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INDIA'S APPROACH IN NAVIGATING REFUGEE POLICY AND CLIMATE MIGRATION

AUTHORED BY - DIYA JOSEPH

ABSTRACT:

This paper explores India's position in the complex interplay of climate change and refugee policies. India faces unique challenges in dealing with climate-induced displacement due to its geography and demography. Though hosting a great number of refugees on its territory, India is not a signatory to the 1951 UN Refugee Convention, for reasons that shall be discussed in the paper. Against this backdrop, the paper analyzes the current legal framework dealing with refugees in India and deficiencies within such legislation when applied to climate migrants. Some of the recent judgments and the decisions have become definitive milestones, like the Supreme Court's latest direction for the extension of rights in a situation involving climate change to civic dignity. For this reason, the study also looks at the domestic legislation that formally attempts to recognize rehabilitation for climate migrants like the Climate Migrants (Protection and Rehabilitation) Bill, 2022. The paper further reflects on international debates for an expansion of the definition of refugees to include those displaced by environmental factors. It concludes by highlighting the need for comprehensive legal response to address the growing challenge of climate-induced migration, both within India and internationally.

Keywords:

Climate change, climate refugees, 1951 refugee convention, environmental law

INTRODUCTION:

India is at the forefront of climate change due to its demographics, topography, and geographical location.¹ While India's focus on economic growth may seem justified, the risks posed by climate change place it in a position where it stands to lose the most. With a population exceeding 1.13 billion, it is home to the largest number of people in the tropical and equatorial regions—significantly more than West Asia's 211 million, Southeast Asia's 554 million, or even

¹ Neil Padukone, Climate Change in India: Forgotten Threats, Forgotten Opportunities, 45 ECONOMIC AND POLITICAL WEEKLY 47, 47-54 (2010)

Africa's 922 million.²² Moreover India is home to a third of the global poor, with over 40% of its population living on less than one dollar a day.³ Majority of India's poor are directly dependent on climate sensitive resources such as agriculture, land, river water etc, making the poor the most vulnerable to the aftermath of climate change. India also witnesses a wide range of topographic variety, which also means that climate change affects different regions differently. Events of glacier floods have become a regular occurrence in the Himalayan region, leading to consequences of decreased water quality, making villages more susceptible to vector borne diseases and sometimes even extreme effects.⁴ Such climate-related challenges, including sudden environmental disasters and gradual changes affecting farming and living conditions, are driving significant population movements. This occurs both within countries and across borders, particularly when nations lack sufficient systems and resources to address these climate-induced issues effectively.⁵

Numerous reports highlight that an average of a billion people could possibly face permanent displacement due to global warming⁶. The Intergovernmental Panel on Climate Change (IPCC) in its fourth report postulates that "the potential for population migration" shall be caused by rise in occurrence of droughts and extreme tropical cyclone activities.⁷ The most evident drivers of forced migration are war and political violence, yet countries like Syria highlight how environmental disasters and backlash from development projects can also result in migration.⁸ Population migration caused by environmental changes are referred to as disaster-induced displacement. These shifts can result from rapid environmental events like floods, storms, or fires, as well as gradual changes such as droughts, deteriorating land conditions, or rising sea

² United Nations, World Population Prospects: The 2008 Revision, Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, 2009 <http://esa.un.org/unpp>

³ Shaohua, Chen and Martin Ravallion, "The Developing World Is Poorer than We Thought, But No Less Successful in the Fight Against Poverty", Development Research Group (DECRG), World Bank, World Bank Policy Research Working Paper No 4703 (2008)=

⁴ Abigail Blue, Colonial Fences Make Contentious Neighbors: Policy, Law, and Climate Refugees in India, 24 HASTINGS ENVIRONMENTAL LAW JOURNAL 330, 331 (2018)

⁵ Human mobility in the Context of Climate Change Adaptation, Disaster Risk Reduction, and Sustainable Development Goals in the Hindu Kush Himalayas, PLATFORM ON DISASTER DISPLACEMENT (Sept. 6, 2017),

<https://disasterdisplacement.org/news-events/human-mobility-in-the-context-of-climate-change-adaptation-disaster-risk-reduction-and-sustainable-development-goals-in-the-hindu-kush-himalayas/>

⁶ Christian Aid, Human Tide: The Real Migration Crisis (London: Christian Aid), 2007 <https://www.christianaid.org.uk/>

⁷ Intergovernmental Panel on Climate Change (2007): "Summary for Policymakers" in M L Parry, O F Canziani, J P Palutikof, P J van der Linden and C E Hanson (ed.), Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (Cambridge, UK: Cambridge University Press), 7-22, p i8.

⁸ André Bank and Christiane Fröhlich, Forced Migration in the Global South: Reorienting the Debate, 3 GIGA Focus, (2018)

levels. The Pacific Oceania region, with its many low-lying islands, is especially at risk from increasing sea levels. India faces challenges in handling immigration, with its Law Commission finding it difficult to enforce the existing, albeit inadequate, immigration laws.⁹ The country's border control policies and practices are not effectively handling current immigration flows. Without comprehensive legal and policy structures at international, national, or regional levels to address migration, India is likely to see a significant rise in unregulated climate-driven immigration or climate migrants. It would hence be wise to note that climate related migration could be an upcoming global crisis wherein a large number of persons are displaced from the comfort of their homes, forcing them to flee. Though research and evidence majorly focus on identifying the quantum of persons being forced to temporarily or permanently displaced from their homes, the prominent question that needs addressing is whether such persons shall be termed as climate refugees.¹⁰ The dawning fact pertaining to this question is that, there is no internationally agreed upon definition for such a term nor an identifiable extent to how such persons can be considered a separate group. .

INDIA AND REFUGEES:

On an estimate India lodges an approximate of 228,345 refugees from across the globe.¹¹ The reason for such high rates has got to largely do with India's geographic location in South Asia and its readiness to set aside political differences in order to provide assistance to those in need, evident from its recent relief efforts in Turkey and the support it extended to Tibetan refugees to state a few.¹² Despite India's strong commitment to assisting refugees and asylum seekers globally, the country has not signed the 1951 UN Convention Relating to the Status of Refugees¹³.

The status of India being a non signatory country has never hindered its capability of hosting refugees. For several decades now, India has been a haven for diverse groups that sought asylum away from strife in neighboring countries. It started with the partition of India and

⁹ Abigail Blue, Colonial Fences Make Contentious Neighbors:Policy, Law, and Climate Refugees in India, 24 HASTINGS ENVIRONMENTAL LAW JOURNAL 330, 331 (2018)

¹⁰ Abigail Blue, Colonial Fences Make Contentious Neighbors:Policy, Law, and Climate Refugees in India, 24 HASTINGS ENVIRONMENTAL LAW JOURNAL 330, 331 (2018)

¹¹ World Population Review, Refugees by Country 2023 (20 March 2023) <https://worldpopulationreview.com/country-rankings/refugees-by-country> .

¹² Ananya Gupta, India's Refugee Governance on the Brink: Needs a National Law, 22 ISIL Y.B. INT'L HUMAN. & REFUGEE L. 182 (2022).

¹³ UN General Assembly, 1951 Convention Relating to the Status of Refugees & 1967 Protocol Relating to the Status of Refugees, GA Res 429 (V), Treaty Series 1249 (14 Dec 1950, adopted 28 July 1951).

Pakistan in 1947 and continues until this day, as seen from the recent influx of the Rohingya Muslims who left Myanmar. Over the years, India has been a place of refuge, mainly for persecuted groups who had to escape armed conflict and violence in neighboring countries.¹⁴ Yet, it is not to say that such generosity has been devoid of its challenges, like social economic and political tensions especially pertaining to regions of Assam, Tripura, and Manipur that face breakouts between the local communities and the migrants. However the greatest challenge faced by refugees is statelessness which stems from there being no concrete refugee law in India. In 1951, the United Nations established the Convention on the Status of Refugees, along with its 1967 Protocol, to provide protection for refugees and create responsibilities for nations to accommodate them. While 146 countries have joined this agreement, several South Asian nations, including India, Bangladesh, Pakistan, Sri Lanka, Malaysia, and Indonesia, are not yet signatories to the Refugee Convention.¹⁵

CLIMATE CHANGE IMPLICATIONS IN INDIA:

As a consequence of global warming and climate change, there would be a large influx of environmental refugees into India's inland. Looking at the few Bangladeshis that have entered India so far, their mere presence has become an explosive political issue.¹⁶ Recently, the north-east region has been facing an increase in the previously receding insurgency trend as the aftermath of migration from the Ganges delta states. Similarly there could be various reasons and causes for the increase in climate immigrants in India, but this comes at the cost of resource stresses and various other conflicts within India.

In India climate change shall have the consequence of displacement and migration mainly due to drought, desertification, rise in sea level, water scarcity, low food productivity and melting glaciers. There has been no concrete findings of these effects but the phenomenon is supported by scientific evidence.¹⁷ The major environmental concern affecting India is the increased drought conditions, especially in western India. There has been an approx of 3,00,000 laborers

¹⁴ Garima Tiwari, Promoting Effective Refugee Protection in India: Balancing National Interests and International Obligations, 10 ATHENS J.L. 221 (2024).

¹⁵ Janmyr, M. (2021). 'Non-signatory States and the international refugee regime', 67 Forced Migration Review 39-42. <https://www.fmreview.org/issue67/janmyr/>

¹⁶ Swain, Ashok (1996): "Displacing the Conflict: Environmental Destruction in Bangladesh and Ethnic Conflict in India, 33 Journal of Peace Research, 189-204 (1996)

¹⁷ Architesh Panda, Climate Refugees: Implications for India, 45 Economic and Political Weekly 76, 76-79 (2010)

that have migrated as a result of drought just in Bolangir district of Orissa.¹⁸ There has been a consistent increase in sea level affecting coastal regions of India, leading to submergence of the Lohachara Island in India's Sundarban region forcing people to move to the nearby Sagar Island.¹⁹ The megacities face rising sea levels and storm surges which induce an approx of 76,40,416 people to migrate from near the sea.²⁰ Flooding at present displaces around 5,00,000 people in Bangladesh.²¹ It is disturbing to understand that these refugee numbers shall only go higher, looking at the increasing rate of global warming and climate change.

INDIA'S STANCE ON REFUGEES IN RELATION TO INTERNATIONAL LAW

The nation believes that there is no need for a specific organization that works for the legal protection of refugees. Moreover, it is a signatory to many international conventions that aim at protecting individual rights and thereby extend positive obligations pertaining to refugee rights as well. There has been no official reasoning being provided from India's end to back up its firm refusal to ratify the refugee convention or its protocols. The Refugee Convention is seen as a product of the post-World War II concerns of Europe, primarily developed without much notice on the calamity the Global South experienced, here, the vast output of flows that refugees resulting from the 1947 partition of India meant. It is a very old convention in nature. The Convention saw no major changes since its inception, and therefore is unable to take on the new challenges in transportation and economic migration that have taken place at lightning-fast speeds around the globe. India feels that ratifying the Convention would increase economic migrants into India seeking the status of refugees. Geopolitical factors also come into the picture. India's present status as a non-signatory state gives it flexibility in diplomatic relations with neighbors even while accepting refugees. Signing the Convention would dilute that relationship and compromise the autonomy of India concerning its management of refugees.

Additional issues are demographic and security concerns for India. The country is already burdened with an enormous population, very porous borders, and internal diversity on cultural lines. The increasing influx of refugees alters local demographics and could possibly lead to

¹⁸ Deshingkar, P, Improved Livelihoods in Improved Watersheds: Can Migration Be Mitigated?" in "Watershed Management Challenges: Improving Productivity, Resources and Livelihoods, International Water Management Institute, Colombo (2003)

¹⁹ The Telegraph, Vanishing Islands Displaced Climate Casualties Underlying Truth, Calcutta, 30 October 2006

²⁰ Dasgupta, S, B Laplante, S Murray and D Wheeler, Sea-level Rise and Storm Surges: A Comparative Analysis of Impacts in Developing Countries, Policy Research Working Paper No 4901, World Bank.

²¹ Warner 2009

future security issues.

Legally a refugee as defined in Article 1(A)(2) of the Refugee Convention, as amended by the 1967 Protocol is someone who:

*"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it [...][In the case of a person who has more than one nationality, the term 'the country of his nationality' shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection the country of his nationality, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national."*²²

It is crucial to note the declaratory nature of refugee status as defined above. An individual attains refugee status upon fulfilling the criteria delineated in the definition, irrespective of formal status determination procedures. This principle establishes a presumption that individuals who have traversed international borders to escape significant risks of harm in their country of origin should be accorded refugee status and treated accordingly. The impetus for forced migration can be attributed to a diverse array of factors.

However, the most prevalent catalysts include armed conflicts, internal strife, persecution, human trafficking, and displacement resulting from environmental degradation or natural disasters.

This conceptualization of refugee status heavily underscores the importance of immediate recognition and protection for individuals fleeing adverse circumstances, regardless of the formal bureaucratic processes involved in status determination. It reflects a humanitarian approach to refugee protection that focuses on the safety and legal protection of displaced persons from the moment they seek asylum in a host country. India also feels that the definition of a refugee under the Convention is too restrictive and lays emphasis on violations relating to

²² Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137.

civil and political rights, and misses out on violations of economic, social, and cultural rights and displacement caused by generalized violence or natural disasters.

TIME FOR A DOMESTIC LEGISLATION:

Regardless of the various reasons that might prevent India from ratifying the convention and its protocol, those reasons do not justify the absence of a domestic refugee law. India being a state hosting a wide range of refugees, there arises a need to regulate their rights and liabilities. The nation has so far relied on the Foreigners Act²³ for addressing the concerns however it still holds inadequate considering the surging number of refugees and the contemporary challenges that India faces.²⁴ The other laws applicable to refugees are The Passport Act, 1967, the Registration of Foreigners Act, 1946, and the Foreigners Order, 1946.

The Foreigners Act does not, however, have such specificity to address the present scenario of refugees. Because even an implicit provision for refugees is absent in the act, arbitrary and wide discretion vests in the Central Government for deciding asylum seekers in India.²⁵ The plight of asylum seekers worsens the same as it already is, owing to the absence of a consistent framework over conferring refugee status and due to the absence of a dedicated body to settle refugee matters.

The other domestic laws governing foreigners also fail to differentiate between a foreign national and a refugee, further complicating the lives of refugees in India. Many refugees enter the country without valid documentation, and while the Passport Act²⁶ does allow for the issuance of passports or travel documents to non-citizens in the public interest, only Tibetan refugees have been granted valid passports by the Central Government so far. Without proper identification, refugees are unable to open bank accounts, obtain ration cards, purchase SIM cards, or secure housing, severely limiting their access to essential services.²⁷ Under the Foreigners Order²⁸, the state government has the power to refuse entry to a foreigner for having an invalid passport.

²³ The Foreigners Act, No. 31 of 1946, INDIA CODE (1946).

²⁴ Ananya Gupta, India's Refugee Governance on the Brink: Needs a National Law, 22 ISIL Y.B. INT'L HUMAN. & REFUGEE L. 182 (2022).

²⁵ Id.

²⁶ The Passport Act, Act No. 15 of 1967. Sec 20.

²⁷ Ananya Gupta, India's Refugee Governance on the Brink: Needs a National Law, 22 ISIL Y.B. INT'L HUMAN. & REFUGEE L. 182 (2022).

²⁸ Foreigners Order 1948, Order under The Foreigners Act 1946. Sec 3.

The nation believes that there is no need for a specific organization that works for the legal protection of refugees. The current international organizations responsible for managing refugees are overstretched and struggling to handle the existing number of refugees.²⁹ Yet there has been some progress with getting them to recognise climate refugees, like, Biermann and Boss (2007) asked for the introduction of a protocol to the UNFCCC on recognition, protection and resettlement of climate refugees.³⁰

The concept of environmental refugees was brought about by Lester Brown of the WorldWatch Institute in the 1970s.³¹ The concept gained popularity after studies by El-Hinnawi (1985)³² and Jacobson (1988)³³ on the forced migration of people due to environmental degradation and natural disasters. However there still needs to be an international as well as a domestic definition for the same for the purpose of identification and legal recognition.

Recent developments in the Indian legal scenario have thrown up climate-induced migration against the backdrop of policy discussions. There was a landmark judgment made by the Supreme Court of India in the case of *MK Ranjitsinh And Ors. v. Union of India And Ors 2023*³⁴ wherein it has been held that citizens have a fundamental right to be protected from the adverse effect of climate change. This judicial verdict might eventually throw open the doors for more climate litigation, particularly laborers since they are going to suffer the worst scars from this crisis of global climatic proportions. Laborers are often trapped within a cycle of displacement, fleeing rural devastations caused by droughts and floods, only to get caught in the extreme heat of urban centers.³⁵

The need for legislative action to protect the rights of climate migrants has gained heightened urgency. This has been evident in India's parliamentary discourse, as seen from the introduction of the Climate Migrants (Protection and Rehabilitation) Bill, 2022, a private member's bill proposed by Pardyut Bordoloi, a Member of Parliament from Assam. This bill attempts to

²⁹ Architesh Panda, Climate Refugees: Implications for India, 45 Economic and Political Weekly 76, 76-79 (2010)

³⁰ Biermann F and Ingrid Boss, Protecting Climate Refugees: The Case for a Global Protocol, Environment (2007)

³¹ Black, Richard, Environmental Refugees: Myth or Reality? Working Paper No 34, New Issues in Refugee Research, UNHCR (2001)

³² El-Hinnawi, Environmental Refugees, United Nations Environment Programme, Nairobi (1985)

³³ Jacobson, Jodi, Environmental Refugees: A Yardstick of Habitability, World Watch Paper No 86, WorldWatch Institute, Washington DC.(1988)

³⁴ MK Ranjitsinh And Ors. v. Union of India And Ors 2023

³⁵ Rishabh Shrivastava, The Case of Climate Refugees, The Analysis, 2024 <https://theanalysis.org.in/the-case-of-climate-refugees/>

formally recognize climate migrants and, therefore, rehabilitate all of them. The bill recognizes acute climatic events like flooding or cyclones but also observes slow environmental changes by way of droughts, erosion, glacial melting, and desertification. Bordoloi calls for the immediate establishment of a legal and policy framework to protect the rights of those people displaced or forced to migrate due to climate-related factors.³⁶

The existing framework of international refugee law could not deal with rights of displaced people because of climate change. Debates have been raised regarding amendments to the 1951 Refugee Convention, including the inclusion of provisions to consider adding environmental degradation as one form of persecution. Debate has continued and indicates increased recognition of climate-driven migration as one of the salient global issues requiring proper responses through legal and policy channels.

CONCLUSION:

In short, vulnerability to climate change coupled with the increasing refugee population in India demands urgent attention to shutting legal loopholes regarding protection for refugees. It is on account of a 150-year-old tradition of providing asylum that exacerbates the plight of refugees and climate migrants and leaves them vulnerable in the absence of a specific domestic legislation. As environmental challenges intensify, India faces a growing crisis of displacement. It goes without saying that such complexities of climate-induced migration call for urgent legislation of domestic and international adequacies that protect the rights of such migrants, including those displaced through environmental disasters.

³⁶ Id.