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DISPLACED BY CLIMATE, UNPROTECTED BY LAW: CLIMATE REFUGEES AND INDIA'S NON-RATIFICATION OF THE 1951 REFUGEE CONVENTION

NATHAN SHINDE

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ABSTRACT

Floods, cyclones, droughts and rising seas are already forcing millions of people from their homes every year, and South Asia is among the regions most exposed. Most of those displaced remain within their own countries, but a growing number will cross borders when their homes become uninhabitable. International refugee law offers them little. The 1951 Refugee Convention protects those who flee persecution, not those who flee a disaster, and the term "climate refugee", though widely used, has no legal standing. This paper examines that protection gap and asks what it means for India, a country that receives large numbers of displaced persons from its neighbours and has itself recorded record levels of disaster displacement, yet is not a party to the Refugee Convention and has no national refugee law. The paper first sets out the scale and nature of climate-related displacement and explains why the Convention definition excludes most of those affected. It then examines the complementary protection that has developed through human rights law, including the Teitiota decision of the UN Human Rights Committee and the International Court of Justice's 2025 Advisory Opinion on climate change, along with regional instruments and soft-law initiatives. Turning to India, it analyses the constitutional protection available to non-citizens, the courts' recognition of non-refoulement and of a right against the adverse effects of climate change, and the Immigration and Foreigners Act, 2025. The paper argues that India's non-ratification need not mean inaction and proposes a national framework for humanitarian protection, temporary status and regional cooperation.

KEYWORDS

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Nathan Shinde
Leiden University

Abstract

Floods, cyclones, droughts and rising seas are already forcing millions of people from their homes every year, and South Asia is among the regions most exposed. Most of those displaced remain within their own countries, but a growing number will cross borders when their homes become uninhabitable. International refugee law offers them little. The 1951 Refugee Convention protects those who flee persecution, not those who flee a disaster, and the term "climate refugee", though widely used, has no legal standing. This paper examines that protection gap and asks what it means for India, a country that receives large numbers of displaced persons from its neighbours and has itself recorded record levels of disaster displacement, yet is not a party to the Refugee Convention and has no national refugee law. The paper first sets out the scale and nature of climate-related displacement and explains why the Convention definition excludes most of those affected. It then examines the complementary protection that has developed through human rights law, including the *Teitiota* decision of the UN Human Rights Committee and the International Court of Justice's 2025 Advisory Opinion on climate change, along with regional instruments and soft-law initiatives. Turning to India, it analyses the constitutional protection available to non-citizens, the courts' recognition of non-refoulement and of a right against the adverse effects of climate change, and the Immigration and Foreigners Act, 2025. The paper argues that India's non-ratification need not mean inaction and proposes a national framework for humanitarian protection, temporary status and regional cooperation.

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1. Introduction

The image of the refugee in international law was formed in the aftermath of the Second World War. It is the image of a person forced to flee because of who they are or what they believe, persecuted by their own State or left unprotected by it. That image still shapes the law today. Yet the people who will make up some of the largest movements of this century may look quite different. They are farmers whose fields have turned saline, fishing families whose villages have been swallowed by the sea, and urban workers whose neighbourhoods flood every monsoon. They are not fleeing persecution. They are fleeing a changing climate.

The scientific evidence on this point is now firm. The Intergovernmental Panel on Climate Change has found that climate and weather extremes are increasingly driving displacement in all regions, with small island States disproportionately affected, and that future displacement will depend heavily on how far warming is limited and how well societies adapt.[1] In 2024 alone, disasters triggered 45.8 million internal displacements worldwide, the highest figure since monitoring began in 2008. India recorded 5.4 million of these, its highest figure in twelve years, with floods responsible for about two-thirds.[2] The World Bank has projected that, without concerted action, more than two hundred million people could be forced to move within their own countries by 2050 because of the slow-onset impacts of climate change, with South Asia among the most affected regions.[3]

Most of this movement will be internal, but not all of it. When land disappears or becomes unable to sustain life, people will cross borders, and some of them will come to India. India shares long land borders with Bangladesh, Nepal, Bhutan and Myanmar, all of which face serious climate risks, and it has a long history of receiving people in distress. Yet India is not a party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, and has no national law defining who is a refugee or how protection is to be granted.

This paper examines the protection gap facing people displaced across borders by climate change, with particular attention to India. Part 2 explains the nature of climate displacement, the problems of terminology and South Asia's particular exposure. Part 3 analyses why the 1951 Convention does not, in most cases, protect those displaced by climate change. Part 4 examines complementary protection under international human rights law, including recent decisions of the UN Human Rights Committee and the International Court of Justice. Part 5 surveys regional and soft-law responses. Part 6 turns to India's legal framework, and Part 7

[1] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability, Summary for Policymakers*, Contribution of Working Group II to the Sixth Assessment Report (Cambridge University Press, Cambridge, 2022).
[2] Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2025* (IDMC, Geneva, 2025).
[3] Viviane Clement, Kanta Kumari Rigaud, et al., *Groundswell Part 2: Acting on Internal Climate Migration* (World Bank, Washington, DC, 2021).

considers why India has not ratified the Convention and what that choice means. Part 8 offers recommendations and Part 9 concludes.

2. Understanding Climate Displacement

2.1 The Problem of Terminology

The phrase "climate refugee" is widely used in the media and in public debate, but it is legally misleading. In international law, a refugee is a person who meets the definition in the 1951 Convention, and that definition does not refer to environmental factors. Scholars and international agencies have therefore preferred terms such as "persons displaced in the context of disasters and climate change" or "climate-related displacement". These phrases are cumbersome, but they reflect two important realities: that climate change rarely acts alone, and that the people affected are not, for the most part, refugees in the legal sense.

Jane McAdam's influential study made the point that the search for a single legal category of "climate refugee" risks obscuring the variety of situations involved.[4] Some people flee sudden disasters such as cyclones and floods and may be able to return home within months. Others leave gradually as droughts lengthen, soils degrade or seas rise, often in ways that look like ordinary economic migration. Still others may be relocated by their own governments from areas that have become too dangerous to inhabit. Each situation calls for a different legal response.

2.2 Climate as a Threat Multiplier

Climate change seldom causes displacement on its own. It interacts with poverty, conflict, weak governance and inequality, making existing vulnerabilities worse. A drought may push a farming family into debt, which in turn forces a young member to migrate for work. A flood may destroy the livelihoods of a community already marginalised, fuelling tensions with neighbours over scarce land and water. In some situations, competition over resources aggravated by climate stress can contribute to violence, and the people who flee that violence may then have a stronger claim to refugee protection. This interaction is precisely why a purely causal test, asking whether climate change was the reason a person moved, is so difficult to apply, and why legal protection must be built around the needs of the person rather than the label attached to the cause.

2.3 South Asia's Particular Exposure

South Asia combines several of the factors that make climate displacement likely. Large populations live in low-lying deltas and along coastlines, as in the Ganges-Brahmaputra delta shared by India and Bangladesh. Hundreds of millions depend on rivers fed by Himalayan

[4] Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press, Oxford, 2012).

glaciers and on monsoon rains that are becoming more erratic. Agriculture remains the main source of livelihood for a large share of the population, making households directly dependent on stable weather. Cyclones in the Bay of Bengal, floods in the Brahmaputra and Indus basins and recurrent heatwaves across the plains already displace millions of people every year. The region's borders, drawn in the twentieth century, cut across shared ecosystems and long-standing patterns of seasonal migration. People in the Sundarbans or the hill districts of the north-east have moved across these lines for generations. As climate pressure grows, such movement will increase, and the legal systems of the region will be asked to decide whether people who cross are migrants to be removed or people in need of protection.

3. The 1951 Refugee Convention and Its Limits

3.1 The Convention Definition

The Convention defines a refugee as a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of their nationality and is unable or, owing to such fear, unwilling to avail themselves of the protection of that country. Its central guarantee is the principle of non-refoulement, which prohibits returning a refugee to a territory where their life or freedom would be threatened on account of one of those grounds.[5] The definition has three elements that climate-displaced persons will usually struggle to satisfy: persecution, a connection to one of the five grounds and presence outside the country of origin.

Persecution implies serious harm inflicted by human agency, either by the State or by actors the State is unwilling or unable to control. The effects of climate change are, in a legal sense, indiscriminate. A cyclone does not select its victims by race or religion, and even if historic emissions by industrialised States are the root cause of climate change, those States are not persecuting the people of a particular coastal village. The leading treatise on refugee law accordingly treats claims based purely on environmental harm as falling outside the Convention, while recognising that environmental disasters may intersect with persecution in particular cases.[6] Moreover, most climate-displaced persons never leave their own country, and the Convention does not apply to internally displaced persons at all.

3.2 The Courts and the Convention: Teitiota

The limits of the Convention were tested in the case of Ioane Teitiota, a national of Kiribati, a low-lying Pacific State acutely vulnerable to sea-level rise. He sought refugee status in New

[5] Convention relating to the Status of Refugees, 1951, arts. 1A(2) and 33, read with the Protocol relating to the Status of Refugees, 1967.
[6] Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford University Press, Oxford, 4th edn., 2021).

Zealand on the basis that rising seas, saltwater contamination of fresh water and land disputes caused by overcrowding made life in Kiribati increasingly precarious. The New Zealand Supreme Court dismissed his claim, holding that he did not face persecution or serious harm of the kind protected by the Convention or the complementary protection provisions of New Zealand law. Importantly, however, the Court added that its decision did not mean that environmental degradation resulting from climate change could never create a pathway into the Convention or protected-person jurisdiction.[7] That cautious opening anticipated later developments in human rights law.

There have been proposals to amend the Convention or adopt a protocol to cover environmental displacement. These have attracted little support among States, partly because of concern that reopening the Convention might weaken existing protections and partly because many States are unwilling to accept new obligations. The more productive path has been to look beyond the Convention to other sources of protection.

4. Complementary Protection under International Human Rights Law

4.1 The Teitiota Views of the Human Rights Committee

After his removal from New Zealand, Mr Teitiota brought a complaint to the UN Human Rights Committee, alleging that his deportation violated his right to life under the International Covenant on Civil and Political Rights. The Covenant prohibits arbitrary deprivation of life and inhuman treatment, and the Committee has long held that these provisions imply an obligation not to remove a person to a place where there is a real risk of irreparable harm.[8] In views adopted in 2019, the Committee found no violation on the facts, reasoning that the risk to Mr Teitiota was not yet sufficiently imminent and that Kiribati, with international assistance, had a period of ten to fifteen years to take measures to protect its population. But the Committee accepted the crucial principle: the effects of climate change in receiving States may expose individuals to a violation of their rights to life, thereby triggering the non-refoulement obligations of sending States.[9]

The significance of this finding is difficult to overstate. It establishes that a person displaced by climate change may, in sufficiently serious circumstances, be protected from return even though they are not a refugee. The protection flows from human rights obligations that bind States regardless of whether they have ratified the Refugee Convention, a point of direct relevance to India, which is a party to the Covenant.

[7] *Teitiota v. Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107 (New Zealand).
[8] International Covenant on Civil and Political Rights, 1966, arts. 6 and 7.
[9] *Ioane Teitiota v. New Zealand*, Human Rights Committee, Views adopted Oct. 24, 2019, U.N. Doc. CCPR/C/127/D/2728/2016 (2020).

4.2 Climate Change and the Right to Life at Home

The Committee developed its approach further in a complaint brought by Torres Strait Islanders against Australia. It found that Australia's failure to take timely and adequate adaptation measures to protect the islanders against the adverse impacts of climate change violated their rights to private, family and home life and their right to enjoy their own culture.[10] This decision addresses the other side of the problem: the obligation of States to protect people from being forced to move in the first place. Effective adaptation, including coastal protection and planned relocation carried out with community consent, is itself a human rights duty.

UNHCR has drawn these strands together in guidance explaining that, although climate change and disasters do not by themselves create refugees, people fleeing them may qualify for refugee status where the effects of climate change interact with conflict, violence or discriminatory denial of protection, and may otherwise be entitled to complementary protection under human rights law.[11] For example, a government that deliberately withholds disaster relief from a disfavoured ethnic or religious group may be engaged in persecution, bringing the affected persons within the Convention definition.

4.3 The International Court of Justice's Advisory Opinion

On 23 July 2025, the International Court of Justice delivered its unanimous Advisory Opinion on the Obligations of States in respect of Climate Change. The Court confirmed that States have binding obligations relating to climate change under treaty law, customary international law and human rights law. On displacement, it referred to the *Teitiota* views and recognised that the principle of non-refoulement may be engaged where the effects of climate change create a real risk of irreparable harm to the right to life. It also observed that sea-level rise threatens territorial integrity and creates a risk of displacement with consequences for the right to self-determination, and indicated that the disappearance of territory does not necessarily lead to the loss of statehood.[12] This followed the advisory opinion of the International Tribunal for the Law of the Sea, which had held that greenhouse gas emissions constitute marine pollution and that States have obligations of due diligence to prevent, reduce and control it.[13]

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[10] *Daniel Billy et al. v. Australia*, Human Rights Committee, Views adopted July 21, 2022, U.N. Doc. CCPR/C/135/D/3624/2019.

[11] UNHCR, *Legal Considerations regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* (UNHCR, Geneva, Oct. 1, 2020).

[12] *Obligations of States in respect of Climate Change*, Advisory Opinion, International Court of Justice (July 23, 2025).

[13] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, Case No. 31, International Tribunal for the Law of the Sea (May 21, 2024).

Advisory opinions are not binding in the way that judgments in contentious cases are, but they carry great authority as statements of the law. The ICJ's opinion confirms that climate displacement is no longer a matter merely of humanitarian charity. It sits within a framework of legal obligations owed by all States, including India.

4.4 The Guiding Principles on Internal Displacement

Since most people displaced by climate change will remain within their own countries, the protection of internally displaced persons is equally important. The UN Guiding Principles on Internal Displacement, presented to the Commission on Human Rights in 1998, expressly include persons forced to flee as a result of natural or human-made disasters within their definition of internally displaced persons, and set out rights relating to protection from displacement, protection during displacement and return, resettlement and reintegration.[14] Although not a treaty, the Guiding Principles restate obligations drawn from existing human rights and humanitarian law and have been widely accepted as an authoritative framework. They are relevant to India both as a guide to the treatment of its own citizens displaced by floods and cyclones and as a reminder that effective internal protection reduces the pressure for people to cross borders at all.

5. Regional and Soft-Law Responses

5.1 Regional Refugee Definitions

Some regions have adopted broader refugee definitions that may cover people displaced by disasters. The 1969 Convention of the Organization of African Unity extends refugee status to persons who flee events seriously disturbing public order,[15] and the 1984 Cartagena Declaration recommends a similar extended definition for Latin America.[16] Whether a sudden disaster amounts to an event seriously disturbing public order is debated, but these definitions show that the Convention model is not the only possible one. Africa has also adopted the first binding regional instrument on internal displacement, which requires States to take measures to protect and assist persons displaced by natural or human-made disasters, including climate change.[17]

Asia has no comparable binding instrument. The Asian-African Legal Consultative Organization adopted the Bangkok Principles on the Status and Treatment of Refugees, an organisation of which India is a member, but these are declaratory and do not address environmental displacement specifically.[18] B.S. Chimni has long criticised the way refugee studies and policy have been shaped by the concerns of Northern States, and has argued for

[14] Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2 (1998).
[15] OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, art. I(2).
[16] Cartagena Declaration on Refugees, 1984, Conclusion III(3).
[17] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009, art. 5(4).

approaches grounded in the experiences of the global South, which hosts most of the world's displaced people.[19] That critique is especially pertinent to climate displacement, where those who contributed least to the problem bear its heaviest burden.

5.2 State-Led Initiatives and Global Compacts

In the absence of a treaty, States have pursued practical cooperation. The Nansen Initiative, a State-led consultative process launched by Norway and Switzerland, culminated in 2015 in a Protection Agenda endorsed by more than one hundred States. It identified effective practices such as humanitarian visas, temporary protection and suspension of deportation for people displaced across borders by disasters, and its work is carried forward by the Platform on Disaster Displacement.[20] Earlier, Walter Kälin and Nina Schrepfer had mapped the legal gaps and proposed similar solutions in a study for UNHCR.[21]

The climate regime itself has recognised displacement. The Paris Agreement refers in its preamble to the rights of migrants, and the decision adopting it requested the creation of a task force to develop recommendations to avert, minimise and address displacement related to the adverse impacts of climate change.[22] The Sendai Framework for Disaster Risk Reduction similarly calls on States to address disaster-induced displacement.[23] In 2018, the UN General Assembly affirmed both the Global Compact on Refugees, which acknowledges that climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements,[24] and the Global Compact for Safe, Orderly and Regular Migration, which commits States to address natural disasters and climate change among the adverse drivers of migration.[25] These instruments are not binding, but they reflect a broad consensus on the direction of policy.

5.3 Bilateral Mobility Pathways

The most innovative recent development is bilateral. In 2023, Australia and Tuvalu signed the Falepili Union Treaty, under which Australia will offer a special pathway for a limited number of Tuvaluans each year to live, study and work in Australia, while both States affirm

[18] Asian-African Legal Consultative Organization, *Bangkok Principles on the Status and Treatment of Refugees* (1966, final text adopted 2001).
[19] B.S. Chimni, "The Geopolitics of Refugee Studies: A View from the South" 11 *Journal of Refugee Studies* 350 (1998).
[20] The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (Geneva, Dec. 2015).
[21] Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches*, Legal and Protection Policy Research Series (UNHCR, Geneva, 2012).
[22] Decision 1/CP.21, Adoption of the Paris Agreement, U.N. Doc. FCCC/CP/2015/10/Add.1 (2016), para. 49.
[23] Sendai Framework for Disaster Risk Reduction 2015–2030, U.N. Doc. A/RES/69/283 (2015).
[24] Report of the United Nations High Commissioner for Refugees, Part II, Global Compact on Refugees, U.N. Doc. A/73/12 (Part II) (2018).
[25] Global Compact for Safe, Orderly and Regular Migration, U.N. Doc. A/RES/73/195 (2018), Objective 2.

that Tuvalu's statehood and sovereignty will continue notwithstanding the impact of sea-level rise.[26] The treaty shows that protection for people at risk of climate displacement can be built through planned, dignified migration rather than emergency flight, a model with obvious relevance for South Asia.

6. India's Legal Framework

6.1 Constitutional Protection for Non-Citizens

India has no refugee statute, but its Constitution offers significant protection to everyone within its territory. The right to equality and the right to life and personal liberty are guaranteed to all persons, not only citizens, and the Directive Principles require the State to foster respect for international law and treaty obligations. Parliament also has power to legislate to implement international treaties and agreements.[27] The Supreme Court has given these guarantees practical effect. In *National Human Rights Commission v. State of Arunachal Pradesh*, it directed the State to protect Chakma refugees against threats of forcible eviction by local groups, holding that the State is bound to protect the life and liberty of every human being, citizen or not.[28]

The protection has clear limits. In *Louis De Raedt*, the Court held that while foreigners enjoy the right to life under Article 21, the fundamental right to reside and settle in India under Article 19(1)(e) is available only to citizens.[29] Much earlier, in *Hans Muller of Nurenburg*, the Court had recognised that the executive has broad power to expel foreigners.[30] More recently, in proceedings concerning Rohingya refugees, the Court declined to restrain deportation, holding that the right not to be deported is ancillary to the right to reside, which belongs to citizens, while directing that deportation follow the procedure prescribed by law.[31]

6.2 Non-Refoulement in Indian Courts

Despite these limits, several High Courts have read the principle of non-refoulement into Article 21. In *Ktaer Abbas Habib Al Qutaifi*, the Gujarat High Court held that the principle, being a part of international law, is encompassed in Article 21 so long as the presence of the refugee is not prejudicial to national security.[32] The Supreme Court has also long accepted that rules of customary international law not inconsistent with domestic law form part of Indian law.[33] If non-refoulement as developed in human rights law now extends, in

[26] Falepili Union Treaty between Australia and Tuvalu (signed Nov. 9, 2023).
[27] The Constitution of India, arts. 14, 21, 51(c) and 253.
[28] *National Human Rights Commission v. State of Arunachal Pradesh* (1996) 1 SCC 742.
[29] *Louis De Raedt v. Union of India* (1991) 3 SCC 554.
[30] *Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta* (1955) 1 SCR 1284.
[31] *Mohammad Salimullah v. Union of India*, Writ Petition (Civil) No. 793 of 2017, Supreme Court of India (order dated Apr. 8, 2021).
[32] *Ktaer Abbas Habib Al Qutaifi v. Union of India*, 1999 Cri LJ 919 (Guj).
[33] *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey* (1984) 2 SCC 534.

sufficiently serious cases, to risks arising from the effects of climate change, as the Human Rights Committee and the ICJ have indicated, Indian courts have the interpretive tools to recognise that protection.

6.3 A Constitutional Climate Right

A further development strengthens this argument. In *M.K. Ranjitsinh v. Union of India*, the Supreme Court recognised, for the first time, a right to be free from the adverse effects of climate change, grounded in Articles 14 and 21, and observed that communities vulnerable to climate change because of their geographical and economic circumstances may suffer impairment of their right to equality.[34] The judgment concerned domestic conservation and renewable energy, not displacement, but its reasoning is directly relevant. If every person in India has a right against the adverse effects of climate change, that right cannot be reconciled with returning a person to a place where those effects threaten their life.

6.4 The Statutory Framework

India's statutory framework on foreigners has been consolidated in the Immigration and Foreigners Act, 2025, which came into force on 1 September 2025 and repealed four earlier laws, including the Foreigners Act, 1946.[35] The Act regulates entry, stay and exit, and strengthens powers relating to the detection and removal of foreigners without valid documents. It does not establish any procedure for recognising refugees or granting asylum. Particular groups receive special treatment through executive orders: the Immigration and Foreigners (Exemption) Order, 2025 provides conditional exemptions for categories including Tibetan refugees, registered Sri Lankan Tamils and members of minority communities from Afghanistan, Bangladesh and Pakistan.[36] Separately, the Citizenship (Amendment) Act, 2019 created an accelerated path to citizenship for members of specified religious minorities from those three countries who entered India before a cut-off date.[37]

This framework protects selected groups on the basis of nationality and religion, chosen through executive discretion. It offers nothing to a person displaced from a neighbouring country by flood, cyclone or sea-level rise. Within India, the Disaster Management Act, 2005 provides for relief and rehabilitation of persons affected by disasters,[38] and the National Action Plan on Climate Change sets out missions on adaptation and sustainable habitat.[39] These address internal displacement and resilience, but neither speaks to cross-border

[34] *M.K. Ranjitsinh v. Union of India*, 2024 INSC 280.
[35] The Immigration and Foreigners Act, 2025, in force from Sept. 1, 2025.
[36] The Immigration and Foreigners (Exemption) Order, 2025, issued under s. 33 of the Immigration and Foreigners Act, 2025.
[37] The Citizenship (Amendment) Act, 2019 (Act 47 of 2019).
[38] The Disaster Management Act, 2005 (Act 53 of 2005).
[39] Prime Minister's Council on Climate Change, Government of India, *National Action Plan on Climate Change* (New Delhi, 2008).

movement. The gap is not merely technical. An official confronting a family that has crossed the border after its village was destroyed by a cyclone has, under the present framework, essentially two options: to treat them as foreigners without valid documents, liable to detention and removal, or to rely on informal discretion to let them stay. Neither option gives the family any legal status, any right to work or any assurance that they will not be sent back to danger. Nor does it give the official clear guidance. A legal framework is needed as much to protect the integrity of administrative decision-making as to protect the displaced themselves.

6.5 Administrative Practice

In practice, India has managed the presence of refugees through administrative arrangements rather than law. Over the decades it has hosted Tibetans, Sri Lankan Tamils, Chakmas and others, often generously, with rights and support varying from one group to another. For other nationalities, the Ministry of Home Affairs issued a standard operating procedure in 2011 under which foreign nationals claiming to be refugees could be considered for long-term visas after verification by security agencies.[40] Such procedures provide some route to regular status, but they are discretionary, are not anchored in a statutory definition of who deserves protection and offer no specific avenue for people displaced by environmental causes. The result is a system that can be humane in its outcomes yet unpredictable in its operation, depending heavily on the nationality of the person concerned and the policy priorities of the day.

7. Why India Has Not Ratified the Convention, and What It Means

India's reasons for remaining outside the Convention have never been comprehensively set out in a single official document, but several considerations are frequently discussed. The Convention was drafted primarily with European displacement in mind, and India, which absorbed millions of people during Partition and later from East Pakistan in 1971, has preferred to manage large movements bilaterally and pragmatically. Concerns about porous borders, national security and the burden of hosting large populations in a country with significant poverty also weigh heavily. There is, too, a principled objection associated with Chimni and others: that a regime which leaves the main burden of hosting refugees on the developing world, while offering limited resettlement elsewhere, should not simply be accepted on its existing terms.

These considerations have force, and this paper does not argue that ratification is the only path. Ratification alone would not solve the climate problem in any case, because the Convention does not cover most climate-displaced persons. The more important point is that

[40] Ministry of Home Affairs, Government of India, *Standard Operating Procedure for Dealing with Foreign Nationals who Claim to be Refugees* (2011).

non-ratification does not place India outside international law. India is bound by the Covenant on Civil and Political Rights, by customary international law, including the core of non-refoulement, and by its own Constitution. India also voted for the Universal Declaration of Human Rights, which recognises the right of everyone to seek and enjoy asylum from persecution in other countries.[41] The real cost of non-ratification is not the absence of obligations but the absence of a clear, predictable procedure for meeting them. Protection in India has depended on executive discretion, on the persistence of individual litigants and on the willingness of particular courts to intervene. For people displaced by climate change, who fall outside the familiar categories altogether, this uncertainty is even greater.

India also has a strong interest in leadership. As one of the countries most affected by climate change, a major voice of the global South in climate negotiations and a neighbour to several highly vulnerable States, India is well placed to shape regional responses. Its insistence in climate diplomacy on equity and the principle of common but differentiated responsibilities would be strengthened by a domestic framework that treated the human consequences of climate change with similar seriousness.

The question of burden-sharing also deserves attention. At the Sharm el-Sheikh climate conference in 2022, the parties agreed to establish new funding arrangements, including a fund, for responding to loss and damage associated with the adverse effects of climate change.[42] Displacement is one of the clearest forms of such loss. A country that hosts people displaced by climate change, or that relocates its own communities from eroding coasts, bears costs that arise largely from emissions produced elsewhere. India can therefore legitimately argue for international support for protection and relocation, and a credible domestic framework would strengthen that claim rather than weaken it.

8. Towards a Framework for Climate-Displaced Persons in India

First, India should enact a national law on asylum and humanitarian protection. Such a law need not mirror the Convention in every respect, but it should establish an independent procedure for determining protection claims, codify the principle of non-refoulement as recognised by Indian courts, and include a category of complementary protection covering persons who face a real risk of serious harm on return, including harm arising from the effects of disasters and climate change.

Second, the law should provide for temporary protection in the event of sudden-onset disasters in neighbouring countries. Drawing on the Nansen Initiative's effective practices, the Central Government should be empowered to grant temporary stay, suspend removals and

[41] Universal Declaration of Human Rights, 1948, art. 14.

[42] Decision 2/CP.27, Funding Arrangements for Responding to Loss and Damage Associated with the Adverse Effects of Climate Change, Including a Focus on Addressing Loss and Damage, U.N. Doc. FCCC/CP/2022/10/Add.1 (2023).

issue humanitarian visas to persons displaced across the border by a declared disaster, for a defined period subject to review. This would allow India to respond quickly and humanely without committing to permanent settlement.

Third, India should develop bilateral and regional mobility arrangements. The Falepili model shows that planned migration pathways, combined with commitments on development and adaptation, can reduce the need for emergency flight. Through existing regional forums, India could promote a South Asian framework on disaster displacement that addresses early warning, shared adaptation, labour mobility and the protection of people who must move.

Fourth, the right against the adverse effects of climate change recognised in *Ranjitsinh* should be given legislative and administrative content. Disaster management and climate adaptation plans should expressly address displacement and planned relocation, including the rights of affected communities to participation, consent and adequate compensation, consistent with the reasoning in *Daniel Billy*.

Fifth, India should invest in evidence. A national system for tracking disaster displacement, building on the figures already compiled by international monitors, would allow policymakers to identify the communities most at risk, plan relocation before disaster strikes and assess the scale of any cross-border movement. Research partnerships with neighbouring countries would help build a shared understanding of the region's displacement patterns.

Finally, until legislation is enacted, the executive and the courts should apply the principle of non-refoulement in light of contemporary human rights law, including the *Teitiota* views and the ICJ's Advisory Opinion. Decisions on the removal of foreigners from India should take account of whether the conditions in the country of return, including those caused by climate change, would expose the person to a real risk to life.

9. Conclusion

The law of refugees was built for a world in which the main threat to a person's safety came from other people. In the world now emerging, the threat may come from the sea, the river or the sky, driven by changes for which the displaced bear little responsibility. The 1951 Convention, for all its achievements, was not designed for this reality, and attempts to stretch its definition to cover climate displacement have largely failed. Human rights law has begun to fill the gap. The Human Rights Committee in *Teitiota* and the International Court of Justice in its 2025 Advisory Opinion have confirmed that non-refoulement can protect people whose lives would be endangered by the effects of climate change, and that States have duties to protect people from being displaced in the first place.

India stands at the centre of this challenge. It records millions of disaster displacements each year, borders some of the world's most climate-vulnerable States and has a Constitution that

protects the life of every person on its soil. Its courts have recognised non-refoulement and, more recently, a right against the adverse effects of climate change. What is missing is a coherent legal framework that turns these principles into predictable protection. India's decision not to ratify the Refugee Convention may be defensible, but it cannot be a reason for silence. By enacting a national framework that includes complementary and temporary protection, and by leading regional cooperation, India can show that protection for people displaced by a changing climate is not a burden imposed from outside but an expression of its own constitutional values and its long tradition of humanity towards those in need.