



INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

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www.ijlar.com

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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

REGULATING CLIMATE DISPLACEMENT: LEGAL GAPS AND POLICY FAILURES IN PROTECTING CLIMATE REFUGEES

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ABSTRACT

Climate change has a corrosive effect on people, lands and livelihood. “Climate Refugees” are invisible in the eyes of Indian and International laws. Those who are displaced due to climate induced reasons are on the rise and yet, the 1951 Convention on Refugee maintain stark silence, putting these people in a legal void. Resultantly, they become stateless and their identities are erased. This paper walks through the legal gaps, followed by encompassing the expansive interpretation of Article 21 and citing a comparative study of Tuvalu, New Zealand and EU. In doing so, the paper argues to shift from territorial constitution to cosmopolitan constitutionalism, as coined by the scholars, that can protect humanity from fragile ecologies.

Keywords: Climate Refugee, Fragile Ecology, Digital Nation, Statelessness, Migration

RESEARCH METHODOLOGY AND RESEARCH DESIGN

Statement of Problem

The statement of the problem is presented below:

Climate change has been one of the greatest threats to the international legal order not only on the degradation of the environment but also on the far reaching human impacts. Amongst them, displacement caused by climate issues is an extremely urgent, but underdeveloped field of law. The current frameworks of international laws especially the 1951 Convention Relating to the Status of Refugees does not acknowledge persons who have been displaced as a result of environmental factors. Consequently, climate-displaced persons are still in the legal invisibility situation, where they have no access to formal protection mechanisms in both international refugee law and domestic constitutions.

Such a lack of legal obligation brings basic concerns on the suitability of international environmental law and human rights law to deal with the reality of climate-induced migration. Although the international environmental law has been diversified to control the behavior of states using the principles of sustainable development and common yet differentiated responsibilities, it has failed to address the human mobility impact of climate change to a large extent. On the same note, constitutional frameworks are stuck to borders thus excluding cross-border climate refugees under the protection of the framework.

The main issue of this research is thus the lack of the coherent legal framework that would identify and defend climate refugees, which means that there is a lack of connection between the environmental damage and legal responsibility.

2. Research Questions

The following are the research questions that guide this paper:

1. Do the current international legal frameworks adequately identify and safeguard displacement as a result of climate?
2. How well international environmental law principles can be used to deal with climate displacement?
3. Can the gap in protection provided by the refugee law be bridged by the human rights law?
4. The question is how constitutional regimes, especially in India, react to displacement caused by climate?
5. Can the principle of constitutional morality be a normative foundation of extending the protection to climate refugees?

3. Objectives of the Study

The major goals of the study include:

- I. To test how the current framework of the refugee law can be expanded to deal with displacement due to climate change.
- II. To examine the overlap of international environmental law and the human rights law with respect to climate change.
- III. To assess the constitutional law, especially, Article 21 of Indian Constitution, in safeguarding the displaced persons.

- IV. To compare and contrast the various jurisdictions, such as New Zealand, European Union and the United States.
- V. To suggest a normative framework of constitutional morality and international law principles to deal with the problem of climate displacement.

4. Research Hypothesis

The hypothesis used in the present study is as follows:

Whether the existing international legal system can be used to deal with the climate-induced displacement as a holistic approach, which involves a combination of the international environmental law, human rights law, and the constitutional law, especially constitutional morality is required to guarantee effective protection of the climate refugees.

6. Strengths and Limitations of the Study.

This study is limited to the legal examination of the problem of climate-induced displacement in the context of the international environmental law, the international human rights law, and the comparative constitutional law. The paper dwells on the developments in the doctrines, judicial rulings, and policy frameworks that apply to climate refugees.

The study is however limited in a number of ways:

- ❖ It fails to do empirical field work or quantitative research of displaced populations.
- ❖ The sources that the study mostly uses include secondary sources like law books, case laws and literature.
- ❖ The nature of climate law is dynamic such that some of the developments may not be settled.

6. Research Methodology

In this study, the methodology used is doctrinal and analytical, which aims at the analysis of primary and secondary sources of law.

(a) Doctrinal Method

The study analyses:

- International treaties (e.g. Refugee Convention, UNFCCC, Paris Agreement)

- Judicial cases (e.g., Teitiota, Indian constitutional cases).
- Principles of international environmental law (CBDR, sustainable development, no-harm rule)

(b) Analytical Method

The study is a critical evaluation of:

- the sufficiency of the current legal systems.
- the inter-relationship of the various fields of international law.
- the existing legal regimes have normative gaps.

(c) Comparative Method

Comparative analysis is done among India, New Zealand, European Union and United States to learn about the difference in legal reaction to climate displacement.

7. Sources of Data

The paper is based on both secondary and primary sources. Primary Sources include but are not limited to Global agreements and treaties, Courts of justice (international and local courts) and Constitutional provisions. Secondary Sources include but are not limited to Reports, books, journal articles. Articles of organisations like IPCC, UNHCR and World Bank have also been used.

8. Importance of the Study.

This study can be added to the expanding body of literature on climate change and law because it fills a significant gap in the current legal provisions. It points to the failure of the conventional refugee law to address climate induced displacement and the necessity to integrate the law.

The study provides a multidisciplinary approach by connecting the international environmental law and human rights and constitutional law, which is crucial in interpreting the issue of climate displacement. Moreover, it suggests the constitutional morality as a normative instrument to extend the legal protection to the territorial boundaries.

10. Research Design.

The following parts are included in this paper:

Part I provides the meaning of climate displacement and the legal consequences.

Part II is an analysis of the definition and restriction of the term climate refugee.

Part III examines the example of Tuvalu and the consequences of losing the territory.

Part IV discusses the Indian constitution.

Part V gives an international comparative analysis.

Part VI deals with major legal and constitutional challenges.

Part VII looks into the place of constitutional morality.

Part VIII is about Climate Change, Human Rights, and the Protection Gap in Climate Displacement

Part IX incorporates the international environmental law and the human rights and thereby, concludes by suggesting how reforms are done.

PART-1 INTRODUCTION

The Anthropocene has blurred the once-stable coordinates of territory, sovereignty, and citizenship. Climate change, as a “threat multiplier,” is displacing millions from their homes and challenging traditional notions of belonging under constitutional and international law. According to the Internal Displacement Monitoring Centre, over 32.6 million new displacements were triggered by climate and weather-related disasters in 2022 alone. The World Bank estimates that 216 million people could be displaced internally by 2050, with South Asia accounting for nearly 40 million of them¹.

In the view of international environmental law, climate displacement is an unanticipated effect of the global climate governance regime. The international environmental law emerged with the Stockholm Conference and institutionalised with the Rio Earth Summit, established the principles of sustainable development, precaution, and common but differentiated responsibilities. Nevertheless, these frameworks are silent on the human mobility impacts of climate change, though they do govern the environmental protection and climate mitigation. Climate displaced people are therefore not subjected to legal protection. Among the most striking illustrations of this looming crisis is Tuvalu, a Pacific Island nation facing the existential threat of submergence.

¹ World Bank, Groundswell: Preparing for Internal Climate Migration (2018), available at <https://openknowledge.worldbank.org/handle/10986/29461> (last visited Aug. 27, 2025).

Tuvalu's attempt to construct a "digital nation"² underscores a profound legal dilemma: Can a state exist without territory, and what becomes to the rights of its citizens when sovereignty is submerged? Similar questions echo in the Sundarbans region of India and Bangladesh, where rising sea levels are displacing local communities. The legal category of "refugee," however, remains bound to the 1951 Refugee Convention, which excludes environmental displacement from its ambit³. This silence has created a protection gap, wherein climate-induced migrants are relegated to the status of "economic migrants" without access to international refugee protections. The challenge, therefore, is not merely humanitarian but constitutional. As India's Supreme Court has observed, the right to life under Article 21 encompasses dignity, shelter, and livelihood⁴. Yet, constitutional guarantees remain territorially bound. Comparative constitutional experiences, particularly from New Zealand which is the first jurisdiction to adjudicate a "climate refugee" claim and the European Union, where human rights jurisprudence is gradually extending to climate-induced displacement⁵, provide valuable insights.

This paper explores whether constitutional morality, as understood in Indian jurisprudence, can furnish a more expansive framework of protection. It argues that the plight of climate refugees demands a reimagining of citizenship, sovereignty, and rights in the face of planetary collapse.

REVIEW OF LITERATURE

The problem of displacement as a result of climate and its reflection in the international environmental law, refugee law, and human rights law has become the subject of growing academic interest. Nevertheless, the literature shows that there is a systemic gap in the legal strategies, and there is no single doctrine that is sufficient to deal with such a phenomenon as climate refugees.

Initial efforts in the area of scholarship on international climate change law, especially by Daniel Bodansky, Jutta Brunnee and Lavanya Rajamani, theorize climate change as a collective action problem under soft-law oriented regimes, including the United Nations Framework Convention on

² Government of Tuvalu, "Tuvalu Becomes the World's First Digital Nation" (Nov. 2022), available at <https://www.tuvalu.tv> (last visited Aug. 27, 2025).

³ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

⁴ Chameli Singh v. State of Uttar Pradesh, (1996) 2 SCC 549.

⁵ European Court of Human Rights, Duarte Agostinho and Others v. Portugal and 32 Others, App. No. 39371/20 (pending).

Climate Change (UNFCCC) and the Paris Agreement. Although these structures are successful in organizing state commitments with regard to mitigation and adaptation, they are essentially state-centric and mitigation-based, thus ignoring the human mobility impacts of climate change. In line with Bodansky et al. assertion, international climate law has grown into a cooperation regime, but not a responsibility regime, which is why it fails to directly deal with displacement, hold liable climate damage.

To add to this perspective, researchers have also pointed out that the international environmental law functions mostly on the basis of such principles as sustainable development, common yet differentiated responsibilities (CBDR), and the no-harm principle, which controls the actions of the states but does not establish any individual rights. Though these principles offer a normative foundation of climate justice, they do not translate into protection procedures of displaced individuals, thus revealing a fatal loophole between environmental management and human protection systems.

By contrast, the literature of the refugee law, especially of Jane McAdam, highlights the structural constraints of the 1951 Refugee Convention, which has traditionally been structured to deal with displacement due to persecution in a post-World War II setting. According to McAdam, any efforts to redefine the Convention to encompass climate-induced dispensation are strained doctrine-wise, since environmental degradation is not within the limited grounds of persecution encompassed by the Convention. Thus, the climate-displaced people are pushed into the group of the so-called environmental migrants and have no legal status and protection under international refugee laws. It is this dogmatism which has prompted academics to suggest other strategies, such as the introduction of a new protocol to the Refugee Convention or the development of a specialised international treaty on climate mobility.

Similar to the refugee law, human rights scholarship have started to put climate change on the agenda as a human rights crisis, in which environmental degradation is linked with violation of other rights like life, health, food, water and housing. Bodansky et al. also observe that although the human rights law provides a more lenient and broad framework than the refugee law does, it experiences major difficulties in its application especially in the context of causation, attribution and extra-territorial jurisdiction. Climate damage is highly diffuse, cumulative and transboundary by its nature and it is hard to find particular human rights violation in individual states. This has made the human rights entities, despite the fact that they have started to realize the effects of

climate change, their jurisprudence is incremental and non-binding and this limits their practical application in safeguarding the climate-displaced individuals.

Another idea that has been examined concerning the human rights and climate displacement is the principle of non-refoulement, especially in the case of *Ioane Teitiota v. New Zealand*. According to the scholars, this decision is seen as a safe yet important move towards the realization of the fact that environmental degradation can lead to the assumption of protection duties in the context of the international human rights law. Nevertheless, the literature always notes that these developments are extraordinary and not radical, and do not create a broader category of the law of climate refugees.

The other important stream of research deals with the idea of the state responsibility and transboundary harm. Based on the events of the Trail Smelter Arbitration and the events that followed, researchers believe that the no-harm principle creates the responsibility of states to ensure that no environmental harm is caused to other countries. This has been applied to imply that in case of a climate change, high-emitting states can be held liable to displacement in the vulnerable areas. But the diffuse and cumulative aspect of greenhouse gas emissions is also a problem as the literature highlights, which makes it hard to attribute them, which further undermines the enforceability of such claims. As such, the principle is normatively important, but has not developed into a tangible process of dealing with climate displacement.

Moreover, the notion of loss and damage, especially in the context of the Warsaw International Mechanism and the Article 8 of the Paris Agreement, has been pointed out as the possible way to respond to the irreversible climate consequences, such as displacement. According to scholars, this new paradigm is a pointer of an increased awareness of the damage caused by climate that goes beyond mitigation and adaptation. Its status in the law is however disputed and it does not have any binding commitments hence restricting its ability to offer viable solutions to the displaced populations.

Comparative legal scholarship views the potential of domestic constitutional systems to supply gaps in international law in a constitutional context. The broad interpretation of Article 21 in India has allowed the courts to include the rights of the environment and socio-economic rights in the right to life. Equally, the South African jurisprudence, specifically in *Grootboom*, has shown the possibility of applying dignity and socio-economic rights in order to focus on structural

vulnerabilities. Nonetheless, the literature is also keen on the point that constitutional protections are territorially limited, and thus, cross-border climate refugees are not covered by them.

As an answer to these restrictions, critical scholars like Upendra Baxi propose that a change to cosmopolitan constitutionalism should take place whereby constitutional ideals are not limited to territorial borders to promote human dignity in globalised society. This is in line with the new demands to incorporate international environmental law, human rights law, and constitutional law in an integrated legal framework that would be able to respond to climate displacement.

In general, three major insights are presented in the literature. To start with, the current legal frameworks, environment-related, refugee, and human rights law, are siloed and each of them is insufficient to help deal with climate-related displacement. Second, the normative principles like CBDR, no-harm and human rights offer a framework of protection but they are not enforceable and coherent. Third, it is becoming increasingly accepted that a multi-level and multi-faceted legal strategy integrating international commitments with constitutional creativity is necessary to close the protection gap of climate refugees.

This paper builds on this literature since the author proposes that constitutional morality can be a bridging normative, allowing courts and states to proceed with protection beyond territorial and doctrinal boundaries. This way, it adds to the developing discussion of the redesign of legal structures in the Anthropocene, in which the issue of environmental degradation, human movement, and the legal accountability are becoming more intertwined.

PART-2 DEFINING THE “CLIMATE REFUGEE”

The term *climate refugee* has gained increasing currency in both policy and academic discourse, yet it lacks recognition under international law. The 1951 Refugee Convention defines a refugee as a person who, “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 their country of nationality and unable to avail themselves of its protection⁶. Nowhere does this definition extend to those displaced by climate-related disasters or slow-onset environmental degradation. The inflexibility of the 1951 refugee regime to definition indicates that it has its historical roots in the post-Second World War political persecution instead of environmental displacement.

⁶ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

Consequently, the international refugee law has been structurally poorly positioned to deal with mobility due to climate. Efforts to redefine the Convention by applying the wider human rights approaches have been made, especially by the principle of non-refoulement under international human rights law. However, these developments are still inadequate and they have not yet solidified in the form of binding international standards that acknowledge climate refugees as a legal category.

This exclusion has been critically examined by scholars such as Jane McAdam, who argues that the framers of the Convention were responding to the immediate post-war context and could not have anticipated climate-induced mobility. As a result, individuals displaced by rising seas, desertification, or floods are frequently classified as “environmental migrants” rather than refugees, thereby remaining outside the protection regime of the UNHCR⁷.

The scale of the crisis is sobering. According to the Internal Displacement Monitoring Centre, 32.6 million new displacements were triggered by disasters in 2022, many of them climate-related. The World Bank’s *Groundswell* report projects that by 2050, climate change could internally displace 216 million people across six regions, including 40 million in South Asia alone. Other studies are even more dire, with the Institute for Economics and Peace estimating up to 1.2 billion people could be displaced globally by 2050.

In South Asia, the vulnerability is compounded by high population density, poverty, and dependence on climate-sensitive sectors such as agriculture and fisheries. Bangladesh, for example, already witnesses an estimated 500,000 to 700,000 people migrating each year from coastal areas due to sea-level rise and salinisation⁸. Similarly, the Sundarbans region in India has seen entire villages disappear beneath the sea, producing a new class of internally displaced persons who lack formal refugee status.

The definitional gap has prompted some scholars to suggest adopting a broader category such as “climate-induced displaced persons” under international law, or expanding the scope of the Refugee Convention through a protocol. Others advocate for regional instruments, drawing

⁷ UNHCR, “Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters,” available at <https://www.refworld.org/docid/4f38a9422.html> (last visited Aug. 27, 2025).

⁸ International Organization for Migration, “Migration, Environment and Climate Change: Policy Brief Series, Issue 1,” available at <https://publications.iom.int> (last visited Aug. 27, 2025).

parallels with the 1969 OAU Refugee Convention and the 1984 Cartagena Declaration, both of which expanded refugee protection beyond the narrow Geneva framework.

The definitional debate is not merely semantic. It determines access to rights, protection, and recognition under both domestic constitutions and international law. Without a clear legal category, climate-displaced communities remain trapped in a legal limbo visible to humanitarian reports but invisible to binding legal frameworks.

PART- 3: THE CASE OF TUVALU

Tuvalu, a Pacific island nation of merely 26 square kilometers, has become emblematic of the existential threat posed by climate change. Rising sea levels threaten to submerge significant parts of its territory within decades, placing its very statehood at risk. Unlike traditional displacements caused by armed conflict or persecution, Tuvalu faces the possibility of *complete erasure* from the physical map of the world.

The state's response has been twofold. On the one hand, Tuvalu has advocated vigorously within international fora for stronger climate commitments, notably at the UNFCCC Conferences of Parties. On the other hand, it has begun constructing a "digital nation", an unprecedented attempt to preserve its sovereignty, culture, and governance structures online, should its physical territory be lost⁹. This raises a critical constitutional question: *Can a state continue to exist without land?*

Classical international law, following the Montevideo Convention (1933), defines a state as requiring (i) territory, (ii) permanent population, (iii) government, and (iv) capacity to enter relations with other states. If Tuvalu's territory disappears, at least one of these elements ceases to exist, thereby destabilising its recognition as a state under international law. Yet, denying Tuvaluans statehood amounts to rendering an entire people *stateless*.

The prospect of the extinction of territory through climate change has brought about heated discussions in the international law as far as continuity of statehood is concerned. The question that scholars have had is whether deterritorialised states can have legal personality by being recognized by other states or by remaining members of international organisations. The problem also brings about complicated issues in regard to maritime entitlements, exclusive economic zone

⁹ Government of Tuvalu, "Tuvalu launches world's first digital nation," available at <https://www.tuvalu.tv> (last visited Aug. 27, 2025).

and state succession in international law. The problem of losing territory due to climate, therefore, questions some of the premises of the international legal order.

This has profound constitutional implications. Citizenship is ordinarily tied to a state's territorial sovereignty. If Tuvalu disappears, do its people lose citizenship, and with it, access to international human rights protection? This is not hypothetical, in *Ioane Teitiota v. New Zealand* (2020), the UN Human Rights Committee acknowledged that climate change could trigger non-refoulement obligations, but ultimately rejected Teitiota's asylum claim¹⁰. Thus, while the recognition of climate threats has emerged, the law still fails to translate that acknowledgment into concrete protection.

Tuvalu's plight therefore underscores a fundamental challenge: the disjuncture between *territorial sovereignty* and *human dignity*. It calls for rethinking constitutional identity in an era of climate collapse, where states may persist digitally and citizens may claim rights decoupled from land.

PART- 4: INDIAN SCENARIO

India illustrates the paradox of climate displacement within a constitutional democracy that lacks a specific refugee law. While India is not a party to the 1951 Refugee Convention or its 1967 Protocol, its constitutional framework, particularly Article 21, has been expansively interpreted to protect life, dignity, and shelter, even for non-citizens¹¹.

The Sundarbans, straddling India and Bangladesh, are a striking case study. Sea level rise and soil salinity have already displaced thousands, creating what scholars call "climate migrants" within Indian territory. Islands such as Leachers and Ghoramara have partially or fully submerged, forcing communities into Kolkata's slums. Unlike conflict-driven migration, this displacement is slow, cumulative, and often invisible to existing legal mechanisms.

The annual floods in Assam displace hundreds of thousands, aggravating vulnerabilities of already marginalised groups¹². Yet, India does not legally distinguish between *internally displaced persons (IDPs)* due to climate and those displaced by development projects. The Draft National

¹⁰ *Ioane Teitiota v. New Zealand*, UN Human Rights Committee, CCPR/C/127/D/2728/2016 (7 Jan. 2020), available at <https://tbinternet.ohchr.org>.

¹¹ *National Human Rights Commission v. State of Arunachal Pradesh*, (1996) 1 SCC 742.

¹² Internal Displacement Monitoring Centre, "India: Annual Floods," available at <https://www.internal-displacement.org> (last visited Aug. 27, 2025).

Action Plan on Climate Change recognises the threat but provides no enforceable rights or rehabilitation mechanisms for climate migrants.

Judicial innovation has partially filled this gap. In *Olga Tellis v. Bombay Municipal Corporation* (1985), the Supreme Court recognised the right to livelihood as integral to Article 21¹³. Similarly, in *Chameli Singh v. State of Uttar Pradesh* (1996), the Court recognised the right to shelter as a fundamental right¹⁴. These interpretations, while progressive, remain territorially bounded, they protect those displaced *within* India, but do not extend to cross-border climate refugees, such as those from Bangladesh.

Thus, India represents both possibility and limitation as constitutional rights have been judicially expanded to protect dignity and shelter, but without legislative backing or refugee law, climate displacement remains inadequately addressed.

PART- 5: COMPARATIVE CONSTITUTIONAL RESPONSES

The absence of a universally binding definition of “climate refugee” has resulted in fragmented national and regional responses. Three jurisdictions illustrate divergent approaches: New Zealand, the European Union (EU), and the United States.

New Zealand emerged as the first jurisdiction to judicially engage with climate refugee claims. In *AF (Kiribati) v. Minister of Immigration* (2013), a Kiribati citizen sought asylum on the basis of climate change¹⁵. The Immigration and Protection Tribunal, upheld by the High Court and Court of Appeal, rejected the claim, reasoning that the 1951 Convention does not extend to climate-induced harm¹⁶. However, the Tribunal acknowledged that “environmental degradation can impact human rights,” foreshadowing a potential expansion of refugee law through human rights jurisprudence. In 2017, New Zealand announced an experimental “climate refugee visa,” though it has not been operationalised.

The **European Union** has approached the issue through human rights and subsidiary protection. The Qualification Directive (2011/95/EU) provides protection where return would expose a person to serious harm, but excludes purely environmental displacement. Nevertheless, the European

¹³ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

¹⁴ *Chameli Singh v. State of Uttar Pradesh*, (1996) 2 SCC 549.

¹⁵ *AF (Kiribati) v. Minister of Immigration* [2013] NZIPT 800413.

¹⁶ *Teitiota v. Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107.

Court of Human Rights (ECHR) has expanded non-refoulement under Article 3 of the European Convention on Human Rights, holding that removal cannot occur where there is a “real risk” of inhuman treatment. This opens space for climate-related claims when environmental degradation threatens health and survival. EU scholarship increasingly argues for recognition of climate migrants under Article 2 (right to life) and Article 8 (family life) of the Convention¹⁷.

The **United States**, in contrast, remains resistant. The Immigration and Nationality Act (INA) mirrors the 1951 Convention definition, requiring persecution on account of race, religion, nationality, political opinion, or social group. In *In re: Acosta* (1985), the Board of Immigration Appeals defined “particular social group” narrowly, excluding climate displacement. While President Biden’s 2021 Executive Order directed agencies to assess options for climate migrants, no legislative reform has followed. Thus, the U.S. continues to treat climate migration as “economic migration.”

Together, these jurisdictions reveal three trajectories: judicial acknowledgment without reform (New Zealand), human rights expansion (EU), and legislative resistance (U.S.). Each underscores the inadequacy of current frameworks, yet also provides entry points for reimagining protection of climate-displaced persons.

These national reactions are divergent, which is a sign of lack of a unified system of international governance, which deals with climate displacement. Although the mitigation of climate change has become institutionalised through the United Nations Framework Convention on Climate Change and other climate treaties, the impact of climate change on human mobility is still mostly under the jurisdiction of the domestic policies that are disjointed.

PART- 6: KEY LEGAL AND CONSTITUTIONAL CHALLENGES

Climate displacement exposes fundamental gaps in both international and constitutional law. Four key challenges dominate the discourse: **statelessness and citizenship, sovereignty, digital identity, and the constitutionalisation of socio-economic rights.**

¹⁷ Jane McAdam, “Protecting People Displaced by the Impacts of Climate Change: The Role of International Human Rights Law,” *UNHCR Legal and Protection Policy Research Series* (2016).

1. Statelessness and Citizenship

The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness provide protection against loss of nationality, yet neither contemplates the disappearance of an entire territory due to climate change. Tuvalu and Kiribati face the prospect of “deterritorialized states,” where citizens risk becoming legally stateless despite continuing to identify with their homeland¹⁸. The International Law Commission has not yet clarified whether displaced citizens retain statehood in absentia. This absence leaves individuals vulnerable to rights deprivations, as nationality is the “right to have rights”.

2. Sovereignty in the Age of Climate Collapse

Classical Westphalian sovereignty presupposes a defined territory, population, and government¹⁹. If territory is submerged, can sovereignty persist? Some scholars propose the concept of “ex-situ sovereignty,” allowing nations like Tuvalu to maintain international legal personality without land. However, this challenges constitutional notions of popular sovereignty, which are rooted in the territorial jurisdiction of the people.

3. Digital Identity and Virtual Nations

Tuvalu has declared an ambition to become the world’s first “digital nation,” preserving its culture and governance online. This raises questions: Can constitutional identity exist virtually? Is citizenship merely a digital credential, or does it require physical community? While digital sovereignty ensures continuity, it risks reducing lived citizenship into symbolic representation, detached from enforceable rights.

4. Rights Without Territory

Constitutions traditionally guarantee socio-economic rights such as shelter, health, water, livelihood within state boundaries²⁰. For climate refugees displaced across borders, whose constitution applies? Article 21 of the Indian Constitution has been judicially expanded to include

¹⁸ Rosemary Rayfuse, “International Law and Disappearing States: Utilising Maritime Entitlements to Overcome the Statehood Dilemma,” *UNSW Law Journal* 41(2) (2018).

¹⁹ Montevideo Convention on the Rights and Duties of States, 1933, 165 L.N.T.S. 19.

²⁰ Constitution of India, Part III and IV.

dignity, livelihood, and shelter. Yet, these protections are territorially bounded. Similarly, the ICCPR (1966) and ICESCR (1966) bind states only to individuals “within their jurisdiction.” Without reimagining extraterritorial obligations, climate refugees risk falling into a rights vacuum. In sum, the collapse of territory destabilises the very architecture of constitutionalism. It compels a rethinking of state responsibility, identity, and constitutional morality to preserve dignity in the Anthropocene.

In the international law, the issue of climate displacement would bring up issues related to the liability of high-emitting nations to climate-related damages. Even though the international environmental law has come up with concepts like common but differentiated responsibilities and climate justice, none of these concepts have been yet converted into enforceable duties to safeguard displaced populations. The lack of a liability system in relation to climate displacement points to a structural constraint of the existing international legal system.

PART- 7: THE ROLE OF CONSTITUTIONAL MORALITY

The crisis of climate-induced displacement challenges the very core of constitutionalism. Traditional constitutional frameworks are built around the territorial state, but climate change requires constitutions to evolve towards **human dignity, justice, and universal responsibility**. Here, the concept of **constitutional morality** offers a normative compass.

1. Understanding Constitutional Morality

The phrase was first articulated by B.R. Ambedkar during the Indian Constituent Assembly Debates. It refers to fidelity not only to the text of the Constitution but to its **spirit** justice, equality, liberty, and fraternity. The Indian Supreme Court has invoked constitutional morality in cases like *Navtej Singh Johar v. Union of India* (2018), stressing that courts must protect dignity even against majoritarian impulses²¹.

2. Constitutional Morality and Climate Justice

Climate displacement forces us to ask: Is constitutionalism merely about protecting citizens within borders, or about protecting humanity from systemic harm? Scholars argue that constitutional

²¹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

morality should act as a **bridge principle**, guiding courts and states to expand rights in light of unprecedented challenges. Just as the Indian judiciary expanded Article 21 to include environmental rights (*Subhash Kumar v. State of Bihar*, 1991), constitutional morality can justify recognition of climate refugees as rights-holders, even in the absence of explicit statutory frameworks²².

3. Beyond Territorialism

Territorial borders constrain the enforcement of socio-economic rights. Yet constitutional morality requires courts to prioritise **human dignity over rigid territoriality**. The South African Constitutional Court, for instance, has used dignity as a foundational value in socio-economic rights adjudication²³. This comparative jurisprudence demonstrates how constitutional morality enables rights to evolve in response to structural crises.

4. Towards a Cosmopolitan Constitutionalism

Some scholars, such as Upendra Baxi, argue for a shift from “**constitutional justice**” to “**cosmopolitan justice**” where the obligation to protect dignity transcends state borders. Climate refugees exemplify the need for this shift. Constitutional morality, if interpreted expansively, can transform constitutions from guardians of state power to guardians of humanity. In the Anthropocene, constitutional morality demands more than textual fidelity. It demands interpretive courage. The dignity of climate refugees cannot wait for international treaties but must be protected through constitutional imagination.

PART- 8: CLIMATE CHANGE, HUMAN RIGHTS, AND THE PROTECTION GAP IN CLIMATE DISPLACEMENT

The climate-induced displacement is at the crossroads of the international environmental law, human rights law, and the migration law, but it is not addressed properly in each of the mentioned frameworks. Although the international environmental law has come up with principles to govern state behavior in relation to climate change, it has been ineffective in considering the human

²² *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.

²³ *Government of the Republic of South Africa v. Grootboom*, 2000 (11) BCLR 1169 (CC).

impacts of environmental degradation. On the other hand, the human rights law acknowledges the effects of climate change on human beings but cannot find a way of giving the effect a legal backing as a way of protecting the displaced people.

Nowadays, it is generally recognized that climate change is a direct threat to the enjoyment of basic human rights, such as the right to life, health, food, water, shelter, and self-determination. The increasing sea level, extreme weather patterns, and gradual environmental degradation destroy not only the ecosystems but also make certain areas inhabitable. Climate displacement in this regard is not so much a by-product of environmental change; it is a deep human rights issue. To the inhabitants of the low-lying islands of the states and the risky coastal areas, the loss of land becomes the loss of dignity, identity, and even life itself. Nevertheless, the implementation of the human rights law to climate displacement is full of structural constraints. The issue of causation is one of the main issues. The issue of climate change is cumulative and transboundary, so it is hard to single out certain human rights violations to the behavior of a certain state.

Compared with the conventional human rights crimes that have recognizable criminals and victims, climate damage is dispersed, widespread and time-spanning. This makes it difficult to put climate displacement in the context of current legal teachings. The jurisdictional limitations also undermine the efficacy of the human rights protection. The human rights commitments are conventionally territorially limited, but the impacts of climate change are beyond the national boundaries. The emission of some states can cause displacement in another state and the issue of extraterritorial responsibility is a complicated issue.

Though it is increasingly accepted that states can have obligations outside their territories, especially when it comes to environmental destruction in the world system, the obligations have been debatable and not well-developed in the international law. The tripartite formulation of state commitments in the form of respect, protection, and fulfilment of human rights, in this case, provides a handy tool of analysis. Not only are states expected to avoid the actions that cause climate damage but they are also expected to have control over the actions of individual actors and take proactive steps to reduce and adjust to climate change .

Failure to enforce proper environmental policies, control on emissions or to offer means of adaptation can be classified as indirect infringement of human rights. In the case of climate-displaced persons, this comprises the lack of systems of relocation, insufficient disaster preparedness and social safety nets. Although these normative changes have occurred, the current

refugee regime is not well positioned to counter displacement by climate. The refugee convention of 1951 is based on the principle of displacement due to persecution and not on the environmental factors.

Consequently, people forced out by the climate change are not under its protection. Efforts to fill this gap by human rights law more specifically by the principle of non-refoulement have had minimal success. Although the consideration of environmental degradation as a possible cause of protection duty has been accepted in some cases, they are considered to be exceptional and do not create a new category of legal status of climate refugees. The weakness of the existing structures indicates a more fundamental structural lack in international law. The issue of climate displacement questions the basic premises on territory, sovereignty, and responsibility. It reveals the constraints of a system that has made the issues of environmental protection, human rights, and migration separate legal silo, though they are becoming more connected.

Specifically, it points out the unfairness of the distribution between the parties who are the greatest contributors to climate change and those who bear the greatest burden of climate change. Meanwhile, human rights-based approach has significant normative benefits. It makes the climate change a question of justice and responsibility by putting the experiences of the affected people at the centre of the issue, which is an abstract issue of the environment. It allows the claims to be put in a form of not just a policy requirement but rather a legal requirement, which will make the moral and legal foundation of protection stronger. Besides, human rights institutions offer arenas though insufficient ones to express and promote the claims regarding climate damage.

There is also another complexity of human rights implication of the measures of climate response itself. Large-scale renewable energy projects or relocation programmes are policies that are designed to mitigate and adapt, but have the unintended consequence of displacing a community or destroying livelihoods. This highlights the necessity of a rights-sensitive climate governance strategy that would make sure that any attempt to deal with climate change does not contribute to the emergence of other forms of vulnerability. Finally, the climate-displaced individuals need a combined legal approach that would not be limited to the current doctrinal scope. This can take the form of coming up with new international tools, broadening of the already existing refugee safeguards, or reinforcing human rights-based strategies in climate governance systems. In a more fundamental way, it requires a reconsideration of the international law concerning the realities of

the Anthropocene, whereby the environmental harm, human mobility, and the law are strongly interlinked.

The process of the displacement caused by climate also has to be considered in the context of the doctrinal principles of international environmental law, especially the principles concerning the state responsibility, the prevention of transboundary harm, and sustainable development. Although the human rights frameworks emphasize on the individual effects of climate change, an international environmental law offers the framework on how the responsibility should be distributed between states.

One of the main principles in this respect is the no-harm principle which compels states to make sure that their activities in their jurisdiction do not harm the environment of other states or regions outside the jurisdiction of the national territory. This principle, which is stated in the Trail Smelter Arbitration, can be used to say that as a state cannot utilize its territory in a way that inflicts severe transboundary damage and that greenhouse gas emissions are a paradigmatic example of transboundary harm because the emissions generated in a state produce an effect on the world atmosphere that can be felt in other states.²⁴

The no-harm rule in climate change is however complicated by the fact that the emission is diffuse and cumulative. Climate change is not caused by a localized industrial pollution as opposed to the time-aggregated behavior of various states. This brings a complicated issue of attribution and proportional blame. The principle, however, has normative importance, since it is based on the principle that states are expected to exercise due diligence to ensure that they do not harm the environment.

The due diligence requirement obliges states to undertake all the relevant steps to prevent, minimize and manage environmental degradation. It does not have a strict liability but requires a standard of behavior that is founded on reasonability and ability. This in the context of climate incorporates the adoption of mitigation policies, controlling of the emissions, and international cooperation in combating the global warming. The inability to fulfil these duties can result in the state responsibility, despite the lack of direct causation of particular harm. These values have been strengthened in the jurisprudence of the environment by the International Court of Justice (ICJ).

²⁴ *Trail Smelter Arbitration* (U.S. v. Can.), 3 R.I.A.A. 1905, 1965 (1941).

The Court in the case of Gabčíkovo Nagymaros Project noted that environmental protection is a critical element of sustainable development and that it has to be balanced with economic development.²⁵ This is especially applicable to climate displacement, which highlights the necessity to strike a balance between development policies and protection of vulnerable population because of environmental degradation. The idea of sustainable development also enhances the legal system of dealing with climate displacement.

Sustainable development as a principle of international environmental law is a combination of environmental protection, economic development, and social development. It also acknowledges the fact that development cannot be made at the cost of environmental stability or human well being. This principle in relation to climate change obliges states to seek developmental options which will reduce negative impacts on the environment and protect the rights and livelihoods of impacted populations. Intimately associated with sustainable development is the concept of common but differentiated responsibilities (CBDR) that recognizes that although every state has a duty to deal with the damage of the environment, they are not equally obligated to do so.

Historically the developed countries are supposed to lead in the mitigation and offer financial and technological assistance to the developing nations because the populations that are most affected are usually in the developing countries that are contributing the least of the global emission.²⁶ The CBDR principle is also overlapping with the general discourse on climate justice which focuses on the unfairness of climate effects distribution. The population of climate-displaced persons is often one of the most vulnerable, as these people do not have the resources to adjust or move.

In this view, climate displacement is not only an environmental problem, but a question of distributive justice, which needs a redistribution of responsibilities on the international level. Another trend in international climate law is the new awareness of loss and damage, meaning harms that are impossible to avoid either by mitigation or adaptation. The Warsaw international mechanism on loss and damage and its further development under the Paris agreement is an indication of the increased recognition of the irreversible effects of climate, such as displacement.²⁷

²⁵ *Gabčíkovo–Nagymaros Project* (Hung. v. Slov.), Judgment, 1997 I.C.J. 7, ¶ 140 (Sept. 25).

²⁶ United Nations Framework Convention on Climate Change art. 3(1), May 9, 1992, 1771 U.N.T.S. 107.

²⁷ U.N. Framework Convention on Climate Change, Warsaw International Mechanism for Loss and Damage, Decision 2/CP.19 (Nov. 2013); Paris Agreement art. 8, Dec. 12, 2015, T.I.A.S. No. 16-1104.

The legal status of loss and damage is still controversial, but this is a significant step towards acknowledging the compensation and support of affected communities.

However, in spite of these normative improvements, the international law governing the environment still experiences a major limitation in dealing with climate displacement. The mechanisms of enforcement are still quite weak, and most principles are soft law instead of obligatory one. In addition, the dissemination of international law between environmental, human rights, and migration regimes does not allow a consistent response to be developed. However, the values of no-harm, due diligence, sustainable development, and CBDR can all offer a basis on which state responsibility can be reconsidered in the climate displacement scenario. They agree with the fact that the states cannot afford to be passive in response to the environmental destruction and the human implications of it that could be predicted. Rather, international law should develop to appreciate the fact that climate displacement prevention and management is a part of environmental governance.

In this regard, climate displacement is an intersection of several threads of international law. It undermines the conventional ideas of the sovereignty as it points to the international effects of the domestic environmental policies. It broadens the state responsibility outside the territorial limits.

PART- 9: CONCLUSION

The phenomenon of climate-induced displacement unsettles the bedrock assumptions of constitutional and international law. Refugee law, as codified in the **1951 Refugee Convention** and its **1967 Protocol**, does not recognise climate displacement. Similarly, most constitutions remain tethered to territorial sovereignty, leaving stateless climate refugees in a legal vacuum. The case of Tuvalu, facing existential submergence, illustrates the inadequacy of conventional doctrines of citizenship and sovereignty.

Through the lens of India's constitutional jurisprudence, particularly Article 21 and its expansion into environmental and socio-economic rights, it is seen the possibility of reconstructing constitutional meaning to respond to ecological realities. Comparative insights from New Zealand (which has entertained but denied climate refugee claims), and South Africa (which has interpreted dignity as a transformative principle), underscore that constitutional law can, if creatively engaged, evolve beyond territorial constraints.

The normative key lies in **constitutional morality**: a commitment to dignity, justice, and fraternity that transcends the text and responds to lived realities. As Upendra Baxi argues, the demand of our times is a **cosmopolitan constitutionalism**, where justice is not confined by borders. If the purpose of a constitution is to safeguard the human condition, then its silence on climate refugees is not neutrality complicity.

Climate-Displaced persons need to be reconsidered in the light of the legal regimes at the international level. Solutions suggested in legal literature are broadening the scope of the definition of refugee by incorporating an extra protocol to the 1951 Convention, establishing a specialised treaty on climate mobility, or enhancing the international human rights law in dealing with climate displacement. In the absence of such reforms, the climate refugees will not be captured in the formal framework of the international protection.

Thus, the urgent task for scholars, judges, and policymakers is to **reimagine constitutional responsibility in the Anthropocene**. Climate refugees force us to confront whether constitutions will remain guardians of sovereignty or evolve as guardians of humanity.

REFERENCES

1. Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* (IPCC, 2023), available at <https://www.ipcc.ch/report/sixth-assessment-report-cycle/>
2. Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2023* (2023), available at <https://www.internal-displacement.org/global-report/grid2023>
3. World Bank, *Groundswell: Preparing for Internal Climate Migration* (2018), available at <https://openknowledge.worldbank.org/handle/10986/29461> (last visited Aug. 27, 2025).
4. Government of Tuvalu, “Tuvalu Becomes the World’s First Digital Nation” (Nov. 2022), available at <https://www.tuvalu.tv>
5. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.
6. UNHCR, “Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters,” available at <https://www.refworld.org/docid/4f38a9422.html>.
7. Internal Displacement Monitoring Centre, “Global Report on Internal Displacement 2023,” available at <https://www.internal-displacement.org/global-report/grid2023>

8. Kanta Kumari Rigaud et al., *Groundswell: Preparing for Internal Climate Migration* (World Bank, 2018).
9. Institute for Economics & Peace, *Ecological Threat Report 2020*, available at <https://www.economicsandpeace.org/reports/>
10. International Organization for Migration, “Migration, Environment and Climate Change: Policy Brief Series, Issue 1,” available at <https://publications.iom.int>
11. Government of Tuvalu, “Tuvalu launches world’s first digital nation,” available at <https://www.tuvalu.tv>
12. Montevideo Convention on Rights and Duties of States, Dec. 26, 1933, 165 LNTS 19.
13. Sugata Hazra, “The vanishing islands of the Sundarbans,” *Journal of Coastal Research* (2010).
14. Internal Displacement Monitoring Centre, “India: Annual Floods,” available at <https://www.internal-displacement.org>
15. Government of India, *National Action Plan on Climate Change (NAPCC)*, 2008.
16. New Zealand Ministry of Immigration, “Pilot Climate Refugee Visa Programme” (2017).
17. Convention Relating to the Status of Stateless Persons, 1954, 360 U.N.T.S. 117.
18. International Law Commission, *Report on the Work of its 71st Session* (2019).
19. Montevideo Convention on the Rights and Duties of States, 1933, 165 L.N.T.S. 19.
20. Government of Tuvalu, “Tuvalu’s Digital Nation Declaration” (2021).
21. Constitution of India, Part III and IV.
22. Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (1966).
23. United Nations, *Convention Relating to the Status of Refugees*, 1951, 189 U.N.T.S. 137.
24. U.N. Framework Convention on Climate Change, *Warsaw International Mechanism for Loss and Damage*, Decision 2/CP.19 (Nov. 2013); Paris Agreement art. 8, Dec. 12, 2015, T.I.A.S. No. 16-1104.
25. United Nations Framework Convention on Climate Change art. 3(1), May 9, 1992, 1771 U.N.T.S. 107.
26. Rosemary Rayfuse, “International Law and Disappearing States: Utilising Maritime Entitlements to Overcome the Statehood Dilemma,” *UNSW Law Journal* 41(2) (2018).
27. Jane McAdam, “Protecting People Displaced by the Impacts of Climate Change: The Role of International Human Rights Law,” *UNHCR Legal and Protection Policy Research Series* (2016).