

Climate Induced Displacement and India's legal Vacuum: Rethinking Refugee Protection, Non-Refoulement and Complementary Protection

Tara Dubey

Masters of laws, Law, Damodaram Sanjivaya National law University

Abstract

Climate change is increasingly transforming patterns of human mobility. Rising sea levels, coastal erosion, floods, cyclones, droughts, extreme heat, desertification and the gradual destruction of livelihoods can make continued residence in a particular territory unsafe or impossible. Although climate-induced displacement is no longer merely an environmental concern, international and domestic legal systems have not developed an equally coherent framework for protecting persons compelled to move because of climate-related conditions. The expression “climate refugee” is widely used in public discourse, yet persons displaced exclusively by climate change do not ordinarily fall within the refugee definition contained in the 1951 Convention relating to the Status of Refugees. At the same time, international human rights law has increasingly recognised that returning a person to conditions involving a sufficiently serious and foreseeable risk to life or inhuman treatment may engage non-refoulement obligations.

India presents a particularly important legal context. It is highly vulnerable to climate-induced displacement but has neither enacted a comprehensive refugee law nor created a statutory category for persons displaced across borders because of climate-related harm. Nevertheless, constitutional jurisprudence provides potentially significant protection. In *M.K. Ranjitsinh v Union of India*, the Supreme Court recognised a constitutional right against the adverse effects of climate change under Articles 14 and 21. This paper examines the limitations of the existing refugee regime, the relevance of non-refoulement, the potential of complementary protection and the constitutional basis for a rights-based climate-displacement framework in India. It argues that India should adopt a layered protection mechanism combining refugee law, constitutional safeguards, humanitarian protection, temporary protection, disaster management and planned relocation.

Keywords: Climate-induced displacement; climate refugees; refugee law; non-refoulement; complementary protection; Article 21; Article 14; climate change; India; asylum; human rights.

1. Research Methodology

The research adopts a doctrinal and comparative legal methodology. The doctrinal component examines primary legal materials, including the Constitution of India, relevant Indian legislation, judicial decisions, international conventions, treaty-body decisions and international legal principles concerning refugees, human rights, non-refoulement and environmental protection. Particular attention is given to Articles 14 and 21 of the Constitution of India, the jurisprudence of the Supreme Court concerning

foreigners and refugees, and the constitutional recognition of climate-related rights in *M.K. Ranjitsinh v Union of India*. The research also examines the Disaster Management Act 2005 as an important component of India's institutional response to disasters.

The international component analyses the 1951 Refugee Convention, international human rights principles and developments relating to climate-induced cross-border displacement. The Human Rights Committee's decision in *Ioane Teitiota v New Zealand* is examined because it represents an important development concerning the relationship between climate change, the right to life and non-refoulement. A comparative method is employed to identify approaches that may assist India in designing a protection mechanism, particularly temporary protection, complementary protection, humanitarian admission and planned relocation. The research is primarily qualitative and analytical and seeks to identify the gap between existing legal categories and emerging realities of climate mobility.

2. Introduction

Climate change has fundamentally altered the relationship between environmental degradation, human security and migration. Displacement caused by climate-related events is no longer an exceptional phenomenon. Floods, cyclones, droughts, extreme temperatures, sea-level rise, coastal erosion and the degradation of agricultural and fishing livelihoods increasingly influence decisions to leave one's home. Climate change may operate as an immediate trigger for displacement or as a gradual factor that undermines the social, economic and environmental conditions necessary for human survival.

The legal difficulty arises because existing international refugee law was not designed around climate-induced mobility. The 1951 Convention relating to the Status of Refugees protects a person who is outside their country of nationality because of a well-founded fear of persecution based on specified grounds. Climate change, standing alone, generally does not constitute persecution within this conventional framework. Yet a person may be compelled to cross a border because an island is becoming uninhabitable, agricultural land can no longer support subsistence, freshwater resources are severely degraded, or repeated disasters have destroyed the conditions necessary for dignified life. The central question is therefore what legal protection prevents return when a person does not fit the traditional refugee category.

India provides a particularly important context. The country has extensive coastlines, densely populated river basins, ecologically vulnerable islands and large populations dependent on climate-sensitive livelihoods. Climate change can consequently produce both internal and cross-border mobility. However, India has neither a comprehensive refugee statute nor a distinct legal status for persons displaced internationally because of climate-related harm. The constitutional framework nevertheless offers a potentially powerful starting point, particularly through Articles 14 and 21 and the Supreme Court's climate jurisprudence.

3. Understanding Climate-Induced Displacement

Climate-induced displacement refers to situations in which climate-related processes or events contribute significantly to the movement of individuals or communities from their habitual places of residence. Movement may be temporary or permanent, internal or cross-border, and may appear voluntary even where adaptation choices are severely constrained.

Climate mobility is often characterised by multiple causation. A drought may destroy agricultural livelihoods; economic insecurity may intensify social conflict; weak governance may reduce adaptive

capacity; and the combined effect may ultimately compel a person to move. UNHCR recognises that climate change interacts with conflict, poverty, inequality, weak governance and other drivers of forced displacement. Climate change may therefore intensify circumstances in which established refugee law becomes applicable.

The distinction between sudden-onset and slow-onset climate displacement is also legally relevant. Sudden-onset events include cyclones, flash floods and extreme storms, while slow-onset processes include sea-level rise, desertification, salinisation and ecosystem degradation. Slow-onset displacement creates especially difficult legal questions because the point at which continued residence becomes impossible is difficult to identify.

Climate displacement can occur through internal relocation, organised or planned relocation, or cross-border movement. The last category creates the most visible protection gap because immigration law becomes applicable at the same time that conventional refugee law may not provide an adequate legal classification.

4. The Limitations of the 1951 Refugee Convention

The 1951 Refugee Convention remains the central instrument of international refugee protection. Its definition, however, is based upon persecution and five protected grounds: race, religion, nationality, membership of a particular social group and political opinion. Climate change alone does not automatically satisfy these requirements. A person displaced because an island is gradually becoming uninhabitable may face an existential threat without being persecuted on a Convention ground.

This does not make refugee law irrelevant. Climate change can interact with persecution in several ways. Environmental scarcity may contribute to conflict or discriminatory governmental policies. Particular communities may be disproportionately affected by environmental measures or resource allocation. Climate-related disasters may exacerbate pre-existing persecution. In such situations, environmental conditions can form part of a broader refugee claim.

The problem is therefore not simply that the Refugee Convention is outdated. Its scope is specific, while climate displacement frequently falls between established categories. This produces a protection paradox: the severity of the harm may be extreme even though the legal classification of the affected person is uncertain. A more appropriate approach is to preserve the refugee definition while developing complementary mechanisms for persons facing serious harm outside that definition.

5. India's Refugee Protection Vacuum

India is not a party to the 1951 Refugee Convention or its 1967 Protocol and does not have a comprehensive domestic refugee statute. Refugees and asylum seekers are therefore dealt with through a combination of constitutional principles, executive policy, general immigration legislation, judicial intervention and administrative practice.

The absence of a dedicated statute creates uncertainty concerning refugee status determination, procedural safeguards, residence rights and protection against removal. The Foreigners Act 1946 and related immigration provisions primarily regulate the presence of foreigners rather than establishing a specialised refugee-protection system. Similarly, the Disaster Management Act 2005 focuses on preparedness, response, recovery and institutional coordination rather than international protection or asylum.

This distinction is important because disaster relief is not the same as displacement protection. A person

affected by a cyclone may receive emergency assistance, shelter or compensation, while a person whose home has permanently become uninhabitable faces questions concerning long-term residence, livelihood, legal status and possible cross-border movement. Existing Indian law does not provide sufficiently precise answers to these issues.

6. Constitutional Protection Under Articles 14 and 21

The Indian Constitution provides an important foundation for addressing the legal vacuum. Article 21 protects “no person” from deprivation of life or personal liberty except according to procedure established by law. Indian constitutional jurisprudence has progressively interpreted Article 21 as protecting substantive conditions necessary for dignified existence, including important environmental interests.

The importance of this development became particularly clear in *M.K. Ranjitsinh v Union of India* (2024). The Supreme Court recognised a right against the adverse effects of climate change under Articles 14 and 21. The Court connected climate change with threats to health, food, water, livelihood and human dignity and recognised that climate impacts can fall unequally upon different communities. This judgment has significant implications for displacement law. If Article 21 protects individuals against conditions that seriously threaten dignified existence, climate-induced displacement cannot be viewed exclusively as a migration-management issue. It can also be understood as a constitutional rights issue. Article 14 is similarly relevant because climate impacts are distributed unequally. Communities in coastal areas, islands, forests and ecologically fragile regions may face greater risks than populations elsewhere.

Articles 48A and 51A(g), although not independently enforceable in the same manner as fundamental rights, reinforce the constitutional importance of environmental protection. Together, these provisions establish a strong constitutional basis for climate-resilient governance and rights-sensitive displacement policy.

7. Refugees and the Principle of Non-Refoulement

Non-refoulement is one of the central principles of refugee protection. At its core, it prevents the return of a person to a territory where they face a legally significant risk of persecution or serious harm. Its significance extends beyond formal refugee recognition because international human rights law can also restrict removal where return would expose a person to serious violations of fundamental rights.

The Human Rights Committee's decision in *Ioane Teitiota v New Zealand* is particularly important. The applicant, a national of Kiribati, argued that environmental degradation, sea-level rise, land scarcity and related conditions made his return unsafe. The Committee did not find a violation on the facts because the necessary threshold of risk had not been established. Nevertheless, it recognised that climate change may, in sufficiently serious circumstances, trigger non-refoulement obligations where return exposes a person to a real risk of irreparable harm to fundamental rights, including the right to life.

The significance of *Teitiota* therefore lies not only in its outcome but in the legal possibility it acknowledged. The question should not always be whether the person is technically a refugee; it may also be whether returning the person would expose them to a sufficiently serious and foreseeable threat to fundamental human rights. This distinction is crucial for India because a person may fail the conventional refugee definition while still presenting a compelling non-return claim.

8. Complementary Protection as a Possible Solution

Complementary protection provides an intermediate legal category between formal refugee status and unrestricted removal. Its underlying rationale is that not every person requiring international protection satisfies the refugee definition, but States may nevertheless have obligations not to return individuals to situations involving serious harm.

For climate-displaced persons, complementary protection can be particularly valuable. A national framework could establish a Climate and Humanitarian Protection Status where return would expose an individual to a serious and foreseeable threat to life or physical integrity; the threat is connected to climate-related or environmental conditions; meaningful internal relocation is unavailable or unreasonable; the home State cannot provide adequate protection; and removal would conflict with constitutional or human-rights obligations.

Such protection could initially be temporary and subject to periodic review. Where return becomes permanently impossible, longer-term residence could be considered. This approach would be more flexible than attempting to stretch the 1951 refugee definition to cover every form of climate mobility. It would also allow India to maintain clear distinctions between refugee status, humanitarian protection and disaster-related temporary stay.

9. The Relevance of M.K. Ranjitsinh to Climate Displacement

M.K. Ranjitsinh is important because it moves climate change from the sphere of environmental policy into a broader constitutional-rights framework. The Court recognised a right against the adverse effects of climate change under Articles 14 and 21. The judgment therefore has implications beyond the immediate environmental dispute.

First, climate harm becomes a rights question where it threatens life, health, livelihood or equality. Second, vulnerability becomes constitutionally relevant because disadvantaged communities may have fewer resources to adapt. Third, climate relocation must be rights-sensitive because moving communities can affect livelihood, property, cultural identity and dignity. Fourth, the judgment provides constitutional guidance for future legislation.

The judgment does not itself create a statutory refugee category, nor can judicial intervention permanently substitute for legislative policy. Its importance is instead foundational: it supplies constitutional principles that Parliament and the executive can use when developing a comprehensive climate-displacement framework.

10. Comparative Perspective

There is no single international model for climate displacement. States and international institutions have used several overlapping mechanisms. Temporary protection allows lawful stay without requiring individual refugee recognition. Humanitarian admission or humanitarian stay permits continued residence where removal would produce unacceptable consequences. Complementary or subsidiary protection covers persons who do not satisfy the refugee definition but face serious harm. Planned relocation addresses situations where habitation has become or is expected to become permanently unsafe.

The comparative lesson is that climate mobility cannot be addressed effectively through one legal category. Refugee law, human rights law, disaster governance and climate adaptation policy need to

operate together. India should therefore avoid creating an excessively narrow “climate refugee” category and instead adopt a layered framework based on the nature and intensity of risk.

11. Climate Displacement, Internal Mobility and Cross-Border Protection

An effective Indian framework must distinguish internal from international displacement. A substantial proportion of climate-related movement will remain within India, including movement from rural areas to cities, from coastal districts to safer inland locations and from environmentally vulnerable areas to more resilient regions.

Internal displacement requires housing, livelihood restoration, healthcare, education, social-security access, documentation, protection against arbitrary eviction and participation in relocation decisions. Cross-border displacement requires additional safeguards because immigration law becomes relevant. The legal response should therefore be based on the nature and intensity of harm rather than simply the geographical location of the displaced person. Crossing an international border does not automatically create refugee status, just as remaining within a country does not remove the need for legal protection.

12. Gender, Children and Vulnerable Communities

Climate displacement is not experienced equally. Women, children, persons with disabilities, older persons, indigenous communities and economically disadvantaged populations may face heightened risks during displacement. Women may face increased risks of exploitation and trafficking, while children may experience disruption of education, family separation and loss of essential services. Communities dependent upon traditional land and natural resources may additionally experience cultural and livelihood loss.

A future Indian statute should therefore adopt a vulnerability-sensitive approach. Protection should not depend exclusively on the ability of an applicant to produce sophisticated evidence of climate causation. Administrative procedures should be accessible and should incorporate gender-sensitive, child-sensitive and disability-inclusive safeguards.

13. Why a New “Climate Refugee” Convention May Not Be the Immediate Answer

A new international convention specifically on climate refugees could provide greater conceptual clarity, but negotiating such a treaty would be politically and legally difficult. Existing international law already contains relevant principles. Refugee law may apply where climate change interacts with persecution or conflict; human rights law may restrict removal in cases of serious risk; and humanitarian or temporary protection can address persons outside the traditional refugee definition.

The immediate priority should therefore be strengthening the application of existing principles while developing domestic legislation. For India, a complementary national framework may be more achievable and effective than waiting for a new global treaty.

14. Proposed Legal Framework for India

India should consider enacting a Climate Displacement and Humanitarian Protection Act or incorporating a dedicated chapter on climate displacement into comprehensive refugee and asylum legislation.

Recognition and registration should distinguish internal climate-displaced persons, cross-border climate-displaced persons, conventional refugees affected by climate change and persons requiring complement-

ary protection. Registration would facilitate documentation and access to essential services.

The legislation should contain an express non-refoulement guarantee where substantial evidence demonstrates that return would expose an individual to a serious and foreseeable threat to life or other fundamental rights. It should also establish complementary protection for persons outside the refugee definition who face serious climate-related harm.

Where climate impacts permanently compromise habitability, planned relocation should include consultation, compensation, livelihood rehabilitation and cultural protection. Institutional coordination should involve the Ministry of Home Affairs, Ministry of Environment, Forest and Climate Change, disaster-management authorities, State governments and local bodies. A dedicated climate-displacement fund should support emergency assistance, rehabilitation, relocation and integration.

15. The Role of Indian Courts

Indian courts have historically contributed significantly to environmental and human-rights jurisprudence. Climate displacement may become another area in which constitutional adjudication establishes minimum safeguards.

However, judicial intervention should not indefinitely replace legislation. Courts can establish constitutional standards concerning Articles 14 and 21, non-arbitrariness and protection against removal in appropriate cases. Parliament should provide detailed procedures for registration, status determination, residence, welfare, relocation and appeal.

The most sustainable approach is therefore a constitutional-legislative partnership. M.K. Ranjitsinh provides an important constitutional foundation, while legislation must provide the institutional and procedural structure.

16. Major Challenges

Several difficulties arise in designing climate-displacement protection. First, causation is complicated because climate change rarely operates as the sole reason for movement. Poverty, conflict, economic conditions and governance failures often interact with environmental pressures.

Second, future risk assessment is difficult because administrative bodies and courts may need to evaluate scientific evidence concerning projected environmental conditions. Third, an automatic entitlement to permanent residence for every climate-affected person could create administrative and political difficulties. Protection therefore requires carefully defined thresholds.

Fourth, climate displacement raises questions of international burden-sharing because countries may experience humanitarian consequences from a crisis to which they contributed unequally. Finally, excessive executive discretion may produce inconsistent outcomes. These challenges demonstrate the need for clear statutory standards rather than constituting reasons for legal inaction.

17. Recommendations

India should enact comprehensive refugee and asylum legislation incorporating explicit complementary protection. The legislation should codify a constitutional non-refoulement principle informed by Articles 14 and 21 and recognise climate-induced displacement as a potential basis for humanitarian or complementary protection where the required threshold of serious harm is satisfied.

A specialised Climate Mobility Authority should coordinate assessment, policy and inter-governmental action. Climate-displacement assessments should rely upon scientific and geographical evidence rather

than requiring applicants to prove climate causation through conventional documentation alone. Temporary protection should be available during sudden-onset disasters and humanitarian emergencies, while permanent or long-term relocation should include housing, livelihood, healthcare, education and social-security guarantees.

Enhanced procedural safeguards should be available to vulnerable groups. India should also explore bilateral and regional arrangements with neighbouring States concerning cross-border climate mobility and participate actively in international discussions concerning climate protection.

18. Conclusion

Climate-induced displacement exposes a significant weakness of contemporary refugee and human-rights law: persons may face existential harm without fitting neatly into established legal categories. The expression “climate refugee” captures an important humanitarian reality but does not automatically correspond to the legal definition of a refugee under the 1951 Convention.

This does not mean climate-displaced persons are without legal protection. Refugee law may apply where climate change interacts with persecution or conflict. International human rights law may provide complementary protection where return would expose individuals to sufficiently serious and foreseeable harm. For India, the constitutional position is especially significant. The Supreme Court's recognition in *M.K. Ranjitsinh* of a right against the adverse effects of climate change under Articles 14 and 21 creates an important constitutional basis for rethinking climate displacement.

The principal challenge is therefore not merely the absence of a new category called “climate refugee”. It is the absence of a coherent protection architecture connecting refugee law, human rights law, environmental law and disaster management. India should adopt a layered model in which refugee status remains available where conventional requirements are met, while complementary protection, humanitarian stay, temporary protection and planned relocation address situations outside the traditional refugee definition.

Climate displacement is likely to become increasingly complex as climate impacts intensify. Waiting until communities become completely uninhabitable would make legal protection reactive rather than preventive. The appropriate response is to build a legal framework before displacement reaches irreversible levels. Ultimately, the question is not whether every climate-displaced person should be called a refugee, but whether a constitutional democracy committed to life, equality, dignity and environmental protection can return a person to conditions in which those rights are placed at serious risk. In the Indian constitutional context, the emerging answer should increasingly be no.

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