

FROM VULNERABILITY TO INJUSTICE: RETHINKING LEGAL FRAMEWORKS FOR CLIMATE-INDUCED DISPLACEMENT IN SOUTH ASIA"

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Abstract

Climate change is a growing driver of human displacement, particularly in climate-vulnerable regions such as South Asia. With increasing frequency and intensity of floods, droughts, sea-level rise, and extreme weather events, millions are being uprooted from their homes. Despite this escalating crisis, the existing international and national legal frameworks remain fragmented and insufficient in protecting the rights and dignity of climate-displaced populations. This study critically examines the legal, political, and historical dimensions of climate-induced displacement in South Asia, focusing on India, Pakistan, and Bangladesh. It evaluates the extent to which international human rights and refugee frameworks—such as the 1951 Refugee Convention, the ICCPR, and the Paris Agreement—address displacement caused by environmental factors. It also assesses national legislative responses, revealing the absence of comprehensive legal recognition or protection for climate-displaced persons within domestic systems. Employing doctrinal legal analysis, comparative case studies, and historical contextualization, this research identifies key legal gaps, institutional weaknesses, and political impediments. It explores how colonial legacies, partition-era migration, and contemporary regional rivalries influence state reluctance to enact meaningful displacement laws. The study further interrogates the limitations of soft law and the challenges of applying existing refugee definitions to climate-related migration. The paper concludes that current legal mechanisms are inadequate and argues for the development of a dedicated international legal instrument to ensure rights-based protection and long-term solutions for climate-displaced communities. In doing so, it contributes to broader debates on climate justice, legal reform, and human rights in the Anthropocene

Keywords: Climate change, displacement, South Asia, Human Rights, Implications, Legal instruments.

1. Introduction

Climate change displacement is something that has been avoided for a very long time and always brushed under the carpet. Though it is the reason for mass violations of human rights, there is no legal framework, whether national or international, to protect displaced people and secure them from future displacements induced by climate change. The fulfillment of certain human rights is essential to a dignified life and depends on a healthy and protected environment. Yet, the causal link between climate change and human rights is not as readily apparent, the impact of

environmental problems on human well-being, food security, infrastructure, and natural resources¹ is widely recognized.² In the Gabčíkovo-Nagymaros case before the International Court of Justice, then Vice-President Justice Weeramantry stated:

the protection of the environment is... a vital part of contemporary human rights doctrine, for it is sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration on Human Rights and in other human rights instruments.³

Despite the taskforce assigned under the Paris Agreement to address environmental-related displacement, there is still a lack of national as well as international protection and binding legal text to protect the rights of the population affected by climate change through an integrated approach to environmental degradation and climate change.⁴ Subsequently, this research area has gained maximum focus with the news of the United Nations, in which an independent UN-appointed climate expert on June 27, 2023, called for full legal protection to be given to those displaced by the impacts of climate change to guarantee their human rights.⁵

In the words of the United Nations Secretary General, Pakistan, with a population of nearly 250 million people, has been responsible for less than 1% of climate change.⁶ However, the deadly flooding of 2022 in South Asia not only took 1,700 lives and displaced 33 million people in Pakistan, causing a loss of USD 15 billion, but also displaced people in huge amounts in India and Bangladesh; almost 300 people were killed and 9 million people were affected. In addition, floods also badly hit Nepal and Sri Lanka, where the number of people displaced climbed up to 20,000 and 2,374, respectively. Moreover, future sea levels are projected to increase in the range of 10 to 100cm by the year 2100, and as a result, the entire Maldives could be submerged. Climate vulnerability has extraordinarily high human and economic implications in South Asia.

¹ Intergovernmental Panel on Climate Change, Third Assessment Report Climate Change 2001: Impacts, Adaptation, and Vulnerability (2001), available at [hereinafter "IPCC Report"].

² United Nations Conference on Environment and Development, June 3-14, 1992, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/5/Rev.1 (1992); United Nations Conference on the Human Environment, June 5-16, 1972, Stockholm Declaration on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1 (1973); Convention on Long-Range Transboundary Air Pollution, Nov. 13, 1979, 18 I.L.M. 1442.

³ Gabčíkovo-Nagymaros Project (Hungary v Slovakia) (Separate Opinion of Vice-President Weeramantry), [1997] ICJ Rep 92.

⁴ Eva del Río Tortosa, "Climate Displacement – The Legal Gap To Protect Climate Refugees' Rights," *Peace for Asia*, 3 March 2021, accessed August 5, 2023, <https://peaceforasia.org/climate-displacement-the-legal-gap-to-protect-climate-refugees-rights/>

⁵ "Legal protection essential for people displaced by climate change: UN expert," UN News, June 27, 2023, <https://news.un.org/en/story/2023/06/1138147>

⁶ "How Pakistan floods are linked to climate change," BBC News, September 2, 2022, <https://www.bbc.com/news/science-environment-62758811>

Floods alone could cost the region up to USD 215 billion per year by 2030, and climate migrants could grow from 40 to 200 million by 2050.⁷ And yet, there remains no legally binding international recognition or protection for climate migrants.⁸ Hence, a lack of international protection and the absence of nationally binding text create an opportunity to seek and fill a legal gap⁹ through the extensive research analysis of existing national and international frameworks for the protection of human rights in climate-induced displacement. There is an urgent need to overcome states' attitudes of postponement in light of their international responsibility to protect human rights and fundamental freedoms as an urgent and humanitarian issue to be managed with timely, well-planned responses.¹⁰

2. Literature Review

Review of relevant literature Little is known about the topic of climate-induced displacements in South Asia, and much less is known about the violations of human rights in consequence of that phenomenon, specifically. The climate crisis that is likely to unfold in South Asia will create profound challenges. South Asian floods are described as the worst in the country's history, and recent studies indicate that over 800 million people in South Asia live in anticipated climate-vulnerable hotspots.¹¹ Moreover, the researchers are often concerned about how the crises are influencing everyone, and unfortunately, those who have contributed least to the problem are hit hardest, and with each passing day, it is only getting worse.¹²

After Bangladesh's Cyclone Aila, international and national NGOs lacked the assistance necessary to rebuild their livelihoods, both in their places of origin and in the places they migrated to.¹³ Climate change-induced displacement is therefore a permanent problem and requires a durable, permanent solution.¹⁴ There is a consensus among scholars and intergovernmental

⁷ Cecile Fruman And Saleemul Huq, "Cross-border action on climate disasters is urgent in South Asia," November 21, 2022, <https://blogs.worldbank.org/endpovertyinsouthasia/cross-border-action-climate-disasters-urgent-south-asia>

⁸ Tim McDonnell, "Climate Migrants Face a Gap in International Law: Journalist Tim McDonnell shares stories from Bangladesh, where riverbank erosion is displacing thousands," February 12, 2019, accessed July 3, 2023, <https://www.cigionline.org/articles/climate-migrants-face-gap-international-law/>

⁹ Aylin Yildiz Noorda, "Mapping the legal Gap," in *Climate Change, Disasters and People on the Move Providing Protection under International Law* (Boston: Brill Nijhoff, 2022), 37, https://doi.org/10.1163/9789004522367_004

¹⁰ Chiara Scissa, "Recognition and Protection of Environmental Migrants in International Law," *E-International Relations*, June 24, 2021, <https://www.e-ir.info/2021/06/24/recognition-and-protection-of-environmental-migrants-in-international-law/>

¹¹ Alistair D. B. Cook, "Climate change, environment and humanitarian action in Southeast Asia," *Humanitarian Law & Policy*, March 28, 2023, accessed August 2, 2023, <https://blogs.icrc.org/law-and-policy/2023/03/28/climate-change-environment-humanitarian-southeast-asia/>

¹² "The climate and environment charter for the humanitarian organizations," *Climate-Charter*, accessed August 3, 2023, <https://www.climate-charter.org/wp-content/uploads/2022/05/ClimateEnvironmentCharter-EN.pdf>

¹³ Shweta Jayawardhan, "Vulnerability and Climate Change Induced Human Displacement," *Consilience: The Journal of Sustainable Development* Vol. 17, no. 1 (2017), 129.

¹⁴ *Ibid*, 135.

organizations that climate change will undermine the realization of internationally protected human rights such as the right to health, food, and shelter.¹⁵

It has been no less than 30 years since the debate, and after two decades, there is still no well-established legal basis upon which states are obliged to assist people displaced by climate change under international law.¹⁶ Despite calls from some developing countries, parties to the United Nations Framework Convention on Climate Change (UNFCCC) have also shied away from considering human displacement under their mandate.¹⁷ Binding instruments that provide protection statutes for environmental displacements, such as the Kampala Convention, are too weakly implemented,¹⁸ while the Paris Agreement does not refer to people affected by climate change.¹⁹

For instance, on March 29, 2023, the United Nations' General Assembly adopted a resolution requesting the International Court of Justice (ICJ) provide an advisory opinion on states obligations concerning climate change. The most appreciative thing about this resolution is that it passed as a result of pressure built up by none other than students of the Pacific Islands. Pressure from students and the passing of the resolution show what is possible when those most affected by climate change stand up to protect their rights and those of future generations.²⁰

Furthermore, no international human rights document exists that protects communities forced to relocate because of climate change.²¹ Under international law, the refugee framework and guiding principles on internal displacement provide a theoretical basis, but none address the complex situation of people forcibly displaced because of climate-induced environmental change.²² Most National and international courts²³ have reached the same conclusion that climate-induced displacement of people cannot satisfy the pre-condition to seek refugee protection as

¹⁵ Ibid, 136.

¹⁶ "Human Displacement and Climate Change," Legal Response Initiative LRI: Lawyers Responding to Climate Change, July 10, 2010, accessed July 2, 2023, <https://legalresponse.org/legaladvice/human-displacement-and-climate-change/>

¹⁷ Ibid

¹⁸ Ane Mcadam, "Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer," *International Journal of Refugee Law* 23, no. 1 (2011): 2.

¹⁹ Bridget Lewis, "Environmental Rights Or A Right To The Environment? Exploring The Nexus Between Human Rights And Environmental Protection," *Macquarie Journal of Comparative and International Environmental Law* 8, no. 1 (2012): 37.

²⁰ "General Assembly Adopts Resolution Requesting International Court of Justice Provide Advisory Opinion on States' Obligations Concerning Climate Change," UN, March 29, 2023, accessed July 18, 2023, <https://press.un.org/en/2023/ga12497.doc.htm>; <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230419-PRE-01-00-EN.pdf>.

²¹ Robin Bronen, "Climate-induced community relocations: Creating an adaptive governance framework based in human rights doctrine," *New York University Review Law & Social Change* 35, no. 2 (2011): 358.

²² Heather Lazrus, "Sea Change: Island Communities and Climate Change," *Annual Review of Anthropology* 41, no. 1 (2012): 285.

²³ Eva del Río Tortosa, "Climate Displacement – The Legal Gap To Protect Climate Refugees' Rights," *Peace for Asia*, March 3, 2021, accessed August 5, 2023, <https://peaceforasia.org/climate-displacement-the-legal-gap-to-protect-climate-refugees-rights/>

refugees are strictly considered to be those displaced in cases of persecution and likely to be returned in the future, which is impossible when dwellings are submerged by climate disasters.²⁴ Conversely, the Guiding Principles on Internal Displacement outline a framework of human rights protections for people who are internally displaced within their country of origin due to ethnic and political violence.²⁵ Thus, the UN is still lacking the international framework to protect against climate change-induced displacements.²⁶

Climate change litigation is one that uses domestic environmental laws. This is providing impetus to promulgate domestic laws in order to protect human rights in the face of climate change displacements.²⁷ This means that if the displacement laws or rights of protection against climate change displacement are recognized internationally, then the applicant does have the remedy to call upon in domestic court for their rights.

3. Significance of the Study

Climate change displacements in South Asia have been chosen because of the mass displacement that occurred as a result of floods in 2022, which has become one of the main sources of gross human rights violations in these areas. This research contributes to an evolving body of scholarship at the intersection of climate justice, human rights law, and South Asian legal studies. It addresses a critical gap in legal discourse by focusing on how climate change-induced displacement intersects with state responsibility, regional governance, and international protection norms. This research will highlight the ones who are responsible for climate change and suggest remedies for the ones who are suffering but have contributed the least to climate change. By discussing legal implications, the violations of human rights will be highlighted, and the lack of laws and legislation will help to develop a focus on legal remedies to be made available to people to challenge their displacements caused by climate change at the national level.

Key contributions include:

- Highlighting the urgency for legal reform in national and international displacement regimes.
- Informing policy debates on the recognition and protection of climate-displaced persons in South Asia.
- Providing a scholarly foundation for advocating a dedicated legal instrument or regional compact to address the unique vulnerabilities of environmentally displaced populations.
- Offering practical recommendations for enhancing legal coherence, institutional coordination, and cross-border collaboration in climate displacement governance.

4. Research Objectives

1. To evaluate the capacity of international legal instruments to address climate displacement.
2. To analyze legislative and judicial responses to climate-induced displacement in South Asia.

²⁴ Chiara Scissa, "Recognition and Protection of Environmental Migrants in International Law," E-International Relations, June 24, 2021, <https://www.e-ir.info/2021/06/24/recognition-and-protection-of-environmental-migrants-in-international-law/>

²⁵ "Guiding Principles on Internal Displacement," UNHCR, accessed August 20, 2023, <https://www.unhcr.org/media/guiding-principles-internal-displacement>.

²⁶ "Legal protection essential for people displaced by climate change: UN expert," UN News, June 27, 2023, <https://news.un.org/en/story/2023/06/1138147>

²⁷ Sara C. Aminzadeh, "A Moral Imperative: The Human Rights Implications of Climate Change," *Hastings Int'l & Comp. L. Rev.* 30, no. 2 (2007): 231

3. To examine how historical events and political systems shape national responses to displacement.
4. To assess the need for a distinct legal framework to protect climate-displaced individuals.

5. Research Questions

1. To what extent do existing international human rights and refugee law frameworks protect individuals displaced by climate change?
2. What are the key legal and institutional gaps in national displacement laws of South Asian countries concerning climate-induced migration?
3. How do political structures and historical legacies in South Asia influence the enactment and implementation of displacement-related legal frameworks?

6. Methodology

This research adopts a qualitative legal analysis methodology, incorporating doctrinal research, comparative legal analysis, and interdisciplinary approaches involving political and historical inquiry. Doctrinal Legal Research includes examination of primary legal texts, including international treaties (e.g., ICCPR, Refugee Convention, Paris Agreement), national laws (e.g., Pakistan's Climate Change Policy, India's Disaster Management Act), and judicial decisions relevant to environmental and displacement rights. Moreover, Comparative Analysis provides critical comparison of legislative and judicial responses in three key South Asian countries—India, Pakistan, and Bangladesh—focusing on legal frameworks, implementation mechanisms, and human rights outcomes. Furthermore, Contextual and Historical Analysis investigates that how post-colonial legacies, partition-related displacement, and regional politics have shaped current legal and policy attitudes toward climate migration.

7. Results

The research reveals that climate-induced displacement in South Asia is escalating rapidly, driven by both sudden-onset disasters (e.g., floods, cyclones) and slow-onset phenomena (e.g., sea-level rise, desertification). Despite the growing scale of human mobility, existing legal frameworks—both international and national—are inadequate to address the complex legal, humanitarian, and human rights challenges posed by climate displacement.

At the international level, instruments such as the 1951 Refugee Convention and the ICCPR provide limited protection because they do not classify climate-displaced persons as refugees or recognize environmental causes as grounds for asylum. Soft law frameworks and climate agreements like the Paris Agreement acknowledge the issue but lack enforceability and rights-based obligations. Nationally, countries like India, Pakistan, and Bangladesh have disaster response policies but no dedicated legal provisions or institutional mechanisms for the long-term protection or rehabilitation of climate-displaced individuals.

Additionally, the research highlights how regional political structures, governance limitations, and historical migration legacies shape the weak or delayed legislative responses in South Asia. Judicial systems in these countries have yet to take a proactive stance on climate displacement, and there is no unified regional platform to address cross-border implications of environmental migration.

Research Question 1: To what extent do existing international human rights and refugee law frameworks protect individuals displaced by climate change?

1. Existing International Frameworks Addressing Climate-Induced Displacement

As climate change intensifies, its effects are increasingly displacing communities across the globe. Rising sea levels, extreme weather events, drought, and salinization are rendering entire regions

uninhabitable. Yet, those displaced by such phenomena frequently find themselves falling into a legal void, lacking effective protection under existing international legal frameworks. This section critically evaluates the international human rights and refugee law regimes, analyzes the implications of rights violations, and interrogates whether current protections are sufficient or if there is a compelling need for a dedicated legal instrument.

1. Human Rights Instruments and State Obligations

The international human rights regime provides a foundational framework to protect the dignity and rights of individuals facing climate-induced displacement. Instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) collectively guarantee rights to life, health, adequate housing, water, and livelihood—rights fundamentally threatened by environmental degradation.²⁸

A groundbreaking decision by the UN Human Rights Committee in *Ioane Teitiota v. New Zealand* suggested that returning an individual to a country where climate change poses life-threatening risks may breach the right to life under the ICCPR.²⁹ This signals a gradual recognition of non-refoulement obligations in climate displacement contexts.

2. Soft Law and Disaster Frameworks

In the absence of binding international law specifically addressing environmental migration, soft law plays a vital role. The UN Guiding Principles on Internal Displacement offer a normative structure for protecting internally displaced persons (IDPs), including those displaced by disasters, within their own countries.³⁰ Moreover, the Sendai Framework for Disaster Risk Reduction (2015–2030) and the Platform on Disaster Displacement (PDD) emphasize the importance of integrating displacement concerns into disaster and climate risk governance.³¹ However, their non-binding nature limits enforceability and implementation.

3. Climate Agreements and Migration Provisions

The Paris Agreement acknowledges the displacement issue through Article 8, which includes the Warsaw International Mechanism for Loss and Damage. This mechanism recognizes displacement as a consequence of climate change, yet stops short of creating rights-based protections or clear state obligations.³² Thus, despite increasing recognition of climate-related mobility in international climate policy, binding legal remedies remain elusive.

²⁸ International Covenant on Civil and Political Rights, December 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, December 16, 1966, 993 U.N.T.S. 3.

²⁹ UN Human Rights Committee, *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, 7 January 2020.

³⁰ United Nations, *Guiding Principles on Internal Displacement*, UN Doc. E/CN.4/1998/53/Add.2, 1998.

³¹ United Nations Office for Disaster Risk Reduction (UNDRR), *Sendai Framework for Disaster Risk Reduction 2015–2030*.

³² United Nations Framework Convention on Climate Change (UNFCCC), Paris Agreement, December 12, 2015, Article 8.

4. Legal Implications of Human Rights Violations in Climate Displacement

Climate-induced displacement exposes millions to violations of basic human rights. States are legally obligated under international law to respect, protect, and fulfill these rights. The failure to prevent foreseeable harm, provide assistance, or ensure equitable access to aid and relocation may constitute state responsibility under international law.³³

In cases where displacement is foreseeable, particularly in slow-onset scenarios like sea-level rise, the failure to act may violate the right to life, the right to housing, and the principle of non-discrimination. Vulnerable populations—especially women, children, indigenous peoples, and the poor—often suffer disproportionate harm.³⁴ These violations are increasingly being raised in regional human rights courts, with litigation strategies invoking both environmental degradation and state inaction.³⁵

5. The Refugee Protection Regime: Adequate for Climate Displacement?

The 1951 Refugee Convention, the cornerstone of international refugee law, defines a refugee as someone with a “well-founded fear of being persecuted” based on race, religion, nationality, membership in a particular social group, or political opinion.³⁶ This definition does not include environmental or climate-related displacement unless there is a nexus between environmental harm and persecution (e.g., where marginalized groups are deliberately denied climate adaptation support).

In practice, individuals fleeing the effects of climate change—be it desertification, floods, or rising seas—do not qualify for refugee status.³⁷ While some states offer complementary protection or temporary humanitarian visas, these are ad hoc, politically sensitive, and lack the legal certainty and universality of formal refugee protection.³⁸ As such, the current refugee framework is insufficient to respond to the growing phenomenon of environmental displacement.³⁹

Research Question 2: What are the key legal and institutional gaps in national displacement laws of South Asian countries concerning climate-induced migration?

³³ European Court of Human Rights, *Budayeva and Others v. Russia*, App. No. 15339/02, Judgment of 20 March 2008.

³⁴ UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 37 on Gender-related Dimensions of Disaster Risk Reduction, CEDAW/C/GC/37, 2018.

³⁵ UN Human Rights Council, “Analytical Study on the Relationship Between Climate Change and the Human Right to Health,” A/HRC/32/23, 6 May 2016.

³⁶ Convention Relating to the Status of Refugees, July 28, 1951, United Nations Treaty Series, vol. 189, p. 137.

³⁷ Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford: Oxford University Press, 2012), 56.

³⁸ Michelle Foster and Jane McAdam, “Implementing the New Global Compact on Refugees: The Role of International Refugee Law,” *International Journal of Refugee Law* 30, no. 4 (2018): 573–83.

³⁹ Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches* (UNHCR Legal and Protection Policy Research Series, 2012).

2. Legislative, Judicial, and Political Dimensions of Climate Displacement Law in South Asia

Climate-induced displacement in South Asia presents not only a humanitarian crisis but also a profound legal and political challenge. While international frameworks have identified the urgency of displacement protection, domestic legislation in South Asian states remains fragmented, ambiguous, or altogether absent. This section examines the legislative and judicial stance on displacement-related human rights, identifies challenges to legal enactment, analyzes the influence of South Asian political systems on lawmaking, and explores how historical legacies have shaped modern state behavior, obstructing the formulation of coherent displacement policies.

1. Legislative and Judicial Stance on Human Rights Protection in Climate Displacement

Despite the increasing frequency of climate-induced displacement, no South Asian country has passed specific legislation to protect the human rights of environmentally displaced persons. Instead, governments tend to rely on disaster management frameworks or general climate adaptation plans.⁴⁰ While these policies address relief and rehabilitation in a reactive sense, they lack a rights-based, forward-looking legal framework that ensures durable solutions such as planned relocation, land security, or livelihood restoration.

2. Legislative Inaction

In Pakistan, the National Climate Change Policy (2021) and the Disaster Management Act (2010) acknowledge the potential for displacement but provide no legal classification or entitlements for displaced persons.⁴¹ In India, the Disaster Management Act (2005) similarly lacks legal provisions for displaced communities beyond temporary relief.⁴² Bangladesh's Climate Change Strategy and Action Plan (BCCSAP) includes a migration pillar, but this remains a policy document with no binding legal force.⁴³

3. Judicial Engagement

Courts in South Asia have engaged with environmental justice and constitutional rights but have rarely ruled specifically on climate-induced displacement. The Supreme Court of India has expanded the right to life under Article 21 to include a clean environment, housing, and livelihood.⁴⁴ In *Shehla Zia v. WAPDA*, the Supreme Court of Pakistan interpreted Article 9 of the Constitution (right to life) as encompassing environmental protection.⁴⁵ However, courts have not yet fully interpreted these provisions to include climate migration or relocation rights. The lack of judicial activism in this specific area reflects both conceptual ambiguity and political caution.

4. Challenges and Impediments to Enacting Displacement Laws

The absence of a coherent legal regime for climate displacement in South Asia stems from multiple institutional and political challenges.

⁴⁰ Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford: Oxford University Press, 2012), 12–16.

⁴¹ Ministry of Climate Change (Pakistan), *National Climate Change Policy 2021* (Islamabad: Government of Pakistan, 2021).

⁴² Government of India, *Disaster Management Act*, 2005.

⁴³ Government of Bangladesh, *Bangladesh Climate Change Strategy and Action Plan* (Dhaka: Ministry of Environment and Forests, 2009).

⁴⁴ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

⁴⁵ *Shehla Zia v. WAPDA*, PLD 1994 SC 693.

1. Conceptual Ambiguity and Lack of Definitions

The term “climate refugee” is not legally recognized under international law, creating confusion among lawmakers regarding classification, jurisdiction, and responsibility.⁴⁶ This ambiguity discourages national parliaments from initiating legal drafting.

2. Political Economy and Resource Constraints

Many South Asian governments operate under resource scarcity and competing development priorities. Legal reform for displaced persons often lacks political will due to its cost-intensive nature and low electoral reward.⁴⁷

3. Bureaucratic Inertia

Displacement response is often split across multiple ministries—climate, disaster management, interior, and human rights—leading to poor coordination and policy incoherence. Moreover, national adaptation plans often prioritize infrastructure and mitigation over human-centered migration solutions.⁴⁸

Research Question 3. How do political structures and historical legacies in South Asia influence the enactment and implementation of displacement-related legal frameworks?

3. South Asian Political Systems: Comparative Impacts on Lawmaking

South Asia’s political systems are diverse but share common democratic roots with varying levels of federalism, centralization, and legislative responsiveness.

1. Institutional Structures and Legal Output

India’s federal parliamentary democracy allows for state-level experimentation, but central-state coordination is often weak, particularly in displacement-affected areas.⁴⁹ Pakistan’s semi-presidential system with strong military influence centralizes national security and disaster narratives, often sidelining rights-based legislation.⁵⁰ Bangladesh’s dominant-party system enables rapid policy formulation but lacks institutional accountability and participatory lawmaking.⁵¹

2. Political Culture and Populism

The populist nature of South Asian politics leads to short-term, visibility-driven policies, rather than structural reforms like climate displacement law, which require long-term planning and

⁴⁶ Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches* (UNHCR Legal and Protection Policy Research Series, 2012).

⁴⁷ Michelle Foster and Jane McAdam, “Climate Change and Forced Migration,” in *The Oxford Handbook of Refugee and Forced Migration Studies*, ed. Elena Fiddian-Qasmiyeh et al. (Oxford: Oxford University Press, 2014), 190.

⁴⁸ Asian Development Bank, *Climate Change and Migration in Asia and the Pacific* (Manila: ADB, 2012).

⁴⁹ Louise Tillin, *Remapping India: New States and Their Political Origins* (Oxford: Oxford University Press, 2013).

⁵⁰ Ayesha Jalal, *The Struggle for Pakistan: A Muslim Homeland and Global Politics* (Cambridge: Harvard University Press, 2014), 228–31.

⁵¹ Ali Riaz, *Bangladesh: A Political History Since Independence* (London: I.B. Tauris, 2016), 189–90.

unpopular land redistribution. The politicization of ethnic, religious, and regional identities also inhibits the inclusive discourse necessary for equitable migration legislation.⁵²

3. Historical Legacies and Their Influence on Displacement Lawmaking

South Asia's postcolonial and partition-era histories continue to influence modern political priorities and policy inertia, especially in the context of migration, identity, and national security.

1. Partition and the Legacy of Forced Migration

The 1947 Partition of British India caused one of the largest mass displacements in history. This historical trauma has led to deep sensitivities around population movements, with migration often framed as a security threat rather than a rights issue.⁵³

2. Nationalism and Border Politics

South Asian states remain embroiled in territorial disputes and border securitization, especially India-Pakistan and India-Bangladesh relations. This heightens suspicion of cross-border movement and hampers regional cooperation on transboundary climate displacement.⁵⁴

3. Legal Legacies

The colonial legal inheritance in South Asia emphasized centralized control and emergency response, rather than participatory, rights-based planning. Contemporary legislation still reflects these structures, emphasizing control and reactive governance over preventive displacement planning.⁵⁵

Major Findings

- International refugee and human rights law fail to adequately protect individuals displaced by climate-related causes, as existing definitions do not recognize environmental factors as valid grounds for asylum or relocation.
- South Asian legal systems lack a coherent and binding legislative framework to protect and rehabilitate climate-displaced persons, focusing instead on short-term disaster response.
- The role of historical migration (e.g., Partition) and regional political tensions contributes to fragmented policymaking and the absence of a coordinated legal approach to displacement.
- Judicial institutions in South Asia have not yet effectively interpreted constitutional or human rights guarantees to include protections for climate-displaced communities.
- There is an urgent need for a new, legally binding international covenant or regional compact specifically tailored to address climate-induced displacement, with clear definitions, state obligations, and rights-based protections.

Conclusion

Conclusively, if climate change displacements in South Asia violate international human rights law, then the international community does have the responsibility to protect people from

⁵² Christophe Jaffrelot, *India's Silent Revolution: The Rise of the Lower Castes in North India* (London: Hurst, 2003), 314–17.

⁵³ Vazira Fazila-Yacoobali Zamindar, *The Long Partition and the Making of Modern South Asia* (New York: Columbia University Press, 2007).

⁵⁴ Sanjoy Hazarika, *Rites of Passage: Border Crossings, Imagined Homelands, India's East and Bangladesh* (New Delhi: Penguin, 2000).

⁵⁵ Upendra Baxi, *The Indian Constitution: Contemporary Perspectives* (New Delhi: Oxford University Press, 2013), 45–48.

displacements and take steps to protect already displaced people and future displacements in order to protect their human rights, on which the whole of the globe agrees in true letter and spirit. Despite facing some of the highest climate displacement risks globally, South Asian countries have not developed comprehensive legal protections for displaced populations. Legislative frameworks remain fragmented, while judicial interpretations have not extended to address the rights of climate-induced migrants. Political structures, conceptual ambiguities, and historical legacies compound the challenges of legal enactment. A transformative approach—rooted in rights, regional cooperation, and climate justice—is needed to confront the growing human cost of environmental displacement. Therefore, it is obligatory to minimize the reasons that cause human rights violations to make sure the efforts that have been put into international systems a long time ago do not go in vain. In order to protect human rights, it is necessary for the international community to make an instrument related to climate-induced displacements that would introduce a framework from raising funds until implementation to prevent the deterioration of international human rights law. Though the implementation framework and interests vary from country to country, this is the time when states have to take responsibility for gross human rights violations in the face of climate change.

Recommendations

There is a growing scholarly and institutional consensus that existing legal frameworks are inadequate to address climate-induced displacement comprehensively. Advocates for a new treaty argue that a dedicated climate displacement convention would:

- Provide clear legal definitions and protections;
- Establish binding obligations for states;
- Foster international cooperation and burden-sharing.

Opponents suggest that rather than creating a new instrument, states should reinterpret existing norms expansively or develop regional agreements tailored to local contexts. However, such approaches risk remaining fragmented, non-binding, and politically inconsistent. As displacement escalates, a new legal instrument may become necessary not just for legal clarity, but for ensuring justice, protection, and dignity for climate-displaced populations.

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