

ADEQUATE HOUSING: A DISTANT DREAM OF INTERNATIONAL (CLIMATE) MIGRANTS? - INDIAN SCENARIO

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ABSTRACT

Humans often migrate from one place to another in search of the requisites which they beseech for. In an era where migration has become common, the government has an onus, posed by national as well as international obligations, to provide affordable housing in order to respect their 'human right' of proper shelter. The need for affordable housing was realized by the Indian government when the migrant crisis happened due to the pandemic. As a result of which, the government formed policies for providing affordable housing. While this step is commendable, it is suggested to enact a statute regarding the same. International conventions put the onus on the government for safeguarding the interests of those who are unable to do so. With the change in environment, there is a possibility for migration. While the status of migrants due to climate change is ambiguous and undefined in international law, various conventions ask the state to respect the basic human rights. The principle of non-refoulement protects the rights of climate migrants. It is recommended that in order to protect the rights of migrants in the long run, there should be a

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change in the definition of refugees and climate migrants should come under it.

I. INTRODUCTION

Migration may be best defined as, “*the crossing of spatial boundary by one or more persons involved in change of residence.*”¹ According to the 2011 census, India had 45.6 crores migrants, while 99 percent of the total were internally displaced and 1 percent were immigrants.² There were 4.5 crores migration for work resulting in 8 percent of total migrants.³ The urban centers, common preferences for migration, have created the most inhuman and brutal living conditions.⁴ The displacement can be internal as well as external in nature. It is a documented fact that there is a possibility of displacements due to climate change. The same is evident from Article 4⁵ of the African Union Convention for the Protection of Internally Displaced

¹ Pieter Kok, *The Definition Of Migration And Its Application: Making Sense Of Recent South African Census And Survey Data* 7 SOUTH. AFR. J. DEMOGR. 19, 20 (1997).

² Madhunika Iyer, *Migration in India and the impact of the lockdown on migrants*, THE PRS LEGISLATIVE RESEARCH (June 10, 2020), <https://prsindia.org/theprsblog/migration-in-india-and-the-impact-of-the-lockdown-on-migrants>.

³ *Id.*

⁴ S.P. Sathe, *Right To Shelter: Review Of Housing Law And Policy In Maharashtra*, 35 J. INDIAN L. INS. 13, 13(1993).

⁵ States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human-made disasters, including climate change.

Persons (the Kampala Convention).⁶ According to a report by the International Organization for Migration, “200 million to 1 billion will migrate from climate change alone by 2050”⁷ and about 7 million people in India will migrate.⁸

Migration often results in homelessness. The gravity of the state of being homeless is severe. Migrants abandon their homelands either on a semi-permanent or permanent basis⁹, which might result in homelessness¹⁰ and this state of being homeless is severe in subaltern strata. It is estimated from the census of 2011 that there are approximately more than 1.7 million people who are homeless¹¹ and 500 million landless people in India.¹² According to the Government of India, around 10 million migrants had attempted to return to their hometown due to the lockdown following COVID 19.¹³ It is well

⁶ *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, 22 Int'l J. Refugee L. 119,124 (2010).

⁷ Paramjit S. Jaswal & Stellina Jolly, *Climate Refugees: Challenges And Opportunities For International Law*, 55 J. INDIAN L. INS. 45,46 (2013).

⁸ *Id.*

⁹ Norman Myers, *Environmental Refugees in a Globally Warmed World*, 43 BIOSCIENCE 752, 752(1993).

¹⁰ Christine H. Lindquist, et. al., *The Myth of the Migrant Homeless: An Exploration of the Psychosocial Consequences of Migration*, 42 SOCIOL. PERSPECT., 691, 692(1999)

¹¹ Varun Sharma & Abhishek Goyal, *Homelessness: Need of wakeup call for a 'state' in slumber*, SCC ONLINE BLOG, (July 21, 2021) <https://www.sconline.com/blog/post/2020/07/01/homelessness-need-of-wakeup-call-for-a-state-in-slumber/> .

¹² *Id.*

¹³ Yogima Seth Sharma, *Labour minister Gangwar clarifies his response on migrant workers in Parliament*, ECONOMIC TIMES (September 16, 2020, 12:29 PM), <https://economictimes.indiatimes.com/news/economy/policy/labour-minister-gangwar-clarifies-his-response-on-migrant-labourers-in->

recognized that homelessness is a direct assault on the right to life.¹⁴ One of the biggest problems for them is the non-availability of affordable housing as, largely, they belong to lower-income households.¹⁵ Moreover, according to a survey, there has been a shortage in 95.6% of urban housing in which many belong to the lower-income class.¹⁶ 'Housing affordability' has become a common way to summarize the housing difficulty in many nations.¹⁷ Without affordable housing, people are left impoverished, the economy shrinks and damage is done to the environment.¹⁸

In an era where migration-both interstate and intrastate, has become common, the government has an onus, posed by national as well as international obligations, to provide affordable housing in order to respect the migrants'

parliament/articleshow/78142699.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

¹⁴ Leilani Farha (Special Rapporteur on adequate housing), U.N. Doc A/HRC/31/54 (Dec. 30,2015).

¹⁵ G.Stacy Sirmans & David A. Macpherson, *The State Of Affordable Housing*, *Journal Of Real Estate Literature*, 11 J. REAL ESTATE LIT. 133, 139 (2003).

¹⁶ Gaurav Wahi & Karan Sharma, *Affordable housing in India-Key Initiatives for Inclusive Housing for All*, SMARTNET (Feb 2016) <https://smartnet.niua.org/sites/default/files/resources/Affordable%20Housing-ICC%20-%20Final.pdf>.

¹⁷ J. David Hulchanski, *The Concept Of Housing Affordability: Six Contemporary Uses Of The Housing Expenditure-to-income Ratio*, HOUSING STUDIES (Oct. 1995), http://www.urbancenter.utoronto.ca/pdfs/researchassociates/Hulchanski_Concept-H-Affd_H.pdf.

¹⁸ Khalil Shahyd, *Why Affordable Housing Matters for Environmental Protection*, ENERGY EFFICIENCY FOR ALL (August 23, 2019), <https://www.energyefficiencyforall.org/updates/why-affordable-housing-matters-for-environmental-protection/>.

'human right' of proper shelter. Recognizing this right becomes more important in the case of climate refugees and migrants. The term 'migrant' begs a precise definition in international law.¹⁹ Hence, the state can make the difference between a regular and an irregular migrant. On the other hand, the Convention Relating to the Status of Refugees (1951)²⁰, later modified by the 1967 Protocol relating to the Status of Refugees²¹ (“**Refugee Convention**”) defines 'refugees' but the definition fails to acknowledge the aspect of climate refugees. The migrants who fulfil the present pre-requisites of Refugee Convention are termed as 'convention refugees' whereas others are known as 'voluntary' migrants. The Refugee Convention adopts a restrictive definition which in turn narrowly limits the legal status of a refugee. Hence, it becomes imperative to study their human rights to have adequate and affordable housing in a state. In order to do so, the paper tries to draw a nexus between the rights of climate refugees and affordable housing from an Indian perspective while doing a comparative study with its counterparts. The paper also attempts to explain how the onus should be on the government to recognize and

¹⁹*Migrants and Refugees*, OHCHR
<https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/MigrantsAndRefugees.pdf>.

²⁰ United Nations Convention Relating to the Status of Refugees, Jul. 28, 1951, 189 U.N.T.S. 150.

²¹ United Nations Protocol Relating to Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267.

implement affordable housing especially during a pandemic.

II. AFFORDABLE *VIS-A-VIS* ADEQUATE HOUSING

Traditionally, human needs include “*food, clothing, and shelter*”²² with shelter being the primary²³ human necessity. Even then according to a report²⁴ by the United Nations, more than 100 million persons on this planet are homeless and about 1 billion inadequately housed. Adding to that concern, it is estimated that there will be an addition of another 300 million urban residents by 2050.²⁵ Furthermore, roughly a quarter of the world's population lives under extremely unhealthy conditions.²⁶ Moreover, it is predicted that more than 3 billion people will be dwelling in unhygienic slums all over the world by 2030.²⁷

The Agenda 21 adopted by the 1992 UN conference on environment and development recognizes, “*the right to*

²² *ShantiStar Builders v. Narayan Khimalal Totame & Or.*, (1996) 1 SCC 233 (India).

²³ Prafulla C. Mishra, *Right To Shelter: A Human Right Perspective*, 40 J. INDIAN L. INS. 230, 230 (1998).

²⁴ *An estimated 100 million people are homeless worldwide*, SHARE THE WORLD'S RESOURCES (Sept. 6, 2018), <https://www.sharing.org/information-centre/reports/estimated-100-million-people-are-homeless-worldwide>.

²⁵ *No Poverty: Affordable and Resilient Houses*, UN INDIA, <https://in.one.un.org/unibf/no-poverty/> (last visited 1 March 2021).

²⁶ Prafulla, *supra* note 23, at 231.

²⁷ *Make cities and human settlements inclusive, safe, resilient and sustainable*, UNITED NATIONS STATISTICS DIVISION, <https://unstats.un.org/sdgs/report/2019/goal-11/> (last visited 27 August 2021).

adequate housing as a basic human right and that people should be protected by any means of unfair eviction from their homes or land” and any such act is a gross violation of human rights.²⁸ The UN Special Rapporteur on adequate housing has defined adequate housing as, “*the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity.*”²⁹ Therefore, the right to adequate housing is intrinsically connected with the realization of other basic human rights and it should be understood in connection with the inherent dignity of the individual. The right to adequate housing has been recognized by several international conventions³⁰ as a human right³¹. In International law, article 25(1)³² of the UN Declaration of Human Rights (“**UDHR**”) ³³ particularly deals with the right to housing. The article

²⁸ U.N. Comm. on Human Rights, U.N. Doc. E/CN.4/RES/1993/77 (March 10, 1993) (Emphasis Added)

²⁹ *Id.*

³⁰ See, for example, Convention on the Elimination of All Forms of Racial Discrimination, Article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, Article 27 (3) of the Convention on the Rights of the Child, Article 10 of the Declaration on Social Progress and Development, section III (8) of the Vancouver Declaration on Human Settlements, 1976 (Report of Habitat: United Nations Conference on Human Settlements).

³¹ Miloon Kothari (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living), ¶17, U.N. Doc. E/CN.4/2005/43 (2003).

³² 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. (Emphasis added)

³³ G.A. res. 217A (III), at 71 (Dec. 10, 1948).

provides that *everyone* has the right to have a standard of living that is *adequate* for the family that includes housing.³⁴ A liberal interpretation of ‘everyone’ here may also include non-citizens of a state and any denial, which may be de jure or de facto, attracts various rights violations mentioned in international conventions. Foremost, any violation attracts infringement of other human rights which may include areas of education, health, etc. To uplift this obligation a state can, ask for international support as mentioned in article 11(1) of the International Covenant on Civil and Political Rights (“**ICCPR**”)³⁵ which provides that the government of the state, with the help of the international community, should act to the full extent to realize the right to adequate housing. Here, the article recognizes housing as ‘adequate’ housing.³⁶ Furthermore, being a treaty, it is legally binding on the state parties which have ratified it. As India has rectified this covenant, it has to be read into Article 21 which will be also enforceable in Indian Court. Although ICCPR does not explicitly acknowledge the right to adequate housing what it recognizes is the right to life³⁷ which, as discussed above, may include right to housing. As mentioned in article 2(1) of the covenant, each state

³⁴ *Id.* (Emphasis added)

³⁵ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171. (“ICCPR”)

³⁶ U.N. Comm. on Economic, Social and Cultural Rights, at ¶ 7, U.N. Doc. E/1992/23(Dec. 13, 1991).

³⁷ *Supra* note 33, art. 6.

party needs to respect rights present in the convent and make them available to *everyone* present in the *territory*. The states can opt for ‘*shelter for all*’ approach according to their respective jurisdiction and resources. According to the United Nation Commission on Human Settlement³⁸, commonly known as UN-Habitat, ‘shelter for all’ means, “**affordable shelter** for all groups in all types of settlements, meeting the basic requirements of **affordability**, **tenurial security**, **structural stability**, and **infrastructural support**, with convenient access to employment and community services and facilities.”³⁹ Moreover, the right is available to everyone, without any discrimination.⁴⁰ Affordable housing is an important aspect at the international, national, and more importantly at an individual level and the same has multiple nexus to an individual's well-being.⁴¹ As unaffordable housing undermines not only individual mental health but also the wealth and economic progress of society overall.⁴² On the other hand, affordable housing increases household wealth increases the health, and higher quality of neighborhoods.⁴³ It has been acknowledged that the lack of affordable housing puts the subaltern in a situation where they have to choose among basic human necessities:

³⁸ G.A. Res. 56/206 (Dec. 21, 2001).

³⁹ G. Stacy Sirmans, *supra* note 15, at 2.

⁴⁰ *Supra* note 20.

⁴¹ CHRISTINE H. LINDQUIS, *supra* note 10.

⁴² Andrea J Boyack, ‘Sustainable Affordable Housing’, 50 ARIZ ST. LJ. 455, 463 (2018).

⁴³ *Id.*

housing or food, housing or clothing, housing or education, housing or health care, and so forth.⁴⁴

Before moving any further, it is imperative to put forward a definition of ‘affordable housing’ in order to understand the nuances of it. Affordable housing does not have any specific definition *per se*, and the meaning of the word changes contingent upon the country in question. A layman meaning of this word that has been, also, accepted by the Indian Government is, “*Affordable housing refers to any housing that meets some form of **affordability criterion**, which could be income level of the family, size of the dwelling unit or affordability in terms of EMI size or ratio of house price to annual income.*”⁴⁵ Therefore according to this, the affordability of a household is an interactive outcome of house price, income, spending, number of heads in the family, location, and other demographic factors that affect the size and maintenance of the household. It is pertinent to note that housing is the single largest expenditure and most of the savings go into this area and a minor impact on this can affect several things which, in turn, can affect the overall

⁴⁴ Arturs Kucs, et.al., *The Right to Housing: International, European and National Perspectives*, 64/65 CUADR. CONST. CTDR. FAD. FURIO. CRL. 101, 102(2008), <https://www.semanticscholar.org/paper/The-right-to-housing%3A-International%2C-European%2C-and-Ku%04%8Ds-Sedlova/de10a04fc4a02e92d5d34955ea8ae4d7889de415>.

⁴⁵ Kalpana Gopalan & Madalasa Venkataraman, *Affordable housing: Policy and practice in India*, 27 IIMB MAN. REV. 129, 130 (2015). (Emphasis added)

welfare of families.⁴⁶ Affordable housing becomes important for the welfare of people who cannot afford or do not have resources to avail themselves of a shelter for themselves for a long term. Due to heterogeneous conditions, there exist no objective test to define an affordability problem. An attempt to solve this can be: any household is said to have an affordability problem if it is paying a substantial amount of income to obtain the basic amenities of adequate and appropriate housing, but on the other hand, it is affordable when the household can pay initial costs, current rents, or any other cost, that make them able to stay in the particular dwelling on a long-term basis while at the same time being able to maintain the minimum standard of living defined by the international or national standards. Moreover, house ownership is not a prudent choice for everyone, especially for the lower economic strata of society. Further, this difficulty behind house ownership may be categorized into three main reasons: the high price of the monthly mortgage is often unaffordable as discussed above, the low credit score often makes it impossible to apply for a home loan, lack of cash in hand making the instalments difficult.⁴⁷

⁴⁶Kana Ram, *Affordable Housing Opportunities in Small Indian Cities- A Case study of Industrial Migrants*, (2013) http://www.isocarp.net/Data/case_studies/2397.pdf (last visited April 25, 2021).

⁴⁷ Andrea J, *supra* note 42, at 483.

III. INDIA: NEED VS. AN AMBIGUOUS TAKE

While in some countries right to affordable and adequate housing has been categorically mentioned and accepted as a matter of right⁴⁸, the same has not been specifically mentioned in any codified law of India. In India, several rights have been recognized by the Indian Constitution and other statutes, the term ‘adequate housing’ does not have any specific mention, albeit, India being a signatory to several conventions which extensively deal with ‘adequate housing’.⁴⁹ Moreover, the importance of adequate housing has been acknowledged by the judiciary several times but the stance remains uncertain. The importance of a shelter was recognized by the Supreme Court in the case of *Chameli Singh v. State of Uttar Pradesh*⁵⁰ when it held that, “*Shelter for a human being is not mere protection of his life and limb. It is a home where he has opportunities to grow physically, mentally, intellectually, and spiritually.*”⁵¹ Moreover, an adequate shelter is more than having a roof overhead, it is also about having “.... *adequate privacy, adequate space,*

⁴⁸ See, for example, CONST. OF THE RUSSIAN FED. art.40; CONST. OF MEXICO art. 4; CONST. OF PORTUGAL art. 65.

⁴⁹ Dr. P.K. Pandey, *Right To Adequate Housing In India: Human Rights Perspective*, 2 THE LEGL. ANLST. 21, 21 (2012).

⁵⁰ *Chameli Singh v. State of Uttar Pradesh*, AIR 1996 SC 1051.

⁵¹ *Id.*

*adequate security.....at a reasonable cost.*⁵² It is more of a habitat development.⁵³

The right to adequate housing and land is intrinsically related to other human rights that are guaranteed by various international instruments. For example, forced eviction has been recognized as a violation of human rights.⁵⁴ Furthermore as acknowledged by the Special Rapporteur on Adequate Housing, "*The indivisibility of survival, health, environmental conditions, and housing confirms the need to view housing rights within a holistic and interdependent framework.*"⁵⁵ Adequate housing is imperative for a child as it provides an environment where the child can grow holistically, and the self-confidence of a child sustainably depends on the place which ought to be peaceful. As reported, the chances of death of a child, before reaching the age of five, increase by 40-50 times when not provided with adequate shelter.⁵⁶ Adding to this vulnerable position, as per a report⁵⁷, among the leading causes of death in children, before the age of five are indoor air pollution,

⁵² *Supra* note 25.

⁵³ PRAFULLA, *supra* note 23, at 231.

⁵⁴ Miloon Kothari (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living), ¶21, U.N. Doc. A/HRC/4/18 (2007).

⁵⁵ Justice Rajinder Sachar (Special Rapporteur on Adequate Housing), U.N. Doc. E/CN.4/Sub.2/1992/15 (1992).

⁵⁶ *Id.*

⁵⁷ *Mortality among children under five years of age as a human rights concern*, OHCHR
https://www.ohchr.org/documents/issues/women/wrgs/health/study_mortalityamongchildren.pdf.

unsafe drinking water, poor hygiene practices. The importance of children to have adequate housing has been recognized by the Supreme Court of India in the case of *Shantistar Builders v. Narayan Khimalal*⁵⁸ where the court held that “*The constitution aims.....development of every child....possible only if the child is in a proper home.*”⁵⁹ India with one of the largest populations of street children in the world, it becomes imperative to safeguard this right.⁶⁰

When looked at from a constitutional perspective, Article 21 of the Indian Constitution provides for the right to life and personal liberty. It is a settled law that the right to life includes the right to live in an appropriate environment with bare necessities of life, such as education, pure water, proper shelter, clothing, etc.⁶¹In the case of *P.G. Gupta v. State of Gujarat and others*⁶², it was held that the right to shelter comes under the ambit of Article 19(1)(g), and reading this article with Articles 19(1)(e) and 21 implies the right to residence and settlement as well. A liberal interpretation of Article 21 read along with Article 19(1)(e) provides a mandate to protect human rights and the right

⁵⁸ *Shantistar Builders v. Narayan Khimalal*, AIR 1990 SC 630.

⁵⁹ *Id.* (emphasis added)

⁶⁰ Sankunni K, *Estimated 18 million children live on streets in India, home to one of the largest child populations on Earth*, TIMES NOW NEWS (April 2, 2021), <https://www.timesnownews.com/india/article/estimated-18-million-children-live-on-streets-in-india-home-to-one-of-the-largest-child-populations-on-earth/744047>.

⁶¹ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

⁶² *P.G. Gupta v. State of Gujarat and Others*, 1995 Supp. (2) SCC 182.

to shelter.⁶³ Further, when Article 39(b) is read with Article 46 –that directs the state to promote the interest of weaker sections with special care of social, economic, and educational interests—it can be concluded that the state can distribute the resources vested in them to benefit the community as a whole. There have been proactive steps taken by the Indian judiciary in the past regarding the importance of home or shelter for homeless people. In the case of *People’s Union for Civil Liberties v. Union of India*⁶⁴, the court held that the right to shelter comes under the ambit of the right to life. Further, in the celebrated judgement of *Olga Tellis v. Bombay Municipal Corporation*⁶⁵, the court recognized that “[T]hat which alone makes it possible to live, leave aside what makes life livable must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life.” In *Kharak Singh v. State of UP*⁶⁶, the court while reiterating that the right to shelter constitutes an important ‘constitutional’ right held that, “Life is something more than mere existence.”

The prima facie question that may now arise is: if these rights are –directly or indirectly–enunciated or acknowledged either in constitution or in judgements, then why are the government of state(s) not giving enough

⁶³ Sathe, *supra* note 4, at 15.

⁶⁴ *People's Union for Civil Liberties v. Union of India*, (2010) 5 SCC 423.

⁶⁵ *Olga Tellis v. Bombay Municipal Corpn.*, (1985) 3 SCC 545.

⁶⁶ *Kharak Singh v. State of UP*, AIR 1963 SC 1295.

importance to housing rights? A succinct answer would be that many governments around the world are afraid to place importance on housing rights because implications originated from these rights may bring criticism if these rights are not implemented or fulfilled by the government.⁶⁷ A possible and common counter argument is that the right to affordable housing as a right can be seen as a public expenditure or taking the resources of someone else to provide a shelter for someone.⁶⁸ It must be acknowledged that providing affordable housing does not impose an obligation on the government to provide built houses for the whole nation. Rather, it is to cover the various intricacies to make a household affordable. The right to affordable housing is far broader than the right to own a property. Where the latter focuses only on the ownership perspective, the former poses various obligations on the government to make policies regarding the overall affordability of the house that may include sustainable and non-discriminatory access to health care, education, rental policies, etc. The state should acknowledge the right to housing to every individual irrespective of their status in the society or access to economic resources and income.

⁶⁷ Scott Leckie, *The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach*, 11 HUM. RTS. Q. 522, 527 (1989).

⁶⁸ *Id.* at 543.

In India, the subject 'housing' belongs to the state list but the central government can be held responsible for making and implementing the broad policy for weaker sections of the society.⁶⁹ However, various reports categorically state that if there is a need to amend the present legislation to make the housing activity more effective and fruitful, then the same should be encouraged.⁷⁰ The scope of availability of affordable housing does not constrain itself to ownership but also rental houses. Rental houses play an imperative role in the formation of any housing policy. It is evident that not everyone in society is eligible to buy a house, even with affordable pricing. This is where the concept of rental houses comes into the picture. They can be considered as a *sine qua non* of a good housing policy. With affordable rental and ownership housing, the fundamental rights of moving freely⁷¹ in the territory of India and settling⁷² in any part of it would be facilitated. Moreover, recognizing the right to affordable housing as a fundamental right may perform an essential role to implement the rights that lie with it and any infringement regarding the same will attract legal remedies. Even though historically, the rent-to-own models have been victimizing the renters rather than encouraging them,⁷³ a sustainable

⁶⁹ Prafulla, *supra* note 23, at 232.

⁷⁰ Sathe, *supra* note 4, at 15.

⁷¹ India Const. art. 19 (1)(d).

⁷² India Const. art. 19(1)(e).

⁷³ Andrea J, *supra* note 42, at 491.

approach can be engaged by acknowledging the inequity between the renters and the household owners. As opined by Andrea, “*the unaffordability is driven primarily by lack of supply*”⁷⁴, meaning lack of affordable rental houses only exacerbate the situation. It is important for the state to form policies, after examining both socio-political and economic conditions, which should be tailored as per demographic of that particular region. A sustainable approach can be formed wherever the rental price of a house is too expensive for an individual. One of the appropriate examples of such a sustainable approach can be of the Netherlands. With the formulation and adoption of the Housing Act of 1901 (“**HA**”), the Netherlands became one of the first countries in Europe to inculcate the right to housing in its constitution.⁷⁵ The HA creates housing associations which are largely independent but funded as well as regulated by the State. The government subsidizes the rent to make the housing affordable. Moreover, the tenants can challenge any exorbitant and unreasonable rent through the Rent Tribunal Act; the decision of the tribunal will be binding on both the parties.⁷⁶ This approach can and must be considered as a base to form policies regarding rent-housing affordability in India.

⁷⁴ *Id.* at 469.

⁷⁵ Arturs, *supra* note 44, at 119.

⁷⁶ *Id.* at 120.

A COMPARATIVE ANALYSIS

Apart from the international treaties discussed above, some regional treaties and legal statutes partially protect the civil and political rights regarding the right to affordable housing. This chapter of the article, while dealing and appreciating those instruments, will take motivation from these instruments to suggest a sustainable and inclusive approach-for India. The European Social Charter, categorically provides for the protection of the right to adequate housing. It also provides that, in order to exercise the right to housing the parties should undertake measures which are designed to a) promote the access to the housing of an adequate standard; b) curtail and reduce homelessness; c) make the prices of housing adequate and *accessible* to those who are with inadequate resources.⁷⁷ Further, The European Convention on Human Rights and Fundamental Freedom, being one of the most powerful international conventions on human rights, provides for the protection of private life and home under Article 8(1). The convention provides for direct application of complaints if any state of the Council of Europe infringes any of the given rights.⁷⁸

⁷⁷ European Social Char. art. 31. (Emphasis added)

⁷⁸ Arturs, *supra* note 44, at 105.

The African Charter of Human Rights does not categorically provide for the right to adequate housing but some provisions relating to the same have been enunciated in several articles⁷⁹ which when read along with other treaties, protects the right to adequate housing. Article 60 of the Charter provides that all the members of the treaty should recognize the obligation posed by the international conventions. The African Charter of the Rights and Well Being of the Child provides in article 20 that the states are under an obligation to take all the appropriate measures to assist the parents and any other people responsible for the child with appropriate material regarding housing.⁸⁰ Moreover, the Constitution of South Africa expressly provides for the right to adequate housing as a fundamental right. Section 26 of the South Africa constitution provides that everyone has the right to have access to adequate housing and the government should take all reasonable measures within its available resources to implement and protect this right. The constitution also provides that the government is under an obligation to respect and realize the right to adequate housing.⁸¹ The constitution creates an extensive system for the

⁷⁹ See, for example, Article 16 deals with the right to health; article 24 deals with the right of peoples to a general satisfactory environment favorable to development.

⁸⁰ African Charter on the Rights and Welfare of the Child, 3 AFR. J. INT'L & COMP. L. 173, 181 (1991).

⁸¹ Const. Of The South Africa sec. 26.

implementation of this socio-economic right. This was recognized in the case of *Government of the Republic of South Africa and Others v. Grootbroom*⁸². (“**Grootbroom case**”). The judgment given by Justice Yacoob was among the first housing rights judgements which placed negative obligation upon the state to not deprive a person of his/her right. The court while deciding this case and *KwaZulu-Natal*⁸³ relied on the Indian jurisprudence on enforceability of social rights. The Court while deciding *Grootbroom* case said that Section 26 does not create an obligation to provide housing but it creates an obligation to form comprehensive, coherent and workable policies and programs. This judgement can be a prime example of how international principles would be the way forward in a national scenario.

The right to housing is well recognized in United States of America with the help of The Protocol of San Salvador. It is limited and is substantially governed by Article 11 which provides that all persons have a right to live in a healthy environment. The Constitution of Argentina recognizes the right to adequate housing in Article 14, according to which, “*The state shall grant the benefits of social security, which shall be complete and non-renounceable. In particular, the States shall*

⁸² *Government of the Republic of South Africa v Grootbroom* 2000 (11) BCLR 1169 (S. Afr.).

⁸³ *Soobramoney v Minister of Health (Kwazulu-Natal)* 1997 (12) BCLR 1696 (S. Afr.).

*establish.... full protection of the family; protection of the family welfare; economic compensation to families and access to **decent housing.***⁸⁴ In an exemplary manner it recognizes the international as well as regional treaties in its constitution.⁸⁵ Apart from the above conventions and constitutions, the Constitution of Brazil may be the best one where it provides, in an exhaustive way, not only for the right to housing but also other pertinent subjects which may tend to affect the right to housing. The Constitution provides for a minimum wage in order to provide the workers with such wages from which they could be capable of meeting the basic needs, which includes housing.⁸⁶ The government also has a responsibility to promote the housing construction programs.⁸⁷ The most important article of the constitution which deals with the upliftment of the right to housing is Article 203(III).⁸⁸ The Netherlands, as discussed above, was among the first European countries to have the right to housing in its constitution. Article 22(2) of the Constitution of the Kingdom of the Netherlands provides that the authorities have an obligation to provide sufficient living accommodations. Due to the explicit mention of right to

⁸⁴ Argentina Const. art. 14. (Emphasis Added)

⁸⁵ *Id.* art. 75.

⁸⁶ Brazil Const. art. 7 IV.

⁸⁷ *Id.* art. 23 IX.

⁸⁸ This article provides for the social assistance which shall be furnished to anyone whosoever is in need, irrespective of the fact that they have contributed to social security or not.

housing in their respective instruments, the competent authority becomes accountable for respecting and implementing the right to housing.

India, as discussed above, does not provide for explicit mention of right to housing neither in Constitution nor in any other statute. A *prima facie* comparison, between the states mentioned above and India, tends to unearth the plausible paucity of steps taken by the Indian legislature in recognizing the right to housing. As per the author, the recognition of this right is imperative due to ‘degenerating’ role of the judiciary. Although, there have been many judgements –as discussed in above chapters– of a progressive nature, there have been instances where the Indian judiciary has taken an ‘anti-people’ stance while reversing the nature of progressiveness in various judgements. For e.g., derogatory statements, according to author, were made by the learned amicus curiae against slum dwellers in the case of *Almitra Patel v. Union of India*⁸⁹. It was opined that, “*The Court should, however, direct that the local authorities, Government and all statutory authorities must discharge their statutory duties and obligations in **keeping the city at least reasonably clean.** We propose to do so now by issuing appropriate directions.*”⁹⁰ It can be concluded by this statement that the learned amicus curiae were referring the

⁸⁹ *Almitra Patel v. Union of India*, (2000) 2 SCC 679 at 685.

⁹⁰ *Id.* (Emphasis Added)

slum dwellers as an impediment and generator of waste. Similarly, the Delhi High Court in the case of *Navniti CGS v. Lt. Governor*⁹¹, the court ordered the demolition of a slum cluster in the year, which was undertaken by the competent authority after a gap of two years without any prior information notice as a result of which the residents were not provided with resettlement. In recent times, the judgement passed a bench headed by now retired Justice Arun Mishra has unleashed a humongous catastrophe on the solders of hapless dwellers.⁹² The court ordered the eviction of slum dwellers along the railway tracks. The court in this case did not make a reference to *Olga Tellis* and thereby, the order can be considered as *per incuriam*.⁹³ Adding salt to injury, the Central Government maintains the status quo of modus operandi of scheme implementation where it has never implemented. As argued by Gonsalves and Anupradha,⁹⁴ these schemes, “.... are all empty promises to the urban poor, just as the Supreme Court judgments declaring housing to be a fundamental right

⁹¹ *Navniti CGHS v. Lt. Governor of Delhi*, WP (C) 5697/2002, High Court of Delhi, August 2004.

⁹² V. Venkatesan, *Justice Mishra's Last Order: Eviction of Slum Dwellers Along Railway Tracks in 3 Months*, THE WIRE (September 6, 2020), <https://thewire.in/law/justice-arun-mishras-last-order-eviction-jhuggies-railway-tracks>.

⁹³ *Id.*

⁹⁴ Colin Gonsalves & Anupradha Singh, *Evicting without rehabilitating violates rights of slum dwellers*, THE INDIAN EXPRESS (June 18, 2021), <https://indianexpress.com/article/opinion/columns/manohar-lal-khattar-haryana-government-slums-rehabilitation-coronavirus-7363948/>.

remained on paper.” It can be concluded from this discourse that the justice for the poor continues to be dependent not on the judiciary’s commitment but on the proclivity of individual judge. Moreover, it is due to erratic and unsettled take by the Indian judiciary, it becomes important to promulgate and implement a right to housing law,⁹⁵ which will not only provide security of tenure but also commits to ending homelessness and forced evictions⁹⁶

IV. CLIMATE MIGRANTS: A STRUGGLE TO DWELL

The first World Climate Conference was organized in the year 1979 by the World Meteorological Organization where it was held that climate change should be taken as an ‘urgent’ problem for the world. The term ‘climate refugee’ was first defined by United Nations Environment Programme (“**UNEP**”) researcher Essam El-Hinnawi as: *“those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/ or triggered by people) that jeopardized their existence or seriously affected the quality of their*

⁹⁵ Press statement by Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context Ms Leilani Farha, OHCHR (April 22, 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19861&LangID=E>.

⁹⁶ Ruel Rolnik (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living), U.N. Doc. A/HRC/25/54 (December 30, 2013).

life.”⁹⁷ According to him, ‘environmental disruption’ means any change due to which the resource base is unable to render suitable support to human life. The formation of United Nations Framework Conventions on Climate Change (“UNFCCC”)⁹⁸, during the Rio summit which is popularly known as Earth Summit, was more than a simple convention as the name suggests it concerns the *framework* regarding the issue of climate change. Furthermore, the Kyoto Protocol⁹⁹, which was a result of a need to have a forceful international response, opted for “*common but differentiated responsibilities and respective capabilities for nations.*”¹⁰⁰ According to this principle, the developed country party are to provide financial resources to the developing country parties in implementing the objectives enshrined in the UNFCCC.

While the international conventions failed to examine the definition of climate refugees, some regional instruments try to include this in their respective conventions. For example, Article 1(2) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, provides the definition of a refugee as someone

⁹⁷ Diane C. Bates, *Environmental Refugees? Classifying Human Migrations Caused by Environmental Change*, 23 POPUL. ENVIRON. 465, 466(2002). (Emphasis added)

⁹⁸ United Nations Framework Convention on Climate Change, May 9, 1992, 1771 UNTS 107.

⁹⁹ Kyoto Protocol to the Framework Convention on Climate Change, Dec. 11, 1997, 2303 UNTS 161. (“Kyoto Protocol”)

¹⁰⁰ *Id.* art. 10.

who was compelled to flee due to *an event* that seriously disturbed the public order. An event herein shall include any climatic event. In similar fashion, internally displaced persons due to climate disasters are covered by the Kampala Convention as,

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or *natural or human-made disasters*, and who have not crossed an internationally recognized state border.¹⁰¹

The needs of migrants will differ based on the type of displacement, factors that may include economic, cultural, political contexts.¹⁰² Some countries have formed special rules or policies to permit the individuals coming from a country that went through severe upheavals, due to climate change making that particular country uninhabitable for them. Some of those countries are United States of America, New Zealand, Sweden, and Finland. The United States implemented Temporary Protected Status (“**TPS**”) for protecting the migrants or persons who are unable to go back to their country due to armed conflict or

¹⁰¹ Kampala convention, *supra* note 6, at art. 1(k).

¹⁰² Lauren Nishimura, ‘Climate Change Migrants’: *Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies*, 27 INT. J. REFUG. LAW 1,3 (2015).

environmental disaster.¹⁰³ TPS is, as understood by the author, a blanket form of humanitarian relief where the relief from removal is administered to a group of individuals. The United State Secretary of Homeland Security has the authority to designate a country under the head of Temporary Protected Status and the authority to gain an extension to any protected state is vested in the hands of the Secretary.¹⁰⁴ As for 2021, twelve¹⁰⁵ countries have been provided with this status. However, this status is provided only¹⁰⁶ to the ones who were present in the States during the implementation of the designation. Further, as the name suggests, it is a temporary designation and not a permanent one. The status only grants legal status to remain in the country and does not provide with a separate path to avail the citizenship or permanent residence.¹⁰⁷ During the designated period, holders of the TPS cannot be detained on the basis of their immigration

¹⁰³ Eva Segerblom, *Temporary Protected Status: An Immigration Statute That Redefines Traditional Notions of Status and Temporariness*, 7 Nev. L.J. 664,665 (2007).

¹⁰⁴ Jill H. Wilson, *Temporary Protected Status and Deferred Enforced Departure*, Congressional Research Service (August 9, 2021), <https://sgp.fas.org/crs/homsec/RS20844.pdf>.

¹⁰⁵ *Temporary Protected Status*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/humanitarian/temporary-protected-status>.

¹⁰⁶ EVA, *supra* note 103, at 667.

¹⁰⁷ *Temporary Protected Status: An Overview*, AMERICAN IMMIGRATION COUNCIL, (August 9, 2021), https://www.americanimmigrationcouncil.org/research/temporary-protected-status-overview?_cf_chl_jschl_tk=__pmd_gFWuSeDIN_MS4ApTxA6.9DV_MJ6Dklt8q5K9O5ZcVEM8-1630139085-0-gqNtZGzNAICjcnBszQjR

status and are eligible¹⁰⁸ for the Employment Authorization Document which is one of the ways to prove the employers that the status holder is allowed to work¹⁰⁹. In addition to this, the holder is eligible to travel abroad although with a prior authorization of the Secretary. A similar kind of protection is given by the European Union from the establishment of the ‘Temporary Protection Directive’, when there is a mass influx of people from where it is not feasible to treat the individual application of the individuals. Sweden as well as Finland both have included migrants due to environmental factors in their respective immigration policies. Further, the Finnish Aliens Act provides for residence permit on the basis of the protection needed by the individual¹¹⁰. Moreover, there has been an agreement between New Zealand and Tuvalu, which is known as the Pacific Access Category (“PAC”) agreement wherein a specific annual quota for the citizens of Tuvalu was granted residence in New Zealand. The PAC presents a special immigration agreement that enables the refugees affected by climate change to move to a less vulnerable environment.

¹⁰⁸ JILL H., *supra* note 104.

¹⁰⁹ *Employment Authorization Document*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document> (last accessed 28 August 2021).

¹¹⁰ *Second Right to Housing Report: The Right to Housing in Comparative Perspective*, MERCY LAW RESOURCE CENTRE (2018), <https://mercylaw.ie/wp-content/uploads/2018/06/MLRC-Second-Right-to-Housing-Report.pdf>.

Moreover, Switzerland and Norway formed the Nansen Initiative on Disaster and cross-border Movements. The initiative is a state-led initiative with an aim of building consensus and principles regarding the protection of displaced persons across the borders as a result of natural disasters.

The extreme weather events-across Asia and the Pacific-have not only a direct relationship to internal and temporary displacement, but also contributes to international migration.¹¹¹ Although Asia-Pacific region is leading¹¹² global action plans on climate change, there exist *no instruments* similar to that of other regional instruments¹¹³. The importance of regional cooperation is evident from the fact that approximately 1 million people will be at risk dwelling around the country's Bay of Bengal sector i.e., West Bengal and Odisha, whereas 15 million people in Bangladesh by 2050 will be at risk.¹¹⁴ With the increase in sudden and slow-onset of disasters due to climate change, risks are generally amplified for people with no or limited access to the resources and social security.¹¹⁵ The cross-border displacement as a response to

¹¹¹ U.N. ESCOR, U.N. Doc. E/ESCAP/GCM/PREP (Sept. 5, 2017).

¹¹² *Id.* at 6.

¹¹³ *Addressing Climate Change and Migration in Asia and the Pacific*, Asian Development Bank (2012), <https://www.adb.org/sites/default/files/publication/29662/addressing-climate-change-migration.pdf>. (Emphasis Added)

¹¹⁴ Norman, *supra* note 9 at 755.

¹¹⁵ *Supra* note 111 at 4.

climate change will be gradual and hidden through the existing channels, as a result of which people's capacity to move will be reduced or constrained.¹¹⁶ As per Angela Williams, "*regional cooperation.... which builds on existing geopolitical bonds and economic relations.... appears a model better suited to climate change displacement.*"¹¹⁷ Regional agreements are more likely to achieve a greater commitment and intended results that might otherwise be achieved at international level.¹¹⁸ Although Asia-Pacific regional consultative processes have not prioritized climate change and migration, there is a forum available for future dialogue and cooperation.¹¹⁹

Further, climate change and human rights are closely intertwined. The same was acknowledged in a resolution¹²⁰ by UN Human Rights Council ("UNHRC"). The resolution reaffirmed the basic rights of life, food, health, and housing which are under threat due to climate change. It must be kept in mind that those who are migrating because of environmental factors have the same rights as others who crossed the borders normally.¹²¹ Various

¹¹⁶ *Id.* at 5

¹¹⁷ Angela Williams, *Turning the Tide: Recognizing Climate Change Refugees in International Law*, 30 LAW & POL'Y, 502,518 (2008).

¹¹⁸ *Id.*

¹¹⁹ *Supra* note 111 at 15.

¹²⁰ Human Rights Council Res. 10/4, U.N. Doc. A/HRC/10/L.11 (May 12, 2009).

¹²¹ Susan Martin, *Climate Change, Migration, and Governance*, 16 GLOB. GOV., 397, 402 (2010).

articles¹²² have been enunciated in UDHR which protect individuals' rights to migrate to other country where they can seek asylum from the persecution taking place in their home country; although there is no *obligation* on the host state to provide one. Article 12 of ICCPR provides that, “everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement, as mentioned in Article 13, and freedom to choose his residence”. But this right is restrictive in nature which may be according to the law, necessary for public order (*ordre public*) and national security. In addition to this, OHCHR has recommended¹²³ that any irregular entry of migrants should not be considered as a criminal offence and the private individual should not be criminalized under the law of host country. Further, it calls upon the state to provide the migrants with necessary medical attention and wherever the detention of migrated individual is required, the condition in detention should in consonance with international standard.

India is one of the most vulnerable countries in the world and has been hit by at least one extreme weather event

¹²² See, for example, art. 13, art. 14.

¹²³ *Recommended Principles and Guidelines on Human Rights at International Borders*, OHCHR, https://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.

every month.¹²⁴ According to the Internal Displacement Report, about 3.6 million people were displaced between the years 2008 to 2019.¹²⁵ Whereas, there has been a displacement of about 5,90,000 within the year of 2019 due to disasters.¹²⁶ Furthermore, according to a survey¹²⁷ of the National Disaster Management Authority, more than half of the states of India are prone to disasters. In the case of Rohtang Pass,¹²⁸ the National Green Tribunal acknowledged the fast change in the climate as a result of increased human activity.

When it comes to the obligation of international law, ‘displaced persons’ serves as a descriptive term and does not form a judicial category, and thereby, States are not under obligation as it does not form a status.¹²⁹ *Prima facie*, the government of the migrants’ country has the primary

¹²⁴ Hridayesh Joshi, *Climate change now displaces more people than war, and India should be worried*, QUARTZ INDIA (February 21, 2020), <https://qz.com/india/1806064/india-vulnerable-as-climate-refugees-surge-amid-floods-droughts/>.

¹²⁵ Rajit Sengupta, *Forced displacement is the new norm in India*, DOWNTOEARTH (May 22, 2020), <https://www.downtoearth.org.in/news/climate-change/forced-displacement-is-the-new-norm-in-india-71303#:~:text=Between%202008%20and%202019%2C%20the,vulnerable%20to%20cyclones%20and%20tsunamis>.

¹²⁶ *India*, INTERNAL DISPLACEMENT MONITORING CENTRE, <https://www.internal-displacement.org/countries/india> (Last visited April 24, 2021).

¹²⁷ Malini Nambiar, *A Decade of Disaster Risk Management in India*, 50 ECON. POL. WKLY. 36, 36 (2015).

¹²⁸ The court on its own motion v. the State of HP, Application No. 237 (IHC)/2013 (CWPIIL No. 15 of 2010), order dated 6 February 2014.

¹²⁹ David Keane, *The Environmental Causes and Consequences of Migration: A Search for the Meaning of "Environmental Refugees*, 16 GEO. INT'L ENVTL. L. REV. 209, 217 (2004).

duty to act whenever their rights are violated. India, not being a signatory to Refugee Convention, is obliged by the principle of non-refoulement,¹³⁰ a *jus cogens* norm.¹³¹ This principle has become a customary international law¹³² wherein it prohibits the transfer of aliens from one authority to another authority where they might be subjected to torture, inhumane or degrading treatment or where the rights and freedoms might be at risk.¹³³ This principle applies *to all migrants* at all times, irrespective of migration status.¹³⁴ Although, the present principle applies to the contracting state,¹³⁵ it is imperative to acknowledge that although the state is under no obligation to admit the climate refugee, the state is under an obligation not to refole them, as per the non-refoulement principle. Further, the ‘floodgate argument’¹³⁶ which was given in the

¹³⁰ Refugees Convention, *supra* note 20, art.33(1); State of Arunachal Pradesh v. Khudiram Chakma, 1994 Supp (1) SCC 615.

¹³¹ Oliver Jones, *Customary Non-Refoulement of Refugees and Automatic Incorporation into the Common Law: A Hong Kong Perspective*, 58 INT COMP LAW Q. 443, 450 (2009).

¹³² *Note on Migration and the Principle of Non-Refoulement*, 99 INT’L REV. RED CROSS 345,346 (2017).

¹³³ Vадislava Stoyanova, *The Principle of Non-Refoulement and the Right of Asylum-Seekers to Enter State Territory*, 3 INTERDISC. J. HUM. RTS. L. 1,1 (2008).

¹³⁴ *The principle of non-refoulement in international law*, OHCHR, <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>. (Emphasis added)

¹³⁵ *Id.*

¹³⁶ Jane McAdam, *Building International Approaches to Climate Change, Disasters, and Displacement*, 33 Windsor Y.B. Access Just. 1, 5 (2016).

case of *AF(Kiribati)*¹³⁷ before Immigration and Protection Tribunal of New Zealand, wherein the State argued that, if the state accepts a person who migrated due to climate change or environmental degradation, the same will open a gate for millions to take shelter under the head of a climate refugee, is, according to author, untenable as the UNHCR provides the funds to the refugees taking shelter in a state. In the recent judgement of *Nandita Haksar v. State of Manipur*¹³⁸ of Manipur High Court, the court observed that the principle of non-refoulement can be, *prima facie*, read with Article 21 of the Indian Constitution. Moreover, on the contention about an exodus of refugees as a threat¹³⁹ given by the states for not providing shelter, the court responded that while providing protection to illegally entered Myanmarese individuals,

They did not enter our country with the clear-cut and deliberate intention of breaking and violating our domestic laws. They fled the country of their origin under imminent threat to their lives and liberty. They aspire for relief under International Conventions that were put in place to offer protection and rehabilitation to refugees/asylum seekers.

¹³⁷ *AF (Kiribati)*, [2013] NZIPT 800413 (N.Zealand).

¹³⁸ *Nandita Haksar v. State of Manipur*, 2021 SCC OnLine Mani 176.

¹³⁹ S.C. Res. 688, (April 5, 1991).

The court while citing the case of *National Human Rights Commission v. State of Arunachal Pradesh*¹⁴⁰ noted that,

Every person is entitled to equality before the law and equal protection of the laws.... no person can be deprived of his life or personal liberty except according to the procedure established by law.... The state is bound to protect the life and liberty of every human being, be he a citizen or otherwise.

Therefore, certain protection has been guaranteed under the Articles 14 and 21¹⁴¹ of the Indian Constitution for the foreigners.¹⁴² In the case of *Chairman Railway Board v. Chandrima Das (Mrs.)*¹⁴³, the apex court held that the Bangladeshi citizen who crossed the borders ‘illegally’ was entitled to be protected under article 21 of the Constitution. Further, as noted by the court in the case of Nandita Haksar, “*India has no clear refugee protection policy or framework, it does grant asylum to a large number of refugees from nearby countries.....mainly from Afghanistan and Myanmar.*”¹⁴⁴ Moreover, foreigners do not have the right to reside and settle in the country in accordance with article 19(1)(e).¹⁴⁵ In absence of any national legal framework, UNHCR

¹⁴⁰ National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742.

¹⁴¹ Louis De Raedt v. Union of India, (1991) 3 SCC 554.

¹⁴² Salomon v. Commrs. Of Customs and Excise, (1996) 3 All ER 871.

¹⁴³ Chairman Railway Board v. Chandrima Das (Mrs.), (2000) 2 SCC 465.

¹⁴⁴ Nandita Haksar, *supra* note 99, at ¶ 19.

¹⁴⁵ Union of India v. Ghaus Mohammad, AIR 1961 SC 1526.

conducts¹⁴⁶ refugee status determination which provides refugees coming from neighboring countries which includes Myanmar temporary resident permits.

V. AFFORDABLE HOUSING: A WAY FORWARD

The right to life in any civilized society requires proper shelter, food, a decent environment, and medical care.¹⁴⁷ However, in a neo-liberal society, private developers and investors dominate the system of housing.¹⁴⁸ This creates disparate opportunity due to which there is a gap in housing affordability which perpetuates discrimination based on income, race and thereby, shaking the basic foundation of the right to equal opportunity,¹⁴⁹ due to which there is a creation of a housing crisis that requires a human rights response.¹⁵⁰ Further, with a decline in public housing,¹⁵¹ the supply of affordable housing has become dependent on the private construction of affordable housing, which in turn has a profit-making focus rather than a humanitarian approach.¹⁵²

¹⁴⁶ Michael Alexander, *Refugee Status Determination Conducted by UNHCR*, 11 INT'L J. REFUGEE L. 251, 255 (1999).

¹⁴⁷ Prafulla, *supra* note 23, at 235.

¹⁴⁸ Farha, *supra* note 14, at 3.

¹⁴⁹ Gaurav, *supra* note 16, at 23.

¹⁵⁰ *Id.*

¹⁵¹ Houses are provided to the lower stratum in the economy which is subsidized by the public funds.

¹⁵² Andrea J, *supra* note 42, at 475.

While housing policy deals with the question of ownership and mortgage affordability, the question of rental affordability does not find a place in that. It is evident from the census that the number of rentals in the urban population is increasing, and the number of renters today is greater than ever before. Moreover, a substantial part of these renters belongs to the low-income class who cannot afford to pay the cost of separate housing.¹⁵³ Rental affordability is an omnipresent problem in today's world. Increasing the supply of affordable housing may curb some issues relating to the same, but it is not a go-to solution as the affordability gap depends on the demographic location of the person. Wherefore, housing affordability should not be concluded from the perspective of cost-to-produce but ability-to-pay perspective.¹⁵⁴

One unsustainable aspect of housing is the divide of the support given to the house owners and the renters. It is evident that the security lasts only till the rent agreement and the bargaining power vests in the hand of the owner who often tends to exploit the renters. To protect the interest of the renters, tenant subsidies and houses with an affordable price should be reserved or rather preserved for the members of a stratum of society which is the neediest segment. While the Constitution of India provides that the

¹⁵³ *Id.* at 468.

¹⁵⁴ *Id.* at 481.

state should provide services at low or no cost, an apolitical and honest administrative system is a core requirement which is-what it seems- impossible in the present system.¹⁵⁵ As opined by S. Ambirajan, “*Our system works on F-mistake (failing to reach the targeted population) and E-mistake (intervention reaches predominantly the non-targeted population) given by Giovannu Andrea Cornia and Frances.*”¹⁵⁶ An impediment in this subsidy regime can be the identification of the actual beneficiary as the immediate recipient of the subsidy may not be the actual or ultimate gainer of the scheme, making subsidy an unproductive incubus. Therefore, the subsidy should be overt and tailored to maximize the minuscule benefits to the identified targeted and intended recipients. However, the subsidy may have financial repercussions on the budget.

Reserve Bank of India’s analysts have opined that excessive government consumption expenditure –which include subsidies– has a negative impact on growth of the country.¹⁵⁷ Although, as stated in a report¹⁵⁸ by the World

¹⁵⁵ S. Ambirajan, *State Government Subsidies: The Case of Tamil Nadu*, 34 ECON. POL. WKLY., 811, 816 (1999).

¹⁵⁶ *Id.*

¹⁵⁷ Rajiv Kumar & Alamaru Soumya, *Fiscal Policy Issues for India after the Global Financial Crisis (2008-2010)*, ASIAN DEVELOPMENT BANK INSTITUTE (2010), <https://www.adb.org/sites/default/files/publication/156104/adbi-wp249.pdf>.

¹⁵⁸ *India: Sustaining Reform, Reducing Poverty*, World Bank, <https://web.worldbank.org/archive/website00811/WEB/PDF/ESDPR.PDF>.

Bank, there is a need to reallocate the expenditures from subsidies towards investment in infrastructure, the affordability of housing is a legitimate rationale for housing subsidies.¹⁵⁹ In order to minimize the financial burden on the government, the subsidy should ultimately be rationalized and phased out in the later phases as they may lead to undesirable wastage of scarce resources.¹⁶⁰ In addition to this, the subsidy should be valid for a period during which the recipient can settle and work holistically on their economic status and after such period the administration should re-evaluate their status and pass-on the subsidy to ones who fulfills the criteria fixed. Moreover, with a demand-side subsidy system-where government subsidies the tenants of affordable housing-the policy makers, with the help of simple legislative decisions, can alter the programs which will be beneficial to the left out or new individuals.¹⁶¹

The right to adequate housing is a basic human right that poses an obligation on the government to ensure the attainment of these rights by all people and any kind of impediments should be dealt with and removed by the government¹⁶², and there should be active participation of

¹⁵⁹ John M. Quigley, *Rental Housing Assistance*, 13 CITYSCAPE, 147, 148 (2011).

¹⁶⁰ *Id.*

¹⁶¹ Adam Zaidel, *Affordable Housing: The Case for Demand-Side Subsidies in Superstar Cities*, 42 THE URBAN LAWY. 135, 151 (2010).

¹⁶² Vancouver Declaration, *supra* note 30.

government, non-government organizations to ensure there should be legal security regarding the tenancy, moreover, there should be equal access to affordable and adequate housing for everyone.¹⁶³ Therefore, the right to affordable housing becomes imperative to respect obligations posed by the international conventions. The same was recognized in the case of *Sudama Singh v. Government of Delhi and another*¹⁶⁴ where the Delhi High Court opined on the importance of implementing the international conventions. This is especially required as the right to shelter comes under the ambit of fundamental rights of the Indian Constitution.¹⁶⁵ Not having an affordable shelter can have serious implications on health and can also cripple the overall development of the family and society as a whole. Further, Committee on Economic, Social and Cultural Rights (“**CESCR**”) provides that the right to adequate as well as affordable housing is indeed a human right and the same creates an obligation, beyond any doubt, on the state to uplift and implement¹⁶⁶ the right

¹⁶³ U.N. Conference on Human Settlements: Habitat II, ¶ 10, U.N. Doc. A/ CONF.165/14, annex I (Aug. 7, 1996).

¹⁶⁴ *Sudama Singh v. Government of Delhi and another*, 2010 SCC OnLine Del 612.

¹⁶⁵ *State of Karnataka v. Narasimhamurthy*, 1995 5 SCC 524.

¹⁶⁶ The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 9 HUM. RTS. Q. 122,122 (1987).

wherever it is legally bound to do so. Also, as per CESCR General Comment No. 3¹⁶⁷,

a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'etre*.¹⁶⁸

As shown in preceding parts of this article, according to author, India has been failing to discharge this obligation. A policy regarding the same should primarily be designed to provide low-cost housing to not only the lower strata of the society but to anyone and everyone.¹⁶⁹ Due to the migrant crisis, the Indian government was motivated to form a scheme, Affordable Renting Housing Complexes (“**ARHCs**”) for the underprivileged class to provide affordable rental housing. The ARHCs will be implemented with the help of two models: utilizing the existing funded houses and converting them to ARHC, and construction of ARHC by private entities. The scheme is in correspondence with the “Housing for all” incentive. The scheme has targeted the Economically Weaker Section

¹⁶⁷ U.N. SCOR. Comm. on Economic, Social and Cultural Rights, U.N. Doc. E/1991/23 (De. 14, 1990).

¹⁶⁸ *Id.* at 86.

¹⁶⁹ *Id.*

(EWS)/ Low Income Group (LIG) who are urban migrants/poor. This scheme can be considered as a silver lining in the uncertain clouds of dwelling.

V. CONCLUSION

As said by Sylvia Lopez-Ekra, International Organization for Migration (“**IOM**”) Ghana Chief of Mission, “*Migration is often misperceived as the failure to adapt to a changing environment. It is, however, one of the main coping and survival mechanisms that are available to those affected by environmental degradation and climate change.*” International Conventions obligate the state to safeguard the human rights of life and property of those within the territory of the state against the threat posed on the migrants by a disaster. India faces a natural disaster every year, which sometimes makes the condition of the affected area unsuitable for living. While the problem originated from the environment, it is an equal crisis of social, political and economic, and human rights. Additional problems are associated with climate migration, which may include poverty, population pressure on the potential state, lack of affordable shelters, unemployment, and many other things. There has been a paucity in the system of global governance which should be acknowledged by international organizations. The most significant impediment, according to the author, to the protection-and appreciation-regime for climate migrants is

the lack of political will. In order to discontinue this political impasse, it's high time for the 'soft law' to put an onus on states along with repercussions for failing any obligation. Although the effects of climate change are omnipresent and well recognised, developing-and-underdeveloped countries bear the most of the brunt. It is suggested and expected that there should and must be an increase in humanitarian assistance with the help of international cooperation. In order to safeguard the economic interests of developing-and underdeveloped-countries, a common pool of financial resources-exclusively for climate migrants at the international level should be set up.

While India itself has many problems –homelessness, poverty, unemployment– international climate migrants will be in a quandary. Due to the principle of non-refoulement, the state cannot refoule the climate migrants. A major impediment for recognizing refugees or international climate migrants is the 'floodgate' argument, according to which recognizing international climate migrants or refugees will allow and encourage a major influx of international climate migrants to consider India as a host country. In order to tackle this, it is suggested that a policy should be formed which will define and designate a temporary status to climate migrants in accordance with the rights provided to refugees under international law.

This designation should be regularly and extensively re-evaluated. The policy should be codified in the later stages, which will enable the legislature to set more certain and consistent standards to designate the status. Moreover, as of now, UNHCR conducts the determination for refugee status and provides requisite funds to the refugees in India. Therefore, UNHCR along with the government should work towards dealing with the issue of climate migrants holistically as only the nomenclature is different and not the human rights.

In addition to that, India can form bi-lateral agreements between neighbouring countries as the probable influx from neighbouring countries is more than other countries. The neighboring countries are also under a constant threat for such environmental migrants. For instance, Nepal experienced a powerful rainstorm in 2019. There were 50 deaths, 10,000 displaced¹⁷⁰ due to heavy pouring, and about 1 million people affected by the disaster¹⁷¹. It is highly probable that some may seek refuge in India in the future due to the melting of glaciers. Moreover, with the submergence of Sundarbans and many islands, like

¹⁷⁰ *Monsoon rains trigger deadly flooding in Nepal*, AL JAZEERA (July 14, 2019), <https://www.aljazeera.com/gallery/2019/7/14/monsoon-rains-trigger-deadly-flooding-in-nepal>.

¹⁷¹ Rebecca Ratcliffe, Arun Budhathoki, *At least 50 people dead and 1 million affected by floods in South Asia*, THE GUARDIAN (July 14, 2019), <https://www.theguardian.com/world/2019/jul/14/at-least-people-killed-in-nepal-floods-monsoon>.

Lohachara island in Hooghly River, in the Indian Territory, it becomes pertinent for India to acknowledge the displacement due to climate disasters. As suggested above, there is a need to make a policy over migration due to these events and to formulate a climate change policy as there is a high possibility of an influx of migrants due to climate change. Migration caused by environmental change requires a theoretical framework to integrate human rights and respect all the suitable problems one could face in the potential destination. Moreover, the definition of 'refugee' under Refugee Convention should be amended to add 'climate refugee' in it, if not this, at least a separate head should be provided to them in the international convention. Further, international conventions provide housing rights for 'everyone'. Therefore, looking from that liberal perspective, it becomes pertinent for the host state to provide affordable shelter, and every other thing which can be considered as basic amenities for a desirable life with the help of bi-lateral ties and international support. The host state should be provided with the financial resources from the migrant's home country in order to ameliorate the probable financial stress on the host country.

Let me conclude my study with a sense of optimism and hope that in the near future various international organizations along with state governments will be able to

inculcate the definition of climate refugee in the present conventions. Moreover, various multilateral treaties, regarding safeguarding these refugees' human rights in a foreign land could be formulated and climate refugees could be provided with the right of affordable housing, at least, in the form of rental housing. Moreover, the state should focus more on inculcating the protection of housing by affordable means in the statutes and not just in policy, as a policy is an inconstant initiative that changes according to the party in power. Moreover, this is necessary to make the recognition of the right to housing a legal obligation and not a political one. Nonetheless, Schemes like ARHCs depict a motivation of the government for working towards underprivileged migrants. The author hopes that inclusive schemes like this can be formulated for the migrants, particularly ones crossing international borders due to climate change.