MAYO COLLEGE GIRLS' SCHOOL MODEL UNITED NATIONS CONFERENCE 2017

BACKGROUND GUIDE

PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS

Letter from the Executive Board

Greetings Members

Welcome to this edition of MCGS Model United Nations and particularly to the Parliamentary Standing Committee on Home Affairs. I look forward to an engaging and informative debate.

The work done by the Parliament in modern times is not only varied in nature, but considerable in volume. The time at its disposal is limited. It cannot, therefore, give close consideration to all the legislative and other matters that come up before it. A good deal of its business is, therefore, transacted in Committees of the House, known as Parliamentary Committee

The origin of Committee system in India can be traced back to the Constitutional Reforms of 1919. The Standing Orders of the Central Legislative Assembly provided for a Committee on Petitions relating to Bills, Select Committee on Amendments of Standing Orders, and Select Committee on Bills. There was also a provision for a Public Accounts Committee and a Joint Committee on a Bill. Apart from Committees of the Legislative Assembly, members of both Houses of the Central Legislature also served on the Standing Advisory Committees attached to various Departments of the Government of India. All these committees were purely advisory in character and functioned under the control of the Government with the Minister-in-charge of the Department acting as the Chairman of the Committee.

The agendas in front of us make for a very technical and exciting debate, disaster level preparedness is a seldom discussed topic- as is the case with most unforeseen situations. However, it is only prudent to talk about the country's preparedness and to understand what needs to be done in such a scenario. Similarly, despite 70 years of independence, India is yet to form an asylum policy. This has become even more important now with India looking to expand its role in the global scenario.

The Background Guide shall act as a guiding document, however you should not limit yourself to the details in it alone. Use the guide as springboard to develop a deeper insight into the agenda. Feel free to get into touch for any queries

Regards,

Animesh Mohan

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Procedural Construct:

Opening Statements:

The members will be delivering an opening statement at the start of the council. The default speakers' time for this will be 90 seconds extendable up to 120 seconds.

After every speech members are obligated to yield the floor back to the Executive Board who will then direct the members to ask questions, the number of questions to be asked- if any depending on the time, will be decided by the Executive Board.

Discussion Session:

In order to discuss various sections of the agenda, a separate time frame is allotted for the members to put their views on the floor of the house. A discussion session can be of 15-30 minutes but the individual speaker's time will remain 60 seconds. Also, a discussion session can be used to discuss crisis updates.

Un-Moderated Sessions:

A regulation Model UN un-moderated caucus, time will be allotted to the delegates to lobby or to prepare a document or to decide upon the future status debate. The duration is up to 20 minutes at most.

Points:

All MUN based points are valid in the committee at all times, except the point of information which shall be in place only in the opening statements.

Written Document:

A report consisting of possible solutions and recommendations for the cabinet is to be prepared at the end of the meeting.

The members can also prepare a press release or communique.

AGENDA 1 - "Comprehensive overhaul report for the Disaster Management System in India- special emphasis on the Sendai Framework and AMCDRR 10 point programme"

Introduction:

India's geo-climatic conditions as well as its high degree of socio-economic vulnerability, makes it one of the most disaster prone country in the world. A disaster is an extreme disruption of the functioning of a society that causes widespread human, material, or environmental losses that exceed the ability of the affected society to cope with its own resources. Disasters are sometimes classified according to whether they are "natural" disasters, or "human-made" disasters. For example, disasters caused by floods, droughts, tidal waves and earth tremors are generally considered "natural disasters." Disasters caused by chemical or industrial accidents, environmental pollution, transport accidents and political unrest are classified as "human-made" or "human induced" disasters since they are the direct result of human action.

A more modern and social understanding of disasters, however, views this distinction as artificial since most disasters result from the action or inaction of people and their social and economic structures. This happens by people living in ways that degrade their environment, developing and over populating urban centres, or creating and perpetuating social and economic systems. Communities and population settled in areas susceptible to the impact of a raging river or the violent tremors of the earth are placed in situations of high vulnerability because of their socio-economic conditions. This is compounded by every aspect of nature being subject to seasonal, annual and sudden fluctuations and also due to the unpredictability of the timing, frequency and magnitude of occurrence of the disasters.

Definition:

Disaster is an event or series of events, which gives rise to casualties and damage or loss of properties, infrastructures, environment, essential services or means of livelihood on such a scale which is beyond the normal capacity of the affected community to cope with. Disaster is also sometimes described as a "*catastrophic situation in which the normal pattern of life or eco-system has been disrupted and extra-ordinary emergency interventions are required to save and preserve lives and or the environment*". The Disaster Management Act, 2005[1] defines disaster as "*a catastrophe, mishap, calamity or grave occurrence in any area, arising*

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[1]http://www.ndma.gov.in/images/ndma-pdf/DM_act2005.pdf

from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area".

The United Nations defines[2] disaster as "*the occurrence of sudden or major misfortune which disrupts the basic fabric and normal functioning of the society or community*".

The High Power Committee on Disaster Management[3], constituted in 1999, has identified 31 various disasters categorized into five major sub-groups which are given in Box

List of Various Disasters	
i. Water and Climate related disasters	a. Floods and drainage management b. Cyclones c. Tornadoes and Hurricanes d. Hailstorm e. Cloud burst f. Heat wave and cold wave g. Snow avalanches h. Droughts i. Sea erosions j. Thunder and lightening k. Tsunami
ii. Geological related disasters	a. Landslides and mudflows b. Earthquakes c. Dam failures/Dam bursts d. Minor fires
iii. Chemical, industrial and nuclear related disasters	a. Chemical and industrial disasters b. Nuclear disasters
iv. Accident related disasters	a. Forest fires b. Urban fires c. Mine flooding d. Oil spills e. Major building collapse f. Serial bomb blasts g. Festival related disasters h. Electrical disaster and fires i. Air, road and rail accidents j. Boat capsizing k. Village fire
v. Biological related disasters	a. Biological disasters and epidemics b. Pest attacks c. Cattle epidemics d. Food poisoning

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[2]http://www.un.org/en/development/desa/policy/untaskteam_undf/thinkpieces/3_disaster_risk_resilience.pdf
[3]http://nidm.gov.in/PDF/pubs/HPC_Report.pdf

Indian Scenario:

During the last thirty years, the country has been hit by 431 major disasters resulting into enormous loss to life and property. According to the Prevention Web statistics, 143039 people were killed and about 150 crore were affected by various disasters in the country during these three decades. The disasters caused huge loss to property and other infrastructures costing more than US $ 4800 crore.

National Disaster Management Act, 2005:

The Disaster Management Act, 2005 (DM Act 2005) lays down institutional and coordination mechanism for effective Disaster Management (DM) at the national, state, district and local levels. As mandated by this Act, the Government of India (GoI) created a multi-tiered institutional system consisting of the National Disaster Management Authority (NDMA) headed by the Prime Minister, the State Disaster Management Authorities (SDMAs) headed by the respective Chief Ministers and the District Disaster Management Authorities (DDMAs) headed by the District Collectors and co-chaired by Chairpersons of the local bodies. These bodies have been set up to facilitate a paradigm shift from the hitherto relief-centric approach to a more proactive, holistic and integrated approach of strengthening disaster preparedness, mitigation, and emergency response.

The National Disaster Management Plan (NDMP) provides a framework and direction to the government agencies for all phases of disaster management cycle. The NDMP is a "dynamic document" in the sense that it will be periodically improved keeping up with the emerging global best practices and knowledge base in disaster management. It is in accordance with the provisions of the Disaster Management Act, 2005, the guidance given in the National Policy on Disaster Management, 2009 (NPDM), and the established national practices.

The NDMP recognizes the need to minimize, if not eliminate, any ambiguity in the responsibility framework. It, therefore, specifies who is responsible for what at different stages of managing disasters. The NDMP is envisaged as ready for activation at all times in response to an emergency in any part of the country. It is designed in such a way that it can be implemented as needed on a flexible and scalable manner in all phases of disaster management: a) mitigation (prevention and risk reduction), b) preparedness, c) response and d) recovery (immediate restoration to build-back better).

 The NDMP is consistent with the approaches promoted globally by the United Nations, in particular the Sendai Framework for Disaster Risk Reduction 2015-2030. It is a non-binding agreement, which the signatory nations will attempt to comply with on a voluntary basis. India will make all efforts to contribute to the realization of the global targets by improving

the entire disaster management cycle in India by following the recommendations in the Sendai Framework and by adopting globally accepted best practices. The four priorities for action under the Sendai Framework are:

1. Understanding disaster risk

2. Strengthening disaster risk governance to manage disaster risk

3. Investing in disaster risk reduction for resilience

4. Enhancing disaster preparedness for effective response and to "Build Back Better" in recovery, rehabilitation and reconstruction

The NDMP incorporates substantively the approach enunciated in the Sendai Framework and will help the country to meet the goals set in the framework. By 2030, the Sendai Framework aims to achieve substantial reduction of disaster risk and losses in lives, livelihoods, and health and in the economic, physical, social, cultural, and environmental assets of persons, businesses, communities, and countries. The NDMP has been aligned broadly with the goals and priorities set out in the Sendai Framework for DRR. While the four cross-cutting Sendai priorities will be present explicitly or implicitly in every aspect of this plan, certain chapters will have specific priorities as the dominant theme. The plan includes measures that will be implemented over the short, medium, and long-term more or less over the time horizon of the Sendai Framework ending in 2030. The measures mentioned here are indicative and not exhaustive. Based on global practices and national experiences, the plan will incorporate changes during the periodic reviews and updates.

Response:

Response measures are those taken immediately after receiving early warning, anticipating an impending disaster, or post-disaster in cases where an event occurs without warning. The primary goal of response to a disaster is saving lives, protecting property, environment, and meeting basic needs of human and other living beings after the disaster. The immediate focus will be on search and rescue of those affected and to evacuate those likely to be affected by the disaster or secondary disaster that is likely to happen. In the section on response, roles, function and responsibilities of ministries and agencies that have a key role to play are described. Since contexts, knowledge base, and technologies change, DM plans must be updated periodically to reflect any changes in the key roles envisaged to particular ministries or agencies.

At the national level, the central government has assigned nodal responsibilities to specific ministries for coordinating disaster-specific responses. The NDMA will be coordinating with relevant nodal ministry. The disaster-specific nodal ministry will ensure liaison with the state

government where the disaster has occurred and coordination among various relevant ministries and departments to provide quick and efficient response. The state government will activate the Incident Response Teams (IRT) at state, district, or the block level as required. The IRTs will coordinate with the state EOC. The SDMA1 (or its equivalent, CoR, or Dept. of Revenue) will provide technical support to the response.

Different central ministries and departments will provide emergency support to the response effort as per request from the State Government. It may be noted that the SDMA, Department of Revenue or Commissioner of Relief (as applicable) is the nodal agency for coordination of disaster response. The various agencies whose responsibilities are defined in detailed DM plans for the state and district will be responsible specific response measures. The DDMA is the nodal agency for coordination of response at district level supported by other district level agencies. The department wise specific activities at central ministries and state government are summarised in matrix providing clarity to the roles and responsibilities of various agencies.

Recoveries:

Globally, the approach towards post-disaster restoration and rehabilitation has shifted to one of betterment reconstruction. While disasters result in considerable disruption of normal life, enormous suffering, loss of lives and property, global efforts consider the recovery, rehabilitation and reconstruction phase as an opportunity to build back better integrating disaster risk reduction into development measures, and making communities resilient to disasters. BBB is not limited to the built environment and has a wide applicability encompassing the economy, societal systems, institutions, and environment. The Sendai Framework envisages that the stakeholders will be prepared for BBB after a disaster. Existing mechanisms may require strengthening in order to provide effective support and achieve better implementation. Disaster recovery tends to be very difficult and long-drawn out. The reconstruction will vary depending on the actual disaster, location, pre-disaster conditions, and the potentialities that emerge at that point of time. The NDMP provides a generalized framework for recovery since it is not possible to anticipate all the possible elements of betterment reconstruction.

Sendai Framework:

The Sendai Framework for Disaster Risk Reduction 2015-2030 (hereafter "Sendai Framework") adopted at the Third UN World Conference in Sendai, Japan, on March 18, 2015 (UNISDR 2015a) as the successor instrument to the Hyogo Framework for Action 2005-2015. It is a non-binding agreement, which the signatory nations, including India, will attempt to comply with on a voluntary basis. However, India will make all efforts to contribute to the realization of the global targets by improving the entire disaster

management cycle in India by following the recommendations in the Sendai Framework and by adopting globally accepted best practices.

The Sendai Framework was the first international agreement adopted within the context of the post- 2015 development agenda. Two other major international agreements followed it in the same year: the Sustainable Development Goals 2015 – 2030 in September, and the UNCOP21 Climate Change agreement to combat human-induced climate change in December. DRR is a common theme in these three global agreements. The Paris Agreement on global climate change points to the importance of averting, minimizing, and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage. These three agreements recognize the desired outcomes in DRR as a product of complex and interconnected social and economic processes, which overlap across the agendas of the three agreements. Intrinsic to sustainable development is DRR and the building of resilience to disasters. Further, effective disaster risk management contributes to sustainable development.

In the domain of disaster management, the Sendai Framework provides the way forward for the period ending in 2030. There are some major departures in the Sendai Framework:

- For the first time the goals are defined in terms of outcome-based targets instead of focusing on sets of activities and actions.

- It places governments at the center of disaster risk reduction with the framework emphasizing the need to strengthen the disaster risk governance.

- There is significant shift from earlier emphasis on disaster management to addressing disaster risk management itself by focusing on the underlying drivers of risk.

- It places almost equal importance on all kinds of disasters and not only on those arising from natural hazards.

- In addition to social vulnerability, it pays considerable attention to environmental aspects through a strong recognition that the implementation of integrated environmental and natural resource management approaches is needed for disaster reduction

- Disaster risk reduction, more than before, is seen as a policy concern that cuts across many sectors, including health and education

As per the Sendai Framework, in order to reduce disaster risk, there is a need to address existing challenges and prepare for future ones by focusing on monitoring, assessing, and understanding disaster risk and sharing such information. The Sendai Framework notes that it is "urgent and critical to anticipate, plan for and reduce disaster risk" to cope with disaster. It requires the strengthening of disaster risk governance and coordination across various institutions and sectors. It requires the full and meaningful participation of relevant stakeholders at different levels. It is necessary to invest in the economic, social, health, cultural and educational resilience at all levels. It requires investments in research and the use of technology to enhance multi-hazard Early Warning Systems (EWS), preparedness, response, recovery, rehabilitation, and reconstruction.

The four priorities for action under the Sendai Framework are:

1. Understanding disaster risk

2. Strengthening disaster risk governance to manage disaster risk

3. Investing in disaster risk reduction for resilience

4. Enhancing disaster preparedness for effective response and to "Build Back Better" in recovery, rehabilitation and reconstruction

India is a signatory to the Sendai Framework for a 15-year, voluntary, non-binding agreement which recognizes that the State has the primary role to reduce disaster risk but that responsibility should be shared with other stakeholders including local government, the private sector and other stakeholders. It aims for the "substantial reduction of disaster risk and losses in lives, livelihoods, and health and in the economic, physical, social, cultural, and environmental assets of persons, businesses, communities, and countries." India will make its contribution in achieving the seven global targets set by the Sendai Framework:

1) Substantially reduce global disaster mortality by 2030, aiming to lower the average per 100,000 global mortality rate in the decade 2020–2030 compared to the period 2005– 2015;

2) Substantially reduce the number of affected people globally by 2030, aiming to lower the average global figure per 100,000 in the decade 2020–2030 compared to the period 2005–2015;

3) Reduce direct disaster economic loss in relation to global gross domestic product (GDP) by 2030;

4) Substantially reduce disaster damage to critical infrastructure and disruption of basic services, among them health and educational facilities, including through developing their resilience by 2030;

5) Substantially increase the number of countries with national and local disaster risk reduction strategies by 2020;

6) Substantially enhance international cooperation to developing countries through adequate and sustainable support to complement their national actions for implementation of the present Framework by 2030;

7) Substantially increase the availability of and access to multi-hazard early warning systems and disaster risk information and assessments to people by 2030.

Asia Regional Plan for Implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030:

At the 6th Asian Ministerial Conference for Disaster Risk Reduction (AMCDRR) in June 2014 and ISDR Asia Partnership (IAP) deliberations after the Third UN World Conference on Disaster Risk Reduction (3WCDRR), Asian countries and stakeholders agreed to develop an 'Asia Regional Plan for implementation of the Sendai Framework' (Regional Plan) to facilitate the cooperation and collaboration for building risk resilience in Asia.

This regional plan aims to provide:

a) Broad policy direction to guide the implementation of the Sendai Framework in the context of the 2030 sustainable development agendas in the region;

b) Long term road map, spanning the 15-year horizon of the Sendai Framework outlining a chronological pathway for implementation of priorities to achieve seven global targets;

c) Two-year action plan with specific activities that are prioritized based on the long term road map and in line with the policy direction.

The Asia Regional Plan seeks to guide and support the national implementation of the Sendai Framework, but is not a replacement of national plans. It does so by identifying priorities at regional activities to support national and local actions, enhance exchange of good practice, knowledge and information among governments and stakeholders, in addition to strengthening regional cooperation to support the implementation of the Sendai Framework. This regional plan is one of the main outcome documents of the AMCDRR in November 2016 in New Delhi, India.

The regional plan has been developed through the IAP and an Advisory Working Group (AWG) mechanism set up by the UNISDR secretariat in Asia Pacific. Three informal Advisory Working Groups were established to ensure the actions for all priority areas of the Sendai Framework are developed with engagement of key partners – the primary implementers of the Sendai Framework from the public, private and local level. This aligns with: the outcome of the 6th Asian Ministerial Conference; and further deliberations in the IAP. The AWG comprised individuals with expertise in public policy, private sector engagement and local level implementation respectively. They consulted governments, stakeholder groups and partners and provided the necessary implementation focus of the regional plan through inputs to the policy direction, road map, and in particular the 2-year action plan.

Important Links:

1. http://ndma.gov.in/images/policyplan/dmplan/National%20Disaster%20Management%20Plan%20May%202016.pdf
2. https://ndma.gov.in/en/national-policy.html
3. http://ndma.gov.in/images/guidelines/national-dm-policy2009.pdf
4. http://ndmindia.nic.in/BriefGoIUNDPproject_09012017.pdf
5. http://www.ndmindia.nic.in/Final-NEW-DELHI-DECLARATION-05-November-2016.pdf

AGENDA 2 – "Deliberation on provisions for a permanent asylum policy in India, with special emphasis on illegal migrants and political asylum requests"

Introduction:

According to the UNHCR[4], asylum seekers are individuals who have sought international protection and whose claims for refugee status have not yet been determined, irrespective of when they may have been lodged.

Refugees are individuals recognised under the 1951 Convention relating to the Status of Refugees[5], its 1967 Protocol[6], the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa[7], those recognised in accordance with the UNHCR Statute, individuals granted complementary forms of protection, or those enjoying temporary protection. Since 2007, the refugee population has also included people in a "refugee-like situations".

At the end of 2015[8], according to the United Nations refugee body, there were 2,07,861 persons of concern in India, of whom 2,01,281 were refugees and 6,480 asylum seekers. India has, over the years, offered shelter to Tibetans, the Chakmas of Bangladesh, Afghans and ethnic Tamil refugees from Sri Lanka.

When read in isolation, these statistics are incomplete for two reasons. First, they do not convey a historical sense of the large refugee populations India has hosted in its past. In total, over the second half of the twentieth century, India has hosted one of the largest populations of refugees and externally displaced peoples in the world. These include around 1,00,000 refugees from Tibet, 1,02,055 from Sri Lanka, 17,270 from Myanmar, and 47,471 Chakmas and Hajongs from Bangladesh in addition to around 10 million refugees from erstwhile East Pakistan. These vast numbers do not include the approximately 14 million people who sheltered and resettled in India as a result of the Partition of India and its accompanying violence. Second, there are a large number of unrecognised refugees in India who remain uncounted. These include large populations of unregistered refugees from Nepal and Bhutan as well as asylum seekers who

[4]http://www.unhcr.org/asylum-seekers.html
[5]http://www.unhcr.org/4ca34be29.pdf
[6]http://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html
[7]http://www.achpr.org/files/instruments/refugee-convention/achpr_instr_conv_refug_eng.pdf
[8]http://www.unhcr.org.in/index.php?option=com_content&view=article&id=3&Itemid=125

were denied asylum as a result of structural failures in UNHCR's refugee status determination mechanism.

In 2015, there were 52,41,000 foreign migrants in India, the world's twelfth-largest population of migrants in a single country. Again, this statistic does not tell the whole story. From 1960 to 1980, India was the world's most popular migrant destination after the United States, hosting a population of 94,11,000 foreign migrants in 1960. Between 1980 and 2000, India fell to fourth place with 64,11,000 foreign migrants in 2000 as the expansion of the European Union (EU) resulted in millions of people exercising the EU's 'freedom of movement' to migrate within Europe. By 2010, Germany was the world's second-most popular destination for migrants and India had fallen to twelfth place.

India has one of the largest refugee populations in South Asia, but is yet to enact a uniform law that addresses the issue of asylum. Neither is the term 'refugee' mentioned in any domestic law. India has not signed the 1951 United Nations Refugee Convention on the Status of Refugees, or its 1967 Protocol that stipulates the rights and services host states must provide refugees.

The Passport (Entry of India) Act, 1920, The Passport Act, 1967, The Registration of Foreigners Act, 1939, The Foreigners Act, 1946, and The Foreigners Order, 1948, are consulted by Indian authorities with regard to the entry of refugees and asylum seekers.

India does, however, have an informal refugee regime broadly in line with international instruments. While it has no formal asylum policy, the government decides on granting asylum on an ad hoc and case-to-case basis.

In December 2015, Congress MP Shashi Tharoor introduced a Private Member's Bill called the Asylum Bill, 2015, to provide for the establishment of a legal framework to consolidate and harmonise India's refugee policies. The Bill is yet to be taken up for consideration.

Legal Position of Refugees from sample reasons:

A. Tibetan Refugees:
The initial wave of Tibetans who arrived in 1959 with the Dalai Lama were regarded as refugees and given asylum. They were given land and housing — which was discontinued for later batches of refugees — and a Registration Certificate (RC) that allowed them to enjoy all privileges of an Indian citizen except the right to vote and work for the government. The RC is a prerequisite for the Identity Certificate (IC), which is necessary for international travel. An IC is normally issued to Tibetans living in India,

from the Regional Passport Office, Delhi, on the recommendation of the Bureau of His Holiness the Dalai Lama (HHDL), New Delhi.

B.   Tamil Refugees from Sri Lanka:

Sri Lankan Tamil refugees are broadly classified as "camp refugees" and "non-camp refugees" based on socio-economic parameters. They cannot vote or own land in India, but are allowed to own cattle and purchase items for domestic use. Sri Lankan Tamil refugees are issued individual and family identity cards with details of names of family members, age, relationship, gender, date and location of arrival in India, education and their erstwhile address in Sri Lanka. They are also issued refugee certificates by the revenue inspector of their camp, which is required for their return to Sri Lanka.

C.   Refugees from Pakistan, Afghanistan and Bangladesh:

In July 2016, the government approved a number of facilities aimed at easing difficulties faced by minority communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians — of Afghanistan, Bangladesh and Pakistan staying in India on Long Term Visas. They were allowed to open bank accounts, purchase property for self-occupation and suitable accommodation for carrying out self-employment, take self-employment, and obtain driving licences, PAN cards and Aadhar numbers.

Free movement of such persons within the state or Union Territory in which they are staying, transfer of visa papers from one state to another, and the waiver of penalty on non-extension of short-term or long-term visas on time, were among other facilities that were allowed.

Earlier, in September 2015, the entry and stay of Hindus, Sikhs, Christians, Jains, Parsis and Buddhists from Pakistan and Bangladesh who came to India fearing religious persecution, either without valid documents or with documents whose validity had since expired, had been regularised by the government.

The government has decided to exempt Bangladeshis and Pakistanis belonging to minority communities who entered India on or before December 31, 2014, from the relevant provisions of rules and order made under the Passport (Entry into India) Act, 1920 and the Foreigners Act, 1946, in respect of their entry and stay in India without such documents, or after the expiry of those documents.

Current Asylum Law and Practice:

This Subpart is divided into three sections. Section 1 examines India's position in the international refugee regime. Section 2 assesses India's domestic law and policy regarding foreigners and asylum. Section 3 reveals the government's three approaches to refugee protection.

1. India and the Global Refugee Regime

This section is divided into two subsections. The first subsection summarises India's discontent with the Refugee Convention. The second subsection highlights India's paradoxical attitude towards the larger interconnected global asylum regime.

a. Standing Apart from the Refugee Convention

144 countries have signed the Refugee Convention but India has not, making it an outlier in the international refugee regime. This is a curious anomaly for a country which has sheltered tens of millions of refugees during the life of the Convention. India's reasons for refusing to sign the Convention have never been clearly communicated; nevertheless four main grounds are apparent from official resources and the informed speculation of commentators.

First, Delhi was irked by the Eurocentrism of the original Refugee Convention and its drafting process. Despite being a founding member of the United Nations (UN) and one of the few independent countries from the Global South, India's input during the drafting of the Convention was marginal. The first drafts of the Convention ignored non-European displacement and refugees, reflecting a 'Europe only' approach to refugees which was carried forward into the draft placed before the General Assembly. Meanwhile, India struggled to cope with the "largest mass migration in human history," caused by the colonial Partition of India which resulted in the forced cross-border displacement of 14.5 million people and the deaths of 1 million people. The experience and circumstances of Partition survivors were similar to Europe's refugees but they did not qualify for protection under the Refugee Convention or the Statute of the Office of the United Nations High Commissioner for Refugees ('UNHCR Statute'). Indian objections to the Convention's Eurocentrism were dismissed by the drafting governments.

Second, there remains discomfort with the Refugee Convention's imagination of a refugee solely as an individual rather than as a constituent of a group or community. Since it is the product of a European weltanschauung, the Convention's focus on individuated persecution is unsurprising. But, for India, an individualist asylum system would ignore its unique national imagination and fluid conception of citizenship; it might even ideologically betray the "idea of India." Refugee individualism conceptually conflicts with mass influx situations because individuals in a mass influx are unable to prove

individuated persecution, leaving them vulnerable to refoulement. For India, which has a history of receiving large mass influxes of refugees, the Refugee Convention's relative silence regarding mass influxes constitutes a continuing failure.

Third, the Refugee Convention fails to deal with mixed migration, which lacks a definition, although there is broad consensus on its features. India has long faced mixed migration, particularly across its eastern land and sea frontiers.Nevertheless, mixed flows were completely ignored by the international refugee regime until growing migration to Europe forced the issue to the top of the agenda. Europe's 'migrant crisis' comprises classic mixed flows of the type that India has talked about for several years. UNHCR's first official response, the "10-Point Plan of Action," was published only in 2006, identifying five areas around the world for special attention. South Asia was not one of those areas, despite its familiarity with migration. Mixed flows often coincide with conflict and other refugee-creating factors; consequently, mixed flows and mass influxes go together.

Fourth, and finally, Delhi wants the Refugee Convention to contain strong 'burden sharing' provisions. This is the argument: since the countries of the Global South which actually host the bulk of the world's refugees had no say in the making of the Convention, and since the Convention's drafters in the Global North have constructed regimes to prevent refugees entering their territories, no demands should be made regarding how southern host countries actualise the Convention's core principles, unless the costs of the demands are shared by the North. The argument resonates in India after its experience of sheltering around 10 million refugees in 1971 with inadequate foreign assistance. Of the total costs of hosting the refugees, estimated at over half a billion dollars, UNHCR contributed between 120 million to 183 million US dollars. India was forced to ask its citizens to pay a special tax to tide over the crisis. The argument is more pointed in Africa. Since most refugees and migrants flee colonially-created conflicts, Europe's ex-colonial powers are accountable for their protection.

b. Disinterest in the 'Refugee Regime Complex'

There are other instruments besides the Refugee Convention which bear on refugees and migrants such as the geographically-determinate OAU Convention and the issue-specific International Labour Organisation's (ILO) migrant workers conventions of 1949 and 1975. The multiplicity of regimes has enabled would-be refugees to 'forum shop' and states to 'regime shift,' thereby injecting cross-institutional strategies into asylum policy. According to Alexander Betts, this regime complexity has resulted in the traditional refugee regime, which was built around the Refugee Convention, giving way to a new 'refugee regime

complex' - a global network of interdependent, independent, and overlapping refugee institutions which underpins contemporary migration and asylum.

Despite facing multiple influxes of people from across South Asia and elsewhere, India has instituted neither geographic nor issue-specific regimes to address refugees or migrants. It has eschewed regional frameworks, such as the EU's successful multilateral travel regime, in favour of bilateral agreements such as those with Nepal and Bhutan, and event-specific domestic measures, such as the orders regarding Tibetan refugees. The reluctance to create a refugee regime may be prompted by the costs of socio-economic protection, but that does not account for the absence of a territorial asylum framework to minimally preserve the principle of non-refoulement while protecting state interests.

On the other hand, India is a member of UNHCR's Executive Committee ('EXCOM'), the body which helps to set the agenda for global refugee policy. But its EXCOM contributions have been self-justificatory and self-congratulatory, ranging from denouncements of the international refugee regime to reminders of India's generosity as a host country. Both claims are accurate, but they do nothing to set out an Indian vision for enforceable asylum. The disinclination to create regional or issue-specific structures of its own to address refugees and migrants reveals the actual reason for its hostility to asylum law - political expediency. The absence of an enforceable asylum law permits the government to respond to asylum requests purely to gratify an instant political interest.

2. Inchoate National Law

This section is divided into two subsections. The first subsection explores the stringent legal framework for foreigners and refugees in India, particularly the extraordinary width of the government's absolute power of deportation. The second subsection argues that, contrary to popular claims, the Constitution does not invest refugees with meaningful rights, not even the right against refoulement.

a. The Foreigners Act Framework

India's ad hoc refugee system is made possible by the wide powers given exclusively to the Centre to act with unfettered discretion with regard to foreigners. In the nineteenth century, India's colonial government enacted the Foreigners Act, 1864, the first statute to ban, detain, and expel foreigners. The statute was heavy-handed, having been designed to promote colonial power and maintain social control. But when the Second World War broke out, the colonial government found even the 1864 statute too lenient for the absolute powers it demanded, so it was replaced by the Foreigners Act, 1940. After the war ended,

and amidst the large-scale displacement that followed, the 1940 wartime legislation was further consolidated as the Foreigners Act, 1946 ('Foreigners Act').

The Foreigners Act is wholly devoid of nuance because it does not differentiate between people on intelligible criteria such as their purpose for entering India. It consequently fails as a people management law. For instance, tourists, travellers, expatriate workers, fugitives, refugees, and migrants have widely divergent reasons for entering and staying in India, but the Foreigners Act treats them uniformly under a monolithic regime. The Centre has used the Foreigners Act to compel foreigners to prove their identities; present themselves at police stations; control their movements, activities, and residences; confine them in internment camps; and, of course, to leave India.

The sheer breadth of the law's deportation power, which has enabled the government to achieve deportations without even minimal judicial review, is revealing. In 1955, the Supreme Court blessed this position and in the intervening 61 years, it has not just reiterated the untrammelled deportation power, it has also relieved the Centre of the requirement of complying with due process while effecting deportations. This awesome power of deportation has been delegated and sub-delegated to such an extent that, in many states, a mid-level police officer can order a foreigner to leave India without even having to provide a reason.

b. Unconvincing Constitutional Symbolism

Some commentators - including, in an earlier article, this writer - have claimed that refugees and asylum seekers enjoy constitutional protection while in India which, amongst other things, protects them from refoulement. That is not true in any meaningful sense. In fact, some of those claims are patently false. No right to non-refoulement has ever been read into Indian constitutional jurisprudence, nor can it be extrapolated. Arguments that Article 21 of the Constitution encompasses non-refoulement usually point to the Gujarat High Court's decision in Ktaer Abbas Habib Al Qutaifi v. Union of India ('Habib'). But, in fact, the Single Judge in Habib did not prohibit refoulement, he only ordered the government to re-examine its deportation order on humanitarian grounds. There are two reasons why Habib does not validate the non-refoulement principle: (i) it expressly permits deportations on the basis of public order and national security, and (ii) it is powerless against the Supreme Court's confirmation of the Centre's "unrestricted right to expel."

What is incontrovertible is that in National Human Rights Commission v. State of Arunachal Pradesh ('NHRC'), the Supreme Court ordered regional authorities to stop the harassment of a refugee community by the area's local inhabitants on the basis of an obvious, textualist interpretation of Article 21 of the Constitution. Since the Article uses the word "person"

instead of 'citizen,' the court correctly held that the life and liberty
of foreigners are protected on Indian
soil. Consequently, the inhabitants of an informally blockaded refugee camp were permitted access to healthcare and food. NHRC neither creates a refugee protection regime nor even mentions the non-refoulement principle; it only confirms that foreigners enjoy limited protections under Article 21.

Besides the minimal right to life and liberty, which does not protect against detention and deportation under the Foreigners Act, refugees arguably have the right not to be discriminated against in relation to other refugees. That is all. In some cases, very few and far between, regarding very specific facts, some courts have required the government to meet procedural due process standards before restrictively regulating refugees. Those cases must be confined to their facts because they are very clearly exceptions; indeed none of them were even declared reportable and they are no longer than a
few unreasoned paragraphs. No amount of spin can create a pro-refugee jurisprudence where none exists, and it is dangerous to persist with the claim that such a jurisprudence does exist because it deflects attention away from a worrying gap in Indian law.

3. State Approaches to Refugee Protection

An examination of independent India's responses to refugees reveals three approaches to protection.

First, mass influx refugees are channelled to temporary camps to be identified
and given shelter. No individualised refugee status determination process is
conducted. There is sometimes a minimal screening process to
identify dangerous persons such as irregular combatants who may be subjected
to restrictive measures. Refugees receive varying levels of socio-economic protection. Most mass influxes have prompted specific legal measures regarding the entry, stay, and protection of refugees. At the end of the conflict or situation that created them, mass influx refugees are usually expected to return en masse to their country of origin.

Second, politically sensitive individuals, usually from countries with which India
has sensitive relations, are granted asylum in rare instances by the Centre without a formal finding of persecution. Rarely referred to asylees, such individuals include the Dalai Lama, Bangladeshi writer Taslima Nasrin, and, potentially, the Baloch dissident Brahumdagh Bugti. Grants of asylum of this nature have usually accompanied a political conflict with the asylum seeker's country of origin and, as such, have prompted accusations of deliberate and non-humanitarian political subversion against the Indian government.

Third, and finally, citizens of countries not covered by the two preceding approaches are allowed to apply to be recognised as mandate refugees by UNHCR following an individualist determination procedure in accordance with the UNHCR Statute If they are recognised as refugees, they are a given an identity document stating that they are refugees which is generally respected by local authorities However, UNHCR's operations in India are not protected by formal agreement with the Indian government and its identity documents have no legal validity Mandate refugees receive no support from the Indian government but the most vulnerable sometimes receive a subsistence allowance from UNHCR

In the committee, we hope to discuss these issues

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