

● ENVIRONMENTAL REFUGEES – A QUEST FOR JUSTICE



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Abstract

Climate Change has been significant factor to demonstrate jurisprudential values in our legal System. There are some unanswered questions that are still have to answer such is the quest for Justice for Climate Refugee in Indian Legal Regime. There are some international initiative taken to address the issue of Climate Change and its mitigation affection but refugee status is silent. The article try to analyse from the legal angel point of view as part of constitutional values and ethos from Human Rights Perspective.

Key words-

Climate Change, Climate Refugee, International Law, Policy, Migration)

I. Introduction

The most nascent fashionable debate in the multi-layered world of climate change is not about science and technology. Rather, it is about considering suggestion regarding the risk of large-scale human migration caused by climate change. This leaves us significant scope for comprehensive study.

In 2014, the IPCC (Inter Governmental Panel on Climate Change) came up with an unsettling oracle) that millions of people would be made homeless as a result of climate change in coming days. In the worst-case scenario, climate change will lead to approximately 200 million homeless, 20 times more than currently protected by the United Nations (UN).¹ The consequences will be grim. Mass movements of refugees most likely will lead us to constrained natural resources, overpopulated areas, and may exacerbate socio-economic and political tensions.

Despite the fact that climate change is a worldwide issue, its consequences are widely dispersed. Developing countries that have large dependence on natural environment for

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¹Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees, Frank Biermann and Ingrid Boas, Global Environmental Politics 10:1, February 2010, by the Massachusetts Institute of Technology.

basic existence often have fewer resources to adjust to and reduce climate crisis.² Climate refugees, requires a supranational consciousness and the dynamic involvement of international society is essential in providing assistance to this vulnerable group.³

In India, displacement and climate-induced migration are already a big problem. "Between 2008-2016, over 200 million people have been displaced worldwide as a result of natural disasters and in India, close to 1.5 million people are classified as internally displaced (1.3 million in 2017) every year".⁴ Adding to this is the growing concern about cross-border migration of homeless people, mainly from Bangladesh. As per the GRID 2020, India and Bangladesh rank amongst the top five countries where the maximum number of displacement has occurred. Besides, the geographical position of Bangladesh is such that migration to India is sometimes the only option available to the victims of disastrous climate change.⁵ This problem is unique with Bangladesh because the other countries with which India shares its borders are not face such imminent threats of climate change at present.

However, there is currently no comprehensive international structure in place to handle the issue of climate-related human exodus. It is also underdeveloped in most part of the world where nations often are reluctant to extend any meaningful protection to these people domestically.

The following sections will capture the severity and urgency of the issue in more detail.

I.II Climate change and Human Displacement: A Perilous Problem to Reckon

Climate change perhaps is the most debated spectacle among all disastrous consequences that our planet is facing at present. Climate change has impacted almost everyone and everything in the world - humans, animals, trees or bio-diversity. It initiates a vicious cycle impacting the environment which in turn impacts the mankind.

The adverse impact of climate change has been predicted since 1990.⁶ However, once there had been debate regarding whether climate change could be a reason for migration or displacement. This might lead to political, economic and social tension between the countries, unless cross-border migration of these people is not managed.

²Reuveny, Rafael. "Eco-migration and Violent Conflict: Case Studies and Public Policy Implications." *Human Ecology*, vol. 36, no. 1, 2008, pp. 1-13. JSTOR, available at: www.jstor.org/stable/27654252. (Visited on July 25, 2021).

³Bonnie, Docherty & Tyler, Giannini. (2009). *Confronting A Rising Tide: A Proposal For A Convention On Climate Change Refugees*. The Harvard Environmental Law Review: HELR. 33. 349-403. Also see Goodwin-Gill & McAdam, 2007 3d ed. (Toronto: Oxford University Press, 2007) 848 pages also see Sumudu Atapattu, *Climate Change: Disappearing States, Migration, and Challenges for International Law*, 4 Wash. J. Envtl. L. & Pol'y 1 (2014).

⁴Global Report on Internal Displacement Report, 2021, *Internal Displacement In A Changing Climate*, available at: <https://www.internal-displacement.org/global-report/grid2021/> (Visited on July 25, 2021).

⁵Neha Choudhury, "Environmental Refugees: A Humanitarian Crisis in India and Bangladesh", Das, S.K. and Chowdhary, N. (Ed.) *Refugee Crises and Third-World Economies*, Emerald Publishing Limited, Bingley, pp. 37-43.

⁶Oli Brown, *Migration and Climate Change*, International Organization for Migration, Geneva, 2008 available at: https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=5866 (Visited on 26 August, 2021).



Such unplanned migration is bound to increase the human density of a particular region which in turn will create a pressure on the existing natural resources.⁷ According to Professor Myers 'estimate this planet will have approximately 200 million climate migrants by 2050.'⁸

Small Island Developing States (SIDS) are mostly exposed to global climate change because of their geographical location, often having low coastlines that are threatened by the raging seas and oceans. Countries like Kiribati and Tuvalu are striking examples of such effects of climate change, which are on the verge of wiping out from face of this planet because of increased sea-level rising.⁹

India, unfortunately, is also experiencing this effect of climate change. Till December, 2020 there are 55 million people living in displacement out of which 7 million are out of Disaster.¹⁰ India ranks fourth in the list of most displacement in the year 2020. India alone has 9, 29,000 internally displaced people. India, Myanmar and Bhutan and is ranked as the largest disaster displacement of the year.¹¹

Last year, Cyclone Amphan had caused nearly 5 million evacuations across Bangladesh. After this incident, within merely two weeks, Gujarat and Maharashtra was struck by another massive storm, Cyclone Nisarga, which caused 170,000 evacuations, many of them could not get back to their homes again as those were completely destroyed. Subsequently, Cyclone Yaas and Taukte has displaced about 2 million people respectively.¹²

Change in the climatic condition has forced the Indian Metrological Department to revise the dates for onset and off set of monsoons. The date for withdrawal of monsoon has been extended for more than two weeks.¹³ It is causing direct impact on people's life and livelihood. In 2020 about 763,000 people were displaced due to southwest monsoon between early June and late October.¹⁴

The situation is also not very encouraging in neighboring areas of India. Since 1988 the pattern of monsoon in Bangladesh has undergone a sea change. Last year it witnessed the longest monsoon of the decade since 1988. Just at start of July, satellite data

⁷Supra note 3.

⁸Stern, N., (Ed.), *The Economics of Climate Change: The Stern Review*, Cambridge University Press, Cambridge, 2006, p. 3. See, also Lovell, J., 2007, 'Climate change to make one billion refugees-agency?', Reuters, 13 May 2007, available at: <http://www.reuters.com/article/latestCrisis/idUSL10710325> (Visited on 26 August, 2021).

⁹Eleanor Ainge Roy, 'One day we'll disappear': Tuvalu's sinking islands, *The Guardian*, May 16, 2019 available at: <https://www.theguardian.com/global-development/2019/may/16/one-day-disappear-tuvalu-sinking-islands-rising-seas-climate-change> (Visited on 26 August, 2021).

¹⁰Nandan Sharalaya, 'Taking India's Climate Migrants Seriously' available at: <https://thediplomat.com/2018/08/taking-indias-climate-migrants-seriously/> (Visited on 26 August, 2021).

¹¹Supra note 2.

¹²PTI, Cyclone 'Yaas' ravages West Bengal, Odisha as over 20 lakhs evacuated; four dead? available at: <https://economictimes.indiatimes.com/news/india/cyclone-yaas-ravages-west-bengal-odisha-as-over-20-lakh-evacuated-four-dead/articleshow/82976106.cms?from=mdr> (Visited on 26 August, 2021).

¹³India Meteorological Department, 'New Normal Dates of Onset/Progress and Withdrawal of Southwest Monsoon over India 2020'; India Meteorological Department, 'Statement on Climate of India during 2020, 5 January 2021.

¹⁴Supra note 4.

revealed that approximately a fourth of the nation had already been submerged.¹⁵ By August the flooding was at its peak and about 5.4 million people were affected.¹⁶

It is clear from above facts that changing climate is a massive problem. Along other impacts, it is bound to create severe displacements in years to come. Hence there is an urgent requirement to mitigate and manage this situation at the earliest. The subject of climate change and environment displacement, on the other hand, is not given attention since the effects of climate change are noticed in nations depending on their geopolitical position.

I.III Who are Climate Refugees?- A Normative Debate:

Considering the fact that the problem of climate refugee has been a matter of open debate since 1980s, the existing definitional discontent is somewhat undesirable.¹⁷ Several terms like climate migrant, climate refugees and climate displaced persons are used to characterize those who have been uprooted from their homes as a result of climate change's causal factors. Some are overlapping and some are used interchangeably. It is, however, makes sense to understand the specific applications of these terminologies.

In 1970, Lester Brown of the World Watch Institute coined the term "environmental refugee" or "climatic refugee" the term began to gain popularity in the 1990s.¹⁸ Simply stating climate refugee means a person or a group of persons who become stateless due to anthropogenic or natural climate change.

However, one can argue that climate refugee is basically a subset of the climate induced migration 'or displacement'. As it suggests, climate induced migration or climate induced displacement can be categorized further based on the extent of the displacement caused. In a sense it is more specific. It can be further categorized into internal migration and cross border migration. By the term internal migration, the researcher means that the migration which causes the person to migrate within the nation for example a shift from rural to urban regions. In fact, migration is a phenomenon that exists numerous push factors such as better job opportunity, health care facility, education system, political stability, religious freedom etc.¹⁹ But one reason precedes all

¹⁵Earth Observatory, NASA, 'Intense Flooding in Bangladesh' 1 August 2020.

¹⁶United Nations Resident Coordinators Office Bangladesh, Humanitarian Response 'HCTT Response Plan Monsoon Floods 2020' available at: <https://www.humanitarianresponse.info/en/operations/bangladesh/document/hctt-response-plan-monsoon-floods-2020> (Visited on 29 August, 2021).

¹⁷This perhaps came in the limelight when Essam El-Hinnawi of UNEP called environmental refugees 'as: ... those people who have been forced to leave their traditional habitat, temporarily or permanently, because of marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life'

¹⁸James Morrissey, Rethinking the 'Debate on Environmental Refugees': From 'Maximalists and Minimalists' to Proponents and Critics 19(1) JPE 36, 49 (2012); See, also Dr. Camillo Boano and Professor Roger Zetter, et.al., Forced Migration Policy Briefing 1, Environmentally displaced people, Refugee Studies Centre, Oxford Department of International Development, University of Oxford, (2008), available at: [pb1-environmentally-displaced-people-2008.pdf\(ox.ac.uk\)](http://pb1-environmentally-displaced-people-2008.pdf(ox.ac.uk)) (Visited on 29 August, 2021).

¹⁹Castles S, Rajah C (2010) Environmental degradation, climate change, migration and development: Mexico 2010. available at: <http://www.nnirr.org/~nnirrorg/drupal/sites/default/files/pga-paper-on-environment-and-migration-by-castlesrajah.pdf> (Visited on 29 August, 2021).



other factors, i.e unexpected and drastic change in weather or the climatic condition of a particular place.

Nevertheless, the expression climate or environmental refugee has largely been criticized as misleading. These criticisms mainly point towards 1951 Refugee Convention and international refugee law where specifically climate refugees as an expression have been preferred. However, definition available under 1951 Convention is considered narrow and misses additional category of persons like the climate migrants. Therefore, according to some critics, instead of climate refugee, environmental migrant or something more contemporary one such as 'displaced person' appears to be more appropriate vocabulary.²⁰ One can see the 'displaced person' identifier is descriptive in nature and may become susceptible in terms of appealing normative aspect.

Furthermore, some argue that the term "climate refugee" does not exist under international law. Persons forced to escape their country as a consequence of ecological or climatic processes or events will not necessarily meet the definition of a refugee as defined by Article 1A (2) of the Refugee Convention²¹ and Protocol.²² It does not accept climate change to be one of the criteria for creation of refugees. At the academic level also the term climate migrant would be more fitting, as climate change is playing an important role in their migration or displacement.²³ But as far as the present legal position goes the term climate migrant seems to be more appropriate in comparison to climate refugees.

"The movement of a person or groups of persons who, predominantly for reasons of sudden or progressive change in the environment due to climate change, are obliged to leave their habitual place of residence, or choose to do so, either temporarily or permanently, within a State or across an international border."²⁴

II. Laws and Regulations:

Professor Walter Kälin, Nina Schrepfer in their pioneering work on the subject had shown that not necessarily climate change itself always trigger the movement of people. In fact, establishment of a direct causal link between a specific climate event (say a major storm) and human displacement is often a daunting task. Similarly, when people are forced to move because of rising sea level (such as Kiribati), there may be multiple reasons involved. The argument here is not single out one specific climate event. Instead, it should be seen as wide- ranging social fallouts where climate change works as a triggering phenomenon. As a result, they believe the relationship among climate-

²⁰Stellina Jolly and Nafees Ahmad, *Climate Refugees in South Asia* (International Law and The Global South, 2019).

²¹Convention relating to the Status of Refugees, 1951 (adopted 28 July 1951, entered into force 22 April 1954).

²²Protocol relating to the Status of Refugees, OHCHR 1967, available at:

<https://www.ohchr.org/Documents/ProfessionalInterest/protocolrefugees.pdf>. (Visited on 29 August, 2021).

²³IOM, *Environmental Migration*, available at: https://migrationdataportal.org/themes/environmental_migration_and_statistics (Visited on 29 August, 2021).

²⁴J. McAdam, *From Economic Refugees to Climate Refugees? Review of International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (2009) 31 *Melbourne Journal of International Law* 579, available at: <https://environmentalmigration.iom.int/glossary> (Visited on 29 August, 2021).

induced events and human movement must be investigated from two angles: one, the slow development of climate-change repercussions, and second, unexpected tragedies like hurricanes. They further emphasized on temporal dimension of the problem by considering the opportunities available to the displaced people to return to their original places. This often can be meaningless for those people as on return they may have to face a host of human rights related problems.²⁵

Nonetheless, a legal assessment of the UNFCCC, the Kyoto Protocol, the Paris Agreement, and the expanding corpus of principles of law arising from the various COPs that response to global must be the starting point for the conversation. Simultaneously, legislative safeguards underneath the refugee legal system, as well as the implementation for human rights legislation in both the host nation and the country of origin, must be considered.

II.I International Law:

In the early part of 1990s, the IPCC, which is made up of scientists, government officials, and civil society organizations, gave climate change a sense of legitimacy and enhanced scientific confidence. The IPCC's initial evaluation description emphasized on seriousness of climate change, as well as its environmental and socioeconomic repercussions.²⁶ The IPCC report was put on hold while the UN General Assembly passed Resolution 45/212, which formed the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC/FCCC).²⁷

The Kyoto Protocol take effect on February 16, 2005. It strengthened the policy and administrative basis of such climate change regime. Then, after series of meetings and discussions, the international community came together in Paris for COP 21 to establish a historic and with the goal of limiting global warming below 2 degrees Celsius, a legally binding agreement has been reached.²⁸

Climate change migration has been recognized at various build-up phases on Paris Agreement. Initial discussions on the wording on damage and loss proposed the creation of a climate change-induced relocation collaborative Centre in the run-up to Paris conference.²⁹ As a result, two points become critical. To begin with, the word "climate refugees" is absent from the Paris Agreement's. Secondly, the avoiding or tumbling climate-related shift emphasizing on population resilience and livelihood options.

²⁵Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches*, Legal and Protection Policy Research Series, United Nations High Commissioner For Refugees (UNHCR), available at: <https://www.unhcr.org/4f33f1729.pdf> (Visited on 29 August, 2021).

²⁶Lorraine Elliott, *The Global Politics of the Environment* 167 2nd ed, Palgrave Macmillan, 2004.

²⁷Protection of global climate for present and future generations of mankind' A/RES/45/212, 1990

²⁸UNFCCC. Adoption of the Paris Agreement. Report No. FCCC/CP/2015/L.9/Rev.1, available at: <http://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf> (Visited on 29 August, 2021). (Hereinafter Paris Agreement).

²⁹Jessica Wentz and Michael Burge, *Designing a Climate Change Displacement Coordination Facility: Key Issues for COP 21*, 2015 1-19, 2 <http://columbiaclimatelaw.com/files/2016/06/Wentzand-Burger-2015-09-Displacement-Coordination-Facility.pdf> (Last visited on 12-02-2029).



The UNFCCC Task Force on Displacement was established inside the Warsaw International Mechanism for Loss and Damage (WIM) in 2015, as part of the Paris Climate Change Agreement. It used a consultative method to make recommendations on in what way to deal with shift towards climate change. The United Nations System, the UNFCCC State Parties, and major shareholders are all addressed in these recommendations. These suggestions aim to address all types of human movement that are connected to climate change's negative effects. This has urged states to implement legislation, programs, and approaches to manage all types of movement related to climate change consequences also while taking into consideration institutions' provisions. Increasing the impact of review and studies on this problem by collaborating with the Global Compact for Climate Change. Members of the Task Force on Displacement taken devoted data products³⁰ to promote awareness of the several sorts of exoduses that occur of sluggish disasters, and to map existing UN mandates for dealing with relocation induced by climate.³¹ The initiative is going to influence government legislation.

For example, the governments of Tajikistan and Kyrgyzstan are examining how closely their national policy frameworks align with the Task Force on Displacement's recommendations in order to identify relevant mechanisms and gaps, as well as formulate particular national suggestions to handle mobility and climate change challenges.³² It's worth noting that the UNFCCC's migration-related policy work is institutionally linked to tactical team in climate talks which remain extremely relevant to migration.³³

The Task Force on Displacement was widely acknowledged as having not only fulfilled its goal to make recommendations, but also had other good outcomes, such as providing a forum to debate "tough and sensitive problems associated to loss and harm."³⁴ As just a consequence of the WIM evaluation workout, the Least Developed Countries Team suggested the creation of a dispersion clinic to aid nations in dealing with specific and cross-border displacement and migration addressing climate change effects, and a direct participation of organizational performers to construct policy frameworks to best utilize awareness leads to lack and damage.³⁵ Building on the work done under the

³⁰UNFCCC, Fourth Meeting of the Task Force on Displacement (TFD4) Summary 7-9 September 2020, available at: [Summary_TFD4_update for Excom 12.pdf \(unfccc.int\)](#)(Visited on 29 April, 2022).

³¹Reliefweb: IOM to the Special Rapporteur on the Human Rights of Internally Displaced Persons, Internal displacement in the context of the slow-onset adverse effects of climate change available at: <https://reliefweb.int/report/world/internal-displacement-context-slow-onset-adverse-effects-climate-change> (Visited on 29 April, 2022).

³²IOM, World Migration Report 2020, available at: https://publications.iom.int/system/files/pdf/wmr_2020.pdf (Visited on 29 April, 2022).

³³Ibid.

³⁴Hantscher, S. (2019). The UNHCR and Environmentally Displaced Persons. In: *The UNHCR and Disaster Displacement in the 21st Century. Contributions to Political Science.* Springer, Cham. https://doi.org/10.1007/978-3-030-19689-9_5 (Visited on 29 April, 2022).

³⁵OHCHR, The slow onset effects of Climate Change and Human Rights Protection for cross-border migrants, a v a i l a b l e a t : https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_slow_onset_of_Climate_Change_ENweb.pdf (Visited on 29 April, 2022).

UNFCCC, global migration policy talks have increasingly operated in tandem to incorporate climate and environmental issues. The approval New York Declaration for Refugees and Migrants, 2016 (New York Declaration) by United Nations Member States,³⁶ followed by the ratification of the Global Compact for Safe, Orderly, and Regular Migration by States in 2018.³⁷ However, it is vital to remember that the Global Compact for Movement primarily addresses international migration, whereas much domestic migration occurs as a result of climatic deterioration, such as from rural to urban regions.

However, completing the tasks of the Global Compact for Migratory, especially that related to tackling migration drivers and increasing adaptability & resiliency within source countries, would have a good influence both on internal and international migration. The Migration Multi-Partner Trust Fund, which had been established to assist in the implementation of the Global Compact for Migration, has started funding joint climatic migration activities.³⁸ While it is too early to assess practical effects. It is encouraging that governments have backed funding for migration initiatives. The International Migration Review Forum,³⁹ which will places in 2022 to assess state of the Global Compact for Migration's implementation, providing crucial pointers of situation commitment to execute the Compact's climate migration objectives, via action. The many worldwide proposals and principles emphasize the complicated ways of migration in relation to gradual climate consequences, as well as the necessity for policymakers from other fields to collaborate in order to establish complete solutions. Migration authorities should lead the way in turning advanced functional to global and sub-national policy that provide protection and assistance to disadvantaged migrants & populations.

II.II Human Rights and the Tale of Climate Change:

There is a clear link between climate change and human rights. Time and again climate change has affected several rights of humans and significant are the right to education, housing, health, sanitation and water, food, development, self-determination and life and right to meaningful and informed participation.

The rights violated by climate change and its impact are protected under the several human rights conventions and declarations and they are the UDHR,⁴⁰ ICCPR,⁴¹ ICESR,⁴² CERD,⁴³ CEDAW,⁴⁴ Convention on Rights of Child,⁴⁵ Convention on protection of Rights of

³⁶United Nation, New York Declaration for Refugees and Migrants, 2016 available at: <https://documents-dds-dny.un.org/doc/UNDOC/GEN/N16/291/97/PDF/N1629197.pdf?OpenElement> (Visited on 29 April, 2022).

³⁷OHCHR, Global Compact for Safe, Orderly and Regular Migration, 2018 available at: <https://documents-dds-dny.un.org/doc/UNDOC/GEN/N18/451/99/PDF/N1845199.pdf?OpenElement>(Visited on 29 April, 2022).

³⁸United Nation Network on Migration, Multi-Partner Trust Fund for Safe, Orderly and Regular Migration available at:<https://migrationnetwork.un.org/mptf>(Visited on 29 April, 2022).

³⁹United Nation Network on Migration, International Migration Review Forum 2022 available at: <https://migrationnetwork.un.org/international-migration-review-forum-2022>(Visited on 29 April, 2022).

⁴⁰Universal Declaration of Human Rights, 1948.

⁴¹International Covenant on Civil and Political Rights, 1976.

⁴²International Covenant on Economic, Social and Cultural Rights, 1976.

⁴³International Convention on the Elimination of All Forms of Racial Discrimination, 1969.

⁴⁴Convention on the Elimination of All forms of Discrimination Against Women, 1979.

⁴⁵Convention on Rights of the Child, 1989



All Migrant Workers and Members of their Families,⁴⁶ UN Declaration on the Rights of Development.⁴⁷

However, any generalization should be avoided here. With the careful study, one can identify fault lines in the current legal framework for human rights. The main difficulty about the adequacy of protective net for climate refugees that human rights law tends to cast. It is not very comforting fact that in spite of all noise, the existing international human rights law has failed to delimit in clear language the right to healthy environment. This is important because any work on climate refugee must address the right conundrum at the first place.

A framework, offering a valuable set of legal standards for protecting victims of natural disasters who are internally displaced, is available in 1998 UN Guiding Principles on Internal Displacement. But, like many of the international legal documents, this also leaves a huge discretion in terms of implementation to the national governments.⁴⁸ Further difficulty is that it is not legally binding and implemented incoherent manner by the states across the globe. Nonetheless, the Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa was drafted using these ideas. The African Union adopted this agreement in October 2009, and it went into effect on December 6, 2012. This is the first lawful regional agreement in the world to obligate states to protect and assist displaced people, those who have been forced to migrate resulting from natural or man-made disasters or development projects.⁴⁹

Convention on Refugees and its subsequent Protocol also fall short of providing clear guidance on legal foundation to climate change induced migrants. "OHCHR investigated on implications of climate change on human rights in 2008 and discovered three hurdles that must be overcome before global climate change to be considered a human rights violation:

- (a) Establishment of connection between one Nation's releases causing exact effect on additional republic;
- (b) Demonstrating that human rights concerns are entirely linked to climate change; and
- (c) Recognizing that the rights paradigm is often applied in reaction to transgressions, while global climate legislation is concerned about future damage."⁵⁰

The Nansen Conference on Climate Change and Migration, held in Norway in 2011, was

⁴⁶International Convention on Protection of Rights of All Migrant Workers and Members of their Families, 1990

⁴⁷UN Declaration on the Rights of Development, 1986

⁴⁸Walter Kälin and Nina Schreper, Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches, Legal and Protection Policy Research Series, United Nations High Commissioner For Refugees (UNHCR). available at: <https://www.unhcr.org/4f33f1729.pdf>. (Visited on 30, April 2022).

⁴⁹African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009.

⁵⁰Understanding Human Rights and Climate Change, OHCHR, available at: <https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>. (Visited on 30 April, 2022).

a watershed moment, with participants formulating key principles on climate change and inter migration, especially in the event of unforeseeable events.⁵¹

The Kyoto Protocol acted as a guiding light for the Convention. The guidelines emphasised need for aiding local legal and policy formation in responding to climate changing relocation, with an emphasis on humanity, respect, and civil rights.⁵²

Yet these are limited to regional efforts only and thus far, have failed to create any attractive global solution.

II.III Climate Change: India's Historical Perspective and Policy Prescription

India has been a key player in global climate negotiation. Following the passing of United Nations General Assembly (UNGA) Resolution 44/207 in 1989, as member states it urgently put together an outline convention to deal with worldwide problem, India lost zero time in clarifying its views on the issue and forming a strong Southern alliance behind it.⁵³

Environmental issues in India have received distinct attention from legislature, executives and judiciary from 1980s. During this era Indian Parliament understood the seriousness of some of the difficult environmental problems and tried to address them by making new laws. But implementation of these laws was not up to the mark and judiciary stepped in to plug the gaps whenever possible. Over the period of time, environmental jurisprudence took a distinct shape in India, much of it molded by active judiciary.⁵⁴

Climate change started to take important place in India 's national policy-making throughout the early Centuries. In 2008, a policy framework laying its National Action Plan on Climate Change (NAPCC) and its subsidiary Eight Missions.⁵⁵

In 2018, India submitted its Second Biennial Update Report (BUR) to the UNFCCC in accordance with the convention's reporting requirements. The research claims that between 2005 and 2014, India's GDP emission intensity has fallen by 21%, and India's climate goal for the period before 2020 is on pace.⁵⁶

⁵¹UNHCR, The Nansen Conference Climate Change and Displacement in the 21st Century, available at: <https://www.unhcr.org/4ea969729.pdf>(Visited on 30 April, 202).

⁵²Disaster Displacement, The Nansen Initiative, 2015, available at: https://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_-low_res.pdf(Visited on 30 April, 202).

⁵³Sandeep Sengupta, "India's Engagement in Global Climate Negotiations from Rio to Paris" India in a Warming World Integrating Climate Change and Development, 115 Oxford University Press, 2019.

⁵⁴MC Mehta v. Union of India WP © 13029/1985, MC Mehta v. Union of India AIR 1987 SC 1086, Godavarman Thirumulpad vs. Union of India and Ors W.P.(C) No. 202 of 1995, Vellore Citizens Welfare Forum v. Union of India AIR 1996 SC 2718, State of Himachal Pradesh v. Ganesh Wood Products AIR 1996 SC 149, Indian Council for Enviro-Legal Action v. Union of India (1996) 5 SCC 281, Enkay Plastics Pvt. Ltd. v. Union of India and Ors 2000(56) DRJ 828, Hanuman Laxman Aroskar v. Uoi & Others MANU/SC/0444/2019.

⁵⁵National Action Plan on Climate Change, Government of India, Prime Minister's Council on Climate Change, 2008, available at: https://archivepmo.nic.in/drmanmohansingh/climate_change_english.pdf (visited on 17 June 2021).

⁵⁶Press Information Bureau, Government of India, Ministry of Environment, Forest and Climate Change, 12 February 2019, available at: <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1564033> (Visited on 2, September, 2021).



III. India's Position to Address Climate Refugee Problem:

Climate change has already been imaginatively labelled like a "vicious" problem since it lacks a specific explanation, is fractured by scientific ambiguity, and suggested solutions are difficult due to their embeddedness in economic, political, and financial institutions.⁵⁷ If weather change is primarily a matter of justice and equality for some, it is primarily an economic and technical problem for someone else. Even just the concept of an issue is complicated in relation to its problems, and so how we discuss and argue weather issues is a difficulty; variances in interests are equally muddled by employing differences in interpretation.⁵⁸

III.I India's March toward Climate Change:

The first of its kind for developing nations was held in April 1990 in New Delhi at the 'Conference of Select Developing Countries on Global Environmental Issues.' India won the top award for its straightforward climate change views. This one was that the civilized world bore the primary responsibility for reducing greenhouse gas (GHG) emissions that cause climate change since they were responsible for the vast bulk of such emissions. Second, emerging nations' outputs have already been relatively low, and they've had to grow in order to meet its future growth and food insecurity goals, therefore no GHG reduction goals could be set for nations. Third, any official agreement on changing climate has to include an era shift and money for developing countries to help them address the problem (Ministry of Environment).⁵⁹

Many legislations specifically discourse specific climate change's different facets, such as implications to give possible legal targets for climate litigation.⁶⁰ In India, however, There is presently no overarching climate change law.

Though, India's expansion apprehensions, as well as mitigation and variation issues, necessitated the formulation of a distinct national policy. The 'National Action Plan on Climate Change (NAPCC), Prime Minister's Council for Climate Change, Government of India (2008)' and its supplementary Eight Missions lay forth this framework. These missions are meant to help India progress its development and establish its climate mitigation and adaptation strategy while adhering to the National Action Plan on Climate Change's principles.

III.II Environment, Indian Constitution vis-à-vis Climate Refugee:

The Indian Constitution, one of only a handful in the world, addresses environmental concerns. The country's dedication to environmental protection and development is shown in the Directive Principles of State Policy (DPSP) and Fundamental Duties

⁵⁷Mike Hulme, *Why We Disagree about Climate Change: Understanding Controversy, Inaction and Opportunity*. Cambridge: Cambridge University Press, 2009.

⁵⁸Navroz K. Dubash, 'An Introduction to India's Evolving Climate Change Debate: From Diplomatic Insulation to Policy Integration' India in a Warming World Integrating Climate Change and Development, 1 Oxford University Press, 2019.

⁵⁹Ministry of Environment and Forests (MoEF) . 1990. 'Greenhouse Effect and Climate Change: Issues for the Developing Countries', in Proceedings of the Conference of Select Developing Countries on Global Environmental Issues . New Delhi: MoEF, Gol.

⁶⁰Ghosh, S. (2020). Litigating Climate Claims in India. *AJIL Unbound*, 114, 45-50. Available at: doi:10.1017/aju.2020.5 (visited on 17 June 2021).

chapters. Climate change can not be seen as a stand-alone phenomenon. It will also influence India's economic and social growth. As a result, India had consented to partake in UNFCCC-led worldwide climate change talks.

Article 47 of Indian Constitution declares that it is a state's principal responsibility to promote nutrition, living standards of its citizens, and public health. It is clear that environmental protection and improvement are involved in the improvement of public health because public health cannot be guaranteed without environmental protection. For the first time, the phrases ecology and environment were inserted to the Indian Constitution under Article 48A and Article 51A(g) following the 42nd Amendment. The government took a good start by including citizen responsibilities and environmental protection rights in the constitution. Article 49A, which refers to DPSP, inserted in Part IV of the Constitution. It gives a constitutional frame to protect and improve the environment, as well as to safeguard the country's forest and wildlife. Part III gives a Constitutional Rights, which indicates that every Indian citizen has certain rights, including the right to freedom, equality, and acceptable living situations. It provides a duty for present and future generations to defend and maintain the condition. Whereas the country's Highest Court and many High Courts have provided a wider scope of "life" within Article 21, it's doesn't immediately relate to climatic changes.

For Last few decades, India has been frontrunner in preserving its flora and fauna by various legislations and constitutional amendments, but it is silent about 'Climate Refugee' Protection. Impromptu construction projects, such as dams, bridges, and trains that were built without regard for scientific or environmental considerations has forced people to relocate in India.⁶¹ Climate change is caused by many developmental activities, which leads to the generation of climate refugees. There really is no special domestic legislation in India that deals with refugees. Climate refugees may come under Articles 21 (Right to Life) and 14 (Right to Equality) of the Indian Constitution, which provide that non-citizens have the same right to life and equality as citizens. Part III of India's Constitution prohibits discrimination on the basis of race, religion, caste, creed, sex, or place of birth, and other fundamental liberties are equally accessible to refugees with reasonable restrictions. There are no substantial laws that protect refugees, despite the fact that the Foreigners Act of 1946 defines a person of non-Indian nationality as a "foreigner" means a person who is not a citizen of India".⁶² Under the Foreigner Registration Act 1939 and the Foreigner Act 1946, which regulate the entry, stay, and departure of all aliens in India, the government establishes the status of refugees by ad hoc administrative decisions. The Passport (Entry into India) Act 1920, the Passport Act 1967, and the Extradition Act 1962 are also relevant. To handle refugees, India does not have a national agency other than the Foreigner Regional Registration Office (FRRO), which is part of the Bureau of Immigration.⁶³

⁶¹Sincy Wilson, "Recognition of Climate refugees: What should be India's stand?" RLI blog on Refugee Law and Forced Migration, available at: <https://rli.blogs.sas.ac.uk/2021/03/18/recognition-of-climate-refugees-what-should-be-indias-stand/> (Visited on 11 June 2021).

⁶²Section 2(a), The Foreigners Act, 1946.

⁶³Stellina Jolly and Nafees Ahmad, *Climate Refugees in South Asia Protection Under International Legal Standards and State Practices in South Asia*, Springer Nature Singapore, 2019.



India is expected to have a significant surge in migration. There are no legal or regulatory structures in place to manage migration at the global, national and regional level.⁶⁴ In the majority of cases, total displacement with loss of house and livelihood has occurred, and the state has gone unreported. In India, there are a few pieces of legislation, such as the Right to Fair Compensation and Transparency in Property Acquisition, Rehabilitation, and Resettlement Act, 2013, which deals with compensation in circumstances when the government acquires land for development purposes. The Disaster Management Act of 2005, which creates catastrophe strategies, avoids or eases adversity things, and organises and manages responses, is another piece of law that deals with rehabilitation in the event of climatic events. These regulations, however, do not address the rehabilitation of climate refugees from other countries. However, these restrictions do not cover the reintegration of climate refugees from other nations.

The lack of a national legislation on refugees has left refugee rights in uncertainty, and India must take significant actions to pass a refugee law in order to safeguard territorial integrity and set high standards for international human rights respect. The idea of non-refoulement⁶⁵ is not officially recognized in Indian law. However, India's constitutional structure includes some measures that benefit all citizens, regardless of citizenship. As a result, it is stated to apply to both refugees and non-refugees. The domain of the Indian Constitution was defined in such a way as to protect the rights of persons who were not born on Indian soil.

Signatories to the International Covenant on Civil and Political Rights and the Convention Against Torture. India has also agreed to the Bangkok Principles. According to Article III of the Bangkok Principles, an individual cannot be expelled if there is a risk of harm to him as a result of his race, religion, nationality, ethnic origin, participation in a specific social group, or political beliefs. The Foreigners Act of 1946 and the Citizenship Act of 1955 are the two legislation that now deal with refugees. The Foreigners Act of 1946 is stated to apply to all non-Indians, however it does not include the non-refoulement clause.

IV. Conclusion

India, with its diverse cultures and values, is noted for its big democracy and multi-party system, and it is wary of an outside involvement in its domestic affairs, believing that it has been dealing with difficulties inside the country. Refugees have an impact on the country's political stability, and leaders are driven by worries about how their decisions on refugees will be perceived by the people. Its refusal to accept foreign meddling in its internal affairs doesn't quite appear to be improper, because every nation has the right to

⁶⁴J. Houghton, 2005, *Global Warming: The Complete Briefing*, Cambridge University Press, 2005.

⁶⁵The principle of non-refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill treatment or other serious human rights violations. Under international human rights law the prohibition of refoulement is explicitly included in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

protect its sovereignty. Identifying climate refugees under the Refugee Convention is a feasible alternative, but it is not without its drawbacks. India must be ready enough within its legal framework to recognise Climate Refugees as it will be a slow but steady process in coming years as different border nations are vulnerable to Climate Change which will push Refugees influx in coming days.