

MILLIONS OF MIGRANTS: IMPLEMENTING A GOVERNANCE
FRAMEWORK FOR CLIMATE REFUGEES IN INDIA

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I. INTRODUCTION

Climate change has impacted the entire globe, affecting residents of all countries and regions.¹ In South Asia, residents are facing severe hardships due to climate change impacts such as extreme heat, heavy rainfall, and flooding.² In recent years, India and other South Asian countries have faced uninhabitable conditions leading to starvation and the death of many residents.³ In certain regions, the impact on the local environment is so harsh that residents are forced to relocate from their homes as areas become uninhabitable.⁴ Many residents of India have moved away from eroding

¹ See generally *Climate Action*, U.N., <https://www.un.org/en/climatechange> (last visited Mar. 16, 2023).

² See Mary Yang, *Extreme Weather is Brutalizing Asia*, FOREIGN POL'Y (Aug. 24, 2022, 5:07 PM), <https://foreignpolicy.com/2022/08/24/extreme-weather-asia-climate-change-floods-droughts-heatwave/>.

³ See generally *Climate Change & Food Systems*, GLOBAL FOOD POLICY REPORT (2022).

⁴ See *Climate Displacement in the News: India*, CLIMATE REFUGEES, <https://www.climate-refugees.org/spotlight/tag/India> (last visited Feb. 20, 2023).

coastal areas and extreme heat zones and relocated to different regions of the country.⁵

Additionally, due to its unique geography, economic opportunities, and lack of strict immigration laws, India is expected to see an influx of migrants from surrounding countries in the coming years.⁶ One of the largest countries in the region, India shares either a land or maritime border with seven countries, which enhances its status as an attractive destination for migrants.⁷ This mass relocation can further exacerbate climate change impacts; political instability and water and food insecurity are two main consequences of this mass migration.⁸ Deemed the “safe haven” of South Asia, India needs to prepare itself for this massive influx of migrants in order to effectively support climate refugees and continue to protect its residents from climate change impacts.⁹ Without effective legal protections, all residents of India, both established and new, will be negatively impacted by the mass migration into the country.¹⁰

Despite facing an unprecedented number of refugees, India lacks the legal frameworks to address this issue.¹¹ Unlike other major political powers, India has not signed the UN’s 1951 Refugee Convention or the 1967 Protocol, nor does the country have a robust domestic refugee policy.¹² Based on its actions, India is not yet willing to consider the plight of climate migrants within its borders.¹³ Most refugee cases are evaluated on an ad-hoc basis by the judiciary, making the rights of each refugee unequal, ambiguous, and

⁵ Amali Tower, *Extreme Climate Events Driving Migration and Trafficking in Odisha, India*, CLIMATE REFUGEES (June 2, 2022), <https://www.climate-refugees.org/spotlight/2022/6/2/india-pakistan>.

⁶ Michael Kugelman, *Climate-Induced Displacement: South Asia’s Clear and Present Danger*, WILSON CNTR. (Sept. 30, 2020) <https://www.wilsoncenter.org/article/climate-induced-displacement-south-asias-clear-and-present-danger>.

⁷ See Phillip Connor, *India is a Stop Source and Destination for World’s Migrants*, PEW RSCH. CNTR. (Mar. 3, 2017), <https://www.pewresearch.org/short-reads/2017/03/03/india-is-a-top-source-and-destination-for-worlds-migrants/>.

⁸ See *Climate Change 2021: The Physical Science Basis*, The Intergovernmental Panel on Climate Change (2021); *Climate Change and Water Scarcity in India*, GLOBAL WARMING (Jan. 21, 2021), <https://globalwarming.com/articles/climate-change-and-water-scarcity-in-india/>.

⁹ See Mahika Khosla, *The Geopolitics of India’s Refugee Policy*, SOUTH ASIAN VOICES (Sept. 22, 2022), <https://southasianvoices.org/the-geopolitics-of-indias-refugee-policy/>.

¹⁰ See generally Shivangi Seth, *Why India Needs a Refugee Law*, THE INTERPRETER (July 25, 2022), <https://www.lowyinstitute.org/the-interpreter/why-india-needs-refugee-law>.

¹¹ Khushboo Sandhu & Meryl Sebastian, *Rohingya and CAA: What Is India’s Refugee Policy?*, BBC NEWS (Aug. 19, 2022), <https://www.bbc.com/news/world-asia-india-62573446>.

¹² Bhairav Acharya, *A Step in the Right Direction But Shashi Tharoor’s Asylum Bill is Far From Perfect*, THE WIRE (Oct. 31, 2016), <https://thewire.in/external-affairs/shashi-tharoor-asylum-bill-2015>.

¹³ See *Climate Displacement in South Asia and India’s Imperative to Act*, SOUTH ASIAN VOICES (June 13, 2023), <https://southasianvoices.org/climate-displacement-in-south-asia-and-indias-imperative-to-act/>.

unpredictable.¹⁴ Although India does not have substantive legal protections for climate refugees, the country has a strong foundation for legal rights for all residents.¹⁵ In fact, India also recognizes the rights of animals and the rights of nature.¹⁶

International law has not granted protection to climate refugees, but it has provided a baseline for understanding their plight.¹⁷ The recognition of a right to a “clean, healthy, and sustainable environment” by the United Nations General Assembly,¹⁸ in conjunction with the Universal Declaration of Human Rights,¹⁹ creates a strong foundation to advocate for the legal protection of climate refugees.²⁰ In fact, the United Nations has acknowledged exacerbated climate conditions around the world and noted that imminent harm may be a basis for seeking legal protections.²¹ Based on the expansive interpretation of the right to life provided in India’s Constitution, as well as the evolving efforts to protect climate refugees under international law, there is a strong basis for and pressing need to codify legal protections for climate refugees in India.²²

While forming a climate refugee policy framework, India should define the term “climate refugee” in order to effectively support displaced individuals. Like most South Asian countries, India will have domestic migrants relocating to different regions of the country, as well as international migrants entering India from surrounding countries.²³ The policy framework should manage population movements and address security concerns arising from the influx of refugees. Ensuring that citizens and migrants feel adequately protected and have the resources to assimilate smoothly should be a high priority in creating the climate refugee policy.

Additionally, the Central Government of India must designate an administrative agency to coordinate the relocation of migrants and serve as a central authority for all refugee-related dialogue and policy. The national policy can then lead to localized adaptation plans which provide guidance for destination cities and other regions to accommodate the arrival of migrants based on local demographics, geography, and socioeconomic factors. A

¹⁴ Nagesh H. Sawant & Aparna Sanjeev, *Climate Refugees in India: A Wake-up Call for an Inclusive Policy*, 78 INDIA Q.: J. INT’L AFF. 371, 372 (2022).

¹⁵ See, e.g., CONST. OF INDIA, arts. 14, 21, and 51A(g).

¹⁶ See, e.g., Mohd Salim v. State of Uttarakhand, (2014) PIL 126 (2016) (India).

¹⁷ See discussion *infra* Part III.

¹⁸ Human Rights Council Res. 52/23, U.N. Doc. A/HRC/RES/52/23 (Apr. 4, 2023).

¹⁹ See generally G.A. Res. 217 (III) A, Universal Declaration of Human Rights, at 71 (Dec. 10, 1948) [hereinafter UDHR].

²⁰ See discussion *infra* Parts III.A, III.B.

²¹ See discussion *infra* Part III.B.

²² See discussion *infra* Parts II.A, III.

²³ Vivek Venkataramani & Parvathi Preethan, *How COVID-19 Pushed India’s Climate Migrants to the Brink?*, WRI INDIA (June 23, 2022), <https://wri-india.org/blog/how-covid-19-pushed-indias-climate-migrants-brink>.

robust climate refugee policy will serve the best interests of displaced individuals, current residents of India, and all levels of government.

Part I of this paper describes climate change in South Asia and how its impacts have forcibly displaced residents, leading to a massive influx of migrants to India.²⁴ Part II discusses the existing legal protections for refugees in India based on the Constitution, judicial decisions, and established rights-based protections for nonhuman entities. Part III explains the evolving international protections for climate refugees under international human rights law and the United Nations. Part IV proposes a policy framework for protecting climate refugees including an inclusive definition, resources for assimilation, and support from all levels of government. Clearly defining climate refugees to include those facing all types of displacement, and providing resources based on the nature of displacement, will ensure better assimilation and more effective support. Based on the current lack of legal protections for all refugees from the Central Government of India, this proposed policy framework will serve as the first step in ensuring climate refugees are properly recognized and adequately protected in India.

II. CLIMATE MIGRATION IN INDIA

Recently, India has seen a wide variety of climate abnormalities, including extreme heat, flooding, and an increase in natural disasters.²⁵ The continued effects of climate change have led residents to relocate in search of more habitable conditions.²⁶ India is a popular choice for transboundary migrants due to its unique geography and large economy.²⁷ India also receives internal migrants, most notably from residents moving away from deteriorating coastal areas.²⁸ The severe changes in climate conditions have also affected human rights; dwindling natural resources can lead to famine

²⁴ See discussion *infra* Part I.

²⁵ See *Climate Change Made Devastating Early Heat in India and Pakistan 30 Times More Likely*, WORLD WEATHER ATTRIBUTION (May 23, 2022), <https://www.worldweatherattribution.org/climate-change-made-devastating-early-heat-in-india-and-pakistan-30-times-more-likely/>; see also Scott Simon & Sushmita Pathak, *Heavy Rains in India Have Caused Deadly Flooding and Landslides*, NPR (July 15, 2023), <https://www.npr.org/2023/07/15/1187929831/heavy-rains-in-india-have-caused-deadly-flooding-and-landslides>; *India: Managing the Complex Problem of Floods and Droughts*, THE WORLD BANK (Aug. 17, 2023), <https://www.worldbank.org/en/news/feature/2023/08/17/india-managing-the-complex-problem-of-floods-and-droughts>; Murali Krishnan, *Climate-Vulnerable India Struck by Natural Disasters 'Almost Daily'*, RFI (June 11, 2022), <https://www.rfi.fr/en/international/20221106-climate-vulnerable-india-struck-by-natural-disasters-almost-daily>.

²⁶ See generally *Climate Displacement in the News: India*, *supra* note 4.

²⁷ Michael Kugelman, *South Asia is on the Front Lines of the Climate Crisis*, FOREIGN POL'Y (Aug. 12, 2021, 5:30 PM), <https://foreignpolicy.com/2021/08/12/south-asia-climate-ipcc-report-front-lines/>.

²⁸ See generally *Climate Displacement in the News: India*, *supra* note 4.

and political instability, and there will be a disproportionate impact on vulnerable groups.²⁹

A. *Climate Change Impacts*

More than half of all South Asians, which amounts to more than 750 million people, experienced one or more climate-related disasters in the last 20 years.³⁰ While the entire region is vulnerable to the worsening effects of climate change, India faces the brunt of these impacts based on its large population and unique geography.³¹ Extreme heat, intense rainfall, flooding, and natural disasters lead to disastrous events and unlivable conditions, including forest fires, reduction in crop yields, and death.³²

In 2022, a heatwave broke records and caused at least 25 deaths throughout the country.³³ March 2022 was the hottest month in India since the country began recording temperatures 122 years ago, and several cities across the country reached temperatures of 109.9 °F.³⁴ Although certain regions are prone to extreme heat and already experience high temperatures, “human-induced climate change” made the heatwaves 30 times more likely.³⁵ The heatwaves not only posed a risk to the health of people in this area but also caused severe drought and diminished overall crop yields.³⁶ In fact, the 2022 heatwave led to a 10 to 35 percent reduction in crop yields in various regions of India.³⁷ Between 2000 and 2002, mass crop failures were attributed to

²⁹ See Kugelman, *supra* note 8.

³⁰ *Climate and Development in South Asia*, THE WORLD BANK, <https://www.worldbank.org/en/region/sar/brief/integrating-climate-and-development-in-south-asia/integrating-climate-and-development-in-south-asia-region> (last visited Feb. 20, 2023).

³¹ *Id.*; see also Gordon Feller, *India in the Crosshairs of Climate Change*, WORLD-GRAIN (Jan. 20, 2023), <https://www.world-grain.com/articles/18002-india-in-the-crosshairs-of-climate-change#:~:text=NEW%20DELHI%2C%20INDIA%20%E2%80%94%20India%20is,of%20millions%20of%20poor%20people>.

³² See WORLD WEATHER ATTRIBUTION; Simon & Pathak; THE WORLD BANK; Krishnan, *supra* note 25.

³³ Arshad R. Zargar, *Severe Heat Wave Kills Dozens in India and Pakistan in a “Snapshot” of What’s to Come from Climate Change, Expert Says*, CBS NEWS (May 9, 2022, 2:53 PM), <https://www.cbsnews.com/amp/news/india-heat-wave-pakistan-climate-change-snapshot/#app>.

³⁴ *Climate Change Made Devastating Early Heat in India and Pakistan 30 Times More Likely*, *supra* note 25; Mary Gilbert, *Temperatures to Top 110 in New Delhi as Searing Heat Wave bakes India*, UPI (Apr. 26, 2022); Kumar Kunal, *March 2022 was India’s hottest in 122 years, says weather department*, INDIA TODAY (Apr. 2, 2022).

³⁵ *Id.*

³⁶ See *Id.*

³⁷ *Id.*

consecutive droughts in Northwest India.³⁸ This led to widespread starvation affecting around 11 million people.³⁹

In July 2005, Mumbai experienced over 37 inches of rain in less than 24 hours, which is the highest amount of rainfall recorded in the last 100 years.⁴⁰ The formation of cyclones along the Arabian Sea has increased in intensity since 1970, which has caused severe flooding throughout the region.⁴¹ The increase in extreme rainfall in India, which has contributed to severe floods, landslides, and mudslides, has turned deadly for some.⁴² In August 2022, at least 32 people died in flash flooding in northern India.⁴³ Floods across the country caused 959 deaths in 2020⁴⁴; this trend has accelerated in recent years and will only continue to worsen.

B. Climate-Induced Migration

Climate change impacts in India have caused mass migration of residents who are concerned about their safety or are forcibly displaced from their homes.⁴⁵ As organizations dedicated to supporting climate refugees have noted, “South Asia is a global hotspot for disaster displacement with 9.5 million new disaster displacements in 2019, the highest figure since 2012 . . . India, alone, recorded the highest number of disaster displacements in the world with five million new disasters in 2019.”⁴⁶ Extreme climate conditions have “proven to be too much for even stable economies . . . to survive,” forcing residents to uproot and relocate based on dangerous climate effects, causing mass climate-induced migration.⁴⁷ As conditions worsen, migration is

³⁸ Mannava. V. K. Sivakumar & Robert Stefanski, *Climate Change in South Asia*, in CLIMATE CHANGE AND FOOD SEC. IN SOUTH ASIA 13, 19 (Rattan Lal et al. eds., 2011).

³⁹ *Id.*

⁴⁰ *Id.* at 18.

⁴¹ *Id.* at 19.

⁴² *Id.* at 17-18.

⁴³ Swati Gupta, *At Least 32 Killed in India as Monsoonal Rains Lash Northern States*, CNN (Aug. 22, 2022, 6:25 AM), <https://www.cnn.com/2022/08/22/asia/india-floods-climate-weather-intl/index.html#:~:text=At%20least%2032%20people%20have,crews%20race%20to%20evacuate%20survivors>.

⁴⁴ Erick Burgueño Salas, *Number of Deaths Due to Floods Across India from 2010 to 2021*, STATISTA, <https://www.statista.com/statistics/1007627/india-number-of-deaths-due-to-floods/> (last visited Nov. 17, 2023).

⁴⁵ See generally *Climate Displacement in the News: India*, *supra* note 4 (describing recent instances of climate-induced migration in India, such as residents of the east Indian state Odisha being driven out of their homes due to extreme climate events).

⁴⁶ Amali Tower, *Cyclone Amphan Puts Focus Back on Millions Displaced by Climate Disaster*, CLIMATE REFUGEES (May 27, 2020), <https://www.climate-refugees.org/spotlight/2020/5/27-amphan>.

⁴⁷ Tower, *supra* note 5.

becoming a common response for residents facing changing environmental conditions.⁴⁸

While much of the disaster displacement is domestic, as residents move from rural to urban areas within their home countries, many are still forced to migrate to other countries.⁴⁹ India is the world's fifth-largest economy⁵⁰ and one of the largest refugee-receiving countries in South Asia as of 2020.⁵¹ Similar to New Zealand in the Pacific, India will be a "destination country" for climate-induced migration in South Asia.⁵² Refugees from a wide variety of countries find home in India, including Bangladesh, Bhutan, Sri Lanka, Afghanistan, Myanmar, and Nepal.⁵³ Major hotspots for climate migrants in the southern Indian highlands will be between Bangalore and Chennai.⁵⁴

Throughout India, 3.8 million people relocated due to climate-related disasters in 2020.⁵⁵ For example, the state of Odisha in eastern India, a generally prosperous area filled with natural resources and a fast-growing economy, is extremely vulnerable to climate extremities which have led to the mass migration of its residents.⁵⁶ The economy of this coastal state is primarily agriculture, putting the livelihood of its residents at the mercy of climate change.⁵⁷ Additionally, an estimated 300,000 workers migrate from Balangir every year, choosing to leave the drought-prone city in western Odisha.⁵⁸ With increased rainfall, risk of severe flooding, and direct impact to

⁴⁸ *Climate Displacement in the News: India*, *supra* note 4.

⁴⁹ See *Climate change and disaster displacement*, UNHCR, <https://www.unhcr.org/what-we-do/build-better-futures/environment-disasters-and-climate-change/climate-change-and> (last visited Nov. 17, 2023); Alexandra Tempus, *Are We Thinking About Climate Migration All Wrong?*, ROLLING STONE (Mar. 14, 2020), <https://www.rollingstone.com/politics/politics-features/climate-migration-predicted-number-climate-refugees-962251/>.

⁵⁰ Joe Myers, *India is Now the World's 5th Largest Economy*, WORLD ECONOMIC FORUM (Feb. 19, 2020), <https://www.weforum.org/agenda/2020/02/india-gdp-economy-growth-uk-france/>.

⁵¹ *India Among Top Three Host Countries of International Migrants, Refugees and Asylum Seekers in South-East Asia Region in 2020*, ECON. TIMES (July 20, 2022, 9:18 PM), <https://economictimes.indiatimes.com/news/india/india-among-top-three-host-countries-of-international-migrants-refugees-and-asylum-seekers-in-south-east-asia-region-in-2020/articleshow/93011530.cms?from=mdr>.

⁵² See Bhumika Sharma, *Climate Displacement in South Asia and India's Imperative to Act*, 9DASHLINE (Feb. 13, 2023), <https://www.9dashline.com/article/climate-displacement-in-south-asia-and-indias-imperative-to-act>.

⁵³ Sawant & Sanjeev, *supra* note 7, at 375.

⁵⁴ *Id.*

⁵⁵ Noah Lourie, *Justice for Odisha's Climate Migrants*, CLIMATE REFUGEES (Apr. 10, 2022), <https://www.climate-refugees.org/spotlight/2022/4/11/Odisha#:~:text=Today%2C%20it%20is%20one%20of,disasters%20including%20cyclones%20and%20drought>.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Sawant & Sanjeev, *supra* note 7, at 2.

food security, many residents have left the area, either temporarily or permanently.⁵⁹

An example of transboundary migration is the Sundurban Delta in Bangladesh, where an estimated 50 to 120 million climate refugees are crossing international borders and migrating to India.⁶⁰ “India will continue to be the natural choice for several thousands of Bangladeshis every year who cannot find any occupation in Bangladesh and elsewhere.”⁶¹ Residents from eastern and northern Bangladesh, as well as those residing in coastal cities, will migrate toward India and Pakistan.⁶² This trend is common throughout the world and will continue to grow as climate conditions worsen.

C. Effect on Human Rights

Human rights are closely intertwined with the implications of climate-induced migration.⁶³ The effects of climate change on natural resources as well as the potential for mass climate migration can lead to destabilization, community tension, and violence, especially in the most vulnerable communities.⁶⁴ “In the coming decades, conflict between India and Pakistan could break out over access to water in addition to territory, and Afghan refugees could be fleeing drought, not just war.”⁶⁵ Security threats and political instability are some of the most immediate repercussions as resources become scarce and living conditions become perilous.⁶⁶

A 2021 report published by the United Nations Intergovernmental Panel on Climate Change (IPCC) discusses the various impacts of climate change on the South Asian region.⁶⁷ The report highlights that mass climate-induced migration would trigger destabilization, predicting nearly 40 million climate migrants in South Asia by 2050.⁶⁸ Given that there are only about 200 million

⁵⁹ Tower, *supra* note 5.

⁶⁰ Sawant & Sanjeev, *supra* note 7, at 375.

⁶¹ *Id.* at 375

⁶² Kugelman, *supra* note 6.

⁶³ *See* Kugelman, *supra* note 8.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *See generally* Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2021), <https://www.ipcc.ch/report/ar6/wg1/>.

⁶⁸ Viviane Clement et al., *Acting on Internal Climate Migration*, GROUNDSWELL REPORT (2021), <https://www.unhcr.org/what-we-do/build-better-futures/environment-disasters-and-climate-change/climate-change-and>.

predicted climate refugees worldwide, South Asia—and India in particular—are extremely vulnerable to climate migration.⁶⁹

Additionally, climate change also causes adverse impacts to drinking water and food sources, causing issues for local populations.⁷⁰ For example, the extreme temperatures in Karnataka have affected food security.⁷¹ In 2012, a drought in the Jalna district of Maharashtra decreased local agriculture yields by 60%.⁷² Major cities in India, including Delhi, Bangalore, Chennai, and Hyderabad, face a severe water crisis that is projected to cause 40% of the population to lack access to drinking water by 2030.⁷³ The severe consequences of climate change are unequally distributed among different sectors of the population; the many hardships faced by residents of India are exacerbated for those with lower incomes, persecuted groups, or those who are forcibly displaced. Some of the most vulnerable are those who lack access to resources to adapt to the effects of climate change, such as having electricity and air conditioning at home during heat waves, as well as those who usually work outside to make a living.⁷⁴

Vulnerable and persecuted groups, which include Muslims and Rohingya refugees in India, face even more hardship if they lack legal protections.⁷⁵ For example, the existing tensions between India and Pakistan over the shared rivers are already a security threat to the region.⁷⁶ The Indus River, which is Pakistan's main surface water source, flows from Kashmir, a region controlled by India.⁷⁷ A wide variety of populations and demographics will be disparately impacted by the effects of climate change.

⁶⁹ See Renata Brito, *Report: Climate Change Could See 200 Million Move by 2050*, AP NEWS, (Sept. 13, 2021, 8:09 AM), <https://apnews.com/article/africa-climate-environment-and-nature-immigration-europe-69cada32a7c13f80914a2a7b48fb5b9c>.

⁷⁰ See generally Kamal Kumar Murari et al., *Extreme Temperatures and Crop Yields in Karnataka, India*, 8 REV. OF AGRARIAN STUD., 92 (2019); see also *Climate Change and Water Scarcity in India*, *supra* note 8.

⁷¹ See Murari, *supra* note 74.

⁷² Shoba Suri & Nehal Sharma, *Climate change poses the biggest risk to food security in India*, UNITED NATIONS OFF. FOR DISASTER RISK REDUCTION (Aug. 29, 2022), <https://www.preventionweb.net/news/climate-change-poses-biggest-risk-food-security-india#:~:text=An%20assessment%20of%20nine%20villages,to%20natural%20calamities%20and%20disasters.>

⁷³ *Climate Change and Water Scarcity in India*, *supra* note 8.

⁷⁴ See *Climate Change Made Devastating Early Heat in India and Pakistan 30 Times More Likely*, *supra* note 28; Salimah Shivji, *India's Outdoor Labourers Struggle to Cope as Country Faces New Reality of Extreme Heat Waves*, CBC (May 21, 2023) <https://www.cbc.ca/news/world/india-heat-waves-extreme-labourers-1.6850498#:~:text=India%20%E2%80%94%20where%20much%20of%20the,the%20end%20of%20this%20decade.>

⁷⁵ INDIA CONST. art. 51.

⁷⁶ See Gregory Pappas, *Pakistan and Water: New Pressures on Global Security and Human Health*, 101 AM. J. PUB. HEALTH 786 (2011).

⁷⁷ See *id.*

III. EXISTING LEGAL PROTECTIONS FOR CLIMATE REFUGEES IN INDIA

In India, there is no cohesive refugee policy or guidance⁷⁸; therefore, incoming refugees are evaluated on a case-by-case basis by the judiciary for legal recognition.⁷⁹ This approach, which is not sustainable or practical, provides unequal and unpredictable protections for refugees, especially those impacted by the effects of climate change.⁸⁰ Despite the judiciary taking action to protect some vulnerable communities, including refugees and non-human entities, the Central Government of India is not as supportive.⁸¹

Referred to as climate refugees or climate migrants, these individuals are being displaced from their homelands but lack the legal protections and national support needed to relocate safely and effectively.⁸² Many environmental and immigration law scholars have sought to define the term “climate refugee,” but the most applicable and cogent definition comes from the UN Environmental Programme (UNEP).⁸³ For the purpose of a book regarding environmental refugees, the UNEP has defined environmental refugees as “people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption that jeopardized their existence and/or seriously affected the quality of their life.”⁸⁴ Climate displaced individuals in South Asia would be covered under this definition. The need to protect climate refugees is not a new concept; however, the lack of action on the domestic and international levels only adds urgency to the issue.⁸⁵

India has been criticized for its poor handling of receiving refugees in the past, which underscores the need to rework its policies.⁸⁶ Free movement of refugees is not allowed in India, so many refugees are imprisoned upon

⁷⁸ See *India's Refugee Policy*, INDIAN NAT'L BAR ASS'N, <https://www.indianbarassociation.org/indias-refugee-policy/> (last visited Mar. 16, 2023).

⁷⁹ See discussion *infra* Section II.B.

⁸⁰ Compare *Dr. Malavika Karlekar v. Union of India and Another*, Criminal No. 583 of 1992 (India) with *Nandita Haksar v. State of Manipur*, Criminal No. 6 of 2021 (India).

⁸¹ See Hamsa Vijayaraghavan, *Gaps in India's Treatment of Refugees and Vulnerable Internal Migrants are Exposed by the Pandemic*, MIGRATION POL'Y INST. (Sept. 10, 2020) <https://www.migrationpolicy.org/article/gaps-india-refugees-vulnerable-internal-migrants-pandemic>.

⁸² For the purposes of this paper, the terms climate refugees and climate migrants will be used interchangeably.

⁸³ Essam El-Hinnawi, UNEP, *Environmental Refugees*, 4 (1985), <https://digitallibrary.un.org/record/121267?ln=en>.

⁸⁴ *Id.*

⁸⁵ Lucia Rose, *The World After Teitiota: What the HRC Decision Means for the Future of Climate Migration*, 12 SAN DIEGO J. CLIMATE & ENERGY L. 41, 43, 60-61 (2021).

⁸⁶ See, e.g., Khushboo Sandhu & Meryl Sebastian, *Rohingya and CAA: What is India's refugee policy*, BBC (Aug. 19, 2022) <https://www.bbc.com/news/world-asia-india-62573446>.

arrival.⁸⁷ “Only about 46,000 of 200,000 refugees in India have received formal protection from the UNHCR office in New Delhi, while others either receive state recognition or are entirely undocumented.”⁸⁸ The limited refugee policies of India apply only to political asylum seekers and do not include climate refugees. The ad-hoc regime for incoming refugees has not been expanded to climate migrants and the country is generally not receptive to the plight of climate refugees.⁸⁹

Currently, India provides a single-entry visa to stateless persons for one month.⁹⁰ Additionally, citizens of the Maldives do not need a visa upon visiting India, provided the stay is 90 days or less.⁹¹ India also has a specific subcategory of visas for Afghani nationals “staying in India due to disturbed conditions in that country.”⁹² This short-term visa is provided based on the current political conditions of the country.⁹³ These specific types of visas for residents of particularly vulnerable nations emphasize the country’s ability and willingness to receive residents of other countries on a short-term basis and can serve as a foundation for creating a humanitarian visa for climate refugees.

In addition to these subcategories of visas, there are other existing protections that provide a strong foundation for protecting climate refugees. The Constitution of India emphasizes India’s broad recognition of the right to life and environmental protection. Many rights listed in the Constitution are deemed Fundamental Human Rights, which makes them applicable to all residents of India – both citizens and non-citizens. In fact, the judiciary has recognized the rights of various refugees using reasoning from the Constitution’s right to life. Additionally, India has recognized the rights of nature and expanded the country’s recognition of rights for humans and non-human entities. While these various efforts have not yet extended to climate refugees, it shows India’s willingness to recognize a broad variety of rights and adopt progressive policies.

A. *Constitution of India*

India recognizes the importance of protecting the welfare of its environment and its people.⁹⁴ The country has a liberal Constitution with a provision ensuring the rights to life and personal liberty, as well as protection

⁸⁷ See Seth, *supra* note 10.

⁸⁸ Mahika Khosla, *The Geopolitics of India’s Refugee Policy*, STIMSON (Sept. 22, 2022), <https://www.stimson.org/2022/the-geopolitics-of-indias-refugee-policy/>.

⁸⁹ See Kugelman, *supra* note 8; see generally *India’s Refugee Policy*, *supra* note 83

⁹⁰ *Details of Visas Granted by India*, MINISTRY OF HOME AFFS. (INDIA), 35-36 (2018).

⁹¹ *Id.* at 35.

⁹² *Id.* at 36.

⁹³ *Id.*

⁹⁴ See, e.g., INDIA CONST. art. 51.

for the environment.⁹⁵ Specifically, Articles 14, 21, and 51A(g) of the Indian Constitution include measures to protect individuals and establish the right to a healthy environment.⁹⁶ These measures can be applied to climate migrants based on their right to life and protections for the environment.⁹⁷

The Indian judiciary has interpreted Articles 14 and 21 of the Indian Constitution—which protect the right to equality and the right to life and personal liberty, respectively—to protect refugees.⁹⁸ This is one of the few existing legal protections that refugees have, but this has not yet been applied to climate refugees.⁹⁹ Additionally, Article 51 requires every citizen to protect the environment and have compassion for living creatures;¹⁰⁰ this commitment to the environment and all living beings can be leveraged to protect those negatively affected by environmental factors. Under its Directive Principles of State Policy, Article 51 of the Indian Constitution further states that “the State shall ... foster respect for international law and treaty obligations in the dealings of organized peoples.”¹⁰¹ These articles in the Indian Constitution provide a strong legal framework for supporting climate refugees.

B. Judicial Decisions

Given the lack of codified protections for climate refugees, Indian case law has provided some protection for refugees.¹⁰² Through this ad-hoc legal regime, the judiciary and other administrative authorities evaluate whether protection for refugees and asylum seekers is appropriate on a case-by-case basis.¹⁰³

In *Dr. Malavika Karelkar v. Union of India*, the Supreme Court of India ruled in a Writ Petition that twenty-one Burmese migrants should not be deported from the Andaman Islands to Burma until their pending refugee status was officially confirmed, noting that “they posed no danger or threat to

⁹⁵ See INDIA CONST. arts. 21, 51A(g); see also INDIA CONST. art. 246 (listing the different sectors over which the Union government has jurisdiction as well as the sectors within the states’ purview).

⁹⁶ INDIA CONST. arts. 14, 21, 51.

⁹⁷ See discussion *infra* Section II.B.

⁹⁸ Sawant & Sanjeev, *supra* note 7, at 374; see also INDIA CONST. art. 14 (noting that the right to life is considered a fundamental human right and therefore applies to both citizens and aliens alike).

⁹⁹ See Ryan Plano & Amali Tower, *New Proposal to Address Climate Migration Protection Gap as India Hit Hard*, CLIMATE REFUGEES (June 8, 2022), <https://www.climate-refugees.org/spotlight/2022/06/08/india/legal>.

¹⁰⁰ INDIA CONST. art. 51.

¹⁰¹ INDIA CONST. art. 51.

¹⁰² See, e.g., *Dr. Malavika Karlekar v. Union of India*, Criminal No. 583 of 1992 (India); see also *Nandita Haksar v. State of Manipur*, Criminal No. 6 of 2021 (India).

¹⁰³ Sawant & Sanjeev, *supra* note 7, at 372.

the security of [the] country.”¹⁰⁴ By requiring the stay of the deportation of migrants until they were officially given refugee status, the court emphasized the need for a clear and consistent process for receiving refugees.

In *Nandita Haksar v. State of Manipur*, the High Court of Manipur at Imphal found that it was “just and proper” to extend protection under Article 21 of the Constitution to seven Myanmarese persons and grant them safe passage to New Delhi to enable them to secure protection from the UNHCR.”¹⁰⁵ Although there may be an argument that these individuals may pose a threat to the security of India, the court noted that “no material is produced in support of the same” and allowed the refugees to request legal protection.¹⁰⁶ Additionally, the court explained that “migrant” refers to individuals who move from one place to another, “especially in order to find work or better living conditions” while the word “refugee” refers to individuals who are forced to leave their country to escape war, persecution, or natural disaster.¹⁰⁷ This clarification shows the need for different definitions and support for individuals in different circumstances.

In contrast, India has received extensive criticism for its handling of the Rohingya refugee crisis¹⁰⁸ in 2015, with some scholars noting the country “[e]ll short of its international obligation and responsibility to protect [refugees].”¹⁰⁹ Two refugees petitioned the court for the release of imprisoned refugees, arguing that the Indian Constitution includes the concept of non-refoulement, which forbids the deportation of refugees to a country where they will be persecuted.¹¹⁰ However, the Supreme Court of India rejected a plea to stop the government from deporting around 150 Rohingya Muslims, ruling that officials can deport refugees provided that they follow due process.¹¹¹ The

¹⁰⁴ See *Dr. Malavika Karlekar v. Union of India*, Criminal No. 583 of 1992 (India).

¹⁰⁵ See *Nandita Haksar v. State of Manipur*, Criminal No. 6 of 2021 (India).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ The Rohingya refugee crisis refers to the mass killing, abduction, torture, rape, and other human rights violations by state actors against the Rohingya Muslim population in Myanmar. The United Nations estimates that thousands of Rohingya Muslims have been killed and hundreds of thousands have fled the area to avoid persecution. See Eleanor Albert & Lindsay Maizland, *The Rohingya Crisis*, COUNCIL ON FOREIGN RELS. (Jan. 23, 2020, 7:00 AM), <https://www.cfr.org/background/rohingya-crisis>; see also *Rohingya Crisis*, UNICEF, <https://www.unicef.org/emergencies/rohingya-crisis> (last visited Mar. 17, 2023).

¹⁰⁹ SNEHAL DHOTE & RITUMBRA MANUVIE, ROHINGYAS IN INDIA 4 (2021)

¹¹⁰ See *Rohingya Deportation*, SUPREME COURT OBSERVER, <https://www.scobserver.in/cases/mohammad-salimullah-rohingya-deportation-case-background/> (last visited Mar. 17, 2023).

¹¹¹ Zeba Siddiqui, *India's Top Court Paves Way for Rohingya Deportations to Myanmar*, REUTERS (Apr. 8, 2021, 9:00 AM), <https://www.reuters.com/article/us-myanmar-rohingya-india/indias-top-court-paves-way-for-rohingya-deportations-to-myanmar-idUSKBN2BV2FG>.

government maintains that the refugees illegally reside in India and pose a security threat to the country.¹¹²

Additionally, the Supreme Court of India has expanded the constitutional rights afforded to constituents, which provides a significant foundation for climate refugee protection by recognizing rights that many climate refugees lack.¹¹³ In *Maneka Gandhi v. Union of India*, the Supreme Court of India expanded the interpretation of Article 21 of the Indian Constitution and enhanced the rights afforded to individuals against the national government.¹¹⁴ The petitioner filed a writ petition in response to the Government impounding his passport without providing a reason, noting that the Government's action violated his constitutional rights.¹¹⁵ The Court noted that "to frustrate Article 21 ... is to rob what the constitution treasures," and determined that various rights, including the right to clean water and the right to livelihood, are protected under Article 21.¹¹⁶ In *Board of Trustees, Port of Bombay v. Dilipkumar*, the Supreme Court of India stated that human "life" under Article 21 has a much broader meaning than just animal existence.¹¹⁷ This case, which involves a dispute between an employer not allowing legal defense for an employee in a civil matter, emphasizes the importance of ensuring a high quality of life, as the holding of the case "does not connote only existence of continued drudgery through life."¹¹⁸

In 1990, the Supreme Court explained that the right to life, as listed in Article 21, consists of rights to food, clothing, a decent environment, and reasonable accommodations.¹¹⁹ The Supreme Court of India further expanded on this definition in *Virendra Gaur & Ors v. State of Haryana*, where the Court evaluated a request for construction on land intended for public use and concluded that the right to a healthy environment also comes under the purview of Article 21 of the Indian Constitution.¹²⁰ The Court held that the right to life under Article 21 embraced the "enjoyment of life," including the "protection and preservation of the environment," "ecological balance," and

¹¹² *Id.*

¹¹³ *Virendra Gaur & Ors v. State of Haryana & Ors* 1994 SUPPL. (6) SCR 78 (India).

¹¹⁴ *See Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (1978) (India). In this case, the Court established the "Golden Triangle of the Constitution," noting that any law that deprives a person of his personal liberty must meet the criteria of Article 14, the Right to Equality; Article 19, the Right to Freedom; and Article 21, the Right to Life and Personal Liberty of the Indian Constitution. This decision also requires that any constitutional issue regarding Article 21 must comply with the test of reasonableness.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Board of Trustees, Port of Bombay v. Dilipkumar*, AIR 1983 SC 109 (1982) (India).

¹¹⁸ *Id.*

¹¹⁹ *Shantistar Builders v. Narayan Khimalal Totame*, AIR 1990 SC 630 (1990) (India).

¹²⁰ *Virendra Gaur & Ors v. State of Haryana & Ors* 1994 SUPPL. (6) SCR 78 (India).

life “free from pollution of air and water without which life cannot be enjoyed.”¹²¹

C. Rights-Based Protections

India has made significant progress in recognizing a wide variety of rights-based protections, including those for non-human entities. The idea of promoting the rights of nature is a growing movement in India as courts at all levels of government are recognizing the individual rights of rivers,¹²² lakes,¹²³ glaciers,¹²⁴ and animals.¹²⁵

In the state of Uttarakhand, the High Court recognized the Ganges and Yamuna rivers as legal persons because of their “sacred and revered” status, which was supported by the Supreme Court of India.¹²⁶ The court noted that the rivers “support...the health and well-being of the entire community” and should be considered a juristic person.¹²⁷ Weeks later, the same court also recognized legal personhood for Himalayan glaciers, noting that any injury to these non-human bodies should be treated as an injury or harm caused to human beings.¹²⁸

In 2020, the Punjab and Haryana High Court recognized that Sukhna Lake, a reservoir in the Himalayan foothills, is a living entity and legal person.¹²⁹ In this case, the court did not explicitly provide a rationale for providing legal personhood to Sukhna Lake aside from ensuring its general preservation. This case is noteworthy because the Court granted rights to Sukhna Lake *sua sponte* and named all citizens of the region as *loco parentis*

¹²¹ *Id.*

¹²² Katie Surma, *Indian Court Rules that Nature has Legal Status on Par With Humans – and that Humans are Required to Protect It*, INSIDE CLIMATE NEWS (May 4, 2022), <https://insideclimatenews.org/news/04052022/india-rights-of-nature/#~:text=The%20Rights%20of%20Nature%20in%20India%E2%80%94%20Growing%20Movement&text=At%20least%20three%20of%20India’s,Earth%20have%20legal%20personhood%20status.>

¹²³ Unreported Judgments, Court on Its Own Motion v. Chandigarh Admin., CWP No. 18253 (2020) (India) (generally referred to as Sukhna Lake Case).

¹²⁴ Lalit Miglani v. State of Uttarakhand, 2017 MCC 139 (2017) (India).

¹²⁵ Surma, *supra* note 128.

¹²⁶ Ashley Westerman, *Should Rivers Have the Same Legal Rights as Humans? A Growing Number of Voices Say Yes*, NPR (Aug. 3, 2019, 8:02 AM), <https://www.npr.org/2019/08/03/740604142/should-rivers-have-same-legal-rights-as-humans-a-growing-number-of-voices-say-ye>; Mohd Salim v. State of Uttarakhand, 2014 PIL 126 (2016) (India).

¹²⁷ Mohd Salim v. State of Uttarakhand 2014 PIL 126 (2016) (India). The granting of legal personhood was subsequently revoked at the Superior Court level due to the impracticality of allowing one state to recognize legal personhood when the river passes through multiple states.

¹²⁸ Lalit Miglani v. State of Uttarakhand, 2017 MCC 139 (2017) (India).

¹²⁹ Sukhna Lake Case, *supra* note 129.

to save the lake from extinction.¹³⁰ This decision underscores the power of the judiciary to protect both humans and non-human entities from environmental degradation and destruction.¹³¹

Furthermore, animals have been extended the status of legal personhood by certain courts in India, as noted by the Uttarakhand High Court and the Punjab and Haryana High Court in 2020.¹³² While the Supreme Court of India has not explicitly declared that all members of the animal kingdom have legal rights, there has been significant progress on this topic.¹³³ In 2001, the Supreme Court of India recognized the plight of voiceless living beings and noted that animals should be protected from distressful and harmful situations caused by humans.¹³⁴

Most recently, a social and environmental advocacy organization filed a petition to ask courts to declare that all members of the animal kingdom have legal rights.¹³⁵ This petition is based on a 2014 Supreme Court decision ruling that humans owe legal duties to animals, which some have interpreted to imply that animals possess certain legal rights.¹³⁶ Although this right has not been explicitly recognized by the Indian National Government, the rights afforded to citizens in the Indian Constitution can apply to other beings. Extending the right to non-human entities only further begs the question as to why these rights have not been applied to climate refugees, another marginalized community in need of legal protection.¹³⁷

IV. INTERNATIONAL EFFORTS TO PROTECT CLIMATE REFUGEES

With the growing number of climate refugees worldwide and the significant impact on human rights, international law serves as a baseline in the formulation of climate policy and “must be understood as a part of a broader set of interrelated, mutually reinforcing processes and institutions-

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Surma, *supra* note 128.

¹³³ *See generally* Naveen Raheja v. Union of India, 9 SCC 762 (2001) (India) (recognizing the “distressing” situation for animals in captivity in zoos and natural reserves).

¹³⁴ *Id.*

¹³⁵ Surma, *supra* note 128.

¹³⁶ *Id.*; *see* Animal Welfare Board of India v. A. Nagaraja & Ors., (2014) 7 SCC 547 (India). Although the Supreme Court of India concluded that Article 51(A) of the Indian Constitution codifies compassion for all living creatures, the Ministry of Environment and Forests, an agency of the Central Government of India, circumvented the Supreme Court’s holding and promoted bullfighting as part of a traditional sport.

¹³⁷ There are several reasons why India may have chosen not to extend these rights, including national security threats and overpopulation. These reasons may also vary depending on whether migrants are internal or transboundary.

interwoven strands in a rope-that together pulls human rights forward.”¹³⁸ Although protections for climate refugees are still nascent, the safeguards afforded to asylum seekers and political refugees can be applied to those fleeing climate disaster as well.¹³⁹ The established international law and nonbinding policies have provided a foundation for these legal protections, most notably from the UN. In *Teitiota v. New Zealand*, a Kiribati citizen was denied refugee status in New Zealand because the effects of climate change did not pose an imminent threat to legally classify him as a refugee. In that case, the UN Human Rights Committee noted the important role of the international community and individual state actors in addressing the impacts of climate change.¹⁴⁰

The international community has acknowledged the increasing severity of climate change impacts around the world but has not yet established a framework to protect climate refugees. While these international policies are not binding on state actors and may not be directly applicable to the Indian government,¹⁴¹ the recognition of climate refugee rights serves a variety of purposes, including forming a common language, reinforcing the universality of human rights, providing juridical precision, and creating increased expectations of compliance.¹⁴² Domestic compliance with such international recognition of rights for climate refugees may not be feasible without a corresponding domestic policy regarding climate refugees, however.

A. UN Recognition

In July 2022, the UN General Assembly (UNGA) officially recognized the right to a clean, healthy, and sustainable environment as a human right.¹⁴³ While not legally binding, this resolution emphasizes the overlap between environmental protection and human rights, and the advancement of rights

¹³⁸ Douglass Cassel, *Does International Human Rights Law Make a Difference?*, 2 CHI. J. INT'L L. 121, 135 (2001).

¹³⁹ See *Crisis Looms*, CLIMATE REFUGEES, <https://www.climate-refugees.org/why> (last visited Mar. 17, 2023).

¹⁴⁰ *Historic UN Human Rights Case Opens Door to Climate Change Asylum Claims*, U.N. HUMAN RIGHTS, OFF. OF THE HIGH COMM'R (Jan. 21, 2020), <https://www.ohchr.org/en/press-releases/2020/01/historic-un-human-rights-case-opens-door-climate-change-asylum-claims#:~:text=In%202015%2C%20loane%20Teitiota's%20asylum,violated%20his%20right%20to%20life.>

¹⁴¹ In 2021 India voted against a UN Security Council resolution requesting the UN Secretary-General to create a security report on the impact of climate change to the country. See Press Release, Security Council, Security Council Fails to Adopt Resolution Integrating Climate-Related Security Risk into Conflict-Prevention Strategies, U.N. Press Release SC/14732 (Dec. 13, 2021).

¹⁴² Cassel, *supra* note 144, at 125-129.

¹⁴³ G.A. Res. 76/300 (Jul. 26, 2022).

that have not yet been recognized at the international level.¹⁴⁴ This significant step paves the way for the recognition of climate refugees, a long-overdue step in mitigating climate injustice.¹⁴⁵

The Universal Declaration of Human Rights (UDHR), which recognizes the right to seek asylum, provides another basis for protecting individuals who are displaced due to climate change.¹⁴⁶ The UDHR provides for the protection of inalienable rights and notes that every individual is entitled to the rights listed in the declaration without any distinction.¹⁴⁷ Article 14 establishes the right to seek asylum from persecution, providing individuals with a framework to seek legal protection when forced to leave their home.¹⁴⁸ As a party to the UDHR, India is bound by the international principle of non-refoulement, which prohibits States from removing individuals from their jurisdiction if there are substantial grounds to believe they would be at risk of harm upon return to their home country.¹⁴⁹

B. Judicial Decisions

In January 2020, the UN Human Rights Committee (UNHRC) made significant progress in protecting climate refugees in *Teitiota v. New Zealand*.¹⁵⁰ Petitioner Ioane Teitiota, who was fleeing intensifying climate change impacts in Kiribati, appealed his denial of refugee status in New Zealand, noting that rising sea levels and environmental degradation violated his right to life.¹⁵¹ The UNHRC evaluated the decision of the New Zealand Supreme Court and suggested that the definition of “refugee” from the 1951 Refugees Convention and the right to life under Article 6 of the International Covenant of Civil and Political Rights could be used to protect individuals displaced due to the effects of climate change.¹⁵² The UNHRC also noted that

¹⁴⁴ *See id.*

¹⁴⁵ *See id.*

¹⁴⁶ UDHR, *supra* note 19, at art. 14.

¹⁴⁷ Sawant & Sanjeev, *supra* note 7, at 374; UDHR, *supra* note 19, at art. 2.

¹⁴⁸ *See* UDHR, *supra* note 19, at art. 14.

¹⁴⁹ Many scholars criticized India for violating the principle of non-refoulement for its handling of the Rohingya refugee crisis. *See* discussion *supra* Part II.B; *see also* Sanya Samtani, *Deporting Rohingya Refugees: Indian Supreme Court Violates Principle of Non-refoulement*, OXHRH BLOG (Oct. 18, 2018), <https://ohrh.law.ox.ac.uk/deporting-rohingya-refugees-indian-supreme-court-violates-principle-of-non-refoulement/>.

¹⁵⁰ *Historic UN Human Rights Case Opens Door to Climate Change Asylum Claims*, *supra* note 146.

¹⁵¹ *Id.*

¹⁵² *Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, U.N. Human Rights Comm., Oct. 24, 2019. The international standard of the Right to Life is the same as the Indian standard in that it does not distinguish between citizens and aliens. Hum. Rts. Comm., *Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Communication No. 2727/2016*, ¶ 9.3, U.N. Doc. CCPR/C/127/D/2728/2016 (Oct. 24, 2019) [hereinafter *Teitioa*].

persons displaced across borders as a result of climate change and natural disasters should not be returned to a country where they would face serious risk of irreparable harm to their right to life, which is a significant legal victory in seeking protections for climate refugees.¹⁵³

Additionally, one of the main takeaways from this case is the determination that climate refugees who are in imminent danger cannot be deported to their home countries.¹⁵⁴ The UNHRC did not provide guidance on what may be considered immediate harm for migrants to secure legal protection, however.¹⁵⁵ The language of this decision requires interpretation of what qualifies as “imminence”¹⁵⁶ of harm, leading scholars to discuss the potential applications of this case.¹⁵⁷

Given that the holding of this case relies on the definition of “refugee” under the 1951 Convention, to which India is not a signatory, the general legal framework established for climate refugees is extremely significant. The *Teitiota* case emphasizes the need for codified protections for climate refugees, a clear interpretation of “imminent harm,” and the need for a national policy framework to include climate refugees. Without a robust policy framework, India will struggle to support millions of new migrants in addition to its 1.4 billion current residents.¹⁵⁸ The international recognition of the plight of climate migrants can be applied to the influx of refugees coming into India from neighboring countries, which underscores India’s need to be prepared for mass migration.

More recently, in 2022, the UNHCR discussed a similar situation in *Daniel Billy v. Australia*. In this case, indigenous inhabitants of the Torres Strait Islands, located off the coast of Australia, brought suit against the Australian government, claiming the country had violated their rights to life, family life, and culture under Articles 6, 17, and 27 respectively of the

¹⁵³ *Id.*

¹⁵⁴ *See id.* at ¶ 9.4.

¹⁵⁵ *See id.* at 4.

¹⁵⁶ *Id.* at ¶ 8.5.

¹⁵⁷ *See* Michelle Foster & Jane McAdam, *Analysis of “Imminence” in International Protection Claims: Teitiota v. New Zealand and Beyond*, 71 INT’L & COMP. L.Q. 975 (2022) (describing the difficulties in applying the imminence requirement for asylum claims created in *Teitiota* and suggesting that the analysis is better suited to consider the foreseeability of harm instead); *see also* Chhaya Bhardwaj, *Ioane Teitiota v. New Zealand Case Note*, 23 ENV’T L. REV. 263, (Jan. 7, 2020) (noting the lack of guidance from the Human Rights Committee regarding how to establish the imminence requirement set forth in *Teitiota* and emphasizing the need for further clarification in order to best support future claims from climate refugees).

¹⁵⁸

See Laura Silver et al., *Key Facts as India Surpasses China as the World’s Most Populous Country*, PEW RSHC. CNTR. (Feb. 9, 2023), <https://www.pewresearch.org/fact-tank/2023/02/09/key-facts-as-india-surpasses-china-as-the-worlds-most-populous-country/>.

International Covenant on Civil and Political Rights (ICCPR).¹⁵⁹ They claimed that Australia failed to take action to mitigate greenhouse gas emissions, which severely impacted their rights and livelihoods.¹⁶⁰ The UNHCR found that Australia violated the parties' rights under Article 17 by "failing to discharge its positive obligation to implement adequate adaptation measures to protect the authors' home, private life, and family."¹⁶¹ The Committee ruled similarly with respect to Article 27, noting that Australia's "failure to adopt timely adequate adaptation measures to protect [their] ability to maintain their traditional way of life and to transmit to their children...their culture and traditions..." violated their cultural rights under the ICCPR.¹⁶²

While the Committee noted that the plaintiffs' claim of a violation of their right to life is directly related to their cultural rights under Article 27, it ultimately found that Australia did not violate the parties' right to life under Article 6 of the ICCPR.¹⁶³ The Committee agreed with Australia's argument that the impacts of climate change are too tenuous to establish a "foreseeable risk... that could threaten their right to life."¹⁶⁴ The Committee relied on the reasoning in *Teitiota*, which noted that Kiribati took adaptive measures to resist the impacts of climate change which therefore does not violate an individual's right to life.¹⁶⁵ Both cases discuss the direct causation between a State's actions and the right to life of its residents, as well as the role of the State to "reduce existing vulnerabilities" to resist the impacts of climate change, emphasizing the Committee's examination of how nations react to changing climate concerns and address the needs of its residents.¹⁶⁶

V. PROPOSAL TO IMPLEMENT CLIMATE REFUGEE PROTECTIONS

Without any form of domestic asylum law or comprehensive refugee legislation, the arrival of climate refugees in India will exacerbate the country's limited resources and refugees will not have any form of legal protection. The few established refugee policies in the country, formed on an ad-hoc basis, have only applied to asylum seekers and refugees fleeing persecution and conflict. There is no precedent for protecting climate refugees

¹⁵⁹ *Daniel Billy v. Australia*, CCPR/C/135/D/3642/2019, U.N. Human Rights Comm., Sept. 22, 2022, Hum. Rts. Comm, *Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Communication No. 3624/2019*, ¶ 1.1, U.N. Doc. CCPR/C/135/D/3642/2019 (Sept. 22, 2022) [hereinafter *Daniel Billy*].

¹⁶⁰ *See id.* at ¶ 2.7-2.8.

¹⁶¹ *Id.* at ¶ 8.12.

¹⁶² *Id.* at ¶ 8.14.

¹⁶³ *Id.* at ¶ 8.8.

¹⁶⁴ *Id.* at ¶ 8.6.

¹⁶⁵ *Teitiota*, *supra* note 159, ¶ 9.12.

¹⁶⁶ *Daniel Billy*, *supra* note 166, ¶ 8.7; *Teitiota*, *supra* note 159, ¶ 9.12.

despite the rapidly growing number of residents being forcibly displaced each day.

The lack of an established policy for all refugees in India makes it difficult to include climate refugees in relevant policies. However, based on the progress made by the UN in recognizing the plight of climate refugees and the progressive application of rights afforded to refugees and other non-citizens, a cohesive climate refugee policy can be formulated in order to best support those displaced by climate change. Given that these individuals face unique challenges, an effective policy should be specifically tailored to climate refugees. The main components of an effective climate refugee policy framework are: (1) the implementation of pilot policies in local areas; (2) the ability to distinguish the different plights of various climate refugees and tailor legal protections to best protect each one; and (3) a designated authority to act as a center point for all refugee-related policy.

A. *Develop a Climate Refugee Policy*

The judiciary is not the appropriate branch to create and implement policy; instead, the executive branch should set forth various goals which are then implemented by Parliament.¹⁶⁷ The policy can be effectively implemented through pilot programs in regions of India that are particularly vulnerable to an influx of climate refugees or those with progressive government frameworks interested in implementing developing programs.¹⁶⁸ For example, the highland area between Bangalore and Chennai,¹⁶⁹ which is expected to receive a large number of climate migrants, could pilot the program and begin to provide protections for incoming refugees. The state of Tamil Nadu, where Chennai is located, is considered one of the more progressive states and may serve as a good example of a state interested in adopting climate refugee policy.¹⁷⁰ Based on the success of its

¹⁶⁷ See Vrunda Parekh, *Legislative Procedure of Parliament*, LEGAL SERV. INDIA, <https://www.legalserviceindia.com/legal/article-7253-legislative-procedure-of-parliament.html> (last visited Apr. 16, 2023); see also Satya Dev Bhagaur v. State of Rajasthan, Civil Appeal No. 1422 of 2022 (noting that courts should not interfere in policy matters unless clearly discriminatory).

¹⁶⁸ This could be structured in a similar manner to how state and local governments in the United States implement policies as a “laboratory of democracy.” This term was popularized by Supreme Court Justice Louis Brandeis in *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932). These sub-national policies can subsequently be scaled up and adopted as federal programs.

¹⁶⁹ See Sivakumar & Stefanski, *supra* note 41.

¹⁷⁰ See generally *Inclusive Growth in Tamil Nadu: The Role of Political Leadership and Governance*, TONY BLAIR INST. FOR GLOB. CHANGE (Jan. 20, 2020), <https://institute.global/policy/inclusive-growth-tamil-nadu-role-political-leadership-and-governance>; see also *Tamil Nadu a Progressive State, Says Ravi, Asks Youth to Build a Strong Nation*, THE NEW INDIAN EXPRESS (Oct. 7, 2022, 3:15 AM),

implementation, the Tamil Nadu state government can provide suggestions and guidance for other local governments planning to adopt the policy as well.

The central government of India has created a National Action Plan for Climate Change (NAPCC), which delineates methods for reducing carbon emissions while working towards developmental goals.¹⁷¹ This plan lists eight missions focused on different sectors, including energy efficiency and sustainable agriculture. Given that this policy framework is already established, it can be used to acknowledge climate refugees as a vulnerable group in need of legal support and codify protections for them. The NAPCC can list criteria for granting climate refugee status and explain the role of the central government in ensuring that protections are properly provided. Additionally, it can provide guidance for domestic Indian migrants who are relocating from rural to urban areas within the country. The local government of each state has adopted its own state action plan for climate change, which can further list protections and offer local support for climate refugees in different states.

The Indian Central Government's definition of "climate refugee" should encompass individuals relocating both within India as well as those who are migrating from a different country. Unlike the UN definition of "refugee," which only applies to individuals facing persecution,¹⁷² this definition should include anyone forcibly displaced from their home or relocating from uninhabitable areas based on environmental factors.¹⁷³ This definition can also extend to those in search of jobs due to their livelihoods being affected by climate change, sometimes referred to as economic migrants.¹⁷⁴ For example, fishermen in regions affected by coastal erosion or farmers working in the agricultural sector facing severe drought may choose to relocate in search of jobs that are not severely impacted by climate change.¹⁷⁵ Given that the effects of climate change affect the lives of individuals in vulnerable areas, those working in sectors that are directly related to climate change should also be considered climate refugees.¹⁷⁶ This definition should ensure that anyone considered a "climate refugee" under the policy should enjoy the rights

<https://www.newindianexpress.com/states/tamil-nadu/2022/oct/07/tamil-nadu-a-progressive-state-says-ravi-asks-youth-to-build-a-strong-nation-2505531.html>.

¹⁷¹ Harshal T. Pandve, *India's National Action Plan on Climate Change*, 13 INDIAN J. OCCUPATIONAL & ENV'T MED. 17 (2009).

¹⁷² *What is a Refugee?*, UNHCR, <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/#:~:text=A%20refugee%20is%20someone%20who,in%20a%20particular%20social%20group> (last visited Nov. 20, 2023).

¹⁷³ See, e.g., Auvro Alam, *Bangladeshi Fishers and Farmers at the Frontline of Climate Change*, THE DIPLOMAT (Mar. 16, 2023) <https://thediplomat.com/2023/03/bangladeshi-fishers-and-farmers-at-the-frontline-of-climate-change/>.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *See id.*

established by the Indian Constitution and should not be deported or detained upon arrival.

B. Legal Protections for Short-Term and Long-Term Refugees

All climate refugees, both internal and transboundary, will seek protection from the government as they assimilate into new areas. Using the national climate refugee policy established above, individuals displaced by both imminent disaster and long-term effects of climate change may seek protection best suited for the needs of each category of refugee. Additionally, transboundary climate refugees could be protected as a type of asylum seekers or enjoy the benefits of temporary protected status, ensuring India does not have an unsustainable population boom with the influx of climate refugees. Given that India already recognizes temporary residents as a subcategory of foreigners within the country, climate refugees can seek protection on a similar basis.¹⁷⁷ The need to recognize displaced people is already well-understood in India; the protections just need to apply to those displaced by climate change as well.

Transboundary climate migrants can be divided into two main categories: those seeking temporary refuge from sudden-onset disaster and those seeking longer-term support from slow-onset disaster.¹⁷⁸ Categorizing refugees into these two categories will require support from scientific studies and predictions. For example, a non-exhaustive list of sudden-onset disasters can include meteorological hazards (cyclones, typhoons, hurricanes, tornadoes), hydrological hazards (landslides, flooding), and geophysical hazards (earthquakes, tsunamis).¹⁷⁹ Refugees in the category of slow-onset disaster include those facing extreme heat, sea level rise, land degradation, and excessive rainfall.¹⁸⁰ Based on scientific predictions on the effects of rising sea levels, rising temperatures, and droughts, individuals can formally be deemed a “climate refugee” once a certain benchmark is met. These scientific metrics should be dynamic and adaptable to changing environmental conditions, and the climate refugee policy should include specific definitions of what constitutes each type of disaster and what thresholds must be met to fit into these categories.¹⁸¹

¹⁷⁷ *India’s Refugee Policy*, *supra* note 83.

¹⁷⁸ See *Terminology: Disaster*, U.N. OFF. DISASTER RISK REDUCTION, <https://www.preventionweb.net/terminology/disaster#:~:text=A%20slow%2Donset%20disaster%20is,that%20emerges%20quickly%20or%20unexpectedly> (last visited April 15, 2023).

¹⁷⁹ See generally *Key Concepts on Climate Change and Disaster Displacement*, U.N. HIGH COMM’R HUM. RTS. (2017).

¹⁸⁰ *Id.*

¹⁸¹ See generally *id.* (the quantitative requirements for the various thresholds can be left up to the discretion of the policymakers and adapted with advancements in environmental science).

While these two categories will be helpful in providing the most accurate and effective support for individuals facing different climate-related threats, there should still be one overarching definition of climate refugee to ensure no individual is unable to seek legal protection due to a technicality. In *Teitiota v. New Zealand*, the petitioner ultimately did not prevail in his claim for legal protection as there was no “imminent”¹⁸² threat despite the court’s acknowledgment of the plight of climate refugees, emphasizing the possibility of individuals losing the opportunity for legal protection based on technical factors.¹⁸³ In order to avoid a similar predicament for future claims, a clear definition of “imminence” is necessary to provide protection for those facing impending disasters.

The two categories of climate refugees will have different definitions of imminence, each of which should be clearly defined. Although slow-onset disaster is a different type of “imminent” threat, the definition should identify the circumstances under which those individuals are eligible to seek support from the judiciary given the *Teitiota* decision. Imminence in the context of a slow-onset disaster may include temperatures or rainfall exceeding a certain threshold. Additionally, one overarching definition for climate refugees will ensure that all individuals seeking protection will have their claims heard regardless of the climate-related threats they are facing, and the subcategorization of refugees will provide better and more effective support to specific needs and circumstances.

For transboundary migrants facing sudden-onset disasters, such as floods or hurricanes, short-term protection would be sufficient based on the needs of each type of refugee.¹⁸⁴ Similar to temporary protected status in the United States, which provides migrants from designated countries with legal residency for a specified amount of time,¹⁸⁵ India can provide refugees with a short-term legal status based on the regional environmental conditions and natural disasters. India currently provides an Emergency Visa to U.S. residents for family emergencies, which can be provided within 24 hours of application and is valid for up to six months of stay.¹⁸⁶ This framework can

The UNHCR provides general information on these definitions which can serve as a starting point in formulating the policy requirements).

¹⁸² *Teitiota*, *supra* note 159, ¶ 2.9.

¹⁸³ *See id.*

¹⁸⁴ The specific protections needed, the length of temporary protected status, and possibility of renewal are just a few of the many considerations that the climate refugee policymakers will have to consider.

¹⁸⁵ *Temporary Protected Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited May 26, 2023).

¹⁸⁶ *Emergency Entry Visa Guidelines*, CONSULATE GEN. OF INDIA, <https://www.cgisf.gov.in/page/emergency-visa/> (last visited Nov. 20, 2023); *Apply for an Urgent Indian Visa*, INDIAN E-VISA, <https://www.indian-visa-online.com/evisa-india-information/how-to-get-urgent-indian->

be applied to temporary status for climate migrants seeking a short-term stay in India due to natural disasters or climate conditions. The length of stay and requirements for receiving the visa can be determined by policymakers depending on the needs of refugees and the capacity of the Indian Government. Given that these refugees are relocating suddenly and quickly, temporary protection can be granted efficiently if they meet the delineated requirements for this type of protection provided in the policy.

Alternatively, migrants seeking longer-term protection from slow-onset disasters across borders, such as coastal erosion or drought, may receive a special humanitarian visa from the Indian government, similar to other countries that also receive a large number of international climate migrants.¹⁸⁷ For example, Argentina offers a three-year humanitarian visa for individuals from Central America, Mexico, and the Caribbean who are displaced by environmental disasters.¹⁸⁸ Other countries expecting an influx of climate refugees have proposed similar solutions to better serve those seeking refuge from climate disasters.¹⁸⁹ Given that India offers a wide variety of visas to specific categories of individuals, including stateless persons, citizens of the Maldives, and Afghani nationals,¹⁹⁰ a humanitarian visa can similarly protect individuals coming from vulnerable areas. The humanitarian visa for climate refugees can be structured in a similar manner to the existing visas by delineating specific conditions and regions for eligible migrants.

C. Implement a Refugee Support Framework

Given the lack of binding legal frameworks for climate refugees, trial courts in India lack the capacity to consider the unique struggles that transboundary climate refugees face.¹⁹¹ The Union Government should designate an authority specifically dedicated to managing refugees, serving as a center point for all refugee-related dialogue and policy. In the past, India has

visa#:~:text=This%20usually%20takes%20between%2018,you%2C%20and%20we%20can%20help (last visited Nov. 20, 2023).

¹⁸⁷ See generally Law No. 891, May 16, 2022, [34.923] B.O. 63 (Arg.); Ana Martín Gil et al., *How Can We Protect “Climate Refugees”?*, BAKER INST. FOR PUB. POL’Y (Oct. 13 2022), https://www.bakerinstitute.org/research/how-can-we-protect-climate-refugees#_ednref64.

¹⁸⁸ See Martín Gil et al., *supra* note 194.

¹⁸⁹ See Aliens Act (2004), §§ 88a, 109 (Finland) (providing humanitarian protection and/or temporary protection for individuals displaced due to environmental disaster); *Helen Dempster & Kayly Ober*, New Zealand’s “Climate Refugee” Visas: Lessons for the Rest of the World, CNTR. FOR GLOB. DEV’T (Jan. 10, 2020) (supporting adaptation efforts and providing other legal migration pathways as humanitarian visa was proposed but never implemented); National Migration Policy (2015), 2.2.2 (Nigeria) (acknowledging the impact of climate change on human mobility and providing specific guidance for internally displaced persons as well as international migration).

¹⁹⁰ See *Details of Visas Granted by India*, *supra* note 95.

¹⁹¹ See Seth, *supra* note 10.

formed agencies to address specific issues based on identified gaps and needs. For example, the National Rural Health Mission was formed in 2005 in response to addressing the health needs of certain states with weak public health indicators.¹⁹² Similarly, the Union Government can create a central agency dedicated to addressing the concerns of climate refugees. This agency would fall under the executive branch like other departments of the Union Government of India and can manage population movements to evaluate current climate-affected areas and growing hotspots for migrant relocation.

Similar to other refugee support networks in different countries, this agency can provide critical resources and services for displaced individuals.¹⁹³ These resources can include outreach, case management, health services, housing recommendations, and academic opportunities.¹⁹⁴ For example, the Finnish refugee resettlement program assesses the refugees' educational background, employment experience, health status, and general effect that resettlement may have on refugees to provide the most applicable and supportive resources.¹⁹⁵ This is conducted through personal interviews by the Ministry of Labour and the Directorate of Immigration.¹⁹⁶ India's climate refugee policy can be based on the Finnish process for refugee assimilation.¹⁹⁷

Alternatively, New Zealand identifies five goals in its Refugee Resettlement Strategy (NZRRS): self-sufficiency, housing, education, health and well-being, and community participation.¹⁹⁸ This approach ensures collaboration between the Government and refugees to ensure they are fully integrated socially and economically.¹⁹⁹ Immigration New Zealand, the country's immigration-focused agency, also notes the changing conditions that refugees face and continues to refresh its program in order to provide "agility to respond to changes in the settlement environment."²⁰⁰ New Zealand

¹⁹² See *National Rural Health Mission*, MINISTRY OF HEALTH & FAM. WELFARE, GOV'T OF INDIA, <https://nhm.gov.in/index1.php?lang=1&level=1&lid=49&sublinkid=969#:~:text=The%20National%20Rural%20Health%20Mission,population%2C%20especially%20the%20vulnerable%20groups> (last visited May 23, 2023).

¹⁹³ See generally THE OFF. OF REFUGEE RESETTLEMENT, THE U.S. DEP'T OF HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/ort/about/what-we-do> (last visited Mar. 20, 2023).

¹⁹⁴ *Id.*

¹⁹⁵ *Resettlement, Relocation, and Family Reunification*, IOM UN MIGRATION, <https://finland.iom.int/resettlement-relocation-and-family-reunification> (last visited Nov. 20, 2023).

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *New Zealand Refugee Resettlement Strategy*, NEW ZEALAND IMMIGR., <https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/refugee-resettlement-strategy> (last visited May 25, 2023).

¹⁹⁹ *See id.*

²⁰⁰ *Id.*

is an excellent example of providing a holistic framework for refugees and monitoring indicators of success to continuously improve the framework.²⁰¹

In Nigeria, the government supports six specific areas for refugees – legal protection, access to education, access to health care, freedom of movement, right to work/self-reliance, and time-limited humanitarian assistance.²⁰² Additionally, the government has included “matters of refugees, IDPs and their host communities in the national development plans.”²⁰³ This favorable asylum policy and various initiatives for refugees and displaced persons can serve as a starting point for India’s climate refugee assimilation policy.²⁰⁴

The Union Government of India is best equipped to oversee the central authority given its broad jurisdiction.²⁰⁵ States have little control in formulating their own policy, especially regarding immigration policy and national security.²⁰⁶ However, state governments can work directly with the central government to promulgate the policy and provide feedback to the central authority. The central agency can provide guidance on how best to address these concerns and ensure that the protections offered to climate migrants do not provide further complications or difficulties for the Union Government.

D. *Overcoming Obstacles to Implementation*

There are many potential concerns that may arise in the formulation of a climate refugee policy, all of which the central authority should consider and address. While security concerns have been the most prominent reason why India has not yet provided guidance for refugees, overstaying of visas and overburdened resources are other significant concerns. Overstaying of visas can be combated through a variety of methods, such as a robust climate refugee policy framework, implementation of penalties, and refugee tracking mechanisms. The burden on resources can best be addressed through collaboration with the refugee’s country of origin to request funding or other methods of support when a large portion of the population seeks refuge in India. The details and enforcement methods for these concerns can be implemented by the central authority and specified in the climate refugee policy.

²⁰¹ *See id.*

²⁰² *See U.N. High Comm’r for Refugees & Nat’l Comm’n for Refugees, Migrants, and Internally Displaced Persons (Nigeria)*, SUPPORTING REFUGEES AND HOST COMMUNITIES: THE GLOBAL COMPACT ON REFUGEES IN NIGERIA 5 (2021), https://www.unhcr.org/ng/wp-content/uploads/sites/121/2021/12/GCR-in-Nigeria-Booklet-10.12.2021_for-web.pdf.

²⁰³ *Id.* at 2.

²⁰⁴ *Id.*

²⁰⁵ *See* INDIA CONST. art. 246.

²⁰⁶ *See Seventh Schedule of Indian Constitution* (listing the legislative lists of the Union and State government, as well as areas that fall under the purview of both).

The security concerns that the Union Government noted in refusing refugees the opportunity to seek asylum within India can be addressed by national laws.²⁰⁷ This falls within the purview of the Ministry of Home Affairs under the Executive Branch and various security concerns can be monitored as India begins to provide protections for climate refugees.²⁰⁸ Many climate refugees will be internal migrants, which may cause a threat to public security as resources become strained.²⁰⁹ However, with clear assimilation guidance and support, resources can be well-managed and host areas can be better prepared for an influx of residents. Additionally, internal migration may pose a risk of cultural clashes as India has 22 different languages with hundreds of regional dialects,²¹⁰ and a wide variety of cultures and religions.²¹¹

As with any form of migration, instability and insecurity can lead to security threats, but with proper assimilation procedures and accessible resources for migrants these threats can be anticipated and addressed.²¹² Based on broad jurisdiction, a central government authority would be “well positioned to address national security concerns” that arise from India receiving transboundary migrants from neighboring countries.²¹³ The agency can monitor asylum seekers and track information from their country of origin before providing legal protection in India.²¹⁴ A clear and systematic method of providing legal protections for refugees will provide transparency and consistency for all parties involved.

VI. CONCLUSION

Climate change has led to environmental abnormalities around the globe, putting regions of South Asia at a heightened risk of drastic consequences

²⁰⁷ See Khosla, *supra* note 93; see also Seth, *supra* note 10.

²⁰⁸ See MINISTRY OF HOME AFFAIRS, <https://www.mha.gov.in/en> (last visited Nov. 20, 2023); see also *Home Affairs and Enforcement*, INDIA.GOV, <https://www.india.gov.in/topics/home-affairs-enforcement#:~:text=The%20Ministry%20of%20Home%20Affairs,of%20security%2C%20peace%20and%20harmony> (last visited Nov. 20, 2023) (noting the MHA ensures internal security within India and is tasked with maintaining home affairs).

²⁰⁹ Soumya Aswathi, *'Hyper'-Urbanisation and Migration: A Security Threat*, 108 *Cities* 102965 (2021).

²¹⁰ *Indian Languages*, MINISTRY OF EDUC. (INDIA), https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/languagebr.pdf (last visited May 27, 2023).

²¹¹ See generally *Distribution of Population by Religions*, CENSUS OF INDIA, 1 (2011).

²¹² See Anjali Nambiar, *Migration and National Security*, CNTR. FOR LAND WELFARE STUD. (Apr. 7, 2020), <https://www.claws.in/migration-and-national-security/>.

²¹³ Shreya Sen, *Understanding the Importance of a National Legislation for Refugee Protection in India*, RTS. IN EXILE (July 1, 2017), <https://rightsinexile.tumblr.com/post/162471010952/understanding-the-importance-of-a-national>.

²¹⁴ *Id.*

including drought, floods, and extreme rainfall. As residents relocate in search of more livable conditions, India is likely to see a large number of both internal and transboundary climate migrants. This mass relocation will exacerbate the effects of climate extremities in India, leading to a variety of potential consequences, including political instability and food insecurity.

While India does not have a cohesive refugee policy, the Constitution of India has a broad interpretation of the “right to life.” The judiciary has applied this right to refugees seeking political asylum on a case-by-case basis but has not yet applied it to climate refugees. India has been criticized for its ad-hoc and unpredictable handling of refugees, usually citing security threats as a reason to not provide protection to transboundary refugees. India has also made significant steps in recognizing the rights of “voiceless” entities. The Ganges and Yamuna rivers have been recognized as legal persons because of their “sacred and revered” status, which was supported by the Supreme Court of India. Animals and non-human species have also received this right, emphasizing the need to apply this same right to life to climate refugees.

The international community has recognized the emergence of climate refugees but has not yet provided clear guidelines or protections for them. The United Nations General Assembly established the right to a clean, healthy, and sustainable environment, noting the connection between environmental protections and human rights. The Universal Declaration of Human Rights recognizes the right to seek asylum, providing refugees with a framework to seek legal protection when forced to leave their home. Most notably, the United Nations High Commissioner for Refugees made significant progress in the cases *Teitiota v. New Zealand* and *Daniel Billy v. Australia*. In both cases, the court noted that rising sea levels and environmental degradation violate the right to life. Ambiguity remains, however, when determining the imminent threat of danger posed to individuals experiencing the effects of climate change.

To best support climate refugees, India should implement an inclusive policy that defines the term “climate refugee” to ensure both internal and transboundary migrants are included. Additionally, the Indian Government can provide temporary protected status to displaced persons seeking protections for the short term and can also provide humanitarian visas for those seeking longer-term legal protection. This policy would be best managed and implemented through a designated authority in India to serve as the center point of all climate refugee-related policies. With proper planning and support, India will be able to establish and implement a climate-induced migration policy to provide effective protections for climate refugees and enable India to emerge as a leader in the global community in addressing this crisis.