CENTRE FOR DISASTER MANAGEMENT AND LAW
NATIONAL LAW UNIVERSITY, ODISHA

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THE CDML REVIEW

APRIL EDITION

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1. Himalayan hazards and glacial disaster law: when melting ice exposes legal fault lines

-Sriti Basu

The Himalaya Mountains, sometimes known as the "Third Pole", are being rapidly transformed by climate change, anthropogenic activities and poor governance (Bolch et al., 2019; Intergovernmental Panel on Climate Change (IPCC), 2023). Glacial retreat, glacial lake outburst floods (GLOFs), and slope instability have transitioned from occurring only infrequently to occurring on an almost daily basis; their occurrence now has far-reaching legal consequences (Richardson & Reynolds, 2000; International Centre for Integrated Mountain Development (ICIMOD), 2020). Like many of the disasters mentioned in the recent CDML Review, these disasters were not simply natural events; they have been exacerbated by a lack of institutions, regulatory failures and poor anticipatory governance (UNDRR, 2015).

Early Warning Systems and the Limits of State Action:

Early Warning Systems (EWS) play a key role in disaster risk reduction in glacial ecosystems (UNDRR, 2015).

In India, significant progress has been made as a result of satellite monitoring, remotely sensed data, and the development of institutional mechanisms under the Disaster Management Act, 2005 (National Disaster Management Authority (NDMA), 2005; ISRO, 2022). Despite this advancement, the overall effectiveness of these systems continues to be limited due to weak last-mile communication, poor real-time coordination and a lack of enforceable legal obligations (Comptroller and Auditor General of India [CAG], 2021).

In mountainous areas of the Himalayan region, evacuations are generally less successful than evacuations from the plains, primarily because of the lack of established evacuation infrastructures in the steep terrain of mountains as opposed to the flat landscapes of the plains (ICIMOD, 2020). High-elevation settlements are exposed to a higher level of risk but face a unique combination of challenges, including remote locations with limited access, dispersed populations and fragile transportation routes (IPCC, 2023). For this reason, governments often fail to meet their obligation under law to provide early warning and arguably carry out a duty to warn, treating early warning as a policymaking process as opposed to a legally enforceable obligation, creating a mismatch between available technological solutions and the legal accountability for their use (Jha & Stanton-Geddes, 2013).

Governments will need to move away from voluntary or discretionary governance and develop legally enforceable frameworks whereby government entities are compelled to establish and/or provide timely early warning alerts, provide for comprehensive evacuation plans and provide accountability for those governments should a failure occur (UNDRR, 2015). Without some form of enforceable early warning criteria, EWS are likely to be used symbolically rather than as a functional, effective method of delivering EWS.

Mountain Ecology and Land Use Regulation: A Legal Vacuum:

The fragile nature of the Himalayan ecosystem continues to be compromised as development continues to occur with little to no regulatory constraints (Singh et al., 2014). Road construction, hydropower projects, and tourism infrastructure have had an immense effect on slope stability, resulting in increased vulnerability to disaster (Kaur et al., 2021). The existing regulatory frameworks such as the Environment Protection Act (EPA 1986) and Environmental Impact Assessment Notification (2006) present a generalised approach to regulation across all of India and do not consider the unique ecological subtleties of the Himalaya (MoEFCC, 2006). Absence of a legally enforceable land-use zoning plan tailored for this environmentally sensitive area also compounds this issue (TERI, 2018).

As such, construction continues to occur within landslide-prone areas and is often conducted without a cumulative assessment of the related impacts of the total development taking place in the region (IPCC, 2023). Courts have consistently made a call for the need for environmental protections, but enforcement of these protections is sporadic, inconsistent, and fragmented across India's Judiciary (Alaknanda Hydro Power Co. Ltd v. Anuj Joshi, 2014).

While there has been a systematic analysis of misusing floodplains or encroaching on urban areas in other disasters, the governance of the Himalaya does not provide a coherent approach or framework for ecological planning. Therefore, there is a significant need for legally enforceable land-use zoning laws and carrying capacity studies for the Himalayas, along with outright bans on building within high-risk areas, because development will become a major driver of disaster if these measures are not adopted.

AI Infrastructure Planning and Environmental Impact Assessment:

AI-assisted disaster prediction and infrastructure planning have both positive and negative attributes (UNESCO, 2021). AI systems can improve glacial monitoring, hazard mapping, and predictive modelling; because of this, they will provide unprecedented accuracy in determining potential zones for natural disasters (World Bank, 2021).

However, current frameworks for Environmental Impact Assessment (EIA) did not take into consideration decision-making based on AI (MoEFCC, 2006). The environmental footprint of digital infrastructure (i.e., data centres, energy consumption) and algorithmic bias are mainly unregulated (Crawford, 2021). Additionally, the fact that AI systems operate in an opaque manner raises significant concerns regarding transparency and accountability with respect to the decisions made (UNESCO, 2021).

In cases where AI-generated assessments influence infrastructure approval or disaster preparedness, there need to be adequate legal frameworks in place for explainability, auditability, and public oversight (UNESCO, 2021). Otherwise, technological governance will likely recreate some of the failings of existing institutions, just in a more complicated or less transparent manner.

Conclusion: From Reactive Response to Anticipatory Law:

The events that occurred in the Himalayas illuminate a much larger problem: the existing laws continue to take a reactive approach to preventing disaster while scientists and researchers are developing predictive approaches to help inform the potential for future disasters – the law does not evolve as we learn more about our environment and change our approach to mitigating risk for the people impacted by a disaster (IPCC, 2023; UNDRR, 2015).

We will need to review the present-day legal framework and develop a forward-looking legal framework that will have all provisions necessary for risk mitigation and to ensure that both traditional knowledge of affected communities and local knowledge are incorporated into the determination of how to best protect those who live in the affected area (ICIMOD, 2020).

The Himalayas serve as critical ecological systems, and they are vital lifelines for millions of people throughout South Asia (Bolch et al., 2019). If these mountains are managed appropriately, there will be no reason to think of them as being unstable. The real issue is whether the legal system will be able to make the necessary changes in a timely fashion to prevent future disasters from happening.

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2. The Lex Himalayana: Re-coding Environmental Jurisprudence via Artificial Intelligence

-Anwesha Panda

Can there be a way for an algorithm to protect a mountain from having to establish a right to stabilise? Recently, the Vanashakti v. Union of India (2025) case marked a monumental moment in Indian environmental law as it has placed the law, or the “static” part, and the slopes under the part of the environment that are “continually changing" or "moving", with both parts having some similarities so they can be thought of as one cohesive entity. India has experienced more than 687 major disasters over 122 years, of which approximately 240 have been recorded as occurring directly within the environmentally sensitive Himalayan Corridors representing a dramatically higher level of vulnerability and National Security risk to this area. Indians will now see their ability to successfully contribute to “Viksit Bharat” 2047, whether it be through an outdated approach to Environmental Impact Assessments (EIAs) without coded noise reduction devices in place or as an example of more recent innovations in improving living standards and creating economic stability with respect to the environment.

The Legislative Lacuna and the 2025 Regulatory Realignment

For decades, the EIA Notification of 2006 acted as a "snapshot" guard and did not take into account the “Himalayan Trifecta”: being prone to geological hazards, ecological fragility, and socio/cultural sensitivity. The proposal of the Draft EIA 2020 proposed 'expediting' 'strategic' linear projects by allowing them to avoid public scrutiny, a move that has been derided by critics as 'judicial legicide'. However, the catastrophic 2025 monsoon season, with the Dharali flash floods depositing 18 metres of sediment, made the new system necessary, involving an “Alignment of the Regulatory Process”.

On March 17, 2025, the Ministry of Environment announced one of the crucial amendments to cancel exemptions on such linear projects as the Char Dham highways. This amendment repairs a significant lacuna by mandating that developers identify and justify excavation sites under a new Appendix XIV framework, re-embedding the Precautionary Principle into the heart of mountain infrastructure.

The Judicial Pulse: Case Law as a Warning

The Indian judiciary has increasingly filled the governance failure gap. In the case of Citizens for Green Doon v. Union of India, the Supreme Court balanced the Ministry of Defence’s need for 10-meter-wide roads for missile launchers against the precautionary principle.

While allowed for national security, a subsequent June 2025 study revealed 811 new landslide zones along that very corridor, primarily triggered by hill cutting, proving that security and ecology are, in fact, an indivisible binary.

Furthermore, the "Public Trust Doctrine", establishing that the State is a trustee of natural resources, was expanded in the 2025 Swacch Association v. State of Maharashtra, 2025 ruling to include even man-made waterbodies. This implies a constitutional duty under Article 51A(g) to protect the Himalayan "water towers" using the highest degree of due diligence. When static EIAs failed to predict the 5.4 cm drop of Joshimath in just 12 days, it signalled the end of the paper-plan era.

Comparative Jurisprudence: AI as the New "Legal Sentinel"

While nations like Ecuador and Colombia have granted constitutional “Rights of Nature”, India is adopting a “techno-legal” approach to personhood. The “Seven Sutras” approved by the IndiaAI Mission require that the infrastructure of a country be designed such that it is “Understandable by Design”. This places the full burden of proof for any AI system on its developer: if an AI-based infrastructure (such as the IIT Mandi system which predicts landslides three hours in advance with 90% accuracy) exists, ignoring the information used to create it may subject the developer to absolute liability for any damages caused by its failure to operate correctly.

Advanced platforms like Terralux now integrate satellite InSAR (Interferometric Synthetic Aperture Radar) to track the "breathing" of mountains. Legally, this transforms the EIA from a one-time permit into a continuous lifecycle commitment, aligning with the EU AI Act's model of algorithmic impact assessments.

The Paradox: The Carbon Footprint of Protection

Critics point out that there is a potential downside to using data centres as a means of helping to protect the Himalayas. The total use of electricity generated by data centres in India is expected to be 9.2 GW (gigawatts) by the year 2030, which is 3% of Australia's total electricity grid power generation. The act of training a large-scale AI model can produce as much as 500 metric tonnes of CO_2 emissions. The Ministry of Environment, Forests and Climate Change (MoEF&CC) has been urged to develop structures (impact assessments) for large-scale AI infrastructure as a means of preventing AI from becoming a "Trojan Horse" for climate warming, including by requiring the use of liquid cooling systems and the use of renewable energy sources in relation to such infrastructure.

A Call for a Coded Constitution

The Himalayas are not static; they are a volatile geological entity. Moving from 'Snapshot EIAs' to "National Digital Twins" of AI by 2035 is not simply a technological upgrade; it will require a new legal framework to govern AI technology.

We need to move away from a system which condones the breaking of laws to one in which we are able to predict peace.

The future of the Himalayas lies in the synthesis of indigenous wisdom, judicial oversight, and the digital sentinel. Let this serve as a call to action to all policymakers and legal scholars: The mountains are watching, and thanks to AI, we finally have the tools to hear them.

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3. The Price of Fragility: Rethinking Himalayan Economics and Risk

-Sameer Panda

Introduction

The Himalayas act as the economic "water tower" of Asia, feeding river systems that support over 1.9 billion people and a significant percentage of global GDP. For nations like India, Nepal, and Bhutan, this region is a critical asset class generating billions in hydropower revenue, tourism receipts, and agricultural output. However, the accelerating crisis of climate change, manifested in Glacial Lake Outburst Floods ("GLOFs") and land subsidence, threatens to turn these assets into stranded liabilities.

Economic discourse often treats environmental regulation as a barrier to growth. In the fragile Himalayan context, this view is dangerously obsolete. Unregulated infrastructure expansion in geologically volatile zones is not development; it is capital destruction waiting to happen. This article argues for a paradigm shift in Himalayan governance, viewing disaster law not merely as a compliance burden but as an essential mechanism for asset protection, risk mitigation, and long-term economic resilience.

The ROI of Early Warning Systems (EWS) and State Action

From an economic perspective, the absence of functional Early Warning Systems ("EWS") in the Himalayas represents a massive market failure. The cost of installing a robust sensor network for a glacial lake is negligible compared to the capital expenditure of the infrastructure it protects. For instance, the 2023 South Lhonak Lake GLOF in Sikkim caused damages estimated in the hundreds of millions of dollars, including the destruction of the 1200 MW Teesta III hydroelectric dam (International Centre for Integrated Mountain Development [ICIMOD], 2023).

Current state action suffers from "disaster myopia", a tendency to underestimate low-probability, high-impact events. A revised legal framework should mandate EWS not just for public safety but also as a condition for insurance and financing. Investment in EWS should be treated as a capital expense with a high rate of return based on "avoided loss" metrics. The Global Commission on Adaptation estimates that every $1 invested in early warning systems yields $9 in economic benefits (Global Commission on Adaptation, 2019). Laws must compel state agencies to disclose glacial risk data to downstream investors and communities. Information asymmetry where the state knows the risk but the market does not leads to mispriced assets and sudden economic shocks when disaster strikes.

Mountain Ecology and Land Use: The Economics of Carrying Capacity

The crisis in Joshimath, a hub for pilgrimage tourism and defence logistics, illustrates the “Tragedy of the Commons". Unchecked construction of hotels and roads to maximise short-term tourism revenue exceeded the geological carrying capacity, leading to land subsidence that rendered assets worth crores worthless overnight.

Economic planning in the Himalayas often relies on a “volume-based” model (more tourists, more roads) rather than a “value-based” model (high-value, low-impact tourism). This inevitably leads to diminishing returns and asset depreciation. Current land use regulations allow developers to privatise profits (hotel revenue) while socialising costs (disaster relief funded by taxpayers). A new legal regime must introduce “Ecological Cesses” or “Resilience Bonds.” Developers building in high-altitude zones must contribute to a sovereign risk pool, ensuring that the cost of potential environmental degradation is priced into the project upfront. Strict zoning laws based on slope stability and soil typology are not "anti-business". They are essential for preserving the long-term value of real estate and infrastructure. By legally enforcing carrying capacity limits, the state protects the “natural capital” that attracts tourists in the first place.

AI Infrastructure Planning and De-risking Investment

The Himalayan region is increasingly viewed as a high-risk investment destination due to climate volatility. This raises the cost of capital (interest rates) for critical projects like hydropower and tunnels. Traditional Environmental Impact Assessments ("EIAs") are often viewed as bureaucratic hurdles rather than risk management tools.

Artificial Intelligence ("AI") offers a path to "de-risk" these investments, turning regulatory compliance into a competitive advantage. Integrating AI into the EIA process allows for dynamic modelling of climate scenarios. If a hydropower company uses AI to demonstrate that its dam design can withstand a 1-in-100-year GLOF event, it can negotiate lower insurance premiums and cheaper financing rates. Legal frameworks should incentivise "Smart Infrastructure." Instead of static concrete structures, regulations should favour projects equipped with AI-driven structural health monitoring systems. These systems can detect micro-tremors or stress fractures early, allowing for preventive maintenance that is far cheaper than post-disaster reconstruction. The government must treat geological and cryosphere data as a public good. An open-access, AI-ready data repository on Himalayan hazards would reduce the due diligence costs for investors and enable better risk pricing by the market.

Conclusion

The economic viability of the Himalayan region depends on shifting from a frontier mentality where nature is conquered for extraction to a stewardship mentality where natural capital is managed for perpetuity. The laws governing this region must evolve to reflect this economic reality. By mandating EWS as an investment shield, pricing ecological risks into land use, and leveraging AI to lower the cost of uncertainty, the Himalayas can transition from a zone of hazardous speculation to a model of resilient economic development. In this high-altitude economy, safety is not an expense; it is the ultimate dividend.

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4. The Legal Vacuum of Climate Displacement: Rethinking Sovereignty and the Sundarbans Crisis

-Pradipta Roy

By the year 2050, global estimates from organisations like the World Bank suggest that over 200 million people could be internally or internationally displaced by the environmental consequences of climate change. We are no longer discussing a distant, slow-onset threat; in 2026, the reality of the Anthropocene is etched into our coastlines and reflected in the dust of our parched hinterlands. However, as we navigate these complexities, a profound and dangerous legal vacuum exists at the heart of international law. The individuals fleeing these crises, often referred to in common parlance as climate refugees, occupy a precarious space. They are victims of a global phenomenon, yet they are ghosts in the eyes of established jurisprudence. This invisibility is not a mere oversight; it is a structural failure of a global legal order that was designed to address state-to-state conflict rather than the systemic collapse of environmental stability.

The central challenge lies in the fact that our current legal architecture was built for a world that no longer exists. The 1951 Refugee Convention, the bedrock of international protection, defines a refugee strictly as someone fleeing well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Because climate change is an indiscriminate force of nature rather than a targeted human persecutor with malicious intent, millions of displaced individuals are stripped of formal asylum protections. In the eyes of the law, they are often categorised merely as economic migrants, a label that ignores the forced nature of their journey and subjects them to restrictive immigration laws that offer no right of non-refoulement. This lack of a protective mandate means that states are under no treaty obligation to provide shelter, legal status, or basic human rights to those whose homelands have quite literally vanished under the rising tide.

This protection gap is particularly acute for those experiencing internal displacement. While the majority of climate-induced migration occurs within national borders, national legal systems are often ill-equipped to manage the fallout. While frameworks like the Sendai Framework for Disaster Risk Reduction provide a roadmap for resilience, they remain largely non-binding, offering guidance rather than guarantees.

This leaves the burden of protection almost entirely on domestic judiciaries, which must interpret ageing constitutions to meet modern existential threats. In India, we are seeing the rise of a "Green Constitution", where the Supreme Court increasingly recognises that the Right to Life under Article 21 is fundamentally inseparable from the right to a stable environment. The judiciary is signalling that without a climate-secure habitat, constitutional guarantees of dignity, health, and shelter become hollow promises. However, judicial intervention is inherently reactive; what is required is a proactive legislative scaffolding that anticipates displacement before it becomes a humanitarian catastrophe.

To understand this protection gap in practice, one needs to look no further than the Sundarbans, the world's largest mangrove delta straddling India and Bangladesh. Here, the abstract concepts of slow-onset disasters and climate displacement are daily realities. In the Sundarbans, the sea is not just rising; it is consuming history, property, and legal identity. The primary legal crisis in the region is the disappearance of the subject matter of the law itself. Under traditional property law, a land title is a permanent deed to a specific geographic coordinate. But when that coordinate is underwater, the land title becomes a relic.

Current revenue and land records have no mechanism to transfer the value of submerged land to a new, safe location, leaving displaced families in a state of economic decapitation where they possess legal documents for properties that no longer physically exist. This "legal drowning" means that families lose their only source of collateral, making it impossible to access the credit or capital necessary to rebuild their lives in more stable inland regions.

As salt water poisons the soil and makes traditional livelihoods impossible, a mass exodus is occurring toward urban slums. This transition highlights a secondary legal failure regarding the portability of social protections. When a resident of the Sundarbans moves to a city like Kolkata or Dhaka, they often lose access to localised benefits, subsidised food rations, and voting rights tied to their home constituency. In the eyes of the urban legal machinery, they are not disaster victims deserving of state support; they are unauthorised migrants or squatters. They fall through the cracks of labour protections because their migration was forced by nature, not just recruited by industry. Furthermore, the gendered impact of this displacement cannot be ignored, as women often remain in the vulnerable delta regions to manage submerged households while men migrate for labour, creating a fractured social fabric that the law is currently failing to mend.

This underscores the need for a Deltaic Jurisprudence that recognises fluid boundaries and provides mobile rights that follow the person rather than the plot of land.

The legal complexity of the Sundarbans also raises profound questions about state responsibility and the "rights of nature". If a state fails to maintain embankments or invest in coastal resilience, is it legally liable for the resulting displacement? Some scholars suggest that the loss of the Sundarbans should be viewed through the lens of a "takings" clause, where the government's failure to act results in a de facto expropriation of citizen property. Simultaneously, we are exploring whether granting legal personhood to the mangrove ecosystem itself could provide a new avenue for protection. If the forest has a legal right to exist, the state would have a mandatory duty to preserve the ecosystem that acts as a natural shield for millions of people. This intersection of environmental law and human rights is the frontier where the next generation of disaster management policy will be written.

At the Centre for Disaster Management, our research is currently focused on a paradigm shift away from reactive humanitarian aid toward proactive climate mobility frameworks. We believe the path forward requires a total reimagining of disaster law that moves toward a formalised legal status triggering specific state obligations long before the crisis peaks.

This includes the development of planned relocation laws that allow vulnerable communities to move with dignity, ensuring their land rights and cultural identities are legally preserved. We are also examining the financial mechanisms of "Loss and Damage" agreed upon at recent COP summits, seeking ways to translate international climate finance into localised legal aid for the displaced. By advocating for regional pacts that treat migration as a form of adaptation rather than a desperate last resort, we aim to ensure that the law acts as a shield for the most vulnerable.

Ultimately, the crisis of climate displacement is a test of our collective legal imagination. As a Law University, our responsibility extends beyond teaching the law as it currently stands; we must envision the law as it must be to survive the coming decades. The legal vacuum we currently observe is not an absence of power but an absence of political and judicial will to recognise a new category of human rights. The displaced are not just statistics in a climate model; they are rights-holders who deserve a legal architecture that recognises their dignity, protects their movement, and secures their future. The law should not be a bystander in times of crisis; it must be the blueprint for the recovery, providing the stable ground upon which a resilient society can be rebuilt.

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OUR TEAM

FACULTY ADVISORS

Kumarjeeb Pegu (Director)

Kanishka (Co-Director)

Kriti Srivastava (Co-Director)

Kumar Aghna Mukherjee (Member)

STUDENT CONTRIBUTORS

Sriti Basu

Anwesha Panda

Sameer Panda

Pradipta Roy

EDITOR-IN-CHIEF

Oishi Bhowmik

Contact us at

cdml@nluo.ac.in