

A Tale of Climate Refugee Vis-A-Vis Responsibility Shifting and Responsibility Sharing

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Abstract

Around the world people have been forcibly displaced by floods, windstorms, earthquakes or droughts. This is equivalent to one person being displaced every second. Depending on the frequency and scale of the major natural disasters occurring, there are significant fluctuations in the total number of displaced people from one year to the next, yet the trend over recent decades has been on the rise. Many find refugee within their own country, but some are forced to go abroad. With climate change, the number of 'climate refugees' will rise in the future. So far, the national and international response to this challenge has been limited, and protection for the people affected remains inadequate. What adds further to the gap in the protection of such people – who are often described as 'climate refugees' – is that there is neither a clear definition for this category of people, nor are they covered by the 1951 Refugee Convention. The latter extends only to people who have a well-founded fear of being persecuted because of their race, religion, nationality, membership of a particular social group or political opinion, and is unable or unwilling to seek protection from their home countries. It has been expressed growing concern and has taken action to support and develop resilience in the countries potentially affected by climate-related stress.

Keywords: *Climate change, Climate Refugee, Role of United Nations, National Framework*

I. Introduction

Contemporarily climate change has become one of the most significant issues and has been affecting almost all countries and regions of the world. It has affected both the living and the non-living in more ways than it can be imagined. Though there has been significant debate regarding the fact whether climate change can be a reason for migration or displacement. There are several

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terms like ‘climate migrant’, ‘climate refugees’ and ‘climate displaced persons’ which is interchangeably used.²Climate change is described to be one of the key reasons for persons to leave their homes by The IPCC (Inter Panel on Climate Change) (IPCC, 2014). As per climate change will lead to 20 times more refugees than presently protected by the United Nations.³This might lead to political economic and social tension along with overpopulation and constrain of natural resources. As per (UNHCR, 2015)Climate refugees present one of the biggest humanitarian challenges of today. But till date it has not been considered as a significant issue due to which there has not been any international legal framework to address the problem of climate refugee as such.

Though the effects of climate change are not uniform but it has attained the status of global problem. The worst affected are the developing countries as they are one who are not in a position to adapt to climate change as they are depended on natural environment for their survival.⁴The level of consciousness or sensitivity required to protect climatic degradation and refugees that it might generate is quite high.The international society is essential in providing assistance to this vulnerable group⁵. Between 2008-2016, over 200 million people have been displaced worldwide as a result of natural disasters and in India, close to 1.5 million people are classified as internally displaced (1.3 million in 2017) every year.⁶

²Frank Biermann and Ingrid Boas, Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees 10(1) Glob. Environ. Politics, 60, 88 (2010).

³ *Ibid*

⁴ *Ibid*

⁵Guy S. Goodwin-Gill and Jane Macdam, The Refugee in International Law 56-57, (3rd Ed. 2007).

⁶ Nandan Sharalaya, Taking India’s Climate Migrants Seriously, The Diplomat (August 10, 2018), <https://thediplomat.com/2018/08/taking-indias-climate-migrants-seriously/>. (last visited Sep 12, 2020).

The term environmental refugee or climatic refugee was coined in the year 1970 Lester Brown of the World Watch Institute. It was in the year 1990 that the term gained popularity.⁷

EssameHinnawi in the year 1985, defined the 'environmental refugees' as:

...those people who have been forced to move or leave their traditional habitat, temporarily or permanently, because of a marked or conspicuous environmental disruption (natural and/or

triggered by people) that jeopardized and imperilled their existence and/or seriously affected

the quality of their life.⁸

Norman Myers has defined the term 'environmental refugees' as 'people who can no longer get or gain a secure livelihood (or living) in their homelands because of soil erosion, drought, deforestation, desertification and other environmental problems, together with associated and incidental problems of population pressures and profound poverty. In their desperation or despair, these people feel they have no alternative or option but to seek sanctuary elsewhere, however, hazardous the attempt. Not all of them have fled or left their countries, many being internally displaced. But all have abandoned their homeland on a semi-permanent if not permanent basis, with no or little hope of a foreseeable return.'⁹

The available literature on climate refugee mainly consists of reports of studies, conferences and workshops conducted by international and non-governmental organizations (NGOs). National and regional level studies are fewer in number.

Environmental sciences contribute to the uncovering of knowledge gaps considering climate refugees issues. These knowledge gaps become particularly

⁷ James Morrissey, Rethinking the 'Debate on Environmental Refugees': From 'Maximalists and Minimalists' to 'Proponents and Critics 19(1) JPE 36, 49 (2012); See, also Camillo Boano (n 76) 7.

⁸ Essam El-Hinnawi, Environmental Refugees 4, (United Nations Environment Programme 1985); See Boano (n 76) 7.

⁹ Norman Myers, Environmental Refugees: a Growing Phenomenon of the 21st Century 357 Philos Trans R Soc Lond Biol Sci. 609, 611 (2002); See also Boano (n 76) 7.

apparent in science-policy interfaces. The academic research regarding climate change and climate refugees makes clear predictions, but the policy of the UN has yet to be adapted to these findings. Effective interaction between academics and policy is important to move climate negotiations forward.

To determine what role the UN could play it is important to see if there is a correlation between climate change and migrant flows, because it represents the scope of the issue. If there is such a correlation, it is of interest for policy to know where climate refugees are coming from, where they are going and what the most common reason is to leave their habitat. Section one will give an overview of: the predicted climate refugees, predicted climate change, current migrant/refugee flows and the most common reason for people to flee their habitats.

Furthermore, with respect to climate refugees, it is important to understand how the climate refugee is conceptualized in the environmental academic literature. The discourse in the academic literature contains various definitions, and conceptual consensus has not yet been reached. Therefore, it shall endeavour to give an analysis of this academic discourse. Because climate change and climate refugees are Transboundary, the international society should aim to make an overarching policy concerning these subjects. The UN is the most comprehensive form of intergovernmental governance, and has played a key role in global environmental governance.

As per the IPCC (2014), a huge number of individuals are driven away from their homes because of environmental change, or will be sooner rather than later. These progressions incorporate, however are not constrained to: ocean level ascent, waterfront disintegration, expanded occurrence of dry season, coral dying, storm floods, desertification, deforestation, soil disintegration, and water deficiencies.¹⁰ This change is predominantly brought about by anthropogenic ozone harming substance (GHG) emanation, which has expanded since the pre-mechanical period, driven to a great extent by financial and populace development (IPCC, 2014). Atmosphere dangers are unevenly appropriated;

¹⁰Carol Farbotko, & Heather Lazrus, The first climate refugees? Contesting global narratives of climate change in Tuvalu, 22 (2) *Global Environmental Change*, 382, 390 (2012).

their character and effect fluctuate in various zones. A few spots get drier, while different spots get overflowed. The genuine advancements don't just rely upon atmosphere related perils, yet in addition on introduction and defencelessness of human and characteristic frameworks, including their diminished capacity to adjust.

As per the IPCC (2014) 'Climate change enhances existing dangers and will make new ones'. Dangers that are identified with environmental change increment different stressors. By and large this has adverse results for vocations, particularly for poor and other hindered individuals and networks in nations at all dimensions of advancement (IPCC, 2014). Expanding extents of warming because of environmental change improve the probability of irreversible impacts and amplify dangers for employments that respect nourishment and human security, on account of this individuals are probably going to escape from their natural surroundings (on the same page). The IPCC predicts that in 2050 there will be 150 million atmosphere outcasts (IPCC, 2014). Meyers anyway expect that the aggregate sum of atmosphere outcasts will be 200 million out of 2050. As indicated by the IPCC the removal hazard increments when populaces do not have the assets for arranged movement experience expanded introduction to outrageous climate occasions. The IPCC additionally takes note of that 'the a great many individuals will be uprooted fundamentally in view of shoreline disintegration, seaside flooding and rural disturbance because of environmental change'. As indicated by the IPCC, particularly poor nations are helpless against environmental change dangers.

Bierman and Boas (2010) affirm that 90 percent of the atmosphere outcasts will originate from Africa and Asia.¹¹ They anticipate that the failure to adjust to ocean level ascent, dry seasons and water shortage are the principle reasons that individuals on these landmasses will escape. Asia runs a high danger of ocean level ascent, while Africa is increasingly powerless against dry spell and water

¹¹Frank Biermann and Ingrid Boas, Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees, 10 (1), *Global Environmental Politics*, 60, 88 (2010), <https://www.mitpressjournals.org/doi/pdfplus/10.1162/glep.2010.10.1.60> (Last visited Sep 12, 2020).

shortage.¹² On account of ocean level ascent, almost certainly, evacuees will escape their homes, however remain inside their nation. On account of dry season and water shortage, atmosphere displaced people are bound to cross universal outskirts.¹³

It is exceptionally sure that huge relocation streams will happen soon because of environmental change (IPCC, 2014). In any case, there is no straight, deterministic relationship between's natural debasement and relocation¹⁴. Natural procedures are inseparably associated with social, monetary, political and institutional structures (in the same place). For instance, it is hard to decide if atmosphere changes or governmental issues are the explanation behind natural corruption, in light of the fact that the condition of any nation's condition is halfway an impression of the sort of administration set up.¹⁵ All things considered, as recently expressed, it is sure that environmental change, and the ecological risks that are the culmination of environmental change occasions, are critical supporters of relocation streams.

Environmental change enhances existing dangers and will make new ones. Nations with a low GDP are incredibly powerless against these dangers in light of their failure to adjust. The extent of this issue is anticipated somewhere close to 150 and 200 million atmosphere displaced people by 2050.

The first official use of climate refugees was in 1985 by El-Hinnawi, which was published in the United Nations Environmental Program (UNEP) report. The term 'climate refugee' 'environmental refugee' are often used interchangeably, although they sometimes refer to different concepts. All are invoked to describe populations that have been displaced or are at risk of displacement for reasons associated with environmental change. It is also reveals that the usage of the

¹² Ibid

¹³ Ibid

¹⁴ Steve Lonergan, The Role of Environmental Degradation in Population Displacement, 4 Environmental Change and Security Project Report, 5,15 (1998).
<https://www.oceanfdn.org/sites/default/files/The%20Role%20of%20Environmental%20Degradation%20in%20Population%20Displacement.pdf> (Last Visited Sep 14, 2020).

¹⁵ Nathaniel Rich, Losing Earth: The Decade We Almost Stopped Climate Change, <https://www.nytimes.com/interactive/2018/08/01/magazine/climate-change-losing-earth.html> (last visited Sep 14, 2020).

terms '*climate*' and '*environment*' have changed over the years. Initially the term '*environment*' is used more often, whereas at later stages the term '*climate*' seems to become more common. Also, the term '*refugee*' is used more often than the term '*migrant*'. The differences between these terms become apparent in their definition according to the Oxford Dictionary (2016).

Climate: The weather conditions prevailing in an area in general or over a long period.

Environment: The surroundings or conditions in which a person, animal, or plant lives or operates. The natural world, as a whole or in a particular geographical area, especially as affected by human activity.

Migrant: A person who moves from one place to another in order to find work or better living conditions.

Refugee: A person who has been forced to leave their country in order to escape war, persecution or natural disaster.

The shift from the term '*environment*' to '*climate*' is not only visible in the literature on climate refugees, but also in the United Nations Security Council (UNSC), in the mainstream media and in the scientific literature¹⁶. This shift is partly due to the media coverage of this subject.¹⁷ The main difference between the two is that *climate change* is caused by humans (IPCC, 2014), whereas *environmental change* also includes natural changes as earthquakes. Climate change can however cause environmental change.

In the literature the terms '*migrants*' and '*refugees*' are used interchangeably, even though these two terms have different meanings according to the Oxford Dictionary. The groups of people concerned are forced to leave their homes due to climate or environmental conditions. This however does not always mean that these groups are forced to leave their country. As described the people who are forced to leave their home are often moving to another place in the same country

¹⁶Chris Russill & Zoe Nyssa, The tipping point trend in climate change communication, 336 *Global Environmental Change*, 344, Volume 19, Issue 3, August (2009).

¹⁷J.M. Dispensa & R.J. Brulle, Media's social construction of environmental issues: focus on global warming: a comparative study. 74, *International Journal of Sociology and Social Policy* 105, 23 (10), (2003).

in order to find better living conditions. Thus, neither one seems to be applicable to the persons of concern. Another term used to refer to the people of concern is ‘internally displaced persons’ (IDPs). IDPs refer to people whom are forced to flee, but remain within their country’s borders. They are often referred to as refugees, although the current definition of a refugee is someone who is forced to leave their country. These are important differences because migrants, refugees and IDPs have different rights. The UN should have consensus on the discourse before making policy, because otherwise the same policy could result in different rights solely because of the termination.

It has given an answer to how climate refugees are conceptualized in the academic literature. The academic literature does not have consensus on the discourse concerning climate refugees. In the literature there is clear a shift from the term ‘environment’ to ‘climate’. These two terms have different meanings, but are used interchangeably. The same applies to the difference between ‘migrant’ and ‘refugee’, although the term ‘refugee’ is used more often, the term ‘migrant’ is not excluded. It is important to create consensus on the conceptualization of climate refugees for a consistent policy of the UN because discourse development and policy development influence one another. Furthermore the Researcher will try to add to existing knowledge on Climate Refugee.

II. The Normative Debate

The number of people having to leave their countries and homelands due to climatic condition like storms, excessive or no rainfall, earthquakes and floods have been increasing over the years. 23.5 million, people have been reported to be forced to migrate due to such change in climatic conditions alone in 2016.¹⁸ Though the definition of the term is not settled yet but the impact of climate change on human migrations will be huge. Presumptions are that by

¹⁸Julie-Anne Richards and Simon Bradshaw, Uprooted by Climate Change: Responding to the Growing Risk of Displacement, Oxfam International Briefing Paper, 10 (2017). https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-uprooted-climate-change-displacement-021117-en.pdf. (Last visited on Sep, 12, 2020).

2050, 200 million people will become be homeless due to harsh climatic conditions.¹⁹

As already mentioned the term climate refugees have not been recognized much the Refugee convention (UNSCR) in the year 1951 along with the additional protocol in 1967 does not recognize the legal status of the climate refugees.²⁰At the outset environment or climate change, developmental project, industrial or manmade accidents and natural disasters was considered to be a reason for human displacement.²¹

A United Nations Environment Programme(UNEP) study led by Hinnawi substantiated these dimensions and gave the worldthe definition of environmental refugees.

“Environmental refugees are those people who have been forced to leave theirtraditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/orseriously affected the quality of their life.”²²There has been a normative debate regarding the nomenclature of the term climatic refugee but the actual concern is regarding the protection of human rights and humane treatment of these refugees in the host state and the recognition of the idea that environmental change has become the cause of migration in many areas of the globe.

¹⁹Norman Myers, Environmental Refugees: A Growing Phenomenon of the 21st Century, *Philosophical Transactions Royal Society: Biological Sciences* 609, 613 (2002) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1692964/pdf/12028796.pdf>. (Last visited on Sep, 12, 2020).

²⁰Bruce Burson, ‘Protecting the Rights of People Displaced by Climate Change: Global Issues and Regional Perspectives’ in Bruce Burson (ed), *Climate Change and Migration: South Pacific Perspectives*(Institute of Policy Studies, 150, 179 (2010).

²¹Graeme Hugo, *Climate Change-Induced Mobility and the Existing Migration Regime in Asia and the Pacific* in Jane Mc Adam (ed.), *Climate Change and Displacement: Multidisciplinary Perspectives*9–37 (Bloomsbury Publishing, 2010)

²²Essam El-Hinnawi, *UNEP: Two Decades of Achievement and Challenge*, 4 (UNEP Nairobi, 1992) <https://files.eric.ed.gov/fulltext/ED386388.pdf>.(Last visited on Sep, 12, 2020).

The Asian Development Bank (ADB) report on climate change does not provide the any particular definition of the term climate refugee, instead it uses terms like displaced persons, economic displacement or physical displacement. Among these term displaced persons is close to the understanding that the people were displaced due to drastic environmental conditions.²³As per the ADB report, approximately 37 million people from India, 22 million from China and 21 million from Indonesia will be at risk from rising sea levels by the year 2050.²⁴ The complexities of the climate change and its relation with human displacement have been incorporated in the definition of the term in the working definition of IOM. The predictions are such that majority of people are expected to move due to climate change and as result will impact several aspects of human life. It is difficult to say that climate change is the sole criteria of human migration. There are many factors like socio, economic, cultural and demographic factors along with climatic conditions which is responsible for human migration or displacement. The IOM thus makes a distinction between ‘displacement’ and ‘relocation’ because the notion of displacement is perceived as a migration where people flee or leave their homes involuntarily²⁵ also known as forced migration owing to political turmoil or sudden-onset of environmental disasters. Thus, the IOM delineates ‘relocation’ as ‘planned migration’ that is executed by the administrative authorities at the national and local stages within the municipal hierarchy.

Primarily, the definitional dilemma is directly linked to the conceptualization and typologies of environmental migration, its estimates and forecasts, and the policy responses aimed at addressing it.²⁶

²³ Asian Development Bank, *Environment Operational Directions 2013–2020: Promoting Transitions to Green Growth in Asia and the Pacific* (ADB, 2013)

<https://www.adb.org/sites/default/files/institutional-document/33869/environment-operational-directions-2013-2020.pdf>. (Last visited on Sep, 12, 2020).

²⁴ Ibid

²⁵ Marta Bivand Erdal and Ceri Oeppen, *Forced to Leave? The Discursive and Analytical Significance of Describing Migration as Forced and Voluntary* 44(6) *J. Ethnic & Migr. Stud.* 981, 982 (2017).

²⁶ Mostafa Mahmud Naser, *Climate Change, Environmental Degradation, and Migration: A Complex Nexus* 36(1) *Wm. & Mary Envtl. L. & Policy Rev.* 742, 744 (2012).

There is a serious need for the clear definition of the term climate refugees as without the definition of the term it would be impossible for one to identify a person whom is a climate refugee and as result of which the gravity of the situation could not be understood as the number of such people could not be estimated. Identification of such people is important in order to provide them with help, assistance and legal protection available for them.

The issues of protection of climate of refugees should be thought in the light of the 2005 United Nations Responsibility to Protect Framework (R2P)²⁷ which was adopted in the UN World Summit. In this summit the states agreed upon to protect their people for a range of issues which include crimes against humanity, war crimes, genocide and ethnic cleansing. While providing protection to the said group of people the states need to rely collectively on the principle of non-intervention on the internal matters of the state as in political or humanitarian refugee. Taking into consideration of the ill impacts of climate change the definition of the term climate refugees must be taken into consideration. The disparity in understanding of the climate refugee has created a great confusion to the understanding as to who exactly the climate refugee is.

III. Climate Change Migration: Legal Protection under International Refugee Law and Climate Change Legal Regime

In order to trace the history of climate change and understand the law regarding climate refugee we need to analyse the Paris Agreement, Kyoto Protocol, UNFCCC and the legal principles laid down in COP's. Due to global warming there have been drastic changes in the climatic changes which include natural disaster, water shortage and droughts. The number of people displaced by climatic conditions has increased to 50 million worldwide. The opinion of the expert is that by 2050 or 2100 the number of people displaced due to climatic conditions will increase by million. There are so many islands which are under the threat of submersion due to rise in sea level. Islands like Tuvalu, Kiribati, Vanuatu and Maldives are facing the. This situation has forced many to seek refuge, relocation and rehabilitation in neighbouring countries

²⁷Sheri P. Rosenberg, Responsibility to Protect: A Framework for Prevention, 1 Global Responsibility to Protect. 442, 444 (2009).

The problem of climate change as a driving force for refugees have been recognised by policy makers have started debating on various solutions. The problem of climate change-induced forced migration has been acknowledged in principle by the academics, UN, environmental expert groups, NGOs and other specialized agencies, but, unfortunately, this problem does not figure in governmental and institutional agenda of the international community. The issues of climate change and its ill effects are to be dealt with excessive and of caution and significance and it is a unique and unprecedented problem which has never been dealt with so the solution to this problem too needs to be unique and unprecedented. The gravity and nature of the situation is such that it tends to question the basic issue of human existence. The nature of the above mentioned problem is such that addressing the problem at the domestic or regional level will not solve the problem. International cooperation is the key to address this issue. But attaining this international cooperation or consensus is not that easy or rather it can be said that it is extremely difficult as the countries are not interested in the well being of the other countries and in turn are uninterested in taking any decision which will benefit other countries. Thus it becomes extremely difficult to come up with a common strategy. The existing international legal precedents in the form of the 1979 Geneva Convention on Long-Range Trans-Boundary Air Pollution as well as the 1985 Vienna Convention for the Protection of the Ozone Layer and its 1987 Montreal Protocol on Substances that Deplete the Ozone Layer constituted serious precedents at adopting innovative and novel mechanisms at tackling global environmental issues through multilateral cooperation.²⁸ Climate change was considered to be a "urgent world problem" in the 1979 conference.²⁹ It was in the year 1981 that the World Climate Programme was established in order to come up with legal as well as climatic solution to climate change but it was by this programme that it required strong international cooperation. It is only after the Bali COP that the international community has initiated paying attention to the issue of climate adaptation and climate change-induced displacement and

²⁸Stellina Jolly and Nafees Ahmad, *Climate Refugees in South Asia (International Law and The Global South*, 2019).

²⁹Daniel Bodansky, *The History of Climate Change, International Relations and Global Climate Change* 23, (2001).

migration. The Paris Agreement has constructively elevated the threshold of issue of human mobility and its consequences and analysed the issue with a focus on interrelationship with human rights and developmental law.³⁰ The international refugee regime have measures by which they identify the person who are in need of international protection, but present refugee law needs to expand its understanding to incorporate the climate change discourse. So the people who are been forced to migrate or are displaced due to climatic conditions can be termed as refugees.

However, the formation of an international consensus requires various stages to be covered the documents like the UN Declarations, UNGA resolutions, Guidelines of UN Agencies and regional understandings and recommendations of different organizations are adopted that conceive and confirm norms and obligations until unanimity and consensus are achieved on specific matters stemming into a treaty and the same process could also be resorted to in addressing the climate change migration.³¹

In order to ensure the rights in the ground of multiculturalism, global pluralism, world constitutionalism, the international rule of law, human rights and humanitarianism there lies a responsibility on the states to recognize climate refugees and work towards providing them with adequate protection. However, the global socio-political understanding of the climate refugee situation is that instead of the climate migrants being protected by the states, they are being treated as threats to internal security and are being viewed from a national security narrative. Hence, an additional protocol to the Refugee Convention, defining climate refugees and laying down their rights and obligations of the states towards their protection has become the need of the hour.

IV. Legal and Institutional Mechanism to Protect Climate Refugees in India

The United Nations Convention on Status of Refugees 1951 with its additional protocol in 1967 and the United Nations High Commissioner on Refugees do not mention or recommend any protection mechanism for the climate refugees

³⁰Ibid

³¹Ibid

in India and other SAARC countries. The Submergence of Bhola island have lead to the displacement of about five hundred thousand people of Bangladesh. These displaced people do not enjoy any legal protection and are forced to live stateless in the fear of deportation to their land which does not even exist creating a legal paradox. Such migration or refugee movements have been identified in Nepal-India, India-Pakistan, Afghanistan- Pakistan and Bangladesh – India. But studies and reports point out to the dangerousthreat of climate change-induced human displacement and climate changemigration that requires being tackled regionally and institutionally.³² People from countries lie Uganda, Sudan, Somalia, Iraq, Iran, Afghanistan and Bangladesh have taken refugee in India. India has always given refuge to people of all community irrespective of religions. But, unfortunately, India has not signed the UNCSR and 1967 Bellagio Protocol.³³ Further, India hasnot ratified the 1954 Convention on the Statelessness and 1961 Convention on the

India is a party to many international human rightsConventions such as the UDHR 1948,³⁴ the ICCPR1966,³⁵ the ICESCR 1966,³⁶ theCERD 1963,³⁷ the CEDAW1979,³⁸ the CAT 1984³⁹ and the CRC 1989.⁴⁰ However, India does recognize the right to asylum under article 14 (1) of the UDHR.⁴¹ The

³²Koko Warner, Climate Change Induced Displacement: Adaptation Policy in the Context of the UNFCCC Climate Negotiations, Legal and Protection Policy Research Series, Division of International Protection UNHCR, 1, 22 (2011) <http://www.unhcr.org/4df9cc309.pdf> (Last visited on Sep, 12, 2020).

³³Omar N. Chaudhary, Turning Back: An Assessment of Non-Refoulement under Indian Law 39 (24) EPW 3257 (2000).

³⁴Ratification by India on 10 December 1948. Ratification by India on 10 December 1948.

³⁵Ratification by India on 10 April 1979 (a).

³⁶Ratification by India on 10 April 1979.

³⁷Ratification by India on 03 December 1968 with certain reservations

³⁸Ratification by India on 09 July 1993.

³⁹India has signed on 14 October 1997 but it has not ratified yet.

⁴⁰Ratification by India on 11 December 1992.

⁴¹Canada: Immigration and Refugee Board of Canada, India: Ability of Tibetan refugees to exit and re-enter India, including the requirements and procedures for Tibetan refugees to obtain and renew an Identity Certificate (IC) and a 'No Objection to Return 196

government determines the status of refugees by *ad hoc* administrative decisions under the Foreigner Registration Act 1939 and the Foreigner Act 1946 to regulate the entry, stay and departure of all aliens in India. Other applicable laws are the Passport (entry into India) Act 1920, Passport Act 1967, and Extradition Act 1962. India does not have any national agency except Foreigner Regional Registration Office (FRRO) under the Bureau of Immigration of India to handle the refugees.⁴² Several members of Parliament across the party lines presented private members' Bills in the Parliament for enacting a National Refugee Law such as Asylum Bill 2015, National Asylum Bill 2015, the Protection of Refugees and Asylum Seekers Bill 2015, but these Bills are still pending before the Parliament.⁴³ Refugees and asylum seekers have been enjoying protection under the Constitution of India.⁴⁴ The Supreme Court (SC) of India has done exceptional service to the cause of refugee rights. SC has interpreted the word 'person' also includes noncitizens.

In the case of *Chairman, Railway Board & Others v. Mrs. Chandrima Das & Others*,⁴⁵ the SC necessitated the Indian state to follow the international human rights covenants and the UN Declarations and also adheres to the provisions of the UDHR into domestic jurisprudence.⁴⁶ International human rights core treaties can also be referred to in interpreting and understanding the national law.⁴⁷ Therefore, SC has directed and appreciated the predicament of refugees in a plethora of cases such as *Khudiram Chakma v. State of Arunachal*

to India' stamp; whether the IC can be renewed from abroad; Visa requirements for Tibetans returning to India, 12 December 2014, IND105024. E <http://refworld.org/docid/55825a44.html> (Last visited on Sep, 12, 2020).

⁴² Article 14 and 15 of the Constitution of India, 1950.

⁴³ Hamsa Vijayaraghavan and others, 'It's Time India Had a Refugee Law' (*The Wire*, 19 December 2015) <https://thewire.in/law/its-time-india-had-a-refugee-law> (Last visited on Sep, 12, 2020).

⁴⁴ T. Ananthachari, 'Refugees in India: Legal Framework, Law Enforcement and Security', 7 *ISILYBIHRL*, 118, 144 (2001). See: Constitution of India, 1950 (n 92) articles, 14, 20 and 21.

⁴⁵ (2000) 2 SCC 465.

⁴⁶ *Ibid.*

⁴⁷ *Nilabati v. State of Orissa* (1993) 2 SCC 746; *D. K. Basu v. State of W.B.*, (1997) 1 SCC 416; *PUCL v. Union of India* (1997) 3 SCC 433; *Githa Hariharan v. RBI*, (1999) 2 SCC 228; *Apparel Export Promotion Council v. A. K. Chopra* (1999) 1 SCC 759.

Pradesh and Ors,⁴⁸ and *National Human Rights Commission v. State of Arunachal Pradesh*,⁴⁹ in which the SC observed that 'all the refugees presently residing in India are entitled to have the right to life and the personal liberty' as enunciated under article 21 of the Constitution of India. In *Louis De Raedt v. Union of India* and Ors⁵⁰ held that article 21 of the Constitution protects the life and personal liberty of all persons including aliens and foreigners present in India. Therefore, judicially created refugee rights under the Constitution of India have successfully been protecting the life and liberty of vulnerable persons.

The climate-displaced population can be benefitted from the protection evolved by the Indian judiciary; however, in the absence of an understanding on the concept of refugees, the climate-induced displaced population may not be legally entitled to claim the human rights protection extended by the Indian judiciary. The Government of India has recently passed The Citizenship (Amendment) Act, 2019 on 12 December 2019. The Act extends citizenship to an individual who belongs to the six religions of minorities such as Buddhists, Christians, Hindus, Jains, Parsis and Sikhs belonging to from Afghanistan, Bangladesh and Pakistan who enters into India without valid visa or travel documents on or before 31st December 2014, such persons shall not be considered as illegal migrants.⁵¹ Thus, the amendment would permit them eligible for Indian citizenship by the process of naturalization. The Act has reduced the cumulative period of residential qualification from eleven years to five years for getting the Indian citizenship by naturalization.⁵² The Act is a significant positive change in the refugee policy of India, and it would be beneficial to the refugees from Afghanistan, Bangladesh and Pakistan.

⁴⁸ *Khudiram Chakma v. State of Arunachal Pradesh and Ors*, 1994 SC AIR 1461.

⁴⁹ *National Human Rights Commission v. State of Arunachal Pradesh*, 1996 SCC (1) 742.

⁵⁰ 1991 AIR 1886, 1991 SCR (3) 149

⁵¹ Rahul Tripathi, Citizenship Amendment Act 2019: What it holds for India, The Economics Times, Dec 23, 2019, 05.54 pm IST, <https://economictimes.indiatimes.com/news/politics-and-nation/citizenship-amendment-bill-decoded-what-it-holds-for-india/articleshow/72466056.cms?from=mdr>. (Last visited on Sep, 13, 2020).

⁵² *Ibid.*

In India, there are as many as 9,200 refugees from Afghanistan, and out of which, 8,500 are the Hindus and there are more than 400 Pakistani Hindu refugee localities in Indian cities like Bikaner, Jaisalmer, Jodhpur and Jaipur in Rajasthan and Surat and Ahmedabad in Gujarat.⁵³ The Government of India has made religious persecution as the sole condition to confer citizenship. But, the controversial Law has left other minorities and groups from these countries that are also facing the refugee-like situation based on religious persecution like Afghan Hazaras, Rohingya Muslims in Myanmar, Ahmadiyya Muslims in Pakistan and Tamil Muslims in Sri Lanka who have taken refuge in India. But, unfortunately, the new Act excludes the Muslim refugees on the ground of religion from these countries.

The new Act deliberately uses the term 'migrant' to deprive refugees in the sense of international refugee law. The Act makes the illegal migrants eligible for Indian citizenship on the ground of all the six religions excluding Islam. The present Act has already been challenged in the supreme court of India. Many of the Constitutional Jurists are of the opinion that it appears to be unconstitutional, and it must include the religion of Islam along with other faiths in its scope, or it must have a religion-free migrant or refugee definition. The Act tried to infringe the right to equality guaranteed under article 14 of the Constitution of India. The absence of a national law on refugees has placed the refugee rights in a vacuum, and India has to proactively go for a refugee law for maintaining the territorial integrity, and for establishing our high benchmarks of respecting the international human rights.

V. Conclusion

Although climate change is a global problem, its effects are distributed unevenly. Developing countries, who depend on their natural environment for their basic existence, often have less resources to mitigate and adapt to climate

⁵³ Aman Sharma, Celebrations in Rajasthan over CAB as over 25,000 Pak Migrants to get citizenship immediately, The Economics Times, Dec 13, 2019, 08.59 am IST, <https://economictimes.indiatimes.com/news/politics-and-nation/celebrations-in-rajasthan-over-cab-as-over-25000-pak-migrants-to-get-citizenship-immediately/articleshow/72500751.cms?from=mdr>. (Last visited on Sep, 13, 2020).

change. The problem of climate change and displaced people due to the same is not a myth, time and again climate change has been recognized by the academicians as one of the significant reason of migration for quite some time now. The protection of climate refugees thus requires a supranational consciousness. The international society is essential in providing assistance to this vulnerable group.

In the Indian context, climate-induced migration can be broadly divided into two categories. The first category is migrants who are forced to move from rural to urban areas as a result of an environmental disaster that might have destroyed their homes and farms. These migrants often seek refuge in mega-cities for the large range of opportunities they present. So in the case of Mumbai, a number of migrants from the South might have moved to the city as a result of land degradation and desertification back home while migrants from the North have largely moved owing to drought.

The second category of climate-induced migrants most relevant to India is migrants who move from Bangladesh in search of a better life in India. Bangladesh is one of the world's most natural disaster-prone countries — a fourth of its land is just five feet above sea level while two-thirds is less than 15 feet above sea level. In last three decades, close to a million people has been rendered homeless as a consequence of increasing erosion in the Brahmaputra river basin. There must be greater capacity building in the administration of environmental programs. This ranges from increased support for NGOs in the environmental field to the development of government agencies that can participate in international environmental work.

The complex nature of environment—population linkages makes it difficult to develop policy recommendations that are as concrete as many would like. However, it is apparent that environmental degradation and resource depletion may play a contributing role in affecting population movement, often filtered through contexts of poverty and inequity. In turn, it is clear that some population movements—particularly large scale, mass movements—have a negative impact on the natural environment of receiving regions. In order to develop a more concise policy agenda, it is imperative that further attention be given to the links among environment, population and poverty; to which groups are most

vulnerable to environmental change; and to identifying vulnerable regions and future “hot spots” of insecurity and potential migration/refugee pressure

Thus, it is high time that the India need to take some constructive steps to understand and act upon its environmental responsibility, at the global level. Though it has tried addressing the issue administratively, but now it is time that it takes some stronger steps to address the same issue.