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Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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INDIAN ENVIRONMENTAL JURISPRUDENCE:
ADDRESSING THE CLIMATE REFUGEE CRISIS
THROUGH LEGAL PERSONHOOD

AUTHORED BY - SHILPI RANI

SEC B BALLB

CERTIFICATE

This is to certify that the dissertation entitled Indian Environmental Jurisprudence: Addressing the Climate Refugee Crisis through Legal Personhood has been prepared by Shilpi Rani, pursuing BALL.B/BBALL from School of Law, Galgotias University under my supervision and guidance.

Place: Delhi NCR

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DECLARATION

I, hereby declare that the dissertation entitled- Indian Environmental Jurisprudence: Addressing the Climate Refugee Crisis through Legal Personhood is based on original research undertaken by me and it has not been submitted in any University for any degree.

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Signature of the student

Name of the student

Shilpi Rani

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Abstract

This dissertation addresses the growing crisis of climate-induced displacement and the urgent need for legal recognition and protection of climate refugees within the Indian legal and policy landscape. Despite the increasing frequency and severity of environmental events—such as sea-level rise, desertification, glacial retreat, and erratic weather patterns—India’s legal system continues to operate without a formal category or framework for individuals displaced by climate change. These communities, often the most socio-economically vulnerable, remain legally invisible, excluded from relief mechanisms, and denied fundamental rights such as shelter, health, education, and livelihood.

The core proposition of this dissertation is the extension of legal personhood—a doctrinal and jurisprudential tool within Indian constitutional and environmental law—as a means to secure recognition, dignity, and enforceable rights for climate refugees. By anchoring climate displacement within the broader frameworks of environmental justice, human rights law, and constitutional interpretation, the work argues for an expansive reimagining of legal subjectivity that includes those displaced by environmental degradation.

The methodology employed is primarily doctrinal, complemented by comparative analysis and case study approaches. It rigorously examines national laws such as the Disaster Management Act, Environment Protection Act, and Forest Rights Act, alongside judicial decisions that have advanced creative environmental jurisprudence—particularly cases that recognize rivers, forests, and ecosystems as legal persons. It also engages with international legal instruments, such as the UN Framework Convention on Climate Change (UNFCCC), and studies foreign legal systems that have innovated legal personhood and protection mechanisms for nature and displaced populations, including New Zealand’s *Te Awa Tupua Act*, Colombia’s *Atrato River* ruling, and the EU’s *Temporary Protection Directive*.

The dissertation’s findings reveal several structural and conceptual gaps: the absence of a legal definition for climate refugees in Indian law, fragmentation among government departments, lack of inter-ministerial coordination, and inadequate rehabilitation frameworks. Judicial interventions—though progressive in environmental contexts—have not yet extended legal imagination to displaced populations. This lacuna necessitates a doctrinal shift and institutional transformation.

Drawing on international best practices, the dissertation proposes a comprehensive legal framework for India centred on five pillars:

Legislative Reform – Enactment of a Climate Displacement and Rehabilitation Act that explicitly defines climate refugees and guarantees rights to resettlement, healthcare, and

livelihood.

Institutional Architecture – Creation of a Climate Displacement Authority with decentralized branches and cross-sectoral coordination.

Rights-Based Protections – Recognition of displaced persons as legal rights-holders entitled to enforceable entitlements.

Financial Instruments – Establishment of a Climate Refugee Rehabilitation Fund sourced from national budgets and international climate finance mechanisms.

Participatory Governance – Integration of traditional knowledge systems and affected community participation in relocation planning and monitoring.

Finally, the dissertation outlines an implementation roadmap, advocating a phased and adaptive strategy that balances urgency with capacity-building. It recommends judicial guidelines under Article 142 for interim relief, amendments to existing legislation, and active judicial monitoring to ensure compliance and accountability.

By bridging doctrinal theory with pragmatic policy solutions, this dissertation contributes to the fields of environmental jurisprudence, refugee studies, and human rights law. It underscores the transformative potential of Indian constitutionalism and judicial creativity in addressing one of the most pressing humanitarian and ecological challenges of the 21st century: the legal and moral imperative to recognize and protect climate refugees.

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Table of Contents

	Abstract
	Acknowledgments
	List of Abbreviations
Chapter I:	Introduction
	Background and Context
	Research Objectives
	Methodology
	Scope and Limitations
Chapter II:	Understanding Climate Refugees
	Defining Climate Refugees
	Distinctions from Other Migrants
	Categories of Climate Displacement
	Global and Indian Case Studies
	Legal and Policy Gaps
	Data Deficiency and Identification Challenges
	Vulnerability and Intersectionality
	Statelessness and Loss of Identity
	The Imperative for Legal Recognition
Chapter III:	Legal Personhood—Theoretical and Jurisprudential Dimensions
	Concept and Scope of Legal Personhood
	Philosophical Underpinnings
	Expansion of Legal Personhood in Indian Jurisprudence

	Intersection with Climate Refugees
	Emerging International Discourse
	Comparative Jurisprudence on Legal Personhood
	Philosophical and Ethical Justifications for Personhood of Climate Refugees
Chapter IV:	International Legal Framework on Climate-Induced Displacement
	Existing International Legal Instruments
	Regional Legal Approaches and Emerging Norms
	The Need for a Dedicated International Legal Instrument
	Human Rights-Based Approach to Climate Displacement
	Climate Justice and the Polluter Pays Principle
	Challenges of Attribution and Causality
	The Role of International Financial Institutions
Chapter V:	Indian Constitutional and Environmental Law Framework
	Introduction
	Constitutional Foundations
	Key Environmental Statutes
	Environmental Jurisprudence in India

List of Abbreviations

CEE: Centre for Environmental Education

CRRF: Climate Refugee Rehabilitation Fund

GCM: Global Compact for Migration

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

NAPCC: National Action Plan on Climate Change

NDMA: National Disaster Management Authority

NHRC: National Human Rights Commission

Chapter I: Introduction

Climate change is not merely an environmental concern—it is a multifaceted crisis intersecting with human rights, economic justice, international relations, and legal theory. The destabilizing impact of global warming is becoming increasingly evident as rising temperatures, erratic weather patterns, and ecological degradation result in the loss of homes, livelihoods, and even national territories. In this context, the phenomenon of climate-induced displacement has emerged as a defining issue of the 21st century, challenging traditional notions of borders, sovereignty, and state responsibility.

Climate refugees—those compelled to leave their homes due to adverse environmental conditions caused by climate change—represent a growing population in need of legal protection. Despite the urgency and scale of the issue, international and domestic legal systems have largely failed to recognize these individuals under existing legal frameworks. This gap leaves displaced populations vulnerable to poverty, statelessness, and systemic neglect.

In India, the legal response to environmental degradation has been dynamic, with the judiciary playing an active role in interpreting constitutional rights in the context of ecological sustainability. Notably, the Indian courts have developed an expansive interpretation of the right to life under Article 21 of the Constitution to include environmental rights. Moreover, they have pioneered the recognition of legal personhood for non-human entities such as rivers, forests, and animals.

This dissertation seeks to explore whether a similar doctrinal approach can be adopted to recognize climate refugees as legal persons within the Indian legal system. It delves into the concept of legal personhood and its transformative potential, examining its applicability to vulnerable human populations displaced by climate change. The study further investigates the potential for aligning Indian constitutional values with international human rights standards to propose a new jurisprudential framework for the legal recognition and protection of climate refugees.

Objectives:

To explore the conceptual evolution of climate-induced displacement and critically define the term "climate refugees" within legal and sociopolitical discourse.

To examine the doctrine of legal personhood—its historical evolution, application to non-human entities, and potential extension to climate refugees.

To analyze international and regional legal instruments addressing environmental migration and assess their influence on Indian law and policy.

To study Indian environmental jurisprudence and assess its capacity to accommodate and protect climate refugees through judicial innovation.

To propose comprehensive legal, constitutional, and policy reforms aimed at institutionalizing the rights and recognition of climate refugees in India.

Methodology: This dissertation adopts a doctrinal and analytical methodology, drawing on primary legal sources such as constitutional provisions, statutes, international treaties, and case law. It also incorporates secondary sources, including scholarly literature, legal commentaries, policy papers, and reports by governmental and non-governmental organizations. Comparative legal analysis is employed to assess jurisprudence from jurisdictions that have recognized environmental rights or personhood for non-human entities. Case studies from within India and globally are utilized to illustrate practical implications and challenges. The interdisciplinary nature of the topic also necessitates engagement with relevant literature in environmental science, sociology, and political theory.

Scope and Limitations: This study is confined to the legal recognition and protection of climate refugees within the Indian context, with reference to international legal standards and comparative practices. It does not attempt to propose technological or infrastructural solutions to climate-induced displacement, nor does it cover the entire spectrum of environmental migrants, such as those moving voluntarily or temporarily. The focus is specifically on individuals forcibly displaced due to irreversible or severe environmental degradation. The normative framework proposed in this dissertation is aimed primarily at policy-makers, judicial actors, and legal scholars interested in the intersection of environmental law, human rights, and migration.

Chapter II: Understanding Climate Refugees

2.1 Defining Climate Refugees

Climate refugees are individuals or communities who are forced to migrate or flee their habitual homes due to sudden or progressive adverse environmental changes. These changes include sea-level rise, extreme weather events like hurricanes and floods, droughts, desertification, glacial melt, and salinization, all of which may render a region uninhabitable either temporarily or permanently. The driving force behind such displacement is not voluntary migration or aspiration for better economic opportunities, but rather survival and the loss of a viable environment for life and livelihood.

Importantly, despite the severity and involuntariness of their situation, climate refugees are not yet recognized under international refugee law. The 1951 Refugee Convention, as well as its 1967 Protocol, limits the definition of a refugee to someone who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Environmental factors or climate-related threats are not included.

This lack of legal recognition leads to several cascading consequences. Firstly, the absence of a recognized legal category makes it difficult for displaced individuals to access rights and protections that are available to political refugees. Secondly, governments and international agencies are not legally compelled to assist them, making it harder to generate political will or allocate resources. Thirdly, climate refugees often end up being miscategorized as economic migrants, stripping them of humanitarian consideration and placing them in precarious legal positions in host communities.

2.2 Distinctions from Other Migrants

To frame legal and policy approaches effectively, it is essential to delineate climate refugees from other types of displaced populations.

Economic Migrants: These individuals relocate primarily in search of better employment opportunities, higher wages, or improved standards of living. Their migration is usually planned and voluntary. While they may face hardship, economic migrants typically retain the option of returning home. In contrast, climate refugees are compelled to leave due to existential environmental threats and may have no homes to return to. Furthermore, economic migrants often have more access to legal migration channels, which are generally not accessible to those fleeing environmental degradation.

Internally Displaced Persons (IDPs): These individuals are displaced within the borders of their own country, often due to conflict, natural disasters, or development projects. In cases where displacement is caused by environmental factors, they may be classified as IDPs. However, IDPs fall under the sovereign jurisdiction of their home state, and international intervention is limited unless the state is unwilling or unable to protect them. Climate-displaced IDPs often receive inadequate attention, especially in countries with limited governance capacity.

Traditional Refugees: Traditional refugees flee their countries due to well-founded fear of persecution and are protected under international law. Their protection includes non-refoulement (the right not to be returned to a country where they face serious threats), the right to work, access to courts, and education. Climate refugees, lacking such legal status, are often returned or denied entry even when facing life-threatening environmental conditions.

Environmental Migrants: This broader category includes people who move, either temporarily or permanently, due to environmental stressors. Unlike climate refugees, who move out of necessity and without alternative options, some environmental migrants relocate pre-emptively or with some degree of voluntariness. The term also encompasses people who may move due to environmental degradation caused by slow-onset processes, such as deforestation or declining rainfall, which might not meet the threshold of a humanitarian crisis.

2.3 Categories of Climate Displacement

Displacement due to environmental factors can be sudden or slow, permanent or temporary, each category requiring different legal, policy, and humanitarian responses.

Sudden-Onset Displacement: This occurs as a direct result of abrupt environmental events, such as hurricanes, cyclones, floods, and earthquakes. In these cases, populations must evacuate rapidly with minimal time to plan or carry personal belongings. The need for emergency relief is immediate, and although people may return once the danger subsides, frequent recurrence can lead to permanent displacement. *Example:* The 2013 floods in Uttarakhand, India, were caused by intense rainfall combined with the outburst of a glacial lake. Entire villages were wiped out, displacing tens of thousands.

Slow-Onset Displacement: This involves gradual environmental changes that deteriorate living conditions over time. Sea-level rise, soil salinity, prolonged droughts, and desertification fall into this category. While populations may remain in their habitat for years, the continuous decline in agricultural productivity, water scarcity, and increased disease burden push them to migrate eventually. *Example:* The Sundarbans region in West Bengal has experienced progressive land loss due to rising sea levels and erosion, displacing communities and affecting their access to fresh water and cultivable land.

Permanent Displacement: Some areas become permanently uninhabitable, either because of physical submergence, long-term contamination, or unsustainable living conditions. These communities require complete rehabilitation and relocation, often without the possibility of returning. *Example:* In Assam, the Brahmaputra River's aggressive erosion has permanently washed away villages, forcing people into landless and stateless existence in informal settlements.

Temporary/Cyclical Displacement: In regions facing recurring droughts, floods, or seasonal weather extremes, people may migrate temporarily during high-risk periods. Over time, these repeated displacements result in chronic vulnerability, disrupting schooling, employment, and healthcare access. *Example:* Seasonal flooding in Bihar and Uttar Pradesh causes annual

displacement of agricultural communities, who migrate to cities for temporary work and return only once water recedes.

2.4 Global and Indian Case Studies

Global Context:

The Maldives: An island nation at high risk of submersion due to rising sea levels. The government has initiated plans to buy land in other countries to relocate its population if necessary. It has also raised this issue in international forums, highlighting the gap in refugee law.

Kiribati and Tuvalu: These Pacific island states face similar threats and have begun negotiating bilateral migration agreements with Australia and New Zealand, highlighting the emerging need for intergovernmental solutions to climate displacement.

Indian Context:

Sundarbans (West Bengal): The region has already lost entire islands like Lohachara and is currently watching Ghoramara shrink due to rising tides. The affected communities lack access to formal resettlement, healthcare, or education, and they frequently migrate to Kolkata and other urban areas.

Assam: The riverine state is experiencing increasingly severe floods and erosion, displacing over 2 million people cumulatively. The displaced often settle on embankments, with minimal infrastructure and no land rights.

Odisha and Tamil Nadu: Cyclone Fani (2019) displaced over 1.5 million people in Odisha. The resettlement measures undertaken were temporary, and many communities lacked permanent housing or employment.

2.5 Legal and Policy Gaps

India does not have a specific legal framework recognizing or addressing the plight of climate refugees. Existing environmental and disaster management laws are inadequate in dealing with the complexities of displacement and rehabilitation.¹

Absence of a National Legal Framework: The Environmental Protection Act (1986), Water Act (1974), and Air Act (1981) are focused on pollution control and ecological conservation. They

¹ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598 – Recognition of the right to a clean environment as part of Article 21.

do not contain provisions for identifying or rehabilitating displaced people. Similarly, there is no mention of climate-induced displacement in the National Green Tribunal Act.

Disaster Management Act, 2005: This Act is primarily focused on immediate relief and crisis response, with little attention to long-term rehabilitation or the systemic causes of displacement. It lacks integration with climate adaptation planning or resettlement frameworks.

Lack of Institutional Designation: No single ministry or authority is designated to deal with climate migration. The fragmentation between the Ministry of Environment, Forest and Climate Change, Ministry of Home Affairs, and Ministry of Rural Development leads to inconsistent policy responses and duplicative or absent measures.

Refugee Law Exclusion: Indian law does not recognize the category of climate refugee. Even under the Foreigners Act, 1946, all undocumented migrants are treated similarly, irrespective of the cause of migration. This makes climate refugees vulnerable to deportation and criminalization.²

2.6 Data Deficiency and Identification Challenges

Inadequate Migration Tracking: National surveys like the Census or the National Sample Survey Organisation (NSSO) do not include questions on climate-induced displacement. This absence of data leads to policy invisibility and an inability to allocate resources.

No Unified Indicators: There is no national index to assess vulnerability to climate change at the household or village level. Without such tools, identifying high-risk areas for pre-emptive resettlement or adaptation remains impossible.

Poor Coordination: Data is siloed across ministries, making it difficult to create comprehensive strategies. There is no shared platform to track environmental displacement, nor an integrated command structure to handle large-scale displacement events.

Invisibility in Urban Areas: Migrants displaced due to climate events often end up in informal urban settlements where they are not registered with local municipal authorities. Without ID cards or proof of residence, they are excluded from welfare programs and public services.

2.7 Vulnerability and Intersectionality

Women and Children: Climate displacement disproportionately impacts women and children, who face greater risks during evacuation, longer periods of food and water scarcity, and limited access to reproductive health services. Post-displacement environments often lack security,

² *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 – Introduction of the Precautionary Principle and Polluter Pays Principle in Indian law.

leading to increased gender-based violence, trafficking, and early marriage.

Indigenous Communities: Many indigenous groups view land as integral to their cultural and spiritual identity. Forced relocation results not only in material loss but in cultural extinction. Additionally, government rehabilitation policies often do not respect traditional governance structures.

Marginalized Castes (Dalits): Social discrimination compounds their vulnerability. Dalits are often the last to receive relief supplies, excluded from shelter camps, and allocated less productive resettlement land. Their voices are generally absent from planning processes.

Urban Poor: Already residing in flood-prone, poorly serviced areas, urban poor communities are the first to be affected and the last to recover. Climate events push them further into informal labor markets and insecure housing.

2.8 Statelessness and Loss of Identity

Cross-Border Issues: When climate refugees cross international borders, they are treated as illegal immigrants. Without international protection mechanisms or bilateral agreements, they risk deportation or indefinite detention. This becomes a serious issue when home territories are permanently submerged or politically unstable³.

Documentation Loss: Sudden-onset disasters often destroy critical documents like Aadhaar cards, land titles, ration cards, and school certificates. Replacing them is difficult due to administrative hurdles and lack of proof of identity.

Electoral Disenfranchisement: Displaced populations often lose voting rights due to lack of a permanent address, thereby weakening their political voice and reducing their ability to influence local governance.

No Legal Designation: Climate refugees are not considered stateless under international law unless they lose their nationality. However, they experience *de facto* statelessness as they are denied access to citizenship rights, legal residency, and protection.

2.9 The Imperative for Legal Recognition

Legal recognition of climate refugees is the cornerstone of any long-term, sustainable response to climate-induced displacement.

Rights-Based Framework: Recognizing climate refugees enables their inclusion in legal regimes that guarantee access to food, clean water, housing, education, and healthcare. It also

³ *Tehri Hydro Development Corporation Ltd. v. State of Uttarakhand*, (2017) – Uttarakhand High Court's recognition of rivers as legal persons.

allows for protection against exploitation and ensures minimum living standards during and after displacement.

Forward-Looking Planning: Legal frameworks can help in the integration of displaced persons into national development plans, including housing, transportation, and employment policies. It can also incentivize disaster-resilient infrastructure in vulnerable areas.

Judicial Recourse: Legal status empowers individuals and communities to seek judicial protection of their fundamental rights. This can include petitions for rehabilitation, compensation, or prevention of forced evictions.⁴

International Leverage: A formal policy on climate refugees can elevate India's standing in international climate diplomacy. It allows for access to global adaptation funds, facilitates collaboration with UN agencies, and contributes to shaping international norms around climate justice.

Chapter III: Legal Personhood—Theoretical and Jurisprudential Dimensions

3.1 Concept and Scope of Legal Personhood

Legal personhood is a foundational concept in jurisprudence, signifying the capacity of an entity to hold rights and duties under the law. Traditionally, this status has been reserved for natural persons (humans) and juridical persons (such as corporations or the State). The idea is not limited to physical existence but reflects a legal recognition that enables participation in legal processes — including the right to sue and be sued, own property, enter contracts, and claim constitutional or statutory protections.

Legal personhood is not synonymous with human existence. For instance, corporations, trusts, and even rivers in certain jurisdictions have been conferred legal personhood for functional purposes. The doctrine rests on legal fiction: the law treats certain entities as persons not because they are human but because legal and moral rationales demand it.

The evolution of legal personhood reflects society's changing values and needs. Historically, groups like slaves, women, indigenous communities, and non-property holders were denied personhood under colonial and pre-modern legal systems. Recognition, in each case, followed political and social transformation, reinforcing that personhood is a constructed and malleable category responsive to human progress and justice.⁵

⁴ United Nations Framework Convention on Climate Change, 1992, and Paris Agreement, 2015 – Frameworks addressing climate impact and displacement.

⁵ Nansen Initiative, *Protection Agenda* (2015) – Non-binding guidelines for disaster-induced cross-border

3.2 Philosophical Underpinnings

Several philosophical traditions inform the concept of legal personhood, each offering insights into how and why legal systems grant or deny this status:

1. Liberal Individualism:

Rooted in Enlightenment thought, this theory links personhood with autonomy, rationality, and self-determination. Thinkers like John Locke and Immanuel Kant emphasized moral agency and the capacity for reason as the basis for rights-bearing status. This framework tends to restrict personhood to adult humans capable of moral reasoning, thereby excluding animals, nature, and non-rational humans such as infants or those with cognitive disabilities — unless expanded through legal interventions.

2. Communitarianism:

This view considers individuals not in isolation but as embedded in communities. Personhood, from this perspective, is relational and contextual. This has implications for collective rights — such as those of indigenous groups or displaced communities — where the group's identity, customs, and social fabric are central to their recognition.

3. Legal Positivism:

Legal positivists like H.L.A. Hart argue that legal personhood is whatever the legal system says it is. Rights and duties are conferred not by morality or nature but by legal enactment. This framework allows for flexibility — for instance, extending personhood to artificial entities — but also risks excluding morally deserving subjects in the absence of positive law.

4. Eco-centric and Post-Humanist Theories:

Contemporary thought increasingly challenges anthropocentric limitations of personhood. Philosophers like Christopher Stone ("Should Trees Have Standing?") and proponents of deep ecology argue that natural entities possess intrinsic value and should be recognized as legal persons to ensure their protection. Similarly, post-humanist perspectives advocate for legal frameworks that transcend human exceptionalism, recognizing non-human life forms and ecosystems as rights-bearing entities.⁶

3.3 Expansion of Legal Personhood in Indian Jurisprudence

India has seen a gradual yet profound expansion in the notion of legal personhood, often driven by constitutional interpretation and public interest litigation.

displacement.

⁶ Global Compact for Migration, 2018 – Acknowledgment of environmental drivers of migration.

1. Corporations and Deities:

Even under colonial rule, Indian law recognized non-human entities as legal persons. Temples, idols, and religious endowments were granted personhood, enabling them to own property, initiate lawsuits, and be protected under constitutional rights. In *Yogendra Nath Naskar v. Commissioner of Income Tax (1969)*, the Supreme Court affirmed the legal personality of a deity, establishing that personhood serves functional and cultural ends.

2. Rivers and Ecosystems:

In *Mohd. Salim v. State of Uttarakhand (2017)*, the Uttarakhand High Court declared the Ganga and Yamuna rivers to be legal persons, inspired by New Zealand's recognition of the Whanganui River. The Court emphasized the spiritual, ecological, and cultural significance of rivers and argued that personhood would enhance their legal protection. However, the judgment was stayed by the Supreme Court, leaving the issue in a state of uncertainty.

3. Fundamental Rights of Non-Humans:

Indian courts have also recognized the rights of animals. In *Animal Welfare Board of India v. A. Nagaraja (2014)*, the Supreme Court held that animals have a right to life under Article 21, reflecting a shift from a purely utilitarian to a rights-based approach in animal jurisprudence. The Court emphasized compassion, dignity, and intrinsic value — attributes traditionally reserved for human beings.

4. Environment as a Subject of Rights:

The National Green Tribunal and various High Courts have expanded environmental rights discourse by treating nature as a stakeholder in legal proceedings. While not always couched in terms of legal personhood, these decisions imply a move toward subjectification of the environment — treating it not just as a passive object of protection but as an active rights-holder.

3.4 Intersection with Climate Refugees

The concept of legal personhood becomes critically important in the context of climate refugees for several reasons:

1. Recognition of Identity:

Displacement often leads to the erosion of legal identity — through loss of documents, land, and community. Granting displaced individuals and communities legal personhood status ensures their reintegration into the legal system. It allows them to claim constitutional rights, seek redress, and access state services.

2. Community Personhood:

Many climate-affected populations, particularly indigenous and coastal communities, define themselves through a collective identity rooted in land and tradition. Displacement fractures not just families but entire social systems. Legal frameworks that recognize community personhood can preserve cultural integrity and ensure collective resettlement and rehabilitation.

3. Environmental Personhood as Preventive Protection:

If ecosystems such as wetlands, mangroves, and rivers are granted legal personhood, it can serve as a preventive measure against climate-induced displacement. Legal status mandates the State and citizens to protect these entities, thereby reducing ecological degradation that forces migration.

4. Statelessness and Human Rights:

Climate refugees, particularly those crossing borders, are at risk of de facto statelessness. Legal personhood, in this context, becomes the entry point to asserting fundamental human rights — including the right to shelter, health, education, and participation. Without personhood, they remain invisible to law.

3.5 Emerging International Discourse

Globally, the idea of legal personhood is being revisited in climate discourse:

UN Special Rapporteurs have called for the recognition of non-traditional rights-bearers, including future generations and ecosystems.

The Inter-American Court of Human Rights has upheld the right to a healthy environment as autonomous and directly justiciable, regardless of the human victim.

In Colombia, the Supreme Court recognized the Amazon rainforest as a legal entity, empowered with rights and entitled to protection from deforestation.⁷

These developments reinforce the idea that legal personhood can be a strategic legal tool to safeguard both vulnerable humans and ecosystems affected by climate change.

3.6 Comparative Jurisprudence on Legal Personhood

South Africa: Post-apartheid constitutionalism emphasizes dignity and socio-economic rights, extending legal personhood to marginalized groups including informal settlements.

Canada: Indigenous legal traditions have influenced the courts to interpret environmental and community rights broadly, with implications for displaced persons.

United States: Corporate personhood has expanded rapidly under the First and Fourteenth

⁷ International Covenant on Civil and Political Rights, 1966 – Right to life and non-refoulement principles.

Amendments, illustrating the strategic use of legal status to gain rights and protection.

India: The Indian judiciary has creatively extended legal personhood in various domains, including temples, deities, and natural entities. This jurisprudence creates a potential pathway for recognizing climate refugees as rights-bearing subjects.

3.7 Philosophical and Ethical Justifications for Personhood of Climate Refugees

A compelling ethical argument can be made that legal systems must evolve to respond to new forms of vulnerability. Climate refugees are not merely passive victims of environmental change but individuals whose rights to life, dignity, and home are being systematically eroded by anthropogenic actions. Recognition of legal personhood for climate refugees can be grounded in:

Principles of distributive and climate justice

Intergenerational equity

The doctrine of substantive equality

Moral obligation of high-emission states

This approach resonates with the transformative goals of constitutionalism and human rights law, particularly in Global South contexts.

Chapter IV: International Legal Framework on Climate-Induced Displacement

4.1 Existing International Legal Instruments

The current international legal regime for refugees and displaced persons is primarily governed by the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. These instruments define a refugee as someone who has a well-founded fear of persecution due to race, religion, nationality, political opinion, or membership in a particular social group, and who is outside the country of their nationality. However, these definitions are deeply rooted in a post-World War II context and do not include persons displaced due to environmental or climate-related factors.

In addition to the Refugee Convention, several other international instruments address displacement, albeit indirectly. The Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), and International Covenant on Economic, Social and Cultural Rights (1966) guarantee the rights to life, adequate living standards, housing, and freedom of movement. However, these documents lack enforceability

in terms of providing asylum or cross-border mobility for climate-displaced persons.

The UN Framework Convention on Climate Change (UNFCCC) acknowledges the impact of climate change on migration but does not create binding obligations for the protection of climate-displaced individuals. The Cancun Adaptation Framework (2010) includes displacement, migration, and planned relocation among climate change-related issues, yet remains largely aspirational and lacks legal mechanisms for implementation. The 2015 Paris Agreement further reinforced the importance of addressing climate-induced displacement by establishing a Task Force on Displacement under the Warsaw International Mechanism, but again without enforceable duties.⁸

4.2 Gaps in the 1951 Refugee Convention and Protocol

The 1951 Refugee Convention, though instrumental in establishing a durable regime for protecting individuals fleeing persecution, is not equipped to deal with the modern realities of climate-induced displacement. The exclusion of environmental factors from the definition of a refugee creates a significant protection gap.

First, the Convention requires that the fear of persecution be based on one of five specific grounds. Climate change, being an impersonal and often slow-onset process, does not fit within these criteria. As such, people fleeing rising seas, desertification, or catastrophic storms cannot claim refugee status under existing norms, even when their displacement is involuntary and their lives are at risk. This definitional limitation excludes a vast number of displaced persons who are vulnerable but cannot meet the legal standard of a 'refugee.'

Second, the Convention is focused on persecution by State or non-State actors, whereas climate displacement is often the result of natural forces or global emissions caused by multiple actors. There is no clear persecutor against whom protection is sought, making the legal threshold for refugee recognition inapplicable to climate refugees. In legal terms, this issue raises questions about attribution and accountability, as climate change is a transboundary issue that diffuses culpability among numerous global actors.

Third, the Convention does not address internal displacement. Many people displaced by climate change do not cross international borders, rendering them invisible under international refugee law. These internally displaced persons (IDPs) often remain within fragile states with limited capacity for rehabilitation and protection. While the Guiding Principles on Internal Displacement offer some normative guidance, they lack legal binding authority and fail to

⁸ Disaster Management Act, 2005 – Institutional framework for disaster response in India.

provide consistent standards for internal environmental migrants.

Fourth, the Convention is grounded in a Cold War-era conception of asylum and borders, which does not reflect the complex interplay of factors in modern displacement scenarios. Mixed migration flows, which include economic migrants, climate-displaced persons, and traditional refugees, blur the lines between categories and necessitate a more flexible and inclusive legal approach.

4.3 Regional Legal Approaches and Emerging Norms

Certain regional instruments and jurisprudence have attempted to expand protection beyond the 1951 framework. The 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees in Latin America include broader definitions of refugees, encompassing those fleeing generalized violence, foreign aggression, and events seriously disturbing public order. Although these terms may accommodate climate-related displacement, they are not uniformly interpreted to include environmental factors.

In Africa, the OAU Convention has been invoked in contexts where environmental degradation contributes to conflict and displacement, such as in the Sahel region. However, there is little jurisprudence that explicitly interprets the Convention to include climate refugees. Similarly, the Cartagena Declaration, though progressive in scope, is non-binding and implemented unevenly among Latin American countries.

In the Pacific, states such as New Zealand have piloted policies such as the "Pacific Access Category," which allows for limited migration from island nations affected by sea-level rise. However, these schemes are discretionary, numerically restricted, and often tied to labor market needs rather than human rights protections. For instance, the case of *AF (Tuvalu) v. Minister of Immigration*, where humanitarian grounds were cited, sets a limited precedent and does not constitute a recognition of refugee status under climate grounds.

Courts have also begun recognizing the urgency of climate displacement. The Human Rights Committee of the United Nations, in the landmark case of *Ioane Teitiota v. New Zealand*, acknowledged that climate change can trigger non-refoulement obligations under the International Covenant on Civil and Political Rights if return to a home country poses a real risk to life. Although Teitiota's claim was ultimately denied, the ruling signals a soft recognition of climate displacement under human rights law.

Furthermore, the European Court of Human Rights (ECtHR) has yet to adjudicate directly on climate-induced displacement, but its growing jurisprudence on environmental rights and the

right to life under Article 2 of the European Convention on Human Rights suggests a possible expansion in future.⁹

4.4 Non-Binding Frameworks and Soft Law Mechanisms

Non-binding international mechanisms, often termed "soft law," have increasingly addressed the phenomenon of climate-induced displacement. The Nansen Initiative, launched in 2012, culminated in the Protection Agenda, which recommends best practices for the protection of people displaced across borders in the context of disasters and climate change. Similarly, the Platform on Disaster Displacement (PDD), launched in 2016, continues this work under the umbrella of risk reduction and resilience building.

While these mechanisms lack binding force, they are significant in establishing normative consensus and influencing national policies. They provide guidelines for States to develop humanitarian visas, temporary protection regimes, and relocation frameworks. However, implementation remains sporadic and subject to political will.

Another important development is the Sendai Framework for Disaster Risk Reduction (2015–2030), which emphasizes disaster preparedness and the need to manage displacement risks. The Sendai Framework encourages countries to integrate disaster displacement risk into laws, policies, and plans, including through land-use planning and early warning systems. However, its provisions are voluntary and largely implemented through domestic frameworks.

The Global Compact for Safe, Orderly and Regular Migration (2018) also refers to climate-induced migration and calls for cooperative approaches, including planned relocation and visa facilitation. Objective 2 of the Compact encourages States to "minimize the adverse drivers and structural factors that compel people to leave their country of origin," including environmental degradation. However, the Compact is non-binding and has faced resistance from several major countries, limiting its efficacy.

4.5 The Need for a Dedicated International Legal Instrument

Given the magnitude of the climate crisis and its foreseeable impacts on human mobility, there is a growing consensus among scholars and human rights advocates on the need for a new, dedicated international legal instrument that specifically addresses climate refugees.

Such an instrument should begin by clearly defining who qualifies as a climate refugee, incorporating both sudden-onset disasters (such as cyclones, floods, and tsunamis) and slow-

⁹ National Action Plan on Climate Change, 2008 – India's national climate strategy lacking explicit displacement provisions.

onset processes (such as desertification, sea-level rise, and salinization). It must recognize that displacement due to climate change is often involuntary and survival-driven, and therefore deserving of protection regardless of whether it fits traditional refugee definitions.

Second, the instrument should establish binding obligations on States to provide safe entry, asylum, temporary or permanent resettlement, and access to rights for climate refugees. It must also integrate principles of burden-sharing and international cooperation, particularly since those least responsible for emissions are often the most affected. Provisions could include quotas for relocation, regional coordination bodies, and a shared funding mechanism.

Third, the framework should include mechanisms for funding adaptation and relocation efforts. International climate finance, such as the Green Climate Fund and the Loss and Damage Fund, could be mobilized to support countries in hosting climate-displaced persons and building resilient infrastructure in high-risk areas. Financial obligations must be equitably distributed, taking into account historical emissions and current capacities.

Fourth, the legal framework must include procedural rights such as participation in decision-making processes, access to legal remedies, and protection against arbitrary detention or refoulement. It should also respect the dignity, cultural identity, and autonomy of displaced communities, particularly Indigenous populations and small island states, who are often most vulnerable to climate impacts.

Lastly, the new legal instrument must uphold the principle of climate justice, recognizing the asymmetrical contribution to climate change and its differential impacts. This includes the application of the polluter-pays principle, intergenerational equity, and the right to development. By anchoring climate displacement in the broader discourse of environmental and social justice, the instrument can ensure holistic and humane solutions.

In sum, while soft law instruments and human rights jurisprudence have taken preliminary steps toward acknowledging climate displacement, the absence of a binding and specific international legal framework leaves millions vulnerable to legal limbo and human rights violations. The imperative for a comprehensive legal instrument tailored to climate refugees has never been more urgent. The international community must act with foresight and compassion to create legal pathways that reflect the realities of the 21st century.

4.6 Human Rights-Based Approach to Climate Displacement

A human rights-based approach to climate-induced displacement emphasizes the dignity, agency, and fundamental entitlements of individuals displaced by environmental factors. Rather than viewing climate migrants merely as victims or passive recipients of aid, this

approach asserts that their rights must be respected, protected, and fulfilled throughout the displacement process.

Central to this framework are rights enshrined in international human rights law, such as the right to life, right to housing, right to health, right to food, and the right to participate in decisions affecting one's life. Climate change threatens all these rights. For example, rising sea levels can destroy homes, contaminate freshwater supplies, and jeopardize food security, while increasing temperatures can facilitate the spread of diseases.

This approach also holds States accountable for ensuring non-discrimination and equality in their responses to displacement. Vulnerable groups—such as Indigenous peoples, women, children, the elderly, and persons with disabilities—must receive special protection due to their heightened risk during climate-induced disasters.

The Human Rights Council and Special Rapporteurs have stressed the importance of aligning climate policies with human rights obligations. For example, the UN Special Rapporteur on human rights and the environment has underscored that States have a duty to protect people from foreseeable environmental harm, including displacement. National Adaptation Plans and disaster risk strategies must therefore be informed by human rights standards.

Ultimately, a human rights-based approach ensures that policies aimed at managing displacement do not violate basic freedoms, but instead empower affected communities, uphold justice, and promote equitable outcomes.

4.7 Climate Justice and the Polluter Pays Principle

Climate justice recognizes that the effects of climate change are distributed unequally, with the greatest burden falling on communities that contribute the least to global emissions. It highlights the ethical dimensions of climate-induced displacement, particularly in demanding accountability and equitable responsibility for mitigation and adaptation.

The polluter pays principle (PPP) is a cornerstone of climate justice. It asserts that those responsible for pollution should bear the costs of managing its consequences. Applied to climate displacement, this means that major historical emitters—typically high-income countries—should finance relocation, rehabilitation, and integration of climate refugees in vulnerable regions.

Implementing PPP involves establishing legal and financial mechanisms to track contributions to climate change and direct funds accordingly. The Warsaw International Mechanism and the Loss and Damage Fund represent preliminary steps, but enforcement remains weak.

Moreover, PPP intersects with the notion of intergenerational equity. Future generations will

inherit the effects of present-day inaction, underscoring the urgency of addressing displacement now. International climate negotiations must therefore incorporate climate justice principles into frameworks for assistance and accountability.

4.8 Challenges of Attribution and Causality

One of the most complex legal challenges in climate displacement is establishing clear causality between climate change and specific migratory events. Unlike persecution or war, climate impacts are often gradual, multi-causal, and diffuse, making it difficult to prove that displacement results directly from environmental degradation.

For legal recognition of refugee or protected status, especially under human rights or asylum law, claimants often must show that returning to their place of origin poses a substantial risk to their life or safety. Demonstrating this causal link is particularly hard in slow-onset scenarios such as desertification or salinization.

Scientific advancements in attribution science can help bridge this gap by quantifying the influence of climate change on specific events. However, legal systems have yet to integrate such methodologies fully. Courts and administrative bodies remain hesitant to base decisions on probabilistic evidence.

Furthermore, displacement is rarely caused by climate factors alone. Economic hardship, governance failures, and social conflicts often exacerbate environmental stressors, complicating legal claims based on environmental causation alone.

4.9 The Role of International Financial Institutions

International financial institutions (IFIs), including the World Bank, International Monetary Fund (IMF), and regional development banks, play a critical role in shaping responses to climate displacement. Through loans, grants, and technical assistance, these institutions influence national strategies for adaptation, infrastructure, and resilience.

IFIs can provide critical funding for relocation programs, early warning systems, and climate-resilient housing. They also support capacity building in vulnerable countries to improve disaster preparedness and urban planning.

However, IFIs have been critiqued for prioritizing economic efficiency over human rights and environmental sustainability. Projects funded by these institutions may inadvertently displace communities or fail to include safeguards for displaced persons.

There is a growing call for IFIs to adopt stronger social and environmental standards. The World Bank's Environmental and Social Framework (ESF), for example, requires stakeholder

consultation and protection of vulnerable groups. Aligning such frameworks with climate justice and human rights can significantly enhance the protection of climate-displaced persons. The current international legal landscape remains insufficient for the recognition and protection of climate refugees. While various treaties, declarations, and frameworks acknowledge the reality of climate-induced displacement, they fall short of offering concrete, enforceable rights and protections.

Regional instruments and soft law initiatives have begun to bridge the gaps, but they lack consistency and binding authority. Moreover, conceptual challenges—such as attribution of causality, definitional ambiguity, and fragmented governance—continue to hinder the development of comprehensive protections.

A human rights-based approach, informed by climate justice principles and supported by robust financial mechanisms, is essential for addressing the legal and ethical dimensions of climate displacement. The establishment of a dedicated international legal instrument tailored to the unique needs of climate refugees is no longer a theoretical aspiration—it is an urgent necessity. The international community must act collectively to reform existing structures, integrate emerging norms, and provide holistic, rights-based protections that meet the realities of our changing planet.

Chapter V: Indian Constitutional and Environmental Law Framework

5.1 Introduction

India is among the most climate-vulnerable countries in the world due to its vast coastline, diverse ecosystems, large population dependent on climate-sensitive sectors like agriculture and fisheries, and widespread poverty. According to reports by the Intergovernmental Panel on Climate Change (IPCC) and the Global Climate Risk Index, India faces severe threats such as rising sea levels, increased frequency and intensity of cyclones, recurrent floods, severe droughts, glacier retreat in the Himalayas, and shifting monsoon patterns. These phenomena not only affect natural habitats but also cause widespread displacement of millions of people annually. For instance, low-lying areas such as the Sundarbans delta face inundation risks, forcing residents to migrate inland. Similarly, communities in drought-prone areas of Maharashtra or coastal Odisha face loss of livelihoods and forced relocation.

Despite the gravity of these challenges, India's domestic legal framework does not explicitly recognize the category of "climate refugees" or "climate-displaced persons." This absence creates significant challenges in ensuring these vulnerable groups receive legal protection, social security, rehabilitation, and inclusion in policy planning. Unlike international refugee

law, which centers on persecution and conflict, climate displacement raises complex questions about state responsibility, migration rights, and environmental justice.

This chapter examines the potential for India's constitutional provisions, environmental laws, and judicial activism to fill this gap by evolving a rights-based framework that explicitly protects climate refugees. It further analyzes state policies on climate action, identifies existing legal and institutional challenges, and explores pathways for legislative reform and judicial innovation to establish a comprehensive protection regime.

5.2 Constitutional Foundations

The Indian Constitution is a living document designed to protect individual rights, promote social justice, and direct state policy towards welfare and environmental sustainability. While it does not mention climate refugees explicitly, several provisions offer legal foundations that can be interpreted to extend protection to climate-displaced persons.

5.2.1 Fundamental Rights

Article 14: Right to Equality before Law

Article 14 guarantees all persons equality before the law and equal protection of the law within the territory of India. This principle bars arbitrary and discriminatory state actions against climate refugees, including denial of essential services or unjust eviction. For example, if climate-displaced communities from regions like Kerala flood-prone zones face denial of rehabilitation schemes in destination states, they can seek constitutional remedies under Article 14 against such discriminatory treatment. Courts have repeatedly held that state actions must be reasonable, non-arbitrary, and follow due process, which is crucial for safeguarding displaced populations.

Article 15: Prohibition of Discrimination

Article 15 forbids discrimination on grounds including religion, race, caste, sex, or place of birth. For climate refugees, who are often internally displaced persons (IDPs), this protection is critical since many face exclusion or stigmatization in their new locations due to their origin, social background, or economic status. For instance, displaced Adivasi groups may face multiple marginalizations rooted in caste or ethnicity, compounding their vulnerability. This article can be invoked to ensure their inclusion in welfare schemes, access to education, and fair treatment in local governance.

Article 19(1)(e): Freedom of Movement and Residence

Article 19(1)(e) guarantees the right of every citizen to move freely throughout India and reside and settle in any part. This is directly relevant to climate refugees who must migrate internally due to habitat loss or livelihood collapse. This right restricts states from imposing unreasonable restrictions on the settlement of displaced persons, although reasonable restrictions may be imposed in the interests of public order or health. The judiciary must balance state capacity concerns with protecting these fundamental freedoms, enabling internal migration without state interference or discrimination.

Article 21: Right to Life and Personal Liberty

The Supreme Court has expansively interpreted Article 21 to include the right to live with human dignity, encompassing the right to adequate shelter, clean air, potable water, health, and livelihood. Environmental degradation and climate impacts threaten these fundamental aspects, as seen in deteriorating air quality in urban areas, loss of agricultural productivity, or water scarcity. Landmark rulings, such as *Olga Tellis v. Bombay Municipal Corporation*, have recognized that displacement undermines the right to livelihood and life itself, thereby framing climate-induced displacement as a violation of Article 21. The courts have the potential to extend this jurisprudence explicitly to climate refugees, requiring the state to provide adequate rehabilitation and resettlement to uphold this right.

5.2.2 Directive Principles of State Policy (DPSP)

Though non-justiciable, DPSPs articulate the social and economic objectives that must guide legislative and executive action. They set a normative framework compelling the State to adopt pro-poor and pro-environment policies.

Article 39(e): Protection of Vulnerable Populations This article directs the state to protect health and strength of workers, prevent exploitation of children, and safeguard the vulnerable sections. Climate refugees, often among the poorest and most marginalized, fall squarely within this protective ambit. This provision demands state action to create targeted schemes to mitigate the impacts of displacement and facilitate social integration and rehabilitation.

Article 47: Raising the Standard of Living This principle obligates the state to improve nutrition, health, and standard of living of its citizens, reinforcing the need for inclusive welfare programs that address the socio-economic dislocation caused by climate change. Without such measures, displaced populations remain trapped in poverty and deprivation.

Article 48A: Protection and Improvement of Environment A constitutional mandate for the

State to protect and improve the environment underscores India's commitment to sustainable development. Climate-induced displacement often results from environmental degradation, necessitating environmental conservation efforts that also consider human resettlement and rehabilitation needs. This provision encourages policies that balance ecological protection with human rights, promoting just transitions for displaced communities.

5.2.3 Fundamental Duties article 51A(g): Duty to Protect the Environment – A Foundation for Climate Justice

Article 51A(g) of the Indian Constitution, introduced by the 42nd Constitutional Amendment in 1976, lays down a Fundamental Duty for every citizen of India “to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.” While not directly enforceable in a court of law, this constitutional mandate carries immense moral and civic weight and has been increasingly recognized in judicial interpretations and policy frameworks as an essential element of India's environmental governance structure.

1. Promoting Collective Responsibility for Climate Action

This duty is not limited to passive observance but calls for active engagement from individuals and communities in environmental stewardship. In the context of climate change, this means:

- Participating in sustainable practices such as water conservation, afforestation, and pollution control.
- Holding industries and governments accountable for environmental degradation.
- Embracing energy efficiency and low-carbon lifestyles.

By fostering a sense of collective responsibility, Article 51A(g) reinforces the notion that climate change is not solely the burden of the state or global bodies but requires localised, citizen-led action to build climate resilience and sustainable ecosystems.

2. Enabling Community-Led Conservation and Adaptation

Grassroots environmental initiatives—such as community forests, coastal cleanups, rainwater harvesting, and mangrove regeneration—are manifestations of Article 51A(g) in action. These community-led conservation efforts serve several critical functions in mitigating climate vulnerability:

- Protecting livelihoods dependent on natural resources (e.g., fishing, farming, forest produce).
- Reducing the risk of climate-induced displacement by stabilizing local ecosystems and making communities more resilient to floods, droughts, and sea-level rise.

- Empowering marginalized populations to participate in local governance and environmental decision-making, thus contributing to inclusive climate adaptation.

3. Supporting Climate Refugees through Public Awareness and Participation

One of the indirect but powerful implications of Article 51A(g) is its role in educating and sensitizing citizens about environmental issues and their social consequences, such as climate-induced migration. In this regard:

- Awareness campaigns, environmental education, and local action plans help build adaptive capacities in vulnerable communities.
- Public participation mechanisms—like public interest litigation (PIL), citizen consultations, and local self-governance—can amplify the voices of those affected by climate displacement.
- By cultivating climate consciousness at the community level, Article 51A(g) helps create a social environment where climate refugees are not just seen as victims but as stakeholders in sustainable development.

4. Bridging Law, Ethics, and Citizenship

While the right to a clean environment is enshrined in Article 21 (Right to Life), Article 51A(g) complements it by creating a moral and civic obligation. It is where law intersects with ethics and active citizenship, offering a holistic foundation for:

- Advocating for legal recognition and rights of climate refugees.
- Creating bottom-up pressure on state authorities to enact and enforce climate-sensitive policies.
- Institutionalizing climate justice through a rights-and-duties framework that recognizes both human and environmental dignity.

5.3 Environmental Jurisprudence in India

India's environmental jurisprudence has evolved significantly since the early 1980s, primarily through proactive judicial interventions that have expanded the scope of constitutional and statutory provisions. The judiciary, especially the Supreme Court and various High Courts, has adopted a rights-based and ecocentrism approach to environmental protection. This jurisprudential shift provides a foundational legal framework that could be extended to address the emerging challenges of climate displacement and the rights of climate refugees.¹⁰

¹⁰ Sendai Framework for Disaster Risk Reduction, 2015–2030 – Recognition of displacement as a disaster risk.

5.3.1 The Right to Environment under Article 21

Subhash Kumar v. State of Bihar (1991) This case established that the right to life includes the right to live in a pollution-free environment, recognizing ecological integrity as fundamental to human survival. This interpretation provides a legal basis to challenge activities causing environmental harm that triggers displacement, such as unchecked mining or industrial pollution.

MC Mehta Cases Through a series of landmark judgments, MC Mehta emphasized the state's duty to prevent environmental degradation and uphold ecological balance. The Supreme Court mandated pollution control measures, forest conservation, and protection of water bodies, recognizing the intrinsic link between environment and human rights. These rulings reinforce the obligation to prevent climate harms that displace populations.

T.N. Godavarman Thirumulpad v. Union of India (1996) This case focused on protecting forest resources and habitats, ensuring preservation of biodiversity and the livelihoods of forest-dependent communities. The ruling's emphasis on conservation protects communities vulnerable to displacement due to habitat loss, highlighting the judiciary's role in safeguarding environmental and human rights in tandem.

5.3.2 Public Interest Litigation (PIL) and Environmental Protection: A Judicial Mechanism for Climate Justice

I. Introduction: The Transformative Role of PIL in India

Public Interest Litigation (PIL) has emerged as one of the most powerful legal tools in the Indian constitutional framework for protecting collective rights and public goods, especially in the realm of environmental protection. Developed through judicial innovation rather than explicit constitutional mandate, India's PIL jurisprudence has significantly relaxed the rule of locus standi, enabling any public-spirited citizen, NGO, or group to approach the courts on behalf of those who may not have the means or access to justice.

This evolution has been particularly transformative in cases where environmental degradation affects vulnerable and marginalized communities, many of whom are at risk of displacement due to ecological collapse, resource scarcity, or climate disasters. Thus, PIL has become an essential instrument for environmental constitutionalism, sustainable development, and climate justice.

II. Democratizing Environmental Governance and Justice

The liberalized standing doctrine in PIL enables the judiciary to act as a guardian of fundamental rights and constitutional values even in the absence of direct injury to the

petitioner. This democratization of environmental litigation allows:

- Affected communities—especially tribal populations, fisherfolk, and forest dwellers—to gain representation in legal forums.
- Civil society and NGOs to mobilize legal action against environmentally destructive policies and projects.
- Judicial scrutiny of executive and industrial conduct, ensuring adherence to environmental regulations, sustainable development principles, and the precautionary approach.

In this way, PIL serves as an institutional counterbalance to administrative inaction, corporate impunity, and regulatory failure, ensuring that environmental governance remains participatory and accountable.

III. Landmark Case: Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh (1985)

One of the earliest and most influential environmental PILs, this case involved the indiscriminate mining of limestone in the ecologically fragile Doon Valley in Uttarakhand. The petitioner—Rural Litigation and Entitlement Kendra (RLEK)—argued that limestone quarrying was:

- Causing serious environmental degradation, including deforestation and pollution of water sources.
- Violating the Right to Life under Article 21, as local communities faced health hazards and threats to livelihood.
- Jeopardizing long-term ecological balance in the region.

The Supreme Court of India, recognizing the gravity of the environmental harm, ordered the closure of several limestone quarries, even at the cost of short-term economic interests. Importantly, the Court observed that ecological security and public health must take precedence over monetary gains, thereby laying the groundwork for environmental protection as an essential aspect of the constitutional right to life.

This case became a precedent for linking environmental preservation to human dignity, health, and livelihoods, which are all issues closely intertwined with climate-induced displacement.

IV. Expanding the PIL Framework to Address Climate Displacement

The jurisprudential foundation laid by RLEK and subsequent environmental PILs enables a natural extension of this mechanism to the emerging crisis of climate displacement. While India lacks a legal definition or policy framework for climate refugees, PIL offers a proactive and rights-based avenue to:

- Challenge state inaction or delayed responses to climate disasters (e.g., floods, cyclones, droughts) that result in displacement.
- Oppose development projects—such as dams, expressways, coastal industrial zones—that exacerbate climate risks or displace populations without adequate rehabilitation.
- Seek preventive and adaptive measures through judicial direction, including early warning systems, relocation plans, climate-resilient infrastructure, and disaster preparedness.
- Demand legal recognition and protection for communities at risk of displacement, thereby advancing the agenda of legal personhood and climate justice.

PILs may also be used to invoke Article 21 (Right to Life), Article 48A (Directive Principle on environment), and Article 51A(g) (citizen's duty to protect the environment) in order to establish a constitutional imperative for safeguarding the rights of climate-displaced persons.

V. Illustrative Examples and Future Potential

Though not always framed explicitly in terms of climate displacement, several PILs have touched upon themes relevant to this issue:

- *Narmada Bachao Andolan v. Union of India* (2000) raised concerns over large-scale displacement due to the Sardar Sarovar Dam project, setting precedents on resettlement and rehabilitation rights.
- *T.N. Godavarman Thirumulpad v. Union of India* led to judicial interventions in deforestation and forest conservation, impacting indigenous populations vulnerable to ecological loss.
- *Research Foundation for Science v. Union of India* addressed the import of hazardous wastes, showcasing judicial willingness to prevent environmental practices that pose long-term risks to public health and safety.

Future PILs can build on these examples by focusing explicitly on:

- Climate hotspots (e.g., Sundarbans, coastal Odisha, Kuttanad, Assam).
- Legal status of internally displaced persons (IDPs) due to environmental collapse.
- Obligations of states under international climate treaties and human rights law.

VI. Conclusion: PIL as a Catalyst for Climate-Conscious Jurisprudence

PIL represents a constitutional innovation that transforms the judiciary into a proactive agent of social and environmental change. In the absence of specific legislation on climate refugees, the PIL framework becomes a lifeline for vulnerable populations whose rights and dignities are compromised by environmental disasters and governmental apathy.

By expanding the scope of PIL to encompass climate-induced displacement, Indian courts can:

- Bridge the legal gap concerning climate refugees.
- Ensure environmental justice and participatory governance.
- Advance a rights-based, compassionate, and forward-looking approach to India's unfolding climate crisis.

5.3.3 Precautionary Principle and Polluter Pays Principle: Foundations of Environmental and Climate Justice in Indian Law

I. Introduction: Evolution of Environmental Principles in Indian Jurisprudence

The Precautionary Principle and Polluter Pays Principle (PPP) are cornerstones of modern environmental law, originally articulated under international frameworks like the Rio Declaration on Environment and Development, 1992. These principles emphasize the need for anticipatory environmental governance and economic accountability for ecological damage, forming part of the broader concept of sustainable development.

In *Vellore Citizens' Welfare Forum v. Union of India* (1996), the Supreme Court of India formally incorporated these doctrines into domestic jurisprudence, giving them binding legal force and marking a turning point in India's environmental governance. These principles have since been reaffirmed in numerous cases and have special relevance to the emerging challenge of climate-induced displacement, particularly in designing legal and policy responses to the needs of climate refugees.

II. Case Study: *Vellore Citizens' Welfare Forum v. Union of India* (1996)

Facts and Context

This case concerned the pollution of water sources in the state of Tamil Nadu by tanneries and other industries that discharged untreated effluents into agricultural lands, water bodies, and drinking water sources. The petitioners highlighted the irreversible ecological harm and the health hazards suffered by local communities.

Judgment and Key Doctrines

The Supreme Court, citing international environmental law and Article 21 (Right to Life), declared:

- Sustainable development is a part of Indian law.
- The Precautionary Principle and Polluter Pays Principle are essential components of environmental governance.
- Industries causing pollution must not only cease damaging activity but also pay compensation and restore the environment.

This judgment became the bedrock for environmental jurisprudence in India, ensuring that

environmental concerns are addressed not only reactively, but proactively and equitably.

III. Precautionary Principle: Preventive Environmental Protection

Definition and Legal Implication

The Precautionary Principle holds that when an activity raises threats of serious or irreversible environmental harm, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Relevance to Climate-Induced Displacement

In the context of climate change and displacement:

- It empowers authorities to take anticipatory action to protect communities residing in ecologically fragile zones (e.g., coastal villages, riverine areas, Himalayan foothills).
- Encourages the design of infrastructure, development projects, and housing in a manner that reduces exposure to climate risks (e.g., rising sea levels, glacial lake outbursts).
- Justifies early relocation policies, even when precise scientific data on future displacement is incomplete, on the basis of observed trends and risk assessments.

Judicial Use

Indian courts have applied this principle in cases such as *A.P. Pollution Control Board v. M.V. Nayudu* (1999), where the Court emphasized that environmental uncertainty demands heightened vigilance, especially when vulnerable populations are at risk.

IV. Polluter Pays Principle: Economic Justice and Accountability

Definition and Legal Implication

Under the Polluter Pays Principle, those who produce pollution are legally and financially responsible for the damage caused to the environment and affected communities. This includes:

- Paying for restoration of degraded ecosystems.
- Compensating affected individuals and communities.
- Covering the costs of preventive and remedial measures undertaken by the state.

Relevance to Displacement and Climate Refugees

- PPP ensures that industries, developers, or governmental bodies whose actions cause or exacerbate climate-related displacement bear the cost of resettlement, relief, and rehabilitation.
- In disaster-prone zones, PPP can be applied where environmental negligence (such as illegal mining, wetland encroachment, or unchecked emissions) leads to loss of habitat and forced migration.
- Encourages the internalization of environmental costs into development planning, thereby reducing long-term displacement risks.

Institutional Implementation

Authorities like the National Green Tribunal (NGT) have actively enforced PPP, requiring polluters to pay environmental compensation, e.g., in cases of river pollution, illegal construction in ecologically sensitive areas, and hazardous waste management failures.

V. Interplay Between the Two Principles and Climate Justice

The synergy between the Precautionary Principle and the Polluter Pays Principle creates a powerful two-pronged strategy:

- Precautionary Principle = Prevent harm before it occurs, focusing on risk mitigation, early action, and disaster aversion.
- Polluter Pays Principle = Remediate and compensate after harm has occurred, ensuring justice, accountability, and rehabilitation.

Together, they allow courts and policymakers to address both upstream (pre-displacement) and downstream (post-displacement) challenges of climate-induced migration. These principles can:

- Support legal frameworks for the recognition of climate refugees, treating displacement not as an incidental tragedy but as a preventable injustice.
- Justify compensation funds, relocation grants, and restorative justice programs for those uprooted by ecological damage.
- Encourage corporate environmental responsibility and sustainable project design, reducing long-term vulnerability.

VI. Constitutional and Policy Integration

These principles are now integral to India's environmental governance, and are embedded in:

- Article 21: Right to Life, encompassing the right to a healthy and safe environment.
- Article 48A: Directive Principle urging the State to protect the environment.
- Article 51A(g): Fundamental Duty on citizens to safeguard natural ecosystems.

They are also reflected in policies like:

- National Environment Policy, 2006
- Environmental Impact Assessment (EIA) Notification
- Hazardous Waste Management Rules
- Draft National Policy for Rehabilitation and Resettlement

In these instruments, the obligations of the polluter and the need for precaution are implicitly or explicitly recognized, forming the basis for climate-sensitive regulatory action.

VII. Conclusion: A Framework for Legal Personhood and Climate Resilience

The Precautionary Principle and Polluter Pays Principle are not only legal doctrines but normative foundations for a future-oriented, rights-based approach to climate governance in India. When applied in the context of climate-induced displacement, they:

- Strengthen the case for legal recognition of climate refugees as bearers of enforceable rights.
- Justify preventive action and compensation mechanisms, aligning legal accountability with environmental ethics.
- Serve as tools to bridge climate vulnerability and environmental justice, ensuring that climate migrants are protected not as passive victims, but as rightful claimants under the law¹¹

5.3.4 Intergenerational Equity and Sustainable Development: Safeguarding Future Generations from Climate-Induced Displacement

I. Introduction: Constitutionalization of Sustainability

The doctrine of intergenerational equity posits that current generations hold the natural environment in trust for future generations. This ethical and legal principle has gained significant traction in Indian environmental jurisprudence, particularly as the judiciary has sought to balance environmental protection with developmental imperatives.

The concept was solidified in Indian law in the landmark case of *Indian Council for Environmental Action v. Union of India* (1996), where the Supreme Court of India recognized sustainable development as a constitutional imperative. This principle not only governs the use of natural resources but also mandates the preservation of ecological integrity for future citizens—thereby linking environmental protection to generational justice.

As climate change increasingly threatens the livelihoods, homes, and survival of communities, the doctrine of intergenerational equity becomes critical to understanding and resolving the crisis of climate-induced displacement.

II. Case Analysis: *Indian Council for Enviro-Legal Action v. Union of India* (1996)

Background and Context

This case involved the discharge of toxic effluents by industries into the environment, resulting in soil and groundwater contamination in the Bichhri village of Rajasthan. The pollution caused

¹¹ Rio Declaration on Environment and Development, 1992, Principles 15 and 16.

severe health impacts and destroyed agricultural productivity.

Judgment and Principles Evolved

The Court declared that:

- Environmental degradation violates Article 21 (Right to Life).
- There is a duty upon the state and polluters to restore the environment.
- Most importantly, the principle of intergenerational equity demands that current developmental activities do not compromise the environmental needs and rights of future generations.

This landmark judgment helped formally embed the principle of sustainable development within India's constitutional and environmental framework.

III. Intergenerational Equity: The Moral and Legal Imperative¹²

Definition and Scope

The doctrine of intergenerational equity emphasizes that the Earth's resources are not the exclusive property of the present generation. Instead, current generations are mere custodians or trustees of the natural environment, obligated to protect and preserve it for posterity.

This principle implies:

- Resource restraint: Ensuring that natural resources are not depleted irreversibly.
- Long-term planning: Incorporating future ecological and social risks in decision-making.
- Environmental governance: Enacting policies that balance current needs with future rights.

IV. Sustainable Development: Legal Doctrine and Policy Mandate

Sustainable Development as a Constitutional Principle

The Indian judiciary has clarified that sustainable development is a binding legal principle derived from the constitutional guarantee of Article 21 (Right to Life), read with Articles 48A (State's duty to protect the environment) and 51A(g) (citizen's duty).

Core Dimensions

- Integration of environmental protection with economic growth.
- Environmental impact assessments before development.
- Carrying capacity analysis to prevent resource overuse.
- Adaptive planning to address climate variability.

¹² Government of India, Ministry of Environment and Forests, *National Environment Policy*, 2006.

V. Relevance to Climate-Induced Displacement and Climate Refugees

The principle of intergenerational equity, when applied to climate change, becomes a protective shield against actions that accelerate environmental degradation and displacement:

1. Preventing Reckless Development in Fragile Areas

Projects such as coastal infrastructure, mining in forested zones, or urban sprawl in floodplains often lead to ecosystem collapse, increasing the risk of climate-induced disasters and displacement. The principle of intergenerational equity justifies judicial review and policy restraint in such areas.

2. Strengthening Climate Resilience

By mandating sustainable use of resources, the principle helps stabilize ecosystems like mangroves, wetlands, and river basins that act as natural buffers against climate threats—thereby protecting communities from displacement.

3. Empowering Future-Oriented Governance

It compels the government to:

- Develop climate-resilient infrastructure.
- Ensure just transition policies for vulnerable workers and communities.
- Plan for managed retreat or relocation in areas facing unavoidable climate risks.

4. Legal Ground for Climate Refugee Rights

If displacement caused by ecological collapse denies people a safe and dignified future, it directly contradicts intergenerational equity. This doctrine can thus serve as a jurisprudential foundation for:

- Recognizing climate migrants as rights-holders.
- Challenging environmental decisions that disproportionately impact future generations.
- Advocating for a legal status and reparative mechanisms for the displaced.

VI. Institutional and Policy Reflection

India has attempted to reflect intergenerational concerns through:

- Environmental Impact Assessment (EIA) processes.
- Coastal Regulation Zone (CRZ) norms.
- National Action Plan on Climate Change (NAPCC).
- State Action Plans on Climate Change (SAPCCs).

However, implementation remains inconsistent, especially in regions with high displacement risks (e.g., Sundarbans, Himalayan belt, coastal Andhra Pradesh).

The National Green Tribunal (NGT), through its precautionary and restorative judgments, also upholds intergenerational concerns by halting or modifying destructive projects.

VII. Conclusion: A Rights-and-Duties Framework for the Future

Intergenerational equity bridges environmental ethics, human rights, and constitutional obligations, offering a holistic vision of justice that transcends temporal boundaries. In the age of climate disruption, it:

- Justifies anticipatory legal protection for vulnerable populations.
- Strengthens the call for legal recognition of climate refugees as stakeholders in future sustainability.
- Holds state and private actors accountable for environmental decisions that jeopardize future habitability.

By anchoring climate displacement within the framework of intergenerational justice, Indian courts and lawmakers are better positioned to institutionalize climate resilience, ensuring that the rights of tomorrow's citizens are not sacrificed at the altar of today's convenience.

