LEGAL POSITION OF CLIMATE MIGRATION: A STUDY FROM THE GLOBAL JUSTICE PERSPECTIVE

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ABSTRACT

The term "climate migration" or "internally displaced persons" have been here for some, time thought not the recognition it deserves and the outlook of safety, security or protection. Yet in this day and age the turmoil, destruction that follows with it, is now more then ever, has become an issue within the walls of international institutions. The slow-onset relation of climate change on the impact on migration has become more of a permanent status with the rapid growing of the increase of weather changes, rising of sea-levels, engulfing of coastal areas, extreme weathers, the migration of fishes in some African regions to the north pole. These disasters, have become more permanent. Some areas have become life-threatening to the rural livelihood, which has created scare resources, and establishing completion over the scarce resources amongst varied communities.

Mass migration at such increasing rate has been taking place every day, and the has been predicated of huge numbers, the mass stressors of climate change creates mass destruction in terms of "climate events" and "climate dividers" now there is no hesitation that migration has existed amongst our civilization, but in recent terms, climate change and its adverse effects have created, within this study we outline the limitation of international laws and the need and hour of acknowledging the chaos that is being established, we will also analyze and highlight the reaction of nation-states to such vulnerable communities, how many 'migrants' in the given terms of climate-induced disaster ? where do these 'migrants ' stand within the international community? And most importantly, what laws will they be governing and how will they be looked upon by the legal community.?

There is no hesitation to the fact that 'climate migrants' will indeed create a whole new legal pandora box, that the international communities concerned will have to look upon, as of now within this study we will notice the numbers predicated of huge increasing displacement done none other, then the stressor of 'climate change' the numbers will also be displayed with great emphasis to the current migration taking place and its impact.

1. Introduction

One of the most significant disruptors to the global order in the present day has been the emerging issue of climate change, particularly global warming. It is not only a worrying environmental phenomenon, but it has also catalyzed migration and displacement. "Natural calamities such as rising sea levels, desertification, deforestation, etc., have led to the abandonment of livelihoods and homes"[1]. The aforementioned events, conjointly referred to as 'Climate Migration', raise alarm over the position regarding the International legal order, particularly as it is projected to increase in the coming years. "The World Bank warns that by 2050, over two hundred million people will be victimized by climate-related problems"[2]. This makes the conspicuous absence of a coherent legal framework all the more harrowing.

Classification is the central legal problem that lies herein. "The 1951 Refugee Convention"[3] and "the 1967 Protocol"[4] serve as the cornerstone of international protection of migrants; however, they are limited in scope, inasmuch as their categorical protection is only afforded to persons persecuted on the bases of race, membership of a particular social group, or political opinion. "Persons affected by the adversity of climate are not included in the above definition and thus are left outside its protection"[5]. "Along the same lines is the position of human rights law, which does guarantee the right to life, dignity, and adequate housing"[6], but fails to offer the particular protection sought by climate refugees as its enforcement across national borders is not consistent and remains tattered. However, it does offer potential. "International Environment Law does a better job at it by establishing principles such as Intergenerational Equity and Common but

[1]Bodansky, D. (2017). International climate change law. Oxford University Press.
[2]Clement, Viviane; Rigaud, Kanta Kumari; de Sherbinin, Alex; Jones, Bryan; Adamo, Susana; Schewe, Jacob; Sadiq, Nian; Shabahat, Elham. 2021. Groundswell Part 2: Acting on Internal Climate Migration. World Bank. http://hdl.handle.net/10986/36248
[3]United Nations (1951). Convention relating to the Status of Refugees. 189 U.N.T.S. 150.
[4]United Nations (1967). Protocol relating to the Status of Refugees. 606 U.N.T.S. 267.
[5]Ibid.*, Supra Note 1.*

Differentiated Responsibilities"[7]. However, the categorical inclusion of the climate migration issue remains unaddressed.

The foregoing voids lead to profound questions as to global justice and the collective responsibility of nations. "Should states care for the life and well-being of those displaced by a crisis that is not their own doing?"[8] And if so, what shall be the extent of their liabilities, vis-à-vis relocation, resettlement, and other humanitarian assistance? "Moreover, there is the fact that developed nations have historically caused the bulk of emissions, which have aggravated climate change. Does this translate into increased moral responsibility on their part?"[9]

This paper seeks to investigate the foregoing issues by ascertaining a legal position of climate-induced migration within the fold of global justice. It is argued that offering international protection to climate migrants is not a simple policy matter, but a fundamental principle of the international legal framework, backed by morality. The shortcomings within the present structure, analysis of case laws, and application of normative theories of justice shall be intrinsic parts of this research. It is contended that the present gap can be sufficiently filled by a justice-oriented approach rather than relying on the strict letter of the law.

2. Conceptual Framework

The issues surrounding the uncertainty in defining the term itself cannot go unaddressed while aiming for a meaningful analysis of this topic. In contrast to well established terminologies such as "refugee" or "internally displaced persons", the phrase climate migration remains undetermined in the legal sphere. It is still wanted of international legal framework to provide an iron clad and grounded definition of the term "climate refugee" or "climate migration". International Organization for Migration has advanced the following definition: "persons or groups of persons who, predominantly for reasons of sudden or progressive change in the environment… are obliged to leave their habitual

[7]Ibid.*, Supra Note 1.*
[8]Pogge, T. (2008). World poverty and human rights: Cosmopolitan responsibilities and reforms (2nd ed.). Polity Press.
[9]Rawls, J. (1999). The Law of Peoples. Harvard University Press.

homes".[10] Regardless, this definition does not bear any binding force and the absence of normative clarity further complicates the extent of prospective legal protection.

This paper pivots on the difference between migrant and refugee. "Per the 1951 Refugee convention, a "Refugee" is a person who is plagued by well-grounded fear of persecution for reasons enumerated under Article 1A (2) thereof"[11]. This definition is directed to the exclusion of persons displaced by environmental calamities, et. al., and it has been time and again been pointed out as a glaringly barefaced lacuna by various courts and tribunals, most significantly being observed by the Human Rights Committee in the Teitiota v. New Zealand case, wherein it was held that "while climate change may place individuals at risk, such risks do not fit neatly within the Refugee Convention framework".[12] As a result, persons affected by climate-induced migration are categorized under the broader and weaker head of 'migrants' instead of the more concrete and better protected status of 'refugees'. on that account, their admission to and protection under the state of their arrival remains that state's sovereign prerogative, unencumbered by international humanitarian obligations.

As far as migrational movement within the territorial extents of a single state is concerned, there is some degree of protection offered to such affected people under the guise of "Internally Displaced Persons (IDP)" within the fold of "1998 UN Guiding Principles on Internal Displacement".[13] Besides, these propositions do not bind any states and are totally negated in cases of cross-border movement. At the international level, principles such as the right to life enshrined in Article 6 of the International Covenant on Civil and Political Rights, extend doctrines such as that of non-refoulment, which states that in the case of real risk of irreparable harm, states cannot deport individuals to countries which are rendered uninhabitable by climate change. Nevertheless, these claims still require refinement in the practice of international law and most states are reluctant to oblige themselves to such duties.

[10]International Organization for Migration (IOM). (2019). Glossary on Migration (2nd ed.). International Migration Law No. 34.
[11]Ibid., *Supra Note 3*. Article 1A (2).
[12]Ibid. *Supra Note 6.*
[13]United Nations. (1998). Guiding Principles on Internal Displacement. UN Doc E/CN.4/1998/53/Add.2.

"The point which ought to be made additionally is that the principles of international environmental law, such as 'Common but Differentiated Responsibility' and 'Intergenerational Equity' have already levied the duty of averting climate change on states and as a result of which, they are to assist vulnerable populations"[14]. Regardless, the underlying issue remains that these principles only form advisory guidelines and are non-justiciable. "They do not create any directly enforceable entitlements for the displaced persons"[15]. "An addition in the direction of change has been made by the Paris Agreement of 2015 which acknowledges "climate-induced displacement" via its preamble and establishes the Warsaw International Mechanism for Loss and Damage"[16]. But these mechanisms have not been amply able to provide legal status or mobility rights to the climate migrants.

With this doctrinal background, the application of theories of global justice provides perspective and interpretative value. A "duty of assistance" towards burdened societies is propounded by Rawls's Law of Peoples, "which may serve as academic backdrop to the assertion that legal obligation must extend towards people displaced by climate change"[17]. also noteworthy is Sen's approach toward "capability" which perpetuates the importance of safeguarding substantive freedoms. "These freedoms also encompass principles such as security and dignity, which are directly challenged by climate migration"[18]. The "Harm Principle", promulgated by Pogge, changes perspective; going from charity to accountability. It states that "*if global institutional arrangements have materially contributed to climate change, then those benefiting from such arrangements owe a duty of redress*"[19]. "The whole "state centric paradigm" is changed by the Cosmopolitan theories of justice, which argue that the wide obligations of protection are grounded in the equal moral worth of all persons, irrespective of nationality"[20].

[14]United Nations (1992). Rio Declaration on Environment and Development. A/CONF.151/26 (Vol. I).
[15]Ibid.*, Supra Note 1.*
[16]United Nations (2015). Paris Agreement, United Nations Treaty Series (UNTS), vol. 3156, p. 79, UNTC XXVII.7.d.
[17]Ibid., *Supra Note 9.*
[18]Sen, A. (2009). The idea of justice. Harvard University Press.
[19]Ibid.*, Supra Note 8.*
[20]Caney, S. (2010). Climate change and the duties of the advantaged. Critical Review of International Social and Political Philosophy, 13(1), 203–228.

Therefore, the conceptual framework of this paper is pivoted on two interdependent columns. First is the legal indeterminacy of climate migration within the fold of existing legal framework, vis-a-vis, the international human rights, refugee and environmental regimes. Secondly, the normative imperative, yielding from the theories of global justice which serve to mitigate the issue of climate migration. In consonance, these provide both, the problem statement and the analytical lens, through which one may assess the legal position of climate migration.

3. Existing Legal Framework

The body of laws currently in prevalence, which governs migration, only provides fragmented and tattered protection to the migrants affected by climate change. Climate-induced migration, as opposed to persecution-based migration which fits neatly within the parameters of international refugee law, is faced with a 'doctrinal vacuum'. This compels the parties concerned, be them states, courts, tribunals or international organizations, to "navigate a labyrinth of human rights law, refugee law and environmental law".

3.1 International Refugee Law

"The 1951 convention"[21] and the "1967 Protocol"[22] constitute the brunt of legal instruments regulating the movement and protection of refugees. "Article 1A (2)" of the former restricts the 'definition of refugee' as follows: *"persons who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, are outside their country of nationality and unable to avail themselves of its protection"*. "An aspect of this definition which calls for improvement is the fact that the term "persecution" is to the exclusion of environmental and climatic harm"[23].

[21]Ibid., *Supra Note 3.*
[22]Ibid., *Supra Note 4.*
[23]Goodwin-Gill, G. S., & McAdam, J. (2021). The refugee in international law (4th ed.). Oxford University Press.

So far, all endeavors to encompass climate related harm within the concept of persecution have been unfruitful. Courts and other state bodies have time and again rejected the plea for asylum yielding solely from environmental degradation. "A glaring example thereof is the case of AF (Kiribati) v. Minister for Immigration"[24] where the New Zealand Immigration and Protection Tribunal held that the severe environmental hardship faced by the applicant did not amount to persecution as per the term's meaning in the Refugee Convention. This restrictive interpretation highlights the failure of refugee law to operate as a vehicle for climate related displacement.

3.2 International Human Rights Law

Contrary to the foregoing, the realm of 'International Human Rights Law' offers heightened protection, although indirect. Core 'human rights' treaties such a 'ICCPR' and 'ICESCR' impose binding obligations upon states to adhere to and protect the rights which are part and parcel to survival and dignity. Particularly relevant is the principle of non-refoulment, which is a customary norm prohibiting the deportation of individuals to places where they are left open to harm to life or liberty.

"To this effect, a 'double edged' principle can be inferred from Teitiota v. New Zealand"[25] "where on one hand the 'Human Rights Committee' upheld New Zealand's deportation' order while simultaneously recognizing the potential that climate change had in exposing individuals to uninhabitable conditions which are antithetical to the Right to Life as enshrined in Article 6 of the ICCPR"[26]. This pronouncement did not extend formal refugee status to individual displaced by climate change, yet it opened the discourse for human rights law to serve a protector from uprooting asylees in extreme cases. Along similar lines, "the European Court of Human Rights has widened the ambit of human rights to include protection from degradation of the Right to Private and Family Life under Article 8 of the European Convention on Human Rights"[27]. "This

[24][2013] NZIPT 800413.
[25]Ibid., *Supra Note 6.*
[26]McAdam, J. (2020). Protecting people displaced by the impacts of climate change: The UN Human Rights Committee and the principle of non-refoulement. American Journal of International Law, 114(4), 708–725.
[27]Council of Europe (1950). Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europe. T.S. No. 5; 213 U.N.T.S. 221

denotes a shift in doctrinal trajectory towards the recognition of environmental displacement as a right based claim"[28].

3.3 International Environmental Law

"The traditional focus of environmental treaties in the international sphere has been on mitigation and adaptation, and seldom do they deal with migration as a legal issue. The United Nations Framework Convention on Climate Change (UNFCCC)"[29] creates obligations on its 'signatories to respond to the adverse effects of climate change' but fails to address inter-border movement caused a consequence of such effect. The Cancun Adaptation Framework of 2010 made a ground-breaking, but regrettably non-binding acknowledgement, by imposing on states to undertake "measures to enhance understanding, coordination and cooperation with regard to climate-induced displacement"[30]. "The Warsaw International Mechanism for Loss and Damage, established in 2013, added to the above work by recognizing displacement. However, the same is limited to financial and technical support and does not administer any individual rights"[31].

3.4 Regional Approaches

"Greater innovation is witnessed in regional instruments. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa"[32] enhances the definition of 'refugee' so as to include persons compelled to flee due to "events seriously disturbing public order." "Albeit the expressions here are not exclusively environmental, some African jurisdictions have interpreted this wider phrasing to encompass persons fleeing from natural disasters"[33]. in the same manner the " Cartagena Declaration of

[28]Kälin, W. (2019). The relevance of human rights law for the protection of environmentally displaced persons. In S. Behrman & A. Kent (Eds.), Climate refugees: Beyond the legal impasse? (pp. 46–65). Routledge.
[29]United Nations (1992). United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107.
[30]UNFCCC. (2011). Report of the Conference of the Parties on its sixteenth session (Cancun Agreements), FCCC/CP/2010/7/Add.1.
[31]Klepp, S., & Herbeck, J. (2016). The politics of environmental migration and climate justice in the Pacific region. Journal of Human Rights and the Environment, 7(1), 54–73.
[32]Organization of African Unity (1969). OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 U.N.T.S. 45
[33]Okoth-Obbo, G. (2001). Thirty years on: A legal review of the 1969 OAU Refugee Convention governing the specific aspects of refugee problems in Africa. Refugee Survey Quarterly, 20(1), 79–138.

Refugees in Latin America of 1984"[34], though not binding, integrates a wider humanitarian approach that exhibits potential to incorporate climate refugees within its fold[35].

In view of the constant threats of inundation faced by small island developing nations in the pacific, there has been an emergence in bilateral and regional arrangements. For instance, Fiji has committed to the resettlement of populations of its neighbor like Tuvalu and Kiribati in case of their permanent submergence owing to rising ocean levels. These commitments are accompanied by the stark realization that they are rooted in political agenda rather than legal obligation and are ultimately subject to discretion of the host state.

3.5 Soft Law and Global Compacts

"The most categorical acknowledgment of climate migration to date can be witnessed in the Global Compact for Safe, Orderly and Regular Migration of 2018"[36]. Climate change and disasters are recognized as drivers of migration under Objective 2 of the aforementioned. "It beseeches states to create corridors for regular migration owing to such challenges. But as a non-voluntary instrument, the efficacy of its provisions is entirely reliant on goodwill of the signatory states"[37]. "Policy guidelines acknowledging the crossroads between climate change and displacement have also been issued by the UNHCR"[38]. But all calls to expand the definition of "Refugee" have been subverted thus far. Complementary protection has been seen as the preferred mode of work in these scenarios.

To sum up, fragmentation and inconsistency have been constants to the legal position of climate migration internationally. Refugee law is formally incapable, whereas

[34]Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, November 22, 1984.
[35]Cantor, D. J. (2020). Environment, mobility, and international law: A framework for analysis. International Journal of Refugee Law, 32(3), 364–389.
[36]United Nations General Assembly Resolution A/RES/73/195, adopted on December 19, 2018.
[37]Betts, A. (2013). Survival migration: Failed governance and the crisis of displacement. Cornell University Press.
[38]UNHCR. (2020). Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters. UNHCR.

Human Rights law only offers case-specific remedies, those too, residual in nature. Environmental law, which could have been a synthesis that offers solution to both the problems above, has been confined to addressing the causes of climate migration while offering no respite therefrom. Innovative regional arrangements and soft-law instruments only partially recognize this issue and do not formulate any binding legal obligations. "This patchwork of a legal framework reflects that these issues are rooted in reluctance, unnecessarily high regard to sovereignty, and resource control"[39]. This results in a lapse in protection by which the climate migrants are left unaided and reliant on host state discretion and irregular enforcement, rather than on enforceable and justiciable legal obligations.

4. Global Justice Perspective

Doctrinal interpretation of existing sources does not do complete justice in addressing the protection gap faced by climate migrants. A normative assessment of global justice theories is necessitated in order to provide the moral and legal skeleton for realigning obligations and priorities across borders. From an international law perspective, principles of responsibility, equity and human dignity are illuminated by the theorists and these principles have the potential to transform into enforceable duties toward the marginalized and disaffected.

4.1 Moral Responsibility of States and International Organizations.

States have long perpetuated the principle of state sovereignty while controlling admission and exclusion at their borders. Erga omnes obligations and duties created under customary international law have always been circumscribing factors which operate to abridge absolute sovereignty. "In the present context, two principles occupy particular positions: the prohibition of non-refoulment and the duty of international cooperation, both of which find roots in the UN Charter".[40] "Looking at this assertion

[39]Werz, M., & Hoffman, M. (2015). Climate Change, Migration, and the Demand for Greater Resources: Challenges and Responses. SAIS Review of International Affairs 35(1), 99-108.
[40]United Nations (1945). Charter of the United Nations. Articles 54 & 55.

through the lens of global justice, it appears that state is collectively obliged towards climate-displaced persons, regardless of national boundaries"[41].

4.2 Rawls: Duty to Assist Burdened Societies.

John Rawls theorizes that a "Duty of Assistance" is owed by the 'well-ordered' societies, unto 'burdened societies', which are inept in providing just and functional political institutions. In the context of 'climate migration', "this principle translates into the duty of nations with greater capabilities, who have historically been liable for the bulk of carbon emission and exploitation of natural resources, to bear the burden of assisting persons affected by climatic adversities. In this sense, the term 'assistance' is not merely humanitarian, but also structural. It calls for permanent relocation, financial aid and cultural integration, catalyzed by policy reform"[42].

"The theories of Rawls frame a moral duty, which is supplemented legally by vehicles such as the Paris Agreement which provides for climate finance and adaptation assistance"[43]. Coupling this with the establishment of the Loss and Damage Fund at 'COP27', it may be inferred as the embryonic form of Rawlsian "Duty of Assistance", better yet, in treaty form and not simply political philosophy.

4.3 Sen: Capabilities and Human Rights.

Sen propounds that individuals should have real opportunities to not only survive, but to live lives that they actually value. This "Capability Approach" shifts focus from resource management to substantive freedoms. "The abilities to live in security and availing basic needs such as accessing food and water and forming societal ties are particularly eroded due to climate migration. Human rights treaties such as ICCPR and ICESCR can be interpreted in a manner consistent with positively obliging states to safeguard these capabilities beyond borders"[44].

[41]Nickel, J. W., & Francioni, F. (2014). The right to a healthy environment. In D. Shelton (Ed.), The Oxford handbook of international human rights law (pp. 701–722). Oxford University Press.
[42]Beitz, C. R. (2009). The idea of human rights. Oxford University Press.
[43]Ibid., *Supra Note 16.* Articles 9 & 11.
[44]Nussbaum, M. (2011). Creating capabilities: The human development approach. Harvard University Press.

"The practice of international human rights bodies resonates with this view. The impairing potential of climate change on right to life and dignity was highlighted in Teitiota"[45]. "This suggests a nexus between Sen's normative structure and actual treaty interpretation. Adding to this, the Supreme Court of Colombia in Future Generations v. Ministry of Environment"[46] has also recognized environmental rights in consonance with capacity-based reasoning.

4.4 Pogge: Harm and Institutional Responsibility.

Pogge argues that affluent states and institutions are responsible for the harm that is perpetuated through global structures at their behest. This harm-based concept of global justice, when applied to climate migration, implies that industrialized states which have disproportionately contributed to greenhouse gas emissions, carry the responsibility to settle and integrate into society, persons displaced by climatic factors. "This theory is aligned with the "Polluter Pays Principle" which is widely accepted owing to its enactment under the Rio Declaration"[47]. "It also resonated with obligations of reparation under the law of state responsibility"[48]. Pivotal aspects of climate migration such a reparations and relocation assistance are strengthened by Pogge's theory. It transforms charity into obligation, rooted in mens rea and actus reus on part of the wrongdoing state. It also challenges the voluntary structure of climate migration and evolves a quasi- criminal jurisprudence approach toward assigning responsibility upon states.

4.5 Cosmopolitanism v. Sovereigntism

It is the assertion of cosmopolitanist theories that all persons, regardless of their national affiliations are owed equal moral concern. "International human rights law has universalist aspirations, which are evident in the recognition of obligations erga omnes, such as prohibition of slavery and genocide"[49]. Climate migration paradigmatically tests

[45]Ibid., *Supra Note 4.*
[46]STC4360-2018.
[47]Ibid., *Supra Note 14.* Principle 16.
[48]International Law Commission (ILC). (2001). Draft articles on responsibility of states for internationally wrongful acts. Article 31.
[49]Held, D. (2010). Principles of cosmopolitan order. Public Reason, 2(1), 1–19.

cosmopolitanism, inasmuch, it inquires whether states are willing to accept that they owe duties of admission and integration which are on a higher plane tan sovereign prerogative.

In contrast, sovereign affirming principles assign primacy to state control over migration. Reasoning behind it can be assigned to the 'non-binding' character of 'the Global Compact on Migration'. The tension between these positions undermines the transaction of justice within the operation international law. However, the growing recognition of 'climate change' as a 'human rights' issue is a promising sign of a gradual shift toward cosmopolitanism.

4.6 Practical Justice Methods.

The application of the above discussed theories can potentially develop several pathways to practical legal solutions of the persisting issues. For example, Pogge's "Harm Principle" postulates that in the context of climate migration, developed states should be legally obliged to contribute to relocation funds, supported by the structure of the 'Loss and Damage mechanism'. Further, the expansive approach of the Cartagena Declaration enables the creation of a dedicated "Climate Migration Protocol". "This will also be backed by Rawlsian "Duty of Assistance" and Sen's "Capability Approach", as the doctrinal spine for such legal framework. Inspiration may also be taken from the Kampala Convention Model of the African Union"[50], regional treaties could be created which allow free and unfettered movement of migrants affected by climate change. These examples serve to illustrate how theories, when inculcated into existing international law, can actuate the creation of a coherent legal regime to accommodate climate migrants.

5. Towards a Normative Legal Framework

Incremental interpretation of existing legal instruments cannot do complete justice in bridging the protection gap looming over climate migrants. Designing a coherent legal

[50] African Union (2009). Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). UNTS v. 3014

framework which is designed to codify responsibilities, obligations and rights in conformity with 'international law' while responding to the stark reality of 'climate-induced migration', is the need of the hour. The three pillars on which this statute shall stand are: Recognition of Status, Allocation of Responsibility, and Institutional Enforcement.

5.1 Recognition of Status.

The primary concern is whether climate migrants should be considered legal category, distinct from refugees fleeing conventional 'persecution'. "Amendments to the 1951 Refugee Convention"[51] for the categorical inclusion of environmental displacement has been proposed. "However, such change is politically hard to digest, on account of resistance of states to expanding their refugee and asylum obligations"[52]. "A far more realistic approach is to develop a committed treaty, such as the 1954"[53] and 1961[54] Stateless conventions. The redeeming virtue of such treaty shall be the recognition of climate migrants as people entitled to protection under international refugee law.

"Existing laws such as the 1969 OAU Refugee Convention"[55] and "1984 Cartagena Declaration"[56], which are symbolized for their progressive phrasing which expands the concept of 'refugee' to cover wider threats to public order, can serve as the launch pad from which such a treaty may take off. Enacting an equally potent "Climate Migrant Protocol" would preserve the integrity of the Refugee Conventions while creating a separate protection regime.

5.2 Allocation of Responsibility.

A morally upright framework also owes to the world community to determine which

[51]Ibid., *Supra Note 3.*
[52]Foster, M. (2012). International refugee law and socio-economic rights: Refuge from deprivation. Cambridge University Press.
[53]United Nations (1954). Convention relating to the Status of Stateless Persons. United Nations, Treaty Series, vol. 360, p. 117.
[54]United Nations (1961). Convention on the Reduction of Statelessness. United Nations, Treaty Series, vol. 989, p. 175.
[55]Ibid., *Supra Note 32.*
[56]Ibid., *Supra Note 34.*

states carry a higher responsibility of accommodating climate migrants. "Distributive principles such as "Common but Differentiated Responsibilities" are already prominent norms within the international legal framework, which serve as foundation for apportionment of obligations in proportion to historical contribution to emissions and current capacities"[57]. "The law of state responsibility also recognizes the duty to make reparation for internationally committed wrongs"[58]. This has potential to expand in order to cover trans-boundary harms resulting from climate change.

Mandatory quotas, regional burden sharing agreements, and financial contributions to a relocation funder administered under the 'UNFCCC', are a few ways in which a division of responsibility may be pushed into shape. A mechanism of this sort not only ensure the equitable distribution of relocation costs but also takes the responsibility away from states to do the same, which may be otherwise ill administered. For example, if left to the will of powerful states, the Global South is exposed to unfair burden as it is least equipped to absorb new migrants.

5.3 Institutional Enforcement.

Even a treaty drafted with the utmost degree of care, is susceptible to fault, in the absence of effective institutions. In the present context, present bodies may be remodeled in lieu of creating completely new administrative organs. Despite its narrow refugee governance, the 'UNHRC' can be authorized to administer a complementary protection framework for climate migrants. "And alternate would be to organize a new supervising entity under the UNFCCC, inspired by the Warsaw International Mechanism for Loss and Damage"[59], which may be capable of monitoring state contributions.

[57]Rajamani, L. (2020). Innovation and differentiation in the Paris Agreement: Lessons from multilateralism for climate governance. Journal of International Economic Law, 23(2), 507–533.
[58]Chagos Advisory Opinion (Legal Consequences of the Separation of the Chagos Archipelago from Mauritius), Advisory Opinion, ICJ Reports 2019.
[59]UNFCCC. (2013). Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, FCCC/CP/2013/10/Add.1.

"This establishment, however, will be rendered meaningless without judicial enforcement. The case of Urgenda v. Netherlands"[60] is a fairly recent example of how courts and tribunals have accelerated the recognition of climate-related obligations. "The same can also be witnessed in the currently pending ICJ advisory opinion on states' obligations regarding climate change"[61].

5.4 Integration of Justice into Legal Design.

A framework oriented towards justice has to ensure that the obligations it creates are solely neither humanitarian, nor are they only discretionary. They must have the force of law behind them, thus creating enforceable duties. Positive law of such sort shall embed within its bounds, the Rawlsian "Duty of Assistance", Sen's "Capability Approach" and Pogge's "Harm Principle". to illustrate, capabilities of the states may be operationalized within a treaty by adding provisions which require states to subscribe to a minimum standard of health, education and housing for the relocated persons. On similar lines institutional responsibility for global harm may be enforced via compensation mechanisms funded by states with higher emissions.

5.5 Balancing Sovereignty and Obligation

A framework highly reliant on morality must balance the tension between global responsibility and sovereignty. Although states have a right to regulate admission of refugees, this right cannot be absolute. "The progressive qualification of state sovereignty into human rights obligations is demonstrated by the evolution of the principle of non-refoulment from being just a treaty obligation into a customary norm"[62]. Climate migration is projected to be on a similar trajectory. Binding norms can result from crystallization of soft law commitments under Global Compact. Practice and opinio juris shall also play a fundamental role in this.

[60]Urgenda Foundation v. State of the Netherlands, Supreme Court of the Netherlands, ECLI:NL:HR:2019:2007.
[61]United Nations General Assembly. (2023). Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change. UN Doc A/RES/77/276.
[62]Hathaway, J. C., & Foster, M. (2014). The law of refugee status (2nd ed.). Cambridge University Press.

Factors of both, legal, and moral bearing, necessitate the creation of a normative legal framework for climate migration. Among other provisions, it must include status recognition, allocation of responsibility in a manner which weighs equity and culpability equally, and the establishment of institutional enforcement mechanisms. Political resistance remains antithetical to the fact that international law has constantly evolved while responding to humanitarian crises. Moving beyond whimsical denial, and codifying obligations, reflective of the demands of justice in a globalizing world which is ravaged by climatic adversity, remains a challenge.

6. Conclusion and Summary of Findings

A fundamental lacuna in international law has been brought to light by the phenomenon of climate migration. In contract to refugees, who are protected by the aforementioned instruments, climate migrants are largely left to the mercy of domestic immigration law of the host states and on humanitarian gestures, which are often only symbolic. The framework governing international human rights does provide a certain degree of relief to their travesty, fails to cover cross border movement caused by degradation of the environment, for which systemic issues are to be blamed. "This lack in legal determination continues despite increasing scientific evidence that climate change threatens the very existence of vulnerable communities, such as those on sinking atolls in the Pacific Ocean and sub-Saharan Africa"[63].

Political reluctance to change only worsens the doctrinal rift. States have treated climate migration not as an obligation but as a matter of charity. Their approach has accorded primacy to sovereignty and migration control. Nevertheless, international law has constantly evolved in this regard. "There has been an increase in adaptation of the normative approach over abiding by strict statutory principles"[64]. A point of inflection has been brought to light by climate migration, which is, if we fail to codify and recognize these obligations now, we risk taking away the right to be seen and heard, preceded by the 'right to life', from vast communities, who in the face of adversity, will have no respite.

[63]McAdam, J. (2012). Climate change, forced migration, and international law. Oxford University Press.
[64]Goodwin-Gill, G. S., & McAdam, J. (2021). The refugee in international law (4th ed.). Oxford University Press.

From a 'global justice' perspective, failure of distribute justice and humanitarianism is highlighted by the non-recognition of climate migrants. The tragedy of it all is the fact that the societies who historically have contributed the least to phenomena such as global warming, are often the ones facing the brunt of its wrath. Shared responsibility, accountability and equity must therefore be inculcated into a legally binding framework to undo this harm. "The creation of a dedicated treaty regime which articulates these obligations within its fold, aided by regional arrangements and institutional policing would mark a pivotal leap in in aligning these imperatives with international law"[65].

The evolution of law in these spheres is ultimately dependent on political will and moral righteousness. The jurisprudence pronounced by international courts and tribunals has illustrated that judicial bodies can and do play a catalytic role in bridging legislative gaps. Judicial innovation alone cannot create durable protection for climate migrants; it also calls for categorical codification. The international community needs to shift its perspective from seeing climate migration on and exceptional case basis, to realizing that it is a foreseeable consequence of global warming. The case-to-case approach of international law needs to be shed and affirmation of the rights of 'climate migrants' must be treated as a matter to which the state is bound by legal obligation and not just discretionary benevolence.

[65]Docherty, B., & Giannini, T. (2009). Confronting a rising tide: A proposal for a convention on climate change refugees. Harvard Environmental Law Review, 33(2), 349–403.