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BEYOND BORDERS: RETHINKING LEGAL PROTECTION FOR CLIMATE MIGRANTS IN INDIA

AUTHORED BY - ANAGHA RAMDASS

ABSTRACT

The adverse impacts of climate change have increasingly led to the displacement of persons, both within national borders (climate migrants) and across international boundaries (climate refugees). India, situated in the climate-vulnerable South Asian region, is poised to witness significant influxes of climate refugees, necessitating a proactive and holistic approach. The paper delves into the intricate legal landscape surrounding climate migrants and refugees in India. It begins by delineating the two distinct terminologies and exploring the current international legal framework, which fails to grant climate refugees an inherent right to resettle in another country. Turning the focus inward, the paper scrutinizes the challenges posed by internal climate change induced displacement in India. The recently introduced Climate Migrants (Protection and Rehabilitation) Bill, 2022, is critically evaluated, acknowledging its positive aspects while identifying areas for improvement. Drawing inspiration from global experiences, the paper examines the approaches taken by countries in addressing climate-induced displacement. The paper then proposes a two-pronged strategy for India: first, mainstreaming climate migration into the National Adaptation Plan for Climate Change (NAPCC) by incorporating dedicated missions or integrating it into existing missions; second, amending the Disaster Management Act, 2005, to explicitly include climate change-related events within the definition of "disaster".

Keywords: Climate Migrants, Climate Refugees, Climate Migrants (Protection and Rehabilitation) Bill, National Adaptation Plan for Climate Change (NAPCC), Forced Displacement, Disaster Management Act

I. INTRODUCTION

Climate change is increasingly being recognized as a major driver of human displacement, both within national borders (internal displacement) and across international boundaries (cross-border displacement). While international soft law instruments like the Cancun Adaptation Framework, Nansen Principles and the Sendai Framework exist, much needs to be done in the domestic legal framework for any tangible change to materialise. While there is increasing acceptance on the growing nexus between climate change and human mobility, terms like “climate refugees” and

“climate migrants” entering the discourse is a relatively recent phenomenon.¹ Needless to say, Climate Change and related natural disasters threaten state stability, social structures, and individual human rights,² exposing the pre-existing vulnerabilities of the affected community,³ especially in developing countries like India.

The paper commences by delineating the distinction between the terms "climate migrants" and "climate refugees," thereby establishing a foundation for understanding the nuances of climate-induced human mobility. It briefly delves into the legal landscape of the international refugee law framework, underscoring the need for comprehensive domestic policies. The paper then shifts its focus inwards, scrutinizing the challenges posed by climate migration within India and critically evaluating the recently introduced Climate Migrants (Protection and Rehabilitation) Bill, 2022. Drawing inspiration from global experiences, the paper examines the approaches taken by various countries in addressing climate-induced displacement and highlights the potential, as well as the limitations, of the *non-refoulement* principle in this regard. Subsequently, the paper proposes a two-pronged strategy for India: mainstreaming climate migration into the National Adaptation Plan for Climate Change (NAPCC) and amending the Disaster Management Act, 2005 to explicitly account for climate migrants.

II. UNDERSTANDING THE TWO DISTINCT TERMINOLOGIES - CLIMATE REFUGEES AND CLIMATE MIGRANTS

At the outset, it is important to distinguish between the terms “climate migrants” and “climate refugees” as used in the paper. Climate migrants refers to individuals that have been *internally displaced* due to climate-change hazards and does not involve crossing international borders. Climate refugees, on the other hand, refers to persons that have crossed borders to seek refuge in another state due to climate change and allied concerns.

A. CLIMATE REFUGEES

The term “climate refugees”, despite being discussed widely, has failed to secure an

¹ Francois Gemenne et al, *Forced Displacement related to the impacts of Climate Change and Disasters*, (Jun.2021), https://www.unhcr.org/people-forced-to-flee-book/wp-content/uploads/sites/137/2021/10/François-Gemenne-et-al_Forcéd-displacement-related-to-the-impacts-of-climate-change-and-disasters.pdf

² International Law Commission, Draft Articles on the Protection of Persons in the Event of Disasters, with Commentaries, 2016, ILC Commentary to Article 5 at ¶ 8, www.refworld.org/docid/5f64dc3c4.html

³ UN High Commissioner for Refugees (UNHCR), *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, (Oct.1, 2020) <https://www.refworld.org/policy/legalguidance/unhcr/2020/en/123356>

internationally agreed upon definition.⁴ While the 1951 Refugee Convention does not take environmental factors into account, calls for amending the Convention have been few and far. Biermann and Boas, political scientists and environmental policy experts use the phrase “climate refugee” as opposed to its equivalents because it has strong moral overtones and lends credibility and urgency to the situation.⁵ Majorly affecting the most vulnerable populations, climate refugees are still not legally protected in any country.⁶

The current international legal framework does not grant climate change refugees an inherent right to resettle in another country, even in cases where they have no other viable option, such as citizens of island nations. Thus, in the existing legal paradigm, the only avenue for climate change migrants to permanently resettle in a foreign country would be by aligning themselves with the categories prescribed within the immigration laws of their desired destination country.⁷

Alternatively, Climate refugees may explore a legal pathway through the principle of non-refoulement. This principle prohibits a country from expelling or returning (“refouler”) an individual to a situation where they would face certain dangers, such as persecution, torture, or cruel, inhuman, or degrading treatment or punishment. The 1951 Refugee Convention⁸ enshrines a version of the non-refoulement principle codified in Article 33, and it is also embedded within certain human rights treaties or has been interpreted as applicable to them, arguably attaining the status of Customary International Law.

However, existing jurisprudence poses significant challenges for climate migrants seeking to invoke the principle. Climate change is unlikely to be considered a harm sufficiently dangerous to trigger the threshold for application of the principle. Even in the event that climate migrants successfully establish non-refoulement claims, the principle only safeguards them from expulsion; it does not confer the right to permanent residency in the country to which they have relocated.

⁴ IPCC (2013), *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Stocker T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley, Cambridge University Press.

⁵ Frank B, Ingrid B., *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*, GLOBAL ENVIRONMENTAL POLITICS 10,67 (2010).

⁶ Gauri S Rane, Riddhi Jangam, *India’s climate refugees and legal implications*, INTERNATIONAL JOURNAL OF LAW, 8, 118-122 (2022).

⁷ Rafael Leal-Arcas, *Climate Migrants: Legal Options*, PROCEDIA- SOCIAL AND BEHAVIOURAL SCIENCES,37, 86-96 (2012).

⁸ U.N Convention relating to the Status of Refugees, Jul. 28, 1951, 189 U.N.T.S 150.

B. CLIMATE MIGRANTS

Internal displacement due to climate change can occur gradually or suddenly, depending on the nature and severity of the environmental stressors involved. In some cases, people may be forced to relocate permanently, while in others, the displacement may be temporary or cyclical. Regardless of the duration, climate migrants often face significant socio-economic and psychological challenges, including loss of livelihood, disruption of social networks, and limited access to basic services and resources.

The Guiding Principles on Internal Displacement of 1998⁹, introduced by the United Nations Economic and Social Council (ECOSOC), represent the first international standards specifically tailored to address the plight of Internally Displaced Persons. These principles draw upon relevant aspects of international human rights law, humanitarian law, and refugee law, adapting them to the unique circumstances of internal displacement. However, it is crucial to note that these Guiding Principles were deliberately designed as a non-binding legal instrument which can, at best, serve as soft law. In practice, only a limited number of countries have incorporated these principles into their national legislation or constitutional frameworks.

III. INDIA AND CLIMATE-INDUCED DISPLACEMENT

This section examines India's unique challenges in contending with climate-induced migration flows, both internal and cross-border. It delves into the country's position as one of the largest refugee-receiving states in South Asia. Simultaneously, it sheds light on the internal displacement crisis fuelled by native socio-economic and topographic-centric factors.

A. INDIA AND CLIMATE REFUGEES

Centred in one of the most environmentally fragile areas of South Asia, the Indian mainland has and will continue to face increasing climate migration influx into its' borders,¹⁰ especially from its' neighbouring countries like Sri Lanka, Bangladesh, Myanmar and Afghanistan. On an international policy level, India is not a signatory to the 1951 Refugee Convention and the 1967 Optional Protocol, thus circumventing it from the legal scrutiny of an internationally binding refugee protection law framework.

Arguing from a constitutional standpoint, with the addition of Article 51-A and Article 48A, post

⁹ Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, E/CN.4/1998/53/Add.2 (Feb.11,1998).

¹⁰ Rane, *supra* note 7.

the ratification of the 1972 Stockholm Declaration, India has signalled its intent to protect and improve natural resources and biodiversity.¹¹ Coupled with the Right to life under Article 21, extrapolating legal recognition to climate refugees in India can be quite the compelling argument.

B. INDIA AND CLIMATE MIGRANTS

India, being a vast country with diverse geographical features have the risk of facing acute differential impacts induced due to climate change like desertification, coastal floods, land degradation and the like.¹² Countries like India, Bangladesh, and China along with numerous countries from the Southeast Asian region will also be impacted by the rising sea levels.

Internally, the nation grieves the loss of biodiversity in the Sunderbans delta threatening to displace close to 5 million inhabitants due to sea level rise. The flooding of Brahmaputra in regions of Assam and Bihar further exacerbate climate change induced internal displacement. Moreover, in the hilly districts of Uttarakhand, erratic rainfall patterns and a declining water table have compelled people to abandon their homes and agricultural lands, forcing them to migrate to the plains. Similarly, in Saharsa district of northern Bihar, a relocated community continues to grapple with the relentless onslaught of floods. These instances underscore the reality that inter-state and intra-state (rural-urban) migration due to droughts, floods, and other extreme climatic events has been an ongoing phenomenon in the country.

IV. DRAWING FROM FOREIGN JURISDICTIONS

Turning to foreign jurisdictions to examine their stance on climate refugees and climate migrants, New Zealand is of particular importance. In 2016, Ioane Teitiota a man hailing from the Kiribati had filed a claim against the New Zealand government for denying “climate refugee” status and asylum claims due to land difficulties and lack of access to safe drinking water in the Pacific Island Nation. While the United Nations Human Rights Committee (UNHRC) ruled in favour of the government, it made some key legal observations. The Tribunal noted that the right to life must be interpreted broadly,¹³ which can potentially pave way for climate refugee jurisprudence vis-à-vis Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR).¹⁴

¹¹ Sincy Wilson, *Recognition of Climate Refugees: What should be India's stand?*, Refugee Law Initiative, (Mar.18,2021), <https://rli.blogs.sas.ac.uk/2021/03/18/recognition-of-climate-refugees-what-should-be-indias-stand>, 2022

¹² Shreya Singh, *Climate Migration and Displacement: Challenges and Responses*, Indian Council of World Affairs, (Feb.21, 2024), https://www.icwa.in/show_content.php?lang=1&level=1&ls_id=10542&lid=6710

¹³ *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), (Jan. 2, 2020), <https://www.refworld.org/jurisprudence/caselaw/hrc/2020/en/123128>.

¹⁴ International Covenant on Civil and Political Rights, Mar. 23, 1976, 189 U.N.T.S 137.

In 2017, the New Zealand Government introduced a one-of-a-kind humanitarian visa, also called a “climate refugee visa”. However, it was discontinued owing to objections from the Pacific Island Countries centring around preservation of indigenous cultures. The United States government, on the other hand, under the Biden Administration, has demonstrated a progressive stance on addressing the nexus between climate change and migration flows. In 2021, the Administration officially correlated climate change as a driving force behind population displacements, marking a significant policy shift. Additionally, they expanded the scope of “Temporary Protected Status” (TPS), a provision that offers temporary refuge from deportation for refugees fleeing war, natural disasters, or other crises in their home countries. While TPS currently benefits refugees from specific nations like El Salvador and Haiti, experts argue that extending this status to encompass climate refugees would be a positive step.

In the Latin American sphere, we can see positive developments in Brazil with the introduction of their ad-hoc humanitarian visa scheme. The United Nations High Commissioner for Refugees (UNHCR) has lauded the initiative of the Brazilian government to provide such visas in favour of Haitians after the 2010 earthquake and an extending it to the Syrians in the wake of the civil war.¹⁵

Many Pacific Island nations are taking proactive measures to address the challenge of climate change-induced displacement. For instance, Fiji has adopted National Relocation Guidelines that offer a skeletal framework for both the government as well as the communities affected by gradual and sudden environmental hazards. Similarly, the country of Vanuatu through its’ Ministry of Climate Change Adaptation has formulated a National Policy on Climate Change and Disaster-Induced Displacement, which aims to ensure that population movements occur with dignity, safeguards, and human rights protections in place.

The potential of bilateral agreements remains largely unexplored. This can be seen by the first of its kind agreement between Australia and Tuvalu to address climate induced migration for low-lying island nations.¹⁶

India can learn from the experiences of foreign jurisdictions in formulating a legal framework for climate refugees. While drawing from positive aspects of foreign frameworks, India should also

¹⁵ Humanitarian visas: building on Brazil’s experience, Forced Migration Review, <https://www.fmreview.org/jubilut-andrade-madureira/>

¹⁶ Australia-Tuvalu Falepili Union treaty, Aus.-Tuv., Nov. 9,2023.

address their limitations. The framework should provide not only temporary refuge but also long-term solutions, ensuring the rights and well-being of those displaced by climate change's adverse effects. By learning from global experiences, India can develop a comprehensive and progressive legal framework tailored to its specific challenges and needs.

V. CLIMATE MIGRANTS (PROTECTION AND REHABILITATION) BILL, 2022

According to data of the Internal Displacement Monitoring Centre, in 2020, 3,856,000 people were displaced by environmental disasters, 989 times more than the 3,900 persons displaced by conflicts.¹⁷ Noting the alarming numbers of climate-induced migration in India, Shri Pradyut Bordoloi, an Assam MP introduced the Climate Migrants (Protection and Rehabilitation) Bill¹⁸ (“**Bill**”) in December 2022 as a private members’ bill. This move, perhaps the first of its kind, is heralded as a start, providing the much needed impetus to, at the very least, initiate academic discourse and public discussions, and in the long-term possibly inspiring a central legislation.

Setting aside the dismal rates of a successful legal culmination of private member’s bills in either houses of the Parliament, there is much potential and scope in the bill, which if augmented by necessary rules, can prove to be a game-changer in the field of climate migrants in India.

A. ANALYZING THE MERITS

The proposed Bill envisages a holistic framework, taking into account aspects like prevention, preparedness, relief, rehabilitation and reintegration of climate migrants. It provides for monitoring and assessing of climate migration risk, prevention and mitigation, relief and compensation for climate migrants and their resettlement, rehabilitation and re-integration. This overarching design reflects an attempt to institutionalize a cyclical and continual process for addressing climate migration's root causes, immediate impacts, and long-term rehabilitative needs within a unitary policy framework. It provides for a dedicated National Climate Change Management Authority¹⁹ to oversee the functioning of the Act and earmarks a stipulated sum from the Consolidated Fund of India for Climate Migration Fund.²⁰ Arguably the most important operative section is the provision which mandates the Central Government to formulate, a National Policy for addressing climate-induced migration.²¹

¹⁷ Global Report on Internal Displacement 2020, IDMC (Apr.2020)

¹⁸ The Climate Migrants (Protection and Rehabilitation) Bill,2022, Bill No. 160 of 2022 (July 7,2022).

¹⁹ *Id.* at §4.

²⁰ *Id.* at §6.

²¹ *Id.* at §3.

B. ANALYZING THE DEMERITS

The protection is extended only to “climate migrants” defined in Section 2(c) of the Bill²² which does not include cross-border migration or “climate refugees” and limits it to Internally Displaced Persons in the classical sense.²³ At the same time, the definition of “climate migrants” is inclusive of even voluntary migration due to worsened living conditions which could make identification and limiting the scope of the Bill difficult.

A glaring shortcoming of the proposed Bill is its failure to integrate with and build upon existing disaster management frameworks such as the Disaster Management Act, 2005. Leveraging these established legal and institutional mechanisms could have significantly strengthened the implementation and efficacy of the new law. Additionally, the Bill neglects to adequately address several critical aspects including the nitty-gritties of the compensation processes, grievance redressal mechanisms for affected populations, and tailored solutions for climate migrants displaced to populated megacities. These oversights represent significant gaps that could hinder the law's ability to comprehensively safeguard the rights and effectively rehabilitate climate migrants against the vagaries of climate change induced displacement.

VI. CHARTING THE PATH AHEAD FOR INDIA

While global climate efforts rightly prioritize long-term emissions reduction and sustainable energy transitions, overlooking the ongoing realities of forced climate migration is a luxury the world can ill afford. Instead of a siloed approach, India ought to adopt an integrated vision harmonizing mitigation efforts with frameworks safeguarding climate migrants. While academics laud initiatives like the portability of ration cards and the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), India continues to face the dual threat of climate change and rapid urbanization.

As nations grapple with the mounting challenges posed by climate change, it becomes imperative to develop comprehensive legal and policy frameworks to address its multifaceted impacts, including climate-induced displacement. India, a country with a vast population and diverse geographical terrain, is particularly vulnerable to the effects of climate change, making it crucial to explore avenues within existing legal structures. Two potential pathways that merit consideration are: (1) integrating climate migration into the broader ambit of the National

²² *Id.* at §2(c).

²³ *Id.* at Preamble.

Adaptation Plan for Climate Change, and (2) amending the Disaster Management Act, 2005 to specifically account for climate refugees.

A. MAINSTREAMING CLIMATE MIGRATION INTO THE NATIONAL ADAPTATION PLAN FOR CLIMATE CHANGE

The National Adaptation Plan for Climate Change (“NAPCC”) is a strategic symbiosis of 8 missions *viz* National Water Mission, National Solar Mission and the like. The NAPCC, as it stands, does not explicitly cover the issue of climate migration and refugees within its national missions. However, given the growing recognition of climate change as a driver of displacement and migration, there could be an opportunity to integrate a comprehensive framework for protecting climate migrants and refugees within the broader ambit of the NAPCC.

A new mission covering aspects like early warning and risk mapping systems to identify potential climate migration hotspots, measures for protected migration corridors and planned relocation of communities from high-risk zones, legal protections, documentation, access to basic rights for climate migrants, rehabilitation, housing, employment, education for displaced climate migrants, Building capacities of urban centers to handle climate-induced migration influxes, International cooperation on cross-border climate migration/refugee issues and Dedicated financial mechanisms to fund is indeed a step in the right direction.

Even if the Bill does not see itself to legal fruition, incorporating elements of the functioning of the National Climate Change Authority from the Bill into the NAPCC either by addition of a new mission or by incorporating the aforementioned aspects into the mandate of an existing mission *viz* the National Mission on Sustainable Habitat can prove to be effective in the long run.

B. AMENDING THE DISASTER MANAGEMENT ACT, 2005

The Disaster Management Act, 2005²⁴ provides a comprehensive statutory framework for addressing disasters in India. However, to effectively incorporate provisions for climate refugees, amendments to the Act are necessary. Firstly, introducing a clear definition of "climate refugees" or "persons displaced due to climate change-related events" would explicitly recognize this category of displaced persons, aligning with international norms and principles.

²⁴ The Disaster Management Act, 2005.

Secondly, expanding the scope of the Act's definition of "disaster" under Section 2(d)²⁵ can prove to be pivotal. While the current definition includes the phrase "...or degradation of, environment," it lacks specificity regarding climate change-related events that lead to displacement, such as sea-level rise, desertification, and extreme weather events. By explicitly including these events within the definition, climate migrants would fall within the purview of the Act.

Notably, the Act's provisions for National Plans,²⁶ State Plans,²⁷ and District Plans²⁸ primarily revolve around disaster mitigation, management, and recovery. Consequently, an inclusive definition of "disaster" that accommodates climate hazards would be a significant step towards addressing the issue of climate refugees. This would ensure that climate change-induced displacement is adequately addressed within the existing framework of disaster management plans at various levels in the country.

VII. CONCLUSION

While majority of the literature and discourse is on establishing a climate refugee status, it provides only a partial approach to address the complexity of human mobility due to climate change, which includes internal displacement as well. At the same time, while amending the 1951 Refugee Convention and the 1967 Optional Protocol to account for environment factors may seem less feasible, one can, for instance, explore the avenue of providing guidelines for domestic law frameworks for climate migrants taking into account both hard and soft law in humanitarian, human rights and refugee law, instruments on internal displacement, disaster management, legal migration and others.²⁹

While migration is classically an adaptation strategy for climate change, it is crucial to recognize that this relationship is bidirectional and nuanced.³⁰ Climate extremes at the destination regions can conversely undermine the adaptive capacity and well-being of these migrants. This phenomenon highlights the intricate interplay between population movements and climate change, wherein they exist as mutually reinforcing processes. Displaced populations seeking

²⁵ *Id.* §2(d).

²⁶ *Id.* §11.

²⁷ *Id.* §23.

²⁸ *Id.* §31.

²⁹ Dina Ionesco, *Head of MECC Division at UNHCR*, (Jun.6,2019),

<https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees/>

³⁰ Hari, Vittal et al., *Climate hazards are threatening vulnerable migrants in Indian megacities*, *NATURE CLIMATE CHANGE*, 11, 636 – 638 (2021).

refuge may encounter new climate risks and vulnerabilities at their resettlement locations, thereby exacerbating their precarity. Acknowledging that there is no one-size-fits-all approach, India, by adopting equitable and sustainable solutions can minimize the effects of climate change so as to safeguard the rights of its citizens.

