



India's climate refugees and legal implications

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Abstract

Climate change has been a significant cause of the end of many civilizations in the past. It is also the most crucial factor in creating climate refugees. The Internal Displacement Monitoring Centres have reported that millions of people in India are classified as Internally Displaced every year due to climate change. The climatological factors like extreme temperatures, droughts, widespread floods, rise in sea levels, tsunamis, desertification, and other natural calamities have left several people displaced within their own country, leading to massive migration of the population. The nexus between climate change and migration is still unclear and complex. There are significant uncertainties regarding the effects of climate change on human societies and their decision to migrate. Second, it is a complex task to disaggregate the role of climate change in migration decisions from other social and economic factors. Climate refugees are neither recognized nor protected under any Indian statutes or international law. Environmental conditions do not constitute a basis for international protection under international refugee laws. Therefore, the International Organisations and Institutions, like the Office of the United Nations High Commissioner for Refugees (UNHCR), have no role in protecting the Right to Asylum of the Climate refugees. There are significant gaps with respect to the failure of the International Community in recognizing the new category of migrants, and the lack of precise definition and meaning of the term refugees. Even if the climate refugees are recognized, the question arises as to who will take the responsibility to provide protection and assistance? A clear understanding of the relationship between migration and climate change is required to mitigate the conundrum of climate refugees. The objective of this research paper is to highlight the lack of legal protection given to the climate refugees under the national and international laws and suggest possible solutions and arrangements to effectively deal with the problem.

Keywords: climate refugees, climate change, international refugee laws, right to asylum

Introduction

Climate change is a major concern of our times. It has been one of the primary reasons for human population displacement worldwide. Climate change due to anthropogenic activities are altering the way we humans live. Due to this, people displaced by the effects of climate change are not legally protected in any country. There has been a discourse all over the world about taking measures for the legal protection of the refugees displaced due to climatic conditions. The environment has been the major reason for the population displacement in both developed and developing countries. It majorly affects the vulnerable population. The term “climate refugees” was coined to define this type of migration and cross-border movements that occur on a large scale due to weather-related issues.

There is hardly any data on “climate refugees” as the term itself is not defined yet. However, recently, data released by the United Nations High Commissioner for Refugees (UNHCR) shows that the number of people displaced by climate change-related factors since 2010 has increased to 21.5 million ^[1]. The World Migration Report 2022 of the United Nations maps the worsening displacement of people due to climate-change-related events. The year 2020 witnessed the displacement of 30.7 million people across 145 countries ^[2]. Further, the Ecosystem Threat Register (ETR) released by the Institute for Economics and Peace (IEP), an Australian think-tank, predicts that at least 1.2 billion people worldwide could be displaced due to these threats by 2050 ^[3].

Laws and policies required to close the legal protection gap for environmentally displaced people should highlight the socio-economic inequalities that make marginalized groups more vulnerable to climate change. The question arises, even if climate refugees are recognized, who is going to be responsible for their protection and rehabilitation? The term “climate refugee” is commonly used in politics and the media, but it is viewed with scepticism in academia because people relocated as a result of climate change are not covered under the 1951 Refugee Convention. According to the convention, a refugee is someone who has been forced to flee their home “Owing to a 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 to, or owing to such fear, is unwilling to avail himself of the protection of that country.” ^[4] People fleeing regions for environmental concerns do not fit the 1951 Convention’s precise definition of a refugee. As a result, the term “climate refugee” is misleading. A person cannot claim a status of a “climate refugee” as of today. United

Nations Environment Programme (UNEP) expert Essam El-Hinnawi defines environmental refugees as: those people who have been forced to leave their traditional habitat, temporarily or permanently, because of marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life ^[5].

In this paper, the researchers argue that people displaced due to climate change should be included in the definition of refugees. Currently, this demand is not being supported by the governments globally because once a person is accorded a refugee status, the governments shall become legally obligated to provide humanitarian assistance. However, the urgency to initiate a discussion on this topic globally is only increasing with the alarmingly increased number of displacements happening globally. Given the large number of climate refugees in India, the government must move quickly to implement a two-pronged policy aimed at preventing environmental degradation and rehabilitating climate refugees through strong rules and laws. Climate refugees in India are currently not recognized and acknowledged expressly under any specific law, leaving thousands of people displaced by natural disasters without identification or access to aid and rehabilitation. In view of this, the researcher aims to discuss the issues concerning climate change refugees in India.

Categories of Climate Change Induced Displacement

Climate change has the potential to have a significant impact on human migration in three ways. First, global warming would limit agricultural potential in some locations and degrade ecosystems such as rich soil and water, hurting people's livelihoods. Second, the occurrence of more extreme weather occurrences will result in widespread displacement. Third, rising sea levels will demolish low-lying coastal areas, forcing millions of people to relocate permanently. There are two types of environmental migration: slow and rapid. In this work, the researchers look at an environmental displacement from climate change, both slow and quick onset. Both rapid and slow-onset environmental displacement are influenced by climate change. Temperatures, rising sea levels, and rising global temperatures are all on the rise. People's interactions with water will be altered. Climate change poses a threat. Living near bodies of water is an essential component of life. Livelihoods rely on sources of water and groundwater. Threats to people's interactions with water have an impact on both rapid and late-onset migration. People are displaced due to the rapid onset of environmental displacement. Natural calamities such as storms, cyclones, and landslides have caused widespread devastation, making certain areas uninhabitable. Because of the effect of rising ocean temperatures on ocean currents, is linked to climate change. According to the Internal Displacement Monitoring Centre, storms and movement "Sudden onset natural catastrophes displaced 14.9 million people in 2011" ^[6] Just as global warming may result in a local 'extinction debt,' in which some species may eventually disappear in response to unsuitable climatic conditions, it may also result in a 'migration deficit,' in which other species may fail to arrive to take advantage of the newly appropriate climatic conditions. The difference between the number of species that have arrived at a location and the number that would be expected if the warming rate was within migration capabilities is referred to as the migration deficit ^[7]. Environmental change, especially climate change, is now a factor in human mobility, which is influenced by interconnected environmental and social processes ^[8].

India's Climate Refugees

Climate change endangers India's socio-economic stability and population health, as well as the health of its neighbours. In the Himalayan Mountain range, Pakistan, Bangladesh, Bhutan, southern Nepal, Myanmar (Burma), and northern areas are seeing more frequent and severe climate events. In the Himalayan region, where there are insufficient national response systems and resources to mitigate the impacts of climate events, environmental disasters and slow-onset climate impacts on agriculture and livelihood create push factors that prompt large-scale migration, both within and across borders ^[9]. People have been relocated to India as a result of unplanned development projects such as dams, bridges, and trains that were built without regard for scientific or environmental considerations. Climate change is caused by many developmental activities, leading to climate refugee generation. Because development projects are typically located in isolated communities, hills, and woods, those displaced generally are indigenous people who have served as traditional conservation agents. Displacement has resulted in the loss of livelihood, habitat, and assets, social instability and disorder, and separation from an environment that had previously supported them. Only in cases of so-called "involuntary resettlement," which have been brought to the notice of social and environmental activists and consequently exposed, does the government intervene.

In the majority of cases, total displacement with loss of house and livelihood has occurred, and the state has gone unreported ^[10]. According to the Internal Displacement Monitoring Centre data, 3,856,000 individuals were displaced by environmental catastrophes in India in 2020, 989 times more than the 3,900 people affected by hostilities (IDMC.) ^[11]. Environmental change influences whether people migrate away or stay at home, and social system characteristics such as social networks play a moderating role. Migration can represent a response to changing environmental and economic conditions, such as a farmer's choice to migrate due to failing crops and insecure livelihood prospects. Migration can also exacerbate environmental and economic problems in receiving areas. For example, urban areas attract migrants seeking better lives. High in-migration contributes to crowding and environmental/ sanitation issues in slums. In most cases, climate change has resulted in total displacement with the loss of houses and livelihood, which has gone undetected by Indian states.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of 2013 governs compensation in circumstances where the government acquires land to carry out developmental initiatives in the state. The Disaster Management Act of 2005, which prepares disaster plans, avoids or mitigates disaster effects, and coordinates and manages responses, is another piece of legislation that deals with rehabilitation in the event of climate events. These regulations, however, do not address the rehabilitation of climate refugees from other countries. Adding to current laws to address the needs of climate refugees would be a significant success on India's part.

India is the country in South Asia that receives and shelters many refugees. India, Sri Lanka, Bhutan, Pakistan, Bangladesh, the Maldives, and Nepal comprise the "South Asian region." Because SAARC members did not endorse the 1951 Refugee Convention or the 1967 Refugee Protocol, they formed an organization named the South Asian Association for Regional Cooperation (SAARC). As a member, India must follow SAARC's rules, procedures, standard decisions, and principles to receive support from the other member nations for the country's successful operation. In fact in some cases, compared to other SAARC nations, India has taken up different steps in ratifying other International conventions such as the Convention on the Rights of the Child, 1989, International Convention on the Elimination of All Forms of Racial Discrimination, 1969, 1984 Torture convention, and the Convention on the Elimination of All Forms of Discrimination against Women, 1981, etc. which are intended to safeguard vulnerable populations such as women, children, and individuals who are subjected to torture by police officers and others. In addition, the concept of non-refoulement established by customary international law is binding on India, which states that no one can be forced to return home ^[12].

Climate Change Legal Framework and Climate Refugee Protection

Estimates of the number of migrants and forecasts of future numbers are contradictory and debatable ^[13]. The International Organization for Migration (IOM) predicts 200 million environmentally-induced migrations by 2050 ^[14]. The first point of contention is classifying persons who have become mobile due to environmental causes such as climate change. Some groups refer to "environmental refugees," but others emphasize that the term "refugee" has a specific legal meaning in the framework of the 1951 Geneva Convention relating to the status of refugees, as UNHCR does. As a result, terms like "environmental migrants" and "environmentally driven migrants" have been coined as alternatives ^[15].

The Convention Relating to the Status of Refugees ^[16] is a multilateral United Nations treaty that defines a refugee and establishes the rights of those granted asylum as well as the duties & responsibilities of countries that provide asylum. The term 'Climate Refugee' is not covered under the 1951 convention relating to the Status of Refugees ^[17]. Unfortunately, India has no national refugee protection framework and is not a signatory to the 1951 Refugee Convention or its 1967 Protocol. Biermann and Boas, political scientists and environmental policy experts use the phrase "climate refugee" because it has strong moral overtones and lends credibility and urgency to the situation ^[18]. The term 'Climate Refugees' have no place in International Law. To solve the problem of refugees during World War II, the 1951 convention relating to the Status of Refugees was a temporary solution to address the issues of refugees. Since then, the convention and the following 1967 protocol have been used today to cover the world's refugees fleeing persecution. When the 1951 convention was introduced, it was introduced to solve the temporary issue, and the topic of climate change was not in vogue. However, considering the statistics of the increase in the environmentally displaced persons, the convention needs to be reinterpreted to include the climate refugees.

Compared to the generalized definition of refugees who are persecuted based on race, religion, nationality, political group, etc, the climate refugees are based on climate disasters and demographics in certain social groups. Even though the scientists like Biermann and Boas support the term climate refugees, some scientists do not. They claim that the UNHCR refuses to use the phrase "climate refugee" because of the legal protections that "refugees" are granted. Internally displaced persons are distinguished from refugees by transboundary flight (IDPs). Refugees are required by law to be outside of their home country. They are termed IDPs if their flight is internal. Because climate change will trigger transnational and internal flight, Biermann and Boas ignore the requirement for refugees to travel across borders. They chose the term "refugee" because it has "strong moral overtones of social protection... [and] by utilising this phrase, climate refugee protection would obtain the legitimacy and urgency it needs." ^[19] Another reason the Refugee Convention isn't the best legal framework for dealing with Climate Refugees is that they're mostly internally displaced, meaning they're displaced within their own countries.

There is no special domestic law in India dealing with refugees. Although Articles 21 (Right to Life) and 14 (Right to Equality) of the Indian Constitution say that non-citizens have the same right to life and equality as citizens, this could apply to climate refugees. There is no law protecting refugees, even though the Passports Act of 1967 and the Foreigners Act of 1946 define a person of non-Indian nationality as a "foreigner, independent of his or her exact legal position." India is anticipated to see a significant increase in unplanned migration of climate migrants in the lack of international, national, or regional legal and policy frameworks to control migration. So now is the moment to act.

Conclusion

The issue of environmental refugees has been questioned on the grounds that there is no agreed-upon definition of what constitutes an environmental refugee. It's difficult to designate people as environmental refugees without

an agreed-upon description. Furthermore, the phrase “environmental refugee” has been chastised for being pluralistic, one-sided, and misleading, assuming a one-way causal relationship between environmental variables and migration. Hundreds of millions of people are projected to be exposed to increased environmental threats resulting from climate change, displacing many people and causing them to relocate. There is a growing consensus that these people are criminals. As climate refugees, they should be recognized. International treaties and appropriate institutional plans should be put in place to deal with their issues. There are, nevertheless, considerable shortages in a number of areas. To begin with, the international community is yet to recognize this new migrant category. Because the term “refugee” has a different connotation under international law, there is no unanimity on the definition and status of climate refugees. Second, there are still gaps in our understanding of how climate change may affect migration as a root cause. Third, even if climate refugees are recognized, who will bear the obligation of providing assistance. Fourth, due to climate change, international migration has received a lot of attention. However, people may also migrate to other places within the countries. Thus, it is also pertinent to recognize the internal displacement of people in order to take appropriate action to address their difficulties.

The current state of information about the relationship between climate change and human migration is still limited. A better and clear understanding of the relationship between climate change and migration is required. The international community should not be diverted by semantic variations in the terminology used to describe the situation of people moving as a result of climate change. To successfully deal with the situation, we must recognize the problem and establish suitable policies and actions to aid persons displaced by climate change. Displacement and migration are already being exacerbated by climate change. Despite the fact that economic and political factors continue to drive displacement and migration, climate change is already having an impact^[20].

Given this situation, it would be wise for India to make a bold first move in this area by initiating social initiatives and legislative regulations that shall recognize the hardships of refugees while also allowing them to reclaim their lives, dignity, and livelihoods. This ground-breaking project would help India gain international attention and demonstrate its concern and action on a serious issue on which no other government has taken significant action. Climate catastrophes and climate refugees are the same things. People affected by climate change will continue to be displaced unless appropriate steps are taken.

The necessity for environmental protection and conservation, as well as the sustainable use of natural resources, is reflected in India’s constitutional framework and international commitments. Articles 51A and 48A of the Indian Constitution (these two provisions were added after the Stockholm Conference of 1972, to which India is a signatory) emphasize the importance of protecting and improving the natural environment, including lakes, rivers, forests, and wildlife, as well as having compassion for living creatures. While the laws are quiet on climate refugees and their proper acknowledgment and rehabilitation, they do provide tools for dealing with environmental disasters. However, issues are not taken seriously at the departmental level, resulting in significant ecological damage. At this point, strict adherence to the law is more important than ever to ensure that climate disasters do not result in such a large number of people being displaced from their natural environment.

Researchers predict that the number of people forced to flee their homes due to water shortages, crop failures, sea-level rise, storm surges, and other climate dangers will be significantly higher globally. However, if global warming is effectively limited to the Paris Agreement’s^[21] limitations, and people are assisted in adapting, the number of people migrating for the reason of climate change will reduce to around 40 million^[22].

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