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# CLIMATE CRISIS, FORCED MIGRATION, AND THE EMERGING HUMAN RIGHTS FRAMEWORK: AN ANALYSIS OF INTERNATIONAL JURISPRUDENCE AND THE INDIAN LEGAL LANDSCAPE

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## ABSTRACT

The global climate crisis has moved beyond being a purely environmental issue and has become a significant driver of human displacement, posing serious challenges to international law and state sovereignty. This paper examines the growing link between climate change and forced migration, highlighting the inability of existing legal frameworks to protect individuals displaced by environmental degradation, sea-level rise, and extreme climate events. The 1951 Refugee Convention, which forms the foundation of international refugee protection, is rooted in a post-war understanding of persecution and does not recognize climate-induced displacement. As a result, a large population of climate-displaced persons remains outside formal legal protection, often living in precarious conditions without access to basic rights or legal recognition. In response to this protection gap, international human rights law has begun to play a critical role. The United Nations Human Rights Committee's decision in *Teitiota v. New Zealand* marked a turning point by interpreting the right to life to include protection against climate-related threats that undermine human dignity. These developments signal an emerging human rights-based framework for addressing climate-induced displacement.

The paper further analyses the Indian legal position, focusing on the Immigration and Foreigners Act, 2025. While the Act modernizes migration governance through digital and security-oriented mechanisms, it does not recognize climate migrants as a distinct legal category. At the same time, the Indian judiciary has advanced climate justice, notably through the Supreme Court's 2024 judgment in *M.K. Ranjitsinh v. Union of India*, which recognized freedom from the adverse effects of climate change as a fundamental right. By integrating international jurisprudence with India's evolving legal landscape, this paper evaluates future legal pathways for climate-displaced persons.

**Keywords:** Climate Crisis, Forced migration, Human Rights, Indian Constitutional Climate Justice, Climate-Displaced Persons

## The Global Nexus of Climate Change and Human Mobility

The contemporary era is defined by a systematic shift in the drivers of human migration, where ecological factors have moved from the periphery to the centre of global displacement trends. The climate crisis acts as a potent threat multiplier, exacerbating existing socio-economic vulnerabilities, governance failures, and resource scarcities.<sup>1</sup> Scientific projections indicate that by the year 2050, as many as 200 million individuals could be displaced by climate-related factors, with 21.5 million people already being displaced annually by sudden-onset disasters since 2008.<sup>2</sup> This movement is not a monolithic phenomenon; it encompasses sudden-onset disasters like cyclones and floods, as well as slow-onset processes such as sea level rise, desertification and the salinization of agricultural land.

Across regions of the Global South, the concept of wet bulb temperature, a measurement combining heat and humidity has emerged as a critical threshold for human survival. When these temperatures exceed the limits of human tolerance, entire population are forced to choose between migration and mortality. For such coastal nations such as Bangladesh and small island developing states such as Kiribati and Tuvalu, the threat exists. It is estimated that 162 million people in countries including India, China and Egypt could be at risk from sea level rise.<sup>3</sup> The 1951 Refugee Convention and its 1967 protocol define a refugee on the basis of fear of prosecution for specific reasons: race, religion, nationality, membership of a particular social group or political opinion.<sup>4</sup> This difference leaves climate-displaced persons in a state of invisibility, where they cross borders without the guaranteed protection of international law, often classified as economic migrants only despite the forced nature of their journey.

### Conceptualising Mobility: Difference between Refugees and Migrants

The terminology used to describe people moving in the context of climate change is not merely a matter of economics, but carries significant legal and historical weight. Although the term

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<sup>1</sup> Dr. Shepherd Mutsvara, Impakter business sustainability (Is It Time to Recognize Climate Refugees? 30 December, 2025) <https://impakter.com/is-it-time-to-recognize-climate-refugees> accessed 7 January, 2026

<sup>2</sup> Karla Mari McKanders, *Climate Migration, American Bar Association: Civil Rights & Social Justice Section – Human Rights* (30 October 2024) <https://www.americanbar.org/groups/crsj/resources/human-rights/2024-october/climate-migration> accessed 7 January 2026

<sup>3</sup> Andreza Dalla Costa & Lygia Maria Copi, *Legal Protection of Climate Refugees: A Gap in International Law and the Theory of Ecological Vulnerability*, December 2024 <https://www.ipea.gov.br/revistas/index.php/rtm/article/download/610/450/2431> accessed 7 January, 2026

<sup>4</sup> Diya Joseph, *India's Approach in Navigating Refugee Policy and Climate Migration*, IJLRA, March 2025 <https://www.ijlra.com/details/indias-approach-in-navigating-refugee-policy-and-climate-migration-by-diya-joseph> accessed 7 January, 2026

climate refugee is often used in media and activist circles to emphasise the forced nature of displacement, it is not recognised as a formal legal category under international law. Critics of the term argue that the use of refugee implies the need to expand the 1951 Convention, a possibility that many states oppose because of their fear of overreaching the system.<sup>5</sup> Climate migration is often prioritised by international organisations such as the International Organisation for Migration, but is criticised by advocates for implying a degree of choice that many displace persons do not have.

This tension between voluntary and involuntary movement is particularly acute with respect to the dangers of slow onset. Unlike flash floods, processes such as desertification or sea-level rise unfold gradually, leading to a continuum of movement that sits between the purely voluntary and fully forced poles.<sup>6</sup> In many cases, migration is used as an active adaptation strategy, where households send members abroad to diversify income and build community resilience for existence. Failure to accurately classify these individuals means that they lack access to basic services, legal recognition, and protection from refoulement.<sup>7</sup>

Category	Driver of Movement	Legal Status	Primary Protection Mechanism
Convention Refugee	Persecution (Race, Religion, etc.)	Recognised under 1951 Convention	Non-refoulement; asylum
Climate-Induced Migrants	Environmental Degradation (slow/sudden)	Not recognised as a distinct category	Discretionary humanitarian visas
Internally Displaced Person	Disasters, Conflict within borders	No international border crossed	National disaster policies <sup>8</sup>
Environmental Migrant	Resource scarcity, change in climate	General migrant status	Human rights law (ICCPR/ICESCR)

<sup>5</sup> Id

<sup>6</sup> Andrea Caligiuri, *Invisible in Law: Environmental and Climate Migrants and the Gap in International Protection*, *QIL-QDI* (31 July 2025) <https://www.qil-qdi.org/invisible-in-law-environmental-and-climate-migrants-and-the-gap-in-international-protection/> accessed 7 January, 2026

<sup>7</sup> Hannah Marcus, Liz Hanna, Peter Tait, Sheila Stone & Chadia Wannous, *Climate Change and the Public Health Imperative for Supporting Migration as Adaptation*, 7 *Journal of Migration and Health* 100174 (11 March 2023) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10034433/> accessed 7 January, 2026

<sup>8</sup> United Nations High Commissioner for Refugees (UNHCR), *The Nansen Initiative Definitions* (UNHCR PDF, n.d.) <https://www.unhcr.org/sites/default/files/legacy-pdf/5448c7939.pdf> accessed 7, January 2026

The lack of a universally accepted definition hinders the creation of a comprehensive global framework. Scholars have proposed a functional approach to protection that focuses less on formal status and more on the specific vulnerabilities and risks faced by individuals.<sup>9</sup> This approach argues that if an individual faces a real risk to their life or dignity, the source of that risk—whether political persecutor or a rising tide—should be secondary to the state's obligation to protect.<sup>10</sup>

### **The International Protection Gap and the Role of Non-Refoulement**

The absence of a treaty to support this principle has led to establishment of non-refoulement as the primary means of providing legal protection. Under International Human Rights laws, most notably ICCPR, states cannot send anyone back to any country or territory where they are at risk of being subjected to any type of irreversible harm (i.e. violation of their right to life and freedom from torture or inhumane treatment).<sup>11</sup> A landmark ruling from the UN Human Rights Committee (UNHRC) recognised this principle in **Teitiota vs New Zealand** where they found that the negative effects of climate change could trigger non-refoulement obligations in specific circumstances.

The Teitiota case established the specific precedent that claims of harm from climate change are recognized as a valid basis for claiming protection under the principle of non-refoulement. The Committee determined that environmental degradation in Kiribati due to rising oceans and saltwater intrusion created an environment that posed a threat to the applicant's right to life. Therefore, while they ultimately agreed with New Zealand's deportation of Mr. Teitiota on the basis that the threat was not yet imminent (with the Committee noting that the Kiribati government has approximately 10-15 years to implement measures to adapt), the decision established the principle that environmental issues arising from climate change could be claimed under the principle of non-refoulement. Even though, at this point, the "standard of

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<sup>9</sup> Caligiuri, *Invisible in Law: Environmental and Climate Migrants and the Gap in International Protection*, QIL-QDI, supra note 6

<sup>10</sup> Shaindl Keshen & Steven Lazickas, *Non-Refoulement: A Human Rights Perspective on Environmental Migration from Small Island Developing States*, *Journal of International Affairs* (13 April 2022) <https://jia.sipa.columbia.edu/content/non-refoulement-human-rights-perspective-environmental-migration-small-island-developing-states> accessed 7 January, 2026

<sup>11</sup> Kate Jastram, Jane McAdam, Geoff Gilbert, Tamara Wood & Felipe Navarro, *International Protection for People Displaced across Borders in the Context of Climate Change and Disasters: A Practical Toolkit* (Center for Gender & Refugee Studies, Kaldor Centre for International Refugee Law, Essex Law School & Human Rights Centre, February 2025) <https://www.unsw.edu.au/content/dam/pdfs/law/kaldor/resource/2025-02-climate-protection-toolkit-full-eng.pdf> accessed 7 January, 2026

proof" to justify a non-refoulement claim may be high (the applicant must prove that he or she has real, long-term risk of personal harm that cannot be mitigated by his or her own nation), the Teitiota decision suggests that human rights law is slowly beginning to account for the effects of environmental catastrophe.<sup>12</sup>

### Soft Law and the Evolution of Global Governance

The unsuccessful attempts to amend treaties like the 1951 Convention have prompted the international community to use alternate forms of implementing climate induced migrations, such as soft law instruments. Instead of imposing additional legal obligations on countries, soft law instruments provide an ethical framework and guidance for countries to create their own policies on Climate Change and Human Mobility. The Global Compact for Safe, Orderly and Regular Migration (GCM), which was developed through the intergovernmental process in December 2018, is the first such intergovernmental document to address all aspects of international migration from a comprehensive perspective with a clear acknowledgement that climate change is contributing to the creation of refugees and displaced persons.<sup>13</sup>

The GCM identifies 23 different goals, which include methods to reduce the negative impacts of migration as well as to expand the available legal channels for people who are forced to migrate due to natural disasters and environmental issues. The Nansen Initiative is a multi-national project that was initiated by the United Nations to establish a framework through which countries will agree to work together to develop protections for individuals who are displaced by environmental catastrophes. The Nansen Initiative is not intended to propose a binding legal document, but rather a set of best practices, such as issuing humanitarian visas and ensuring that deportations do not occur for those affected by disasters.<sup>14</sup>

Soft Law Framework	Key Objectives	Implications for Climate Migrants
Global Impact for Migration	Manage all aspects of Migration	Argues states for climate-induced movement

<sup>12</sup> Keshen & Lazickas, *Non-Refoulement: A Human Rights Perspective on Environmental Migration from Small Island Developing States*, *J. Int'l Aff.*, supra note 10

<sup>13</sup> International Organization for Migration (IOM), *Global Compact for Migration* (2025) <http://iom.int/global-compact-migration> accessed 8 January, 2026

<sup>14</sup> UNHCR, *The Nansen Initiative Definitions*, supra note 8

Nansen Initiative	Build Consensus on Protection	Provides a “toolbox” of policy options for states
Global Impact on Refugees	Strengthen International response	Addresses climate as a “threat multiplier” for refugees
Platform on Disaster Displacement	Implement Nansen Findings	Focuses on regional cooperation and DRR integration

These frameworks explain that although the majority of climate induced movements occur within the borders of a single nation, cross border displacements will continue to occur and international cooperation and responsibility sharing are necessary in order to meet this challenge. The Platform for Disaster Displacement continues this work, by stressing the importance of integrating human mobility into Climate Action Plans and Disaster Risk Reduction Strategies within a country’s borders.<sup>15</sup>

### India’s Legislative Overhaul: The Immigration and Foreigners Act, 2025

India has historically taken a complex and discretionary approach to migration. Though it is not a signatory to the 1951 Refugee Convention, it has nonetheless hosted many refugees from neighbouring states. In 2025, India enacted the Immigration and Foreigners Act, 2025, the most dramatic step toward modernizing its immigration laws since Independence. This legislative change received Presidential assent on April 4, 2025 and became effective on September 1, 2025, consolidating and re-creating four major colonial/post-colonial statutes.<sup>16</sup>

### Consolidation and Repeal of Statutes

The 2025 Act establishes the first concrete basis for a single legal framework, simplifying the originally complex legal framework and system, by removing from the law the following acts:

- The Passport (Entry to India) Act, 1920
- The Registration of Foreigners Act, 1939

<sup>15</sup> Platform on Disaster Displacement, *Our Response, DisasterDisplacement.org* (n.d.) <https://disasterdisplacement.org/the-platform/our-response> accessed 8 January, 2026

<sup>16</sup> The Immigration and Foreigners Act, 2025, Act No. 13 of 2025 (India) [https://prsindia.org/files/bills\\_acts/acts\\_parliament/2025/The\\_Immigration\\_and\\_Foreigners\\_Act,\\_2025.pdf](https://prsindia.org/files/bills_acts/acts_parliament/2025/The_Immigration_and_Foreigners_Act,_2025.pdf) accessed 8 January, 2026

- The Foreigners Act, 1946
- The Immigration (Carriers' Liability) Act, 2000<sup>17</sup>

The purpose of the consolidation was to allow greater clarity, improve the operational efficiency, and enhance the government's Accountability for the regulation of foreign nationals. But this meant that the State had introduced a significant expansion of their surveillance power and a much stricter penalty system.<sup>18</sup>

### **Entry, Stay, and Registration Requirements**

Under Section 3 of the 2025 Act, no person can enter or leave India unless he or she has a valid passport or travel document, and for foreigners, a valid visa. Great discretion is given to the concerned immigration officers to refuse entry into or stay in India to any person who is viewed as a danger to Indian security, sovereignty, public health, or any foreign state. It is necessary for foreigners to register themselves before the concerned Registration Officer on arrival in the country, and any subsequent change in his or her name or details is not allowed without prior authorization.<sup>19</sup>

A digital reporting system is created by the Act for the purpose of providing real-time information on foreign visitors to several types of institutions. Accommodation providers (e.g., hotel operators, homeowners who rent rooms in their homes) must keep a database of the names of their foreign guests and keep it updated electronically. Educational institutions must report information on newly admitted foreign students within twenty-four (24) hours of admission; and clinics and hospitals must report of foreign patients receiving in-house treatment or who have been born or died while in the facility. The Bureau of Immigration will be responsible for administering this centralised database. This database will be used to track individuals who have overstayed their time limits and to enforce an individual's compliance with the conditions

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<sup>17</sup> Id

<sup>18</sup> Drishti IAS, *Immigration and Foreigners Act, 2025*, *DrishtiIAS.com* (05 Sep. 2025) <https://www.drishtiias.com/daily-updates/daily-news-analysis/immigration-and-foreigners-act,-2025> accessed 8 January, 2026

<sup>19</sup> SCC Online Blog, *Immigration and Foreigners Act, 2025 notified: Legal Framework and Repealed Laws*, *SCC Times* (01 Sept. 2025) <https://www.sconline.com/blog/post/2025/09/01/immigration-and-foreigners-act-2024-comes-into-force/> accessed 8 January, 2026

of his or her visa.<sup>20</sup>

**Penal Provisions and Enforcement**

The Act 2025 comes as the end of our era’s long-standing immigration violations, with increasing punishments for violators. For example, if a person enters India without proper travel documents, he/she will face a punishment of 5 years in prison and up to 500,000 in fines. According to the 2025 Act, if a person uses a fake passport or a fake visa to enter India, he/she faces much harsher penalties, including between 2-7 years' imprisonment and between 100,000 and 1,000,000 rupees in fines.<sup>21</sup>

Violation	Penalty Under 2025 Act	Context/Impact
Entry without valid documents	Up to 5 years of jail; Fine up to ₹5 lakh	Stricter than previous ₹50,000 fine
Overstaying or violating visa	Up to 3 years jail, Fine up to ₹3 lakh	Mandatory reporting by hotels
Using fake travel documents	2-7 years jail; Fine ₹1-10 lakh	Targets organised smuggling/fraud
Entry into restricted areas	Up to 5 years jail; Fine Up to ₹5 lakh	National security focus
Carrier violation (illegal foreigner)	Fine of ₹2-5 lakh for carriers	Increased liability airlines/ships <sup>22</sup>

Furthermore, the Act allows a police officer (not below the rank of Head Constable) to arrest any person whom the officer suspects has violated any provision of the Act without a warrant. The Central Government has been given authority under Section 29 of the Act to direct any foreign national to be removed from India based on a contravention of the Act, or when the Government receives an adverse security report about the foreign national. The "Security First" approach has raised concerns among several human rights groups because, in their opinion, "public interest" is not clearly defined in the face of confusion, and deportation orders could

<sup>20</sup> The Hindu, *Govt appoints new FRROs for Rajasthan, Assam, Chandigarh and Haryana* (27 Nov. 2025) <https://www.thehindu.com/news/national/govt-appoints-new-frros-for-rajasthan-assam-chandigarh-and-haryana/article70328829.ece> accessed 8 January, 2026

<sup>21</sup> Vialto Partners, *India | Immigration | Impact of the Immigration and Foreigners Act, 2025* (22 Sept. 2025) <https://vialtopartners.com/regional-alerts/india-immigration-impact-of-the-immigration-and-foreigners-act-2025> accessed 8 January, 2026

<sup>22</sup> Id

lead to arbitrary detentions and could violate a Nation's obligations under International Human Rights Law.<sup>23</sup>

### **Humanitarian Exemption and Regional Priorities in India**

The Immigration and Foreigners (Exemption) Order, 2025 provides specific humanitarian protections even though the 2025 Act is very strict. The inclusion of these specific exceptions illustrates the strength of regional diplomatic relationships among Indian States and Government's commitment to protecting some minorities fleeing persecution.

### **Exempted Categories and Minority Relief**

The 2025 Order allows exemption from mandatory passport and visa requirements for several groups:

- **Minority Refugees:** Minority refugee populations including Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan who entered India prior to December 31st, 2024, will no longer face penalties for missing or invalid documentation.
- **Tibetan refugees:** Tibetan refugees already residing in India and registered with authorities will be able to remain in India without fear of being subjected to the normal passport and visa restrictions.
- **Regional Citizens:** Citizens of Nepal and Bhutan will also be able to enter India via land or air without having to obtain a visa under the terms of longstanding bilateral agreements.
- **Military and Diplomatic Personnel:** Indian Armed Forces that are currently active, along with their dependents, and certain members of the diplomatic corps will also be able to cross national borders without being subjected to the requirements of

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<sup>23</sup> Amnesty International, *India: Immigration and Foreigners Exemption Order Threatens Human Rights* (20 Nov. 2025) <https://www.amnesty.org/en/latest/research/2025/11/india-immigration-and-foreigners-exemption-order-threatens-human-rights/> accessed 9 January, 2026

acquiring a visa.<sup>24</sup>

While these exemptions may have been intended to offer compassion as part of modernisations to systems, there are critics, including international organisations such as Amnesty International, highlighting the selective and discretionary nature of such exemptions; for example, the groups presently recognised as having been the victims of violence and other crimes (such as the Rohingya, who are fleeing continued extreme forms of persecution), are NOT granted such exemptions; further, there is an inherent high chance that these groups will be remitted to harm if they are removed from India based on procedures contained within the 2025 Removal Act.<sup>25</sup> This demonstrates that India chooses to handle refugee status through executive discretion rather than through a framework of Rights under which refugees would have been entitled to seek protection.

### **Indian Jurisprudence: The “Right to be Free from Climate Change”**

Although border security is a priority for state legislators, the Indian judiciary is leading the way in creating new avenues for constitutional protection against climate change and environmental damage. This type of judicial activism offers an essential legal shield to people who have been displaced due to climate change.

### **Article 21 and the Expanding Right to Life**

The Supreme Court of India has consistently upheld the right to a clean atmosphere, as it relates to the provision of Article 21 of the Indian Constitution - right to life and personal liberty. Many landmark cases have established that human beings are unable to have a quality of life when faced with environmental dangers including pollution and depletion of natural resources - as seen in the case of *M.C. Mehta v Union of India*.<sup>26</sup>

In April 2024, in a landmark decision in the case of *M.K. Ranjitsinh v Union of India*, the Supreme Court recognised that the "Right to be free from the adverse effects of Climate

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<sup>24</sup> Lawrbit, *Immigration and Foreigners Act, 2025*, Lawrbit.com <https://www.lawrbit.com/article/immigration-and-foreigners-act-2025/> accessed on 9 January, 2026

<sup>25</sup> Amnesty International, *India: Immigration and Foreigners Exemption Order Threatens Human Rights*, supra note 23

<sup>26</sup> Dr. Tulika Singh & Ms. Roshni Singh, *Role of Judiciary in Sustainable Development vis-à-vis Environmental Impact Assessment*, 13 Int'l J. Creative Research Thoughts (IJCRT) (May 2025) <https://www.ijcrt.org/papers/IJCRT25A5844.pdf> accessed 9 January, 2026

Change" is an important Fundamental Right which is protected under Article 14 (Right to Equality) and Article 21 (Right to Life). It was indicated that the damage caused to the world by Climate Change increases every year and it is therefore vital to have this declared as a Fundamental Right in order to provide the means of holding the state responsible for its national commitments at a National and International level.<sup>27</sup>

### **Implications for Climate Migrants**

The implications of this judicial finding extend far beyond simply protecting those displaced by climate change. The Court has recognised that those who are displaced as a result of climate change are likely to lose both their homes and their way of life due to its negative effects on the environment. By recognising climate protection as a basic human right, the courts have set forth a process for individuals to pursue justice for loss of home and culture caused by the inaction of their government in regard to climate change.<sup>28</sup>

In addition, the 2025 act grants people the right to challenge deportation orders. If a climate-displaced person must go to a place that has experienced an environmental catastrophe and is now unlivable, they have the ability to say that going back is a violation of their constitutional right to live and not be harmed by anything caused by climate change. In this sense, the judicial shield described here is necessary because the current statutory-based (the 2025 act) legal system is concerned only with documents and security.<sup>29</sup>

### **The Socio-Economic and Public Health Dimensions of Forced Migration**

Displacement caused by climate change presents challenges not only legally, but also through multifaceted health and social disruption. Migration becomes the option of last resort and opens up new avenues for severe vulnerability. The use of unsafe routes for migration creates opportunities for others to victimize individuals through sexual violence, human trafficking,

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<sup>27</sup> Sabrang India, *SC: The Right to Be Free from Adverse Effects of Climate Change Is a Fundamental Right* (12 October 2025) <https://sabrangindia.in/sc-the-right-to-be-free-from-adverse-effects-of-climate-change-is-a-fundamental-right> accessed 9 January, 2026

<sup>28</sup> *Id*

<sup>29</sup> Randall S. Abate & Chhaya Bhardwaj, *Enhancing Protection of "Climate Refugees" in Destination Hubs: A Comparative Analysis of Legal Mechanisms and Governance Challenges in the United States and India*, 37 *Harvard Human Rights Journal* (2024) <https://journals.law.harvard.edu/hrj/wpcontent/uploads/sites/83/2024/08/Abate-Bhhardwaj-Final.pdf> accessed 9 January, 2026

and the mental health consequences that accompany forced migration.<sup>30</sup>

### **Public Health as a Human Rights Perspective**

As climate change has caused increased environmental degradation, which has resulted in both water and food scarcity, public health experts have been, increasingly suggesting the need to create a public health-enabling environment in order to allow for climate migrants to adapt by moving to new locations. This has resulted in the public health community becoming increasingly vocal about the need to improve the enabling environment for climate migrant adaptation as a public health imperative. There have been numerous health-related effects from the occurrence of drought in the Eastern Mediterranean Region of the World Health Organisation and the increased likelihood of cholera outbreaks due to climate change-related factors.<sup>31</sup>

The concept of "trapped populations" is an important issue for the climate migration community because these individuals lack the economic means to migrate to more favourable locations. The situation places them at greater risk of health-related problems and violence as they continue to reside in unsafe environments. Additionally, when individuals from rural areas migrate to urban areas, they frequently live in poor-quality informal housing that has inadequate sanitation facilities, which contributes to an even greater risk of disease and illness.<sup>32</sup>

### **Labour Mobility and Economic Integration**

Creating a sustainable system in areas affected by climate change, migration has been viewed in the past solely as an adaptation, whereas today, as was done in 2025, both India and Portugal took the first step toward creating the first global bilateral labour agreement using migration for adaptation. By establishing a legal framework to bring Indian workers into Portugal, it removes much of the red tape currently associated with such processes and provides a clearer

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<sup>30</sup> Marcus *et al.*, *Climate Change and the Public Health Imperative for Supporting Migration as Adaptation*, *J. Migr. Health*, supra note 7

<sup>31</sup> Saverio Bellizzi, Christian Popescu, Catello M. Panu Napodano, Maura Fiamma & Luca Cegolon, *Global Health, Climate Change and Migration: The Need for Recognition of "Climate Refugees"*, 13 *Journal of Global Health* 03011 (24 March 2023) <https://pmc.ncbi.nlm.nih.gov/articles/PMC10037158> accessed 9 January, 2026

<sup>32</sup> Marcus *et al.*, *Climate Change and the Public Health Imperative for Supporting Migration as Adaptation*, *J. Migr. Health*, supra note 7

pathway for compliance.<sup>33</sup> By moving away from the traditional hubs of migration and diversifying their destinations, such agreements can offer additional safety to at-risk areas and continue sending skilled workers to the global labour market.

### **Comparative Analysis: Global Models of Protection**

To address the international protection gap, scholars and activists have proposed several models, some of which have been implemented in various jurisdictions.

#### **The Nordic and American Models**

Environmental disasters were at the forefront of national protection grounds for many countries. Countries like Finland & Sweden claimed that environmental disaster victims could be granted residence under the 2005 SWEDISH ALIENS ACT. It should be noted that these provisions in this legislation have since been restricted due to additional political influences; however, they are still valuable examples of how national laws may accommodate such displacement resulting from climate change; therefore, they can be viewed as a best practice.

While there are discussions about how to create a domestic framework for people fleeing environmental stressors, current legislation in the Immigration and Nationality Act is limited to the conventional notion of a refugee. According to the Harvard Human Rights Journal, both the United States and India have "chaos" related to migration risk given that they do not have an established formalization of climate refugees with rights and protections through domestic legislation.<sup>34</sup>

#### **The “Climate Passport” and “Temporary Residence” Proposals**

Legal experts are advancing innovative approaches to protecting the rights of climate refugees through the establishment of legal documents similar to birth certificates and passports that would give a person rights equivalent to citizenship when their home nation becomes uninhabitable. In particular, legal professionals in India have called for a reform of the post-sentence detention of "illegal immigrants," particularly following the *Maja Daruwala v. State of West Bengal (2025)* ruling that mandates a strict timeline of 90 days for deportation or

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<sup>33</sup> Jobbatical, *India-Portugal Work Visa 2025: HR Guide* (n.d.) <https://www.jobbatical.com/blog/india-portugal-work-visa-2025-hr-guide> accessed 9 January, 2026

<sup>34</sup> Abate & Bhardwaj, *Enhancing Protection of “Climate Refugees”*, supra note 29

processing and the granting of "temporary residential rights" to persons who have been denied repatriation to their home nation indefinitely if their home nation refuses them. This reform would allow for the maintenance of the government's need for security while also upholding the humanitarian obligation to not defer endlessly or in an arbitrary manner.<sup>35</sup>

### **Critical Critique: Security vs Human Rights in India's 2025 Act**

The Immigration and Foreigners Act, 2025 holds both positive and negative consequences for the protection of human rights. On one hand, it consolidates and simplifies immigration processes; however, on the other, it gives the Executive unlimited control.

### **Violation of Non-Refoulement and Due Process**

Section 12 of the 2025 Order has given rise to serious worry due to its implications regarding those who lack adequate paperwork. This part of the legislation has been called a breach of both an individual's right not to be deported back to their home country (Non Refoulement) and of the articles on the right to a fair trial (Article 6), the right to be free from cruel, inhuman or degrading treatment (Article 7) and the right to privacy (Article 9) under the International Covenant on Civil and Political Rights (ICCPR). Further, it puts the onus on an individual to establish their citizenship/legal status (Section 9 of the Bill), rather than having the State provide that proof. Thus, those seeking refuge because of environmentally related disasters and climate change are at increased risk of being wrongfully detained and removed due to providing or being unable to provide proof of their citizenship/legal status.<sup>36</sup>

### **The Expansion of Foreign Tribunals**

The 2025 Act expands the powers of quasi-judicial Foreigners Tribunals throughout India by granting them authority to issue arrest warrants and detain people in detention centres. Historically, these institutions have been condemned for their inadequate procedures and in Assam, there have been numerous instances where Indian citizens were declared as foreigners without much opportunity to appeal the Tribunal's decision. If the 2025 Act implements this

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<sup>35</sup> Law School Policy Review, *The Forgotten Prisoners: Bridging the Legal Gaps in Post-Sentence Custody of Illegal Immigrants* (11 July 2025) <https://lawschoolpolicyreview.com/2025/07/11/the-forgotten-prisoners-bridging-the-legal-gaps-in-post-sentence-custody-of-illegal-immigrants> accessed 9 January, 2026

<sup>36</sup> Centre for Policy Research (CJP), *India: A Deep Dive into the Legal Obligations Before Deportation* (16 October 2025) <https://cjp.org.in/india-a-deep-dive-into-the-legal-obligations-before-deportation> accessed (January, 2026)

model on a national scale, there is potential for widespread human rights violations against many vulnerable groups within the country.<sup>37</sup>

Banning foreign nationals from working in other areas of the company involved in human rights (Article 9) and international civil society will ultimately reduce the amount of independent oversight of company policies.<sup>38</sup>

### **Conclusion: Towards a Unified Framework for Climate Justice**

Climate change-related emergencies around the world are now being seen through a different lens, from viewing migrant populations strictly as 'threats to security' to recognising migrant populations as persons whose human rights are to be respected. As long as we continue to operate within an international framework that hasn't evolved, which has its roots in an outdated 1951 Convention and evolutionary interpretations around Human Rights Law accounted for in various implementations of soft-law compacts, we will continue to encounter difficulties meeting 21st century challenges.

The Immigration and Foreigners Act, implemented by Government of India on September 1<sup>st</sup> 2025, exhibits a commitment to security and surveillance by the Indian State. Nonetheless, the landmark recognition of the "Right to be Free from Climate Change" by the Indian Judiciary serves as a powerful counterpoint. To ensure climate justice, India and the international community must:

- 1. Climate Displacement Should be Given Legal Status via Statutory Non-Refoulement:** Enshrine environmental harm, through the incorporation of the non-refoulement principle, into domestic law as mandated by the nation's laws, as opposed to relying on executive discretion.
- 2. Implement GCM Recommendations:** Shift to an approach gained from the Global Compact for Safe, Orderly and Regular Migration that includes "individual screening" and the operationalisation of human rights-based assessments at the point of entry for climate migrants.

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<sup>37</sup> Amnesty International, *India: Immigration and Foreigners Exemption Order Threatens Human Rights*, supra note 23

<sup>38</sup> Lawrbit, *Immigration and Foreigners Act, 2025*, supra note 24

3. **Establish Safe and Alternative Routes:** Develop and create new labour mobility agreements as well as introduce new "humanitarian visa" programs.
4. **Change Detention Policies:** Adopt the usage of 90 days and the use of a "temporary residence" status for individuals who are unable to be returned to their country because the environmental conditions are not conducive to living and being able to return to their home country.

The climate crisis represents not only a threat to the environment but also an opportunity for all people around the world to come together in solidarity. It requires developing a new framework of international human rights law that will provide legal support to the most vulnerable individuals who are experiencing hardships due to global warming. Therefore, as we move into the Anthropocene epoch and begin to see an increase in global temperatures, we must ensure that the legal rights associated with life now include a right for individuals to relocate due to climate change.