁴ A few years ago there was a rather spectacular case of fraudulent use of the social security system by an Indian in Karlsruhe and newspaper coverage very much emphasised the nationality of the culprit.

This brief description of some legal issues relating to employment and education certainly does not give a complete picture, and neither will the following sections provide such for their topics, but it can give an idea of the complexity of problems and their influence on the individual's life and the development of ethnic communities.

3.5. South Asian families and the German law

In the process of sojourners to settlers the South Asian migrant population also changed from one of single young men to one of families, with the share of women however staying until today below a third. Family formation takes different forms mainly depending on the particular migration history. The students of the 50s and 60s have to a very high proportion married Germans and some have either chosen or let somebody choose for them a partner from South Asia. In the case of the Keralite nurses the latter is the normal case, with only few having entered into bi-national marriages. Among the asylum seekers, especially the Indian ones, a considerable proportion has married Germans, often after only a short period of acquaintance as the German law did not offer much time for decision. Among the Ahmadis and the Tamil marriage within their community seems to be more the standard. In fact at least the latter seem to adhere to their traditional system of family law. In how far they place this within the German legal system I have found no information on so far.

Concerning South Asian families one must thus introduce a further pair of differentiation, namely that of bi-national and of purely South Asian families, as to some extent the legal issues arising differ. Firstly, now the situation of mixed families, in so far as this means spouses with different citizenships, will be looked at.²⁵ From a legal perspective here the different legal statuses of the spouses are the central topic. Very often the secure permit to stay of the South Asian citizen was gained only through the marriage and can thus be withdrawn if the latter fails within the first years. This creates a legal inequality in the partnership, which is further strengthened by the fact that in most cases the German spouse is more familiar with the German legal system and thus plays the dominant part in all legal matters. This imbalance has led to tensions in partnerships and will continue to do so, especially if the husband is the foreigner and comes from a background, which has very traditional opinions about gender roles. Until up to at least the 70s, however, the presumption of the German administration, that a German wife of a foreigner must expect to follow her husband abroad, has resulted in a rather more shared experience of insecurity. Another issue often arising in the context of bi-national partnerships is linked to the fear of German wives, that the legal system of her husband's country of origin might protect her rights less than the German one does. In particular there have always been fears, that for example a Pakistani court would give the children to a father, if he tried to take them away from the mother. This left many German wives a bad feeling whenever their husbands travelled alone with the children to South Asia, and in some few cases these feelings were justified.

While this latter issue is of no special importance to purely South Asian marriages, different legal statuses may be. This is especially the case where one spouse joins the other in Germany, as also in that case the former's permit to stay is dependent on the marriage and the partner is in a dominant position also for his or her knowledge of the system²⁶. Again this seems to have the worst effects when the newly arrived spouse is the husband. Especially so

²⁵ Much research has been done about them by the organisation *iaf e.V. (Verband für binationale Partnerschaften)* and for the case of Indo-German families by Pandey (1988). References to such marriages can, however, be found also in other sources.

²⁶ This is also an issue touched upon by the novel of Puri (1993).

as in the case of family reunion there is a waiting period for getting a work permit, this means that potentially highly qualified husbands are for several years condemned to stay at home. This means a change in the traditional structure of the family, which has not been decided on by the couple itself but has been imposed from the outside. As one consequence of this many men either returned to South Asia or migrated to another country, thus either compelling the wife to give up her employment in Germany or splitting the family.²⁷

Whenever a foreign spouse is part of a marriage and that is to take place in Germany, it is connected with many additional regulations. The South Asian spouse has to provide a marriage eligibility certificate from an Indian authority, checked by the German embassy and conforming to a long catalogue of requirements. Additionally, he or she must, at least in the case of India, which does not issue an *Ehefähigkeitsbescheinigung* as required by German law, apply before court for an exemption for having to produce such.²⁸ All this is connected with much hassle, costs and time, and there always remains the danger that the German administration will refuse to recognise the documents because they suspect a bogus marriage. Once marriage has been made possible, problems do not end. Numerous court cases suggest that the determination of names, both of family names and that of children, often pose major problems, as South Asian rules about them are different from the Germans. Furthermore, there seem to have been several cases where courts did not know what to do about legitimising illegitimate children, when the father is Pakistani. In general it seems that having to deal with the registry office opens at least as much scope for problems as contact with the foreigners office. Especially as much ignorance is common among registrars, even though there are publications such as Brandhuber and Zeyringer (1992), and some are not very willing to find solutions together with the South Asian migrants.

A few cases also show that misbehaviour in South Asia and adherence to traditional value systems can have legal implications in Germany. In one case an Indian woman was married only for her dowry, when she finally came to Germany she was maltreated by her husband and could escape from this only with the help of outsiders.²⁹ In another case a German court held that a Sri Lankan wife had killed her husband, because divorce was for her no option and she saw no other alternative to flee from experienced maltreatment (BGH 2 StR 143/90).

Finally, although many more issues could be discussed, only one brief further treatment of a particular South Asian issue will be considered. Both bi-national and purely South Asian families are part of trans-national families and this is the root for many problems. The most obvious of these is the complicated procedure Germany has devised for getting a visa to visit relatives in Germany. This again takes a lot of time and success depends not only on the income and accommodation of the South Asian in Germany but also on the mood of the personnel in the German embassy abroad. Another aspect is that German taxation regulations are not very favourable for South Asians, who maintain family on the sub-continent or send their children to school there. In fact there seems to be no recognition of the fact, that for South Asians in Germany maintaining their links to their country of origin is an essential part of their life and does not pose a danger for the German state.

²⁷ These problems were mostly experienced by Keralite nurses and accordingly much has been reported about them in *Meine Welt*, especially in Vol. 2, No.1, April 1985.

²⁸ For the rules see Schmidt (1993) and Brandhuber and Zeyringer (1992).

²⁹ For a description of the case see *Meine Welt*, Vol. 5, No. 3, December 1988.

3.6. *Second Generation South Asians*

Today the South Asian communities in Germany do not consist anymore only of the migrants themselves, but also of their children. These are born or at least brought up in this country, are familiar only with it, most fluent in the German language and nonetheless are confronted with legal problems normally devised for foreigners. To understand this one needs to look first at the question of citizenship. Due to the *ius sanguinis* in Germany children of non-German parents do not attain the German citizenship. Up to 1975 in fact only children of German fathers or illegitimate children of German mothers did so. This implies that for a large proportion of the second generation South Asians the foreigners law applies just as for their parents, even though the regulations give a somewhat more secure status to those brought up in Germany.

To give an example, this has the effect that the permit to stay is in danger when a young South Asian goes abroad for study purposes. This makes it also difficult for him or her to go to South Asia for a time and get to know more about his or her parent's country of origin. Furthermore, it means that when members of the second generation without German citizenship marry, that they have to submit the same documents as their parents, i.e. a country in which they might never have lived must issue a certificate about their eligibility to marry. In contrast to their German school mates or university friends they can add to this not spontaneously join in a trip to one of the European countries, unless it has joined the Schengen agreement. In questions of admission to universities and grants they fall under the particular category of *Bildungsinländer*, which shows that they are not really foreign but also not really German. They cannot enter all professions as still restrictions based on citizenship are in operation. They have no electoral rights, and many more such problems can be found.

Then why do second generation South Asians not apply for the German citizenship, as the law gives them the possibility? This is a question, which cannot be answered by recourse to rational arguments. The legal benefits of naturalisation are so considerable for all those who want to stay in Germany, that accordingly, if nothing else is taken into consideration, the decision should be clear. The issue can, however, not be seen independent of questions of identity formation and then it gets highly complex. South Asian parents very often take the South Asian citizenship as an indication for their children's continuing connection to their own background and culture. A change of citizenship thus does not mean a mere legal act but an alienation from the roots. Accordingly many children are brought up in a way, where the South Asian citizenship is portrayed as a major foundation of their identity.³⁰ Furthermore, the fact that one has to apply for the German citizenship is perceived as having to ask for a favour, which one is not prepared to do. South Asian citizenship is also seen as a protection in case, that racism increases in Germany and one needs to flee from the country to South Asia. Citizenship is thus not perceived at all as a purely legal issue, but it is far more emotionally loaded and connected to self-perception and -identification. If there was the possibility of a dual citizenship, the situation would be different for most of the second generation and they would adopt the German as well. For bi-national children German law does not create any obstacle to this, but the Indian legal system is strictly against it³¹.

There are further legal issues, which pose a problem for those, who attempt to skillfully navigate between the German and the South Asian culture, and their parents, which are

³⁰ For one example of the processes, which can be triggered by this see Pandey (1988, 223,253 and 261).

³¹ A few years back some second generation Indo-Germans had a meeting with the Indian ambassador about this issue.

independent of citizenship. Most of these centre around the fact, that the second generation is brought up in a context, where recourse to the law is a natural thing, even concerning family matters. They grow up in a consciousness of certain legal rights, such as that of maintenance or freedom of decision when reaching majority, and occasionally in times of conflict with their parents they claim these. This very often alienates the South Asian parent as he or she is not used to such a behaviour and considers taking the law into the family as an attack on his or her person.³² Another area of conflict is that of marriage. Most of the South Asian parents would prefer a partner of the same cultural background for their children and do not approve of partnerships without marriage. These values, however, can hardly be asserted and the common compromise developing seems to be, that the children choose their spouse themselves, but are willing to perform besides the official registration of the marriage also a ritual ceremony either in Germany or South Asia. At least in one case (Dessai 1993, 26 and 144) a daughter of Indian parents also used the German legal system to confront them with the legal facts of being married already and thus made it impossible for them to do anything against her partnership with her German boyfriend. But also in this case the compromise found was, that a Hindu ceremony was performed afterwards.

The legal situation of second generation South Asians in Germany is thus on the one hand one of structural discrimination in comparison with their German fellows and on the other one of emotional conflict with their parents.

3.7. South Asian religions in Germany

Among the German population there does not seem to be much awareness of the fact that there are members of South Asian religions in the country. The reason for this lies probably to a large extent in the behaviour of the South Asians themselves. The established Hindus have never shown much effort to establish a religious infrastructure on a wider scale in Germany. Activities are restricted to the private sphere.³³ The case was always different for the Keralite Christians, who have constructed well organised communities with their own priests and regular activities. But even though their forms of Christianity differ from the German ones, the similarities are sufficient to prevent major alienation. That threatens to take place rather with respect to those religious communities, which were set up by the asylum seekers, i.e the Sikh, the Ahmadiya and the Tamil Hindu communities. All these have established religious buildings (gurudvaras, mosques and temples), perform religious ceremonies, provide religious education and offer a meeting place for their members. They are thus also more visible to the German public than the established Hindus and this already has led to legal disputes. Baumann (1997, 1) describes an incident where a temple of Sri Lankan Tamils had to be removed from a residential to an industrial area, because it did not conform to planning rules. Desai (1993, 36) suggests that there might be problems connected with the use of the swastika, but so far legal conflicts involving South Asian religions seem to have been few.

This, however, might change in the future as the newly developing communities will increase in visibility. In that case the present situation of non-interference (basically fuelled by ignorance) on the side of the German law might change. Changes seem to occur also among the established Hindus. While formerly they hardly emphasised their religion and the problems perceived primarily were difficulties in pursuing a vegetarian life and limits to promotion in Christian hospitals, some seem now to want to go more into the offensive. Since

³² For an account of one such conflict see Pandey (1988, 209, 265 and 272).

³³ On this topic see Desai (1993).

1984 there is a German section of the VHP, which initially gained much following, but then in the aftermath of the demolition of the Babri Masjid lost again much support. The interviews carried out by Desai (1993) seem to show, that the VHP also in Germany attempts anti-Muslim agitation and collects funds for the same in India. In 1997 it interfered in a dispute between established Hindus and a German broadcasting company (SDR). The latter had printed a pamphlet to make advertisement for a special week about India with a Ganesh holding microphones in his hands on its cover. One Hindu complained about being hurt in his religious feelings, the SDR director apologised, the pamphlet was withdrawn, the VHP asked for more measures and for several weeks all concerned were quite worried by the incident.

3.8. Conclusions

The discussion so far, which was not able to do anything more than give a rough overview of legal issues facing South Asians in Germany, has shown that these are multi-faceted, going far beyond the realms of the foreigners law into all other laws as well, and have much impact on the life of the persons involved. Legal, sociological and psychological factors very much interlink. Furthermore, it could be seen that the dominant fields of contact with the legal system depend on the legal status of the migrant as well as his or her degree of integration in, respectively segregation from German society. The direction of causality is, however, not one way, it goes in both directions. The life of the South Asians is formed by the law, which in turn determines how they come in touch with it and how the law reacts to their presence.

All the issues discussed need further research, especially it is necessary to have a closer look at individual cases in order to analyse the exact processes taking place. From the general topics the case of the second generation is one of the most important. While the issues encountered by the first migrants give a historical description of how the German legal system and the South Asians interacted, those involving members of the second generation will gain in importance in the next few years, accordingly asking for an increased awareness of them.

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