

Emerging Dichotomy of Migrants: Environmental Refugees

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Abstract

Practice to preserve the environment and embody sustainable development has become a contemporary concern globally. Environmental issues and concerns not only affect the current population but pose threat to coming generations. Forms of environmental ramifications have germinated modern class refugees categorized as Environmental Refugees. Various nations are contemplating and revisiting the classification of refugees, but it requires more serious and uniform structuring. Moreover, the environment being the chief concern in coming years States needs to evaluate its impact on all aspects. The concept of Environmental Refugees emerged within the UN system and gained relevance after the Stockholm Conference, 1972. However, in 1948 the Universal Declaration of Human Rights¹ came up with fundamental human rights protected universally. This declaration cited human rights for people seeking asylum under Article 14. The Universal Declaration of Human Rights Article 14 clause (1) provides right to seek asylum from persecution in other countries

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precluding prosecutions genuinely arising from non-political crimes or contrary to the principles of the United Nations. Under the Universal Declaration of Human Rights, the conditions to seek asylum is restrictive in nature. Subsequently, the United Nations High Commissioner for Refugees was formed in 1950. The core convention to protection international refugee i.e. the United Nations Convention dealing with the status of refugees was adopted in 1951. The convention has been subject to only one amendment known as the 1967 Protocol, which primarily removed the geographic and temporal limits. Although, amendments are essential to redefine the concept classification, recognition of refugee and its implication. The convention is silent on environmental refugee; this has been impressed by various authors and scholar dispositions.

This is a global issue needs to be addressed with greater enthusiasm and legal brainstorming. The regulations, law and the international conventions and practices need to abreast with emerging global issues and concerns. The work intends to bring to surface issues pertaining to environmental refugees and the host country.

Keywords: Environmental refugee, migration, host country.

INTRODUCTION TO THE CONCEPT OF ENVIRONMENTAL REFUGEES

According to UN Refugee Agency around 65.6 million² i.e. 656, 00,000 lakh people have been forced to migrate from their home, worldwide. This includes approximately 22.5 million refugees under the age group of eighteen years. Mainly refugees in the world are seen from South Sudan, Afghanistan and Syria, from these three countries.³ In 2016, almost 20 people were forced to displace from their homes every minute, according to the Global Trends Report, which analyzes the changes of the United

¹Hereinafter mentioned as UDHR.

²UNHRC the UN Refugee Agency Future at a Glance, available at: <http://www.unhcr.org/figures-at-a-glance.html> (Last visited on December 15th, 2017).

³Supra note 3.

Nations High Commissioner for Refugees (UNHCR).⁴ These statistics fundamentally relate to refugee which needs to be observed for understanding environmental refugees, a species of refugees. There are multifarious uncertainty and vagueness associated with environmental refugees, which are contemplated in this study. The United Nations projections show the existence of around 50 million i.e. 500, 00,000 lakhs environmental refugees by 2020.⁵ Albeit Environmental Refugees is not a new phenomenon, it is gaining more and more impetus due to forced displacement of people due to various environmental hazards. Ramification of environmental disaster, degradation or destruction is due to the act of nature or humans, which threaten human existence.

Almost 50 million land inhabitants were affected due to the environmental desertification and other environmental disruption such as climate change and poor farming techniques in North Africa. There has been rising in the migrants from North African to Western Europe to escape from dearth of water and crop failure. Most of these migrant's ended migrating to places neighboring to Western Europe, which happen to be the poorest in the world. Refugees are the unwelcome guest in many of such places because they emplace additional strain on depleting environment and natural resources like water and land supplies.⁶

Migration is not the only remedy to climate change or environmental degradation; other adaptation options might be perused. People must not relocate in anticipation of climatic change. The appropriate national public policy shall assist the people to make efficient migration choices and at the right time.

The statistical examination of environmental refugees and case studies reflect the forced migrant is prominent, but the encouragement to develop a new section of public policy or study is inconsequential. Although, numerous international organizations have impressed on concerns speculated about environmental refugees. The interest and sponsorship of

⁴See, <http://www.unhcr.org/globaltrends2016/> (Last visited on December 15th, 2017).

⁵The Sydney Morning Herald, 50 million 'environmental refugees' by 2020, experts say, available at: <http://www.smh.com.au/environment/climate-change/50-million-environmental-refugees-by-2020-experts-say-20110221-1b31i.html> (Last visited on December 14th, 2017).

⁶Environmental Refugees, available at: <http://www.globalization101.org/environmental-refugees/> (Last visited on December 29th, 2017).

initiatives and studies on environmental refugees have been shown by international organizations, such as:

- International Organization for Migration (IOM)
- United Nations Environment Programme (UNEP),
- Intergovernmental Panel on Climate Change (IPCC)

According to Professor Kibreab, the prominent international personalities have been irrelevant in determining the explanatory or predictive value of a term. The term was invented with intent to de-politicise the causes of displacement. Subsequently, it enabled states to derogate their obligation to provide asylum. Due to the current international law, which does not require states to provide asylum to those displaced by environmental degradation? Moreover, environmental refugees have been contended to be an extension of asylum law or humanitarian assistance, to incorporate the people forcibly displaced due to environmental degradation. As a matter of policy, it requires recognition and ratification to distinguish 'political' and 'environmental' causes that result in refugees.

Definition and Terminologies related to Environmental Refugees

Concept of Environmental Refugees is cognate to certain terminologies like Refugees, Political Asylum, Home Country, and Host Country, which have been delineated as:

Persons who flee or expel from a country, especially because of persecution⁷ they seek haven in another country and are referred as Refugees.⁸ However, for the purpose of international law the definition, perhaps, is departed from the general definition of refugee. A refugee is a person who is forced to leave home for certain specific reasons and who, furthermore, is outside the country of his or her origin and does not have its protection.⁹

The 1951 Convention relating to the status of refugees under Article 1 defines refugee, which will apply only to member nations.¹⁰

⁷ Generally referred to hostility contributed due to political reasons for refugees. The drafters of the Conventions left the term undefined; this omission gives the States a wider discretion. Resulting in the absence of a consistent or coherent jurisprudence. See, Guy S. Goodwin-Gil, *The Refugee in International Law* (second edition, Clarendon Press, Oxford, 1996).

⁸ Bryan A. Garner, *Black's Law Dictionary* 1394 19th edition, WEST Thomas Reuters, US.

⁹ B.S. Chimni (edn) *International Refugee Law* 1 (Sage Publication, 2000, India).

¹⁰ See, 1951 Convention Relating to the Status of Refugees, available at: <https://www.unhcr.org/3b66c2aa10> (last visited October 18th, 2019).

It is perhaps pertinent to note that refugee and stateless persons¹¹ are distinct.¹²

Political Asylum usually denotes a political refugee who gets protection from arrest by a foreign jurisdiction, nation or embassy.¹³

The country where people have their home and livelihood is considered to be the Home Country. Persons flee or are expelled from such country.

The country in which the refugees (includes Environmental Refugees) seek asylum or relocate to be the Host Country.

El-Hinnawi initially defined Environmental Refugees¹⁴ as any person who has been forced temporarily or permanently to relocate from their traditional place of habitat due to environmental disruption which adversely affects human existence and quality of life. They are not accepted as one of the legitimate refugees, which implies they do not enjoy refugee status.¹⁵ Moreover, they get lesser acknowledgement than economic refugees. They receive marginal resources by the UN Disaster Relief Coordinators.

Environmental migrants or climate refugees are those who are forced to move and relocate due to changing climatic conditions. An enduring definition is:

Environmental migrants are persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave

¹¹ According to the Convention Relating to the Status of Stateless Persons, 1954, a stateless person has been defined to be a person who is not considered as a national by any State under the operation of its law.

¹² The 1951 Convention addresses and advocates problem of refugee whereas the Convention Relating to the Status of Stateless Persons, 1954 address the international legal rights of stateless persons. See, Collection of International Instruments and Other Legal Texts Concerning Refugees and Displaced Persons (UNHCR, Geneva, 1995) Vol. I, p. 75.

¹³ *Supra* note 8 at 144.

¹⁴ Environmental refugee is not defined in the convention and draws the aforesaid is purported from various authors and scholar dispositions.

¹⁵ To accord the status of refugee, the definition provided in the Convention views five essential elements to be established. These elements are alienage, well-founded fear, persecution, nexus, and cessation/exclusion. See, James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, Cambridge University Press, Vol 13, 2nd edition 2014.

their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad.¹⁶

The Indian statute the Environment (Protection) Act, 1986 exemplifies the term Environment. It includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.¹⁷

Development and Environmental Degradation

Development is key to bullish economic performance, living standards, but it has an inverse correlation with environment of the area. Development comes at a cost; the industrial development drastically affects the environment, leaving it to recuperate from the ill effects. Natural forces are not solely responsible for environmental disaster and degradation happening worldwide. Human beings equally contribute to environmental calamities by exploiting natural resources which in turn triggers an ecological imbalance and change in natural environmental structure. The basic necessities for survival like food, water and shelter are derived from the natural environment. The entire human race extremely dependent on the environment. There is a vicious cycle running between humans and the environment. Since, humans exploit environment the environment in turn effects human habitation. Climate change is predicted to occur at frequent periods in the form of extreme warm temperatures, droughts and floods, incidences of heavy storms or rain. Such extreme weather conditions trigger migration from one place to the other then another and so on.

1) Position of Environmental Refugees

People fleeing persecution, due to political issues, religion, nationality, race or affiliation to a particular social group, get certain rights under the UN Refugee Convention (1951). Unlike the refugee resulting from any of the five stated reasons, the environmental refugees are not recognized as refugees by the international law. The global organization UNHCR, a UN Refugee Agency, is working to protect rights, save lives and building a better future for refugees. These refugees forcibly become part of displaced communities and stateless people. The basic rights of

¹⁶ International Org. for Migration, Discussion Note: Migration and The Environment 1–2 (2007).

¹⁷ The Environment (Protection) Act, 1986 Section 2 Clause (a).

rehabilitation and compensation are obscure for this category of refugees.¹⁸ If an alleged refugee is persecuted as climate migrants, according to the Geneva Convention 1951, the refugee will be unqualified. The refugee will be disqualified as he/she, perhaps may not fit in any of the five protected grounds.¹⁹

Environmental Refugees stem out of environmental disaster or disruption, making it impossible for habitation, which is not rescued by the Paris Agreement.²⁰ The Paris Agreement was adopted at the twenty first session of UN convention to combat climate change. The agreement under the aegis of UN convention intended to keep global temperature rise below 2 degrees Celsius above pre-industrial levels, for this century. Further, consistent efforts to limit the temperature increase to 1.5 degrees Celsius.²¹ Few nations have adopted initiatives under sustainable development, such as, renewable energy, energy efficiency and saving resources.

Environmental refugees seek a safe harbour in the host country which should be maintained irrespective of the class of refugee. Synchronization of interest and safety of the local nationals already residing in the host country with that of migrant is the duty of the State. Else, this may develop as a ground of swaying local residents to forcibly relocate elsewhere. These local residents become a refugee, *inter alia*; they pose a threat on the resources of the host country. A sound legal framework to regulate and administer environmental refugees and locals of the host country is

¹⁸ Ioane Teitiota a citizen of Kiribati was deported back when he lost appeal before the Supreme Court of New Zealand. Since environmental refugee is not listed under the UN Refugee Convention the argument was rejected that he faced persecution because of climate change. See <http://www.thehindu.com/opinion/op-ed/The-nowhere-people/article16765025.ece> (Last visited on December 28th 2017).

¹⁹ Under the Geneva Convention 1951 relating to the Status of Refugees (UN Convention) a refugee fears of persecution on five exhaustive ground of religion, race, nationality, membership of a social group, or political opinion. United Nations Convention Relating to the Status of Refugees art. 1(A)(2), July 27, 1951, 189 U.N.T.S. 2545.

²⁰ The Paris Agreement is the climate agreement within the United Nations Framework Convention on Climate Change (UNFCCC) which has been signed by 195 members of UNFCCC and 172 nations are party to it.

²¹ All Parties are required to regularly report their emissions and their implementation efforts. Every 5 years there will be a global stock take to assess the collective progress to check status of the purpose of the Agreement and to inform individual actions for Parties. See, http://unfccc.int/paris_agreement/items/9485.php.

necessary that the existing habitation is not at risk. Hence, the interest of both the sections must be coherently impressed on as the law and guidelines being silent in respect of environmental refugees.

In case of US immigration law, it has a feature to unilaterally change the definition of refugee, which enables it to incorporate climate refugees within the definition.²²In the US it can decide its existing immigration framework to allow or to restrain climate refugees under its existing framework. Albeit, US immigration framework is flexible to permit climate refugees, but the grey area of legal protection is indistinct. Moreover, the agenda deliberated in this paper deals with pertaining to international law, not a domestic/municipal law.

The Universal Declaration of Human Rights provides right to seek asylum if persecutions genuinely arise from political crimes.²³ Again persecutions from environmental issues and disruptions have been kept out of UDHR purview. The right to have adequate standard of living to have health, well-being of himself and his family is provided in UDHR Article 25. It includes food, clothing, housing, medical care and necessary social services as specified in UDHR Article 25(1).²⁴UDHR Article 14, 25 read with Article 25 (1) effectively operationalizes fundamental human rights of environmental refugee. However, an environmental refugee must be clearly defined, categorized as refugee and provided legal safeguard.

2) Constrains of Environmental Refugee

People displaced due to environmental disasters, can move to a new state or city within the country or in another country. The latter results in creating migrants. Migrating due to environmental issues needs socio-

²² Breanne Compton, Note, The Rising Tide of Environmental Migrants: Our National Responsibilities, 25 Colo Nat Res Energy & Env'tl L Rev 381 (2014).

²³ Article 14 (1) and article (2) of the Universal Declaration of Human Rights.

²⁴ Article 25 of the Universal Declaration of Human Rights. Read as- 25(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

²⁵ Article 14 of the Universal Declaration of Human Rights. Read as- 14 (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. 14 (2) This right may not be invoked in the case of persecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

legal, regulatory framework at the international level. There may be an influx of refugees in a particular State. In such scenarios, every state will habituate its own nationals before considering the environmental refugees. The economic impact of migration can be both positive or negative, irrespective of the class of refugee. Since, the migrants accelerate consumption, generate demand correspondingly are a threat to the resources, health and job market.

Presently legislations, international regulations on the status of environmental refugees are imprecise. Moreover, this category of refugee is neither recognized nor unrecognized, moreover, unknown to many. Although, the lacuna is transverse by States, especially for ones who all qualify as environmental refugees under the UN Refugee Convention 1951. It has to be determined, whether migrants are consequence of environmental hazards. Such migrants should explicitly come under the purview of Environmental refugees. Stratification of migrants based on environmental disruptions or issues shall be considered under environmental refugee. For Example: Tsunami migrants may be entitled to environmental refugee status, but the migrants displaced due to volcanic eruption may not. Such stratification should be proposed in the international regulatory framework. To bring clarity and transparency in the conceptualization of the term environmental refugee. Consequently, this will dictate the eligibility of granting reliefs. An inordinate numbers of displacements are being projected due to climate change and other factors in near future. However, some thinkers view environmental refugee to be unworkable and unsound. Concerns associated with environmental refugee are ascending. However, States seem to be reluctant to acknowledge and protect this hostile category of migrants. Migration of environmental refugees into the host country amplifies the surplus of human resources, albeit it poses pressure on the existing job market (skilled or unskilled). The labour market and the infrastructure of the host country may, perhaps, not be able to accommodate the accentuated numbers of people. Thus, it is essential that environmental refugees are classified or given an inclusive definition. They should be granted their basic human rights and be included in the objectives of UDHR.

Since, it is an international issue, efforts and resources should be entrusted by international relief agencies, home country and host country. The environment refugee facing the threat or repatriated back due to limitation of resources and safety concerns. The home country should take cognizance and provision interim relocation of its civilians. Consistently, envisage restoration of environmental hazard or destruction.

States have a duty to provide employment opportunities for its nationals; they are not obligated towards the migrating environmental refugees. This can cause job scarcity in the host country. Subsequently, it is open to a plethora of health-related issues or epidemic to germinate, which environmental refugees may be carrying with them. Life threatening epidemic can trigger in the environmental refugee, migrant camps or clusters which may arise due to low hygiene, diseases, etc. and non-availability of medical facilities.

There are certain areas which are greatly susceptible to environmental ramification which adversely threat human settlement, they are:

- Areas near to rivers, streams or coastal areas,
- Dense population or untreated industrial waste, causing water pollution near or around streams or river,
- Rapid expansion risking natural areas and agricultural land,
- Increase infrastructural expansion and demand creating potential pollution problems,
- Transportation vehicles and facilities create pollution, accentuate greenhouse effect, depletes nonrenewable resources such as petrol, diesel and oil,
- Burning of crop, agricultural residue, trash use of coal and firewood contributes major proportion of the population especially in rural and semi-urban regions.

Displacement and migration arising due to environmental hazards, not being a new phenomenon was prevalent in primeval period. Though the displacement and migration in those days were minuscule. Presently, lack of international legal regime, increase abuse and pressure on the environment has estimated the high number of displacements. The indeterminate definition of environmental refugees sailing makes it extremely difficult to extend rights or protection to environmental refugees.

3) Influx of Refugees in Host Countries

In recent studies refugees and economic gain have been coupled together. It has been interposed that refugees not only impact host countries, but can offer economic growth. The refugee camps receive aid in kind and cash, though aid in cash is preferred. The aid in cash provides a substantial boost to the host country's economy. Some attributes of aid in cash that lead to economic growth, found by researchers are²⁶:

²⁶See, <https://www.ucdavis.edu/news/refugees-can-offer-economic-boost-their-host-countries/> (Last visited on January 7th, 2018).

- The aid received increases the annual real income in the local area.
- Businesses surrounding the camps have customers from refugee's camps.
- Increase demand leads to higher sale of goods that boosts overall income and spending levels in the host country.

Therefore, refugees not only possess threat to the host country they contribute to the economic growth of the host countries. The new cluster of refugee sets up demands necessities like food, shelter, water, etc. which acts an impetus to trade.

Suggestions for New Frameworks to Manage Environmental Refugee

Main factors, due to which contentions for developing a legal framework have become increasingly relevant, include: Growing effects of global climate change, increasing the drive for locals to move and creating a burden on local governments of the affected region, and recent cases pertaining to climate refugee has been adjudicated. These results along with the social pressures relating to climate change have burdened the international community to deal with refugees relocating due to climatic or sociopolitical reasons.

Existing UN Framework doesn't have an inclusive definition of refugee it shall embrace the environmental refugees within the current definition of refugee. Environmental migration already happening, migrants having right to a legal solution needs redefinition of the term refugee. Redefining or eliminating the persecution element and expanding or eliminating the protected grounds has been common suggestions. Environmental migrants can be protected by the existing UN Convention by simply adding as a class of people.²⁷ Although, the suggested changes seem simple and uncomplicated but five²⁸ contentions pertaining to the US have been identified by scholars leaving environmental refugees with limited options in the United States. Climate refugees will have limited options in the United States for refugee or asylum claims due to absent legal claim for refugee status grounded in the existing UN Convention.

²⁷ Carey DeGenaro, Comment, Looking Inward: Domestic Policy for Climate Change Refugees in The United States and Beyond, 86 U Colo L Rev 991, 1033 (2015).

²⁸ The contentions included: Temporary protected status granted by the Secretary of the Department of Homeland Security; prosecutorial discretion by the executive branch not to pursue cases against environmental migrants, parole granted by the Secretary of the Department of Homeland Security or executive branch allowing environmental migrants to remain in the United States; and withholding of removal, preventing the return of an individual to another sovereign nation where they may be persecuted.

Development of a new comprehensive legal structure of environmental migration has been advocated by many. Implies that entirely new and distinct United Nations protocol can be adopted. Simultaneously, adoption and cooperation of sovereign nations are essential for having a legal structure at the international level. The sensitive part of rights, grants and protection of environmental refugees must prorate by countries. New framework can be in the form of protocol, convention, promulgation of a treaty or agreement relying on inextricable of global socio-economic factors. Although, the new framework if gives concrete recognition to environmental refugees will induce mass migration worldwide. Another apparent constrain is about, the international community should have sufficient deliberations to draft new framework. Non- efficacy around devising and implementing the new framework is high. The burden will stay on all countries to implement and uphold the new legal framework. Simultaneously, the process of drafting effected and a holistic new framework and its implementation would take years together.

Beside the new legal framework regime, regional agreements are another way to treat environmental refugees unless international law assimilates their status. Although, regional agreements are not an alternative to the international legal framework, but the ancillary way to deal with environmental refugees. These regional agreements may assist in treating and protecting environmental refugees amongst the countries around the specific region. As environmental refugees relocate to countries and regions around their home country, therefore, regional agreement can be an alternative.

CONCLUSION

There are numerous typologies used for environmental refugees or environmental migrants, however, there is a minuscule understanding of these terms. This alarming issue of environmental refugees, persistently exists many scholars and think tanks have impressed at the fact. Besides, it does not mean that indeed the existences of high environmental risk are factors are behind large-scale voluntary or involuntary migration. People have relocated, left places in the past, resulting the harsh, deteriorating conditions or inhabitable conditions. Outcome of poor rainfall or political upheaval, high unemployment or other issues adverse factors. Without a specific and concrete definition of environmental refugee, it is incorrect to say that this category of people is increasing. Unless one knows who are environmental refugee how can their population, impact, rights, protect or effect be assessed. However, the conception of scholars worldwide must

contribute to this assessment which will rationalize and back the impact projected.

Non-acceptable status of environmental refugees as legitimate refugees equates to disqualify status of refugee. Apparently only political refugees have dominant stand and claim. The plight of people leaving hazardous and fragile environments has not translated into hard evidence of the fundamental cause of their problems. Further, displacement of refugees due to environment degradation laying stress on depleting natural resources of the host country is another concern. Some studies relating to environmental refugee effect on Asia indicate an influx of environmental refugee into India from neighboring countries especially from Bangladesh. This would add to the shortage of resources and threaten the livelihood of the existing population. The Indian population in and around coastal areas, islands and other sensitive regions pose threat of cyclone, flood, earthquakes, drought, etc. which might invoke environmental refugees. In such a situation, India will become home country of environmental refugee's being the preferred host country. However, environmental refugees of one block may migrate within India to another block, which disqualifies them as environmental refugees.

Since environmental refugee migrates from environmentally vulnerable areas they need to be directed to rehabilitation area not equally vulnerable. Moving from one location to another both being environmentally vulnerable areas doesn't provide any relief to the people. Such people need guidance because they might not be apprised of the environmentally vulnerable existing in the relocating area. For example, migrants may move from cities located in low-elevation coastal areas which are prone to increased flooding to drought-prone agricultural areas.

Therefore, definition of environmental refugee, the scope of environmental refugees and legal status to qualify as refugee need concrete and detailed discussions on a worldwide platform. Additionally, the international legal framework on environmental refugees must not reduce to bureaucratic agendas of international organizations and academics rather than emphasizing on empirical insight. The root cause of environmental refugee needs to be addressed simultaneously. All countries must work together to protect, preserve and grow healthy environment around us not only for present but for future generations. Protection and assistance of the international refugee regime require cogitation with focusing the world's attention on environmental problems.