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At the Heels of Warming: Advocating the Rights of Climate Refugees

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The principal objective of this article is to focus on the idea of protecting the rights of climate refugees and it elucidates the pressing need to fill the legal gap which is existing in the current refugee law framework. Initially, it explores the fundamentals of Global Warming along with its impact on human beings and the environment additionally, it explores the phenomenon of climate change, highlighting the urgent need to take corrective measures to solve the issue. This article highlights the problems faced by the refugees through the landmark case of Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment, as this case deals with the legal gap in refugee law and it also advocates the need to bring changes in the current legal framework so that it can prove to be useful in the coming future also, by the Refugee Convention of 1951 and the Refugee Protocol in 1967, the paper helps to showcase the importance of these convention for the protection of the rights of the Climate Refugees. Additionally, it suggests some measures that can be adopted by global policymakers for the protection of the refugees. With the help of this paper, the reader will get an idea about the needs of the climate refugees and will also be able to understand the need for sustainable development in our society.

Keywords: *climate refugee, global warming, climate change, sustainable development, refugee convention, green gases.*

INTRODUCTION: WHAT IS GLOBAL WARMING?

Global warming is a phenomenon that increases average air temperatures near the surface of the earth, this phenomenon has been an issue for people across the globe because it has some very drastic consequences which are quite prevalent in today's time. The climate of the earth is very delicate as it is regulated by a balance of outgoing heat energy and incoming solar radiation and even a small change can result in the loss of lives of thousands of people including flora and fauna on earth. Global Warming is increasing primarily because of the emission of Green House gases including Methane (CH₄), Carbon Dioxide (CO₂), and Nitrous Oxide (N₂O), and human activities such as deforestation, burning of fossil fuels, industrial processes that add fuel to the fire. The result of these activities is the release of large amounts of gases in the atmosphere, which are toxic and trap heat, which results in Global Warming.

The Impact of Global Warming on Humans and the Environment is quite evident and it is very severe and drastic let us try to understand the severity:

The Rise in Temperature: One of the major impacts of Global Warming is the Increase in temperature Heat Waves are increasing, which is harmful to the health of Humans, Animals, Agriculture, and especially the ecosystem.

The Melting of Ice and Rise of Sea Temperature: Rising sea water is the direct result of the thermal expansion of seawater and the melting of ice and glaciers the coastal areas have become more vulnerable to flooding and erosion. According to the Fourth National Climate Assessment, the level of Oceans has increased by Seven to Eight inches since it was in the 1900s. The IPCC has also predicted that the sea will rise from one foot to three and a half feet above 2000 level by the end of the century.

Extreme Weather Events and Ocean Acidification:¹ The Extreme Weather Conditions such as the heat wave in Delhi and throughout the Country, the Pakistan Flood, which resulted in the loss of lives of many people, the increase in the number of floods across Africa, and the increase

¹ 'Understanding Ocean Acidification' (NOAA Fisheries)

<<https://www.fisheries.noaa.gov/insight/understanding-ocean-acidification#why-is-ocean-acidification-a-problem>> accessed 28 May 2024

in several cyclones throughout America and coastal areas, drought in Amazon all these events are the consequences of Global Warming. Ocean Acidification can be defined as a reduction in the pH level of the ocean due to the uptake of Carbon Dioxide from the atmosphere. Ocean Acidification can create conditions that wash away or we can say, eat away the minerals, which are crucial for oysters, sea shells, and coral reefs for the development of their shells. This could alter the marine food chain and can also decrease the mechanism of storm protection as well.

Biodiversity loss, risk related to Food Security: Change in Climate due to global warming will affect the plants and animals and they will have to adapt themselves according to the changing environment but some of the species may face challenges while adapting it, which may result in their extinction. Animals such as the Great Indian Bustard, Gangetic Dolphins, and Snow Leopard are on the verge of Extinction due to global warming and climate change.

Economic loss due to global warming: According to a study conducted in the year 2020, a total loss due to climate change can be approximated between 127 and 6216 trillion dollars, which can increase in the future.

WHAT IS CLIMATE CHANGE?

Climate change refers to adverse changes in climate for long-term changes such as changes in temperature, extreme rainfall, etc. These happen because of human activities of burning fuel, deforestation which leads to drastic natural calamities that cause major humanitarian losses and lead to various social issues as they impact the environment, agriculture, economy, and the health of the people, as we know the effect of climate change can be seen globally but some areas which are particularly vulnerable due to the geographical location, reliance on the natural resources and the socio-economic factors are facing a lot of problems due to climate change such as Chad² according to the University of Notre Dame's country vulnerability studies it is considered as the most vulnerable country in the world and many other countries in the world.

² 'Countries most affected by climate change Which countries are most threatened by and vulnerable to climate change?' (*Iberdrola*) <<https://www.iberdrola.com/sustainability/top-countries-most-affected-by-climate-change>> accessed 29 May 2024

At this hour, it is important to address the issue, which can only be done through the cooperation of government, communities, and individuals, because then only we will be able to handle this issue and save the lives of future generations.

WHAT ARE THE WAYS TO TACKLE CLIMATE CHANGE?

Climate change is a very serious issue and tackling it needs a lot of strategies not just on paper but in practical life also because it happens that the government does a lot of things on paper that do not get implemented and now, if it doesn't get implemented it will result in the loss of lakhs of people because climate change is no joke.

There are many ways to tackle Climate Change let us discuss some of the main issues:

Shifting towards Renewable Energy: In today's time, there is a dire need to shift towards renewable energy from fossil fuels because as we know the burning of fossil fuels is making the situation worse. Therefore, it is the right time to shift towards sustainable and renewable energy such as Wind, Solar, and Hydropower as the use of these energy will help to reduce greenhouse gas emissions. The governments must come forward and try to develop infrastructure that is suitable for renewable energies; it can be done through adopting technologies and providing subsidies so that people get attracted towards renewable energy.

Restoring and Protecting Eco-System: It is the time when we should start focusing more on the protection of wetlands, forests, and other Natural Ecosystems as they have the power to reduce the amount of Carbon Dioxide from the atmosphere and help to enhance the climate change impact. Reforestation Initiatives, Sustainable Land Management, and Conservation Efforts are essential to protect and enhance the health of the ecosystem.

Promoting Energy Efficiency: Energy Efficiency can be promoted by improving energy efficiency in transportation, industrial processes, and buildings. This will eventually lead to upgradation in infrastructure, which will be suitable for renewable energy.

Implementation of Carbon Pricing: Mechanisms such as Carbon Taxes or cap-and-trade systems can be used, which will motivate businesses to reduce carbon emissions and eventually,

they will adopt cleaner technologies. Carbon pricing will also help to generate revenue for the climate mitigation and adoption efforts.

Enhancement of Climate Resilience: In today's time, investing in technologies that can be strategically used to adapt to increasing climatic changes such as rise in sea level, water scarcity, and floods, can be beneficial for the protection of communities and economies. Technologies such as Sea Walls and levees are beneficial to protect the communities from rising sea levels. Technologies like these can help to tackle climate change efficiently.

WHAT IS THE LINK BETWEEN ECONOMIC DEVELOPMENT AND CLIMATE CHANGE?

According to a report by the Carnegie Endowment for INTERNATIONAL Peace, in the second half of the twentieth century, countries where the temperature rose by 1°C have reported a 1.4% fall in per capita income on average. In another report's finding Titled 'The Economics of Climate Change: No Action Not an Option' by the Swiss Re Institute, by the year 2050, due to climate change, the global economy could lose 10% of its value. And if no action is taken and if the temperature rises by 3.2°C, a total of 18% of the global GDP could be lost. Even though the countries meet the targets of the Paris Agreement, the global economy will still face a contraction of 4%.

WHO ARE CLIMATE REFUGEES?

Climate refugees are people or whole communities who had to escape from their homes, regions, or countries because of sudden climate changes such as a rise in sea level, sudden increase in temperature, tsunamis, or prolonged drought, which makes the living conditions uninhabitable for the people and they had to leave the place to secure a safe place for themselves and their families. The literal meaning of climate refugees is people who had to leave their homes, region, or country and migrate to new places due to these natural disasters, but the main issue is that they are not recognised under any international laws and therefore, their identity is ignorant in the eyes of the world but everyone needs to understand that this is not an issue faced by a single nation but in the near future, every country will face these kinds of challenges because climate change will affect every country in one or the other way.

Issues related to climate refugees will induce many complex humanitarian issues such as the issues related to resettlement, loss of lives, and potential conflict over resources many refugees relocate themselves within their own country, or some move to other countries, which increases the Complexities., therefore there is a need to tackle this issue and protect their rights and together for humanity.

These calamities are increasing day by day such as:

1. Monsoonal Rainfall in Pakistan: From mid-June to the end of August 2022, a large part of Pakistan received heavy rainfall in August 2022, which made it the wettest since 1961³. Due to this, rain and flooding affected a total of 1.7 million homes, and nearly 1500 people lost their lives. The government declared a national emergency, economic loss was around US \$ 30 billion, and many other infrastructural damages were caused by climate change.

2. Jakarta the Sinking City: On May 15, 2023, the headline of an article in The Hindu was Jakarta, the world's fastest-sinking, fights⁴ to raise itself they made seawalls and took several other measures to protect themselves, but nothing can compete when nature is playing with you and this all is happening because of climate change. Indonesia had to change its capital and now the officials are calling it a sustainable forest City and aim to make it carbon-neutral by 2045.

HOW IS INTERNAL DISPLACEMENT TRIGGERING THE PROBLEM OF CLIMATE REFUGEES?

According to UNHCR, of all the internal Displacement that took place in 2022, 70% was because of climate change or climate disaster. According to a report by IMDC, Global climate-related disasters or climate change triggered 32.6 million displacements in 2022. Additionally, UNHCR reported that 70% of the refugees were shifting to the neighbouring countries to save themselves from climate change, but they were choosing neighbouring countries because they want to live close to their families and there's a high chance that this displacement will trigger massive

³ 'Climate change likely increased extreme monsoon rainfall, flooding highly vulnerable communities in Pakistan' (*World Weather Attribution*, 14 September 2022) <<https://www.worldweatherattribution.org/climate-change-likely-increased-extreme-monsoon-rainfall-flooding-highly-vulnerable-communities-in-pakistan/#>> accessed 29 May 2024

⁴ *Ibid*

migrations from Global South to Global North. Till the term, Climate Refugee is not officially recognized by the International Law.

According to a report by IMDC Global by the end of the year 2022, the highest-ever recorded displacement of 2.1 million people took place across countries such as Somalia, Ethiopia, and Kenya. An increase of 20% was seen in just a year, the biggest reason for this displacement was the La Niña effect, this used to get triggered every 3-5 years but in 2022 it happened for the third consecutive year. This phenomenon also led to record levels of flooding in Pakistan, Brazil, and Nigeria.

DISPLACEMENT AND FOOD SECURITY

According to the IDMC Global Report three -quarters of the countries where the food security issues were increasing have faced displacement in recent years some of the countries are Afghanistan, Nigeria, Ethiopia, and Yemen. The Horn of Africa also saw its longest drought, which became the reason for the extreme water scarcity in that region.

CASE REGARDING CLIMATE REFUGEES

Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment:⁵ A person who was a citizen of Kiribati was denied refugee status in New Zealand, so he filed an appeal against the New Zealand High Government in the High Court, where the appellant argued regarding the effects of Climate Change on Kiribati, such as the rise in the ocean level, and degradation of the environment which are forcing the people on the Island to migrate. The High Court, though found out that the impact of climate change was not that extreme to qualify the appellant to get the refugee status as he was not subjected to the persecution required in the 1951 United Nations Convention related to the status of the refugees. The court asked the appellant to return to Kiribati but also expressed concern regarding expanding the scope of the refugee convention as in the future, there will be millions of people who will be facing hardships due to climate change.

⁵ *Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107

Global legal framework for Climate Refugees: Sir David Attenborough in a speech to the UN Security Council, said that Climate Change can only be dealt with by the Global Cooperation as it is the biggest threat to the security that modern humans will ever face. The UN has defined refugees as individuals or groups of individuals who have crossed an international border due to fear of being prosecuted for religion, nationality, or other reasons that don't include climate change. Therefore, UNHCR⁶ argues that the definition is inaccurate for climate refugees and not every climate refugees leave their country and crosses an international border they may move from one region to another inside the country to find a safe and secure place and therefore, they call climate refugees as 'environmental migrants' or 'climate migrants', because of these reasons only they can't claim rights as of refugees under international laws. United Nations Secretary-General António Guterres elucidates it as a 'Legal Void'. In October 2020, a set of legal considerations regarding climate change was published by UNHCR. They even reported that a total of 21.5 million people have migrated in the last 11 years. They are forced to leave because of sudden climate change such as in the case Pakistan, Jakarta, and even Bangladesh are facing the same issue as 75% of the country is below sea level, and because of this, 25.9 million people are getting affected. It is also estimated that by the year 2050, another 17% of the country will submerge, which will affect 20 million people. The Institute for Economics and Peace has also estimated that by 2050, a total of 1.2 billion people will be displaced because of climate change.⁷

The Refugee Convention 1951 and The Refugee Protocol 1967: The Refugee Convention of 1951 and the Refugee Protocol of 1967 main aim is to deal with the legal status and rights of Refugees, but the sad part is that they don't cover Climate Refugees, these conventions outline the duties and responsibilities that the countries have to follow for the protection of the refugees. There is a difference between the refugees and the migrants, which is that the refugees do get support from their government, but the migrants do get some sort of support from their government.

⁶ 'Climate change impacts and cross-border displacement: International refugee law and UNHCR's mandate' (UNHCR, 12 December 2023) <<https://www.unhcr.org/media/unhcr-note-climate-change-international-refugee-law-and-unhcrs-mandate-dec-2023>> accessed 30 May 2024

⁷ Morgiane Noel, 'Here's how international law can protect people fleeing environmental disaster' (*World Economic Forum*, 16 May 2023) <<https://www.weforum.org/agenda/2023/03/as-people-flee-environmental-disasters-how-can-international-law-help-them/>> accessed 27 May 2024

Lack of Legal Protection: Climate refugees, even after facing a lot of problems, are often overlooked in global discussions about Migration and displacement. The authorities even lack the required data about the migrating pattern, and up till now, there are no criteria about who can be qualified as a climate refugee. Therefore, these refugees lack protection. Though there are many differences between the climate refugees and the Refugees recognised internationally, some of them are as follows:

- Firstly, some climate refugees leave their country due to sudden climate changes such as earthquakes and Floods where, whereas other refugees are those who are affected by slow climatic changes such as a Rise in Sea Level, etc.
- Secondly, most refugees are often displaced internally within their own country rather than to other countries.

These are some of the reasons why climate refugees don't get protection under the Refugee Convention of 1951. The UN is trying to adopt some international agreements that are non-binding regarding the displacements related to climate change to ensure the protection of Climate Refugees as the 2018 Global Compact on Refugees has tried to address the matter of Climate Refugee by providing comprehensive ideas for the protection of Climate Refugees. These include solutions like "devising planned reallocation and easy visa options for the climate refugees. But as these are non-binding, there are no consequences for noncompliance with these frameworks. Therefore, there is a need to find other solutions as well for the protection of the refugees.

WHAT IS THE SOLUTION?

To protect the lives of the climate refugees, the whole world will have to come together with a Borderless solution because the climate refugees must have the right to have their legal identity. Not everyone who migrates does it because of national or religious reasons, but due to the increase in global warming and climate change, people are forced to migrate from their homes and move to new places just to make sure that they protect the lives of their families. The domestic solutions, such as the US under the Biden Government, had suggested adopting the current asylum and refugee laws, for example, the Temporary Protected Status, to protect the

lives of the refugees. For long-term benefits, some laws are available, but they just need to be modified a bit to preserve the rights of the climate refugees.

Humanitarian Visas for Climate Refugees:⁸ These can be proved to be the best solution for the protection of the people and these solutions work will work best when the inputs are taken from the most vulnerable communities suffering from climate change. Under this program, the host country can issue visas to the citizens of those countries who are vulnerable to climate change.

For example, New Zealand in the year of 2017 created Humanitarian Visas for the people of the Pacific Islands, such as Kiribati and Fiji, but this program was abandoned only after 6 months of initialization by the government. This initiative lacked support from the Islanders; the people who opposed it advocated for preventing rather than mitigating the effects of climate change. The nations should take input from these vulnerable groups and try to implement climate visas for them.

Cooperation at the International Level: International cooperation is very necessary even though the domestic solutions are implemented properly. Some of the policy and academic experts have already paved the path, such as the Model International Mobility Convention (MIMC), which has the power to protect the rights of the refugees if it becomes binding by the members of esteemed organizations such as the U.N. MIMC made a legal framework which is much wider than that of 1951 convention that will cover the climate refugees. It also promotes the new right of reunification for those who have been separated from their families. Furthermore, it also established a framework of Mobility Visa Clearing House it is a web platform that promotes and facilitates the orderly, safe, and regular migration of individuals. These mechanisms will help to protect the vulnerable communities.

Expansion of Existing Refugee Law: The 1951 Convention's main objective is the principle of non-refoulement, which has been mentioned in Article 33(1) of the convention. In the year 2020, additionally, the UNHCR also issued legal considerations for the refugees it also recommended

⁸ Caitlan M. Sussman, 'A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?' (2023) 2(1) Chicago Journal of International Law
<<https://cjl.uchicago.edu/sites/default/files/2023-04/2ChiJIntlOnline41%20%28C.%20Sussman%29.pdf>>
accessed 28 May 2024

the ways through which the 1951 convention can be interpreted. Additionally, Regional Agreements such as the Organisation of African Unity Convention and the 1984 Cartagena Declaration protect refugees who have been disturbed due to the events that are disturbed by the public order. The Cartagena Declaration, though it is not binding, also aims to protect the rights of the refugees.

CONCLUSION

The status of climate refugees needs to be addressed immediately, and the attention of policymakers around the globe is necessary, as we know that the temperature of our planet is increasing day by day, and therefore, issues related to climate change, such as the rise in sea level, and other weather events and therefore cases related to climate displacement is also dramatically increasing. That is the reason why international cooperation and support are necessary to solve this issue it is important to protect the lives of those thousands and lakhs of people who are suffering because of climate change and we must make the legal framework more favourable for climate refugees. Along with this, we should also try to mitigate this issue and try to come up with a sustainable solution to solve it. Therefore, it is said that 'when everyone will come together then only we can bring the desired change which we want to bring' and here the desired change is to make institutions and modifications in the existing laws to protect the rights of the climate refugees.