

South Asian Climate Migration with a Special Emphasis on the existing Policy towards Climate Migrants

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ARTICLE INFO

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Dates:

Received: 10-10-2024

Accepted: 15-11-2024

Published: 30-12-2024

Keywords:

Climate change, climate migrants, migration, refugees, environmental constitutionalism, human rights, international refugee law.

How to Cite:

Wilson, S. (2024) South Asian Climate Migration with a Special Emphasis on the existing Policy towards Climate Migrants. DME Journal of Law, 5(2), 86-99. doi: 10.53361/dmejl.v5i02.09

Abstract

With 1.94 billion inhabitants, the densely populated Southern Asia subregion has seen strong migratory trends as a result of natural catastrophes and wars. There is currently a great deal of worry about the treatment of refugees and climate migrants in South Asia due to the fact that several of these nations have not joined the 1951 Refugee Convention and its 1967 Protocol. Although nations in the region are aware that variables such as climate change affect migratory patterns, they are generally hesitant to make major changes to their current policies regarding migration and climate change. Although nations in the region are aware that variables such as climate change affect migratory patterns, they are generally hesitant to make major changes to their current policies regarding migration and climate change. The best example of how these people survived without a formal legal system is India. This study looks at India's compliance with international standards, considers whether India should support refugees and migrants more because of climate change, and looks at regional and international initiatives that are already in place to assist refugees and migrants because of climate change. For South Asian countries, especially India, strengthening human rights safeguards and promoting environmental constitutionalism may be viable alternatives. In this instance, a stronger framework for regional climate action collaboration that considers climate migration is needed.

INTRODUCTION

Anyone who is outside their country of nationality because they have a legitimate fear of being persecuted because of their race, religion, nationality, membership in a specific social group, or political beliefs and are unable or unwilling to take advantage of that country's protection, or who does not have a nationality and is outside the country of his former habitual residence, is considered a refugee, according to the 1951 Convention Relating to the Status of Refugees (Art. I (A)(2), Refugee Convention, 1951). "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 jeopardised their existence and/or seriously affected the quality of their life," according to El-Hinnawi (1985), is a new class of people known as

environmental refugees. Despite being globally recognised, not all South Asian countries are party to the 1951 Refugee Convention and its 1967 Protocol, thus the aforementioned categories do not apply to them; instead, they have their own policies and programs.

The absence of legal assistance for refugees and climate migrants in South Asia is a problem that numerous scholars have identified, and the author here investigates this subject. If so, the following talks will explore how important it is for these nations to handle refugees legally. The highly populated Southern Asia sub-region, which is home to 1.94 billion people (UN DESA, 2020) across nine countries Afghanistan, Bangladesh, Bhutan, India, the Islamic Republic of Iran, the Maldives, Nepal, Pakistan, and Sri Lanka has seen substantial regional and international migration movements as a result of climate change and conflicts.

Due to the fact that the region contains some of the world's most disaster-prone nations, a significant number of people are at danger of being displaced due to environmental disasters (IOM, 2016).¹ The 1951 Refugee Convention has only been ratified by three of Asia's twenty-four countries: Timor Leste, Afghanistan, the Philippines, and Cambodia (UNHCR, 1951).² Therefore, South Asian countries cannot effectively manage refugees and unrecognised refugees, also referred to as climate migrants, without violating their basic rights and requirements without a special legislative strategy.

South Asia and Climate vulnerability

When discussing South Asia's susceptibility to climate change, many commentators immediately bring up Bangladesh, a lower riparian, low-lying nation that regularly suffers catastrophic floods. In actuality, the entire region is really unstable. The coastal countries of Bangladesh, India, Pakistan, and Sri Lanka are under risk from flooding and sea level rise. Because of the size and density of their coastal urban populations, the citizens of these countries are especially susceptible to the effects of climate

1 World Migration Portal, (2021)<https://www.migrationdata-portal.org/>.

2 The Convention relating to the Status of Refugees(1951)

change. The landlocked nations of Afghanistan, Bhutan, and Nepal are currently experiencing the effects of droughts, glacial melt, and rising temperatures.

The smallest and most inhabited island in the world, the Maldives, faces the very real possibility of complete submersion in the not-too-distant future. The world's lowest-lying nation is the Maldives. Climate migrants are more inclined to relocate to cities that will provide them with more employment prospects and to regions with better agricultural climates (Rigaud et al. 2018; Sedova and Kalkuhl 2020). Rigaud et al. predict that parts of Nepal, western Bangladesh, and the southern Indian highlands particularly those between Bangalore and Chennai will become hotspots for climate in-migration in South Asia. The study predicted that by 2030, hotspots for climate-related in-migration would start to appear in the southern Gangetic Plain.³

Although India's circumstances are unique, no other Asian country has had to deal with such a large-scale population exodus and has had to establish plans for relief and resettlement (Khan, 1980).⁴ Therefore, it makes sense that South Asian nations should establish a unified legal framework to assist refugees and climate migrants so that people can migrate there with confidence under these particular conditions.

Background of the study

Looking at the existing research to assess the importance of the case of refugees and climate migrants (in the absence of a specific law for climate migrants) could help answer some of the questions surrounding climate change predictions, the rights of refugees and climate migrants, and the current legal framework for them. Climate change might increase migration, according to studies by Myers and Kent (1995). Although this computation was

3 World Bank's Report.(2021).Groundswell Preparing For Internal Climate Migration, <https://www.worldbank.org/en/news/infographic/2018/03/19/groundswell-preparing-for-internal-climate-migration>.

4 World Bank's Report.(2021).Groundswell Preparing For Internal Climate Migration <https://www.worldbank.org/en/news/infographic/2018/03/19/groundswell---preparing-for-internal-climate-migration>.

done in 1995, recent publications demonstrate the accuracy of those research. The bulk of studies indicates that under international law, “climate refugees” are not granted the same protections as refugees and asylum seekers.⁵

Current policy may not be able to handle the quantity of migration that climate change may cause or worsen. Recommendations to promote migration in order to alleviate the expected displacement have not received any response from anyone (i.e., McAdam and Pryke 2020; Myers 1997).⁶ Since South Asia is one of the climate-vulnerable regions and home to 25% of the world’s population, it was chosen as the primary study area. The region’s high poverty rates make it especially susceptible to migration and displacement brought on by climate change, most of which are internal (Asian Development Bank 2012; Rigaud et al. 2018).⁷

According to the Global Report on Internal Displacement (IDMC 2022),⁸ floods, cyclones, and drought are the three most important natural disasters that cause displacement in South Asian nations. According to Rigaud et al. (2018), there will be roughly 35.7 million internal climate migrants in South Asia by 2050. By 2050, almost 62.9 million South Asians will have to flee their homes due to natural disasters, according to a study by Singh et al. (2020). For climate migrants, these figures are far higher. But it’s also critical to remember that migration is only feasible if there are places for people to go and they are not restricted by political, social, or economic constraints.

Despite its vulnerability to natural disasters, India was selected for this study because it accepts

non-refugees, such as those from Bangladesh, Myanmar, Nepal, and other countries, who are now fleeing the effects of climate change. The South Asian regions, which are not signatories to the 1951 Refugee Convention, are not particularly concerned by the fact that more people are escaping their homes due to climate change, despite the fact that it is well known that the 1951 Convention does not recognize climate refugees as legal persons under international law. India has traditionally taken in a lot of refugees (unrelated to climate change), such as Tibetans and Chakma refugees from Bangladesh, to mention a few groups, even though it is not a signatory to the UNCSR.

However, a noticeable increase in “anti-outsider feeling” based on resource/economic competition and religious/cultural differences has made policymaking more challenging in several parts of the country, including the northeastern states of Assam, Tripura, Manipur, and others. Other countries have also accepted refugees in the region. For example, over a million Rohingya refugees have fled Myanmar to Bangladesh in order to avoid political persecution by the military government. This article examines whether India’s paradigm for taking in refugees and persons from neighboring countries who have been displaced by climate change has altered in the absence of a standardized procedure backed by legislation.

Even South Asian countries’ “refugee” programs are not well-established and are riddled with legal ambiguity and political problems. Because so many of these issues still remain in the region, the author discusses the primary reasons why South Asia cannot have a unified legal framework while highlighting the benefits for both refugees and climate migrants.

Research Context

South Asian regions are considered to be particularly vulnerable to climate change, but many of these areas won’t have a specific legal framework to deal with migration until 2022. Therefore, it might be argued that climate refugees have a legal position similar to “no man’s land” because there is no international treaty to handle their issue. However,

5 The Convention relating to the Status of Refugees, adopted in July, (1951).

6 Jane McAdam. (2012). *Climate Change, Forced Migration and International Law*, New York, OXFORD UNIVERSITY PRESS, p. 43.

7 World Bank’s Report. (2021). *Groundswell Preparing For Internal Climate Migration* <https://www.worldbank.org/en/news/infographic/2018/03/19/groundswell---preparing-for-internal-climate-migration>.

8 Internal Displacement Monitoring Centre. (2016). is an international non-governmental organization established in 1998 by the Norwegian Refugee Council in Geneva. It is focused on monitoring and providing information and analysis on the world’s internally displaced persons, <https://www.internal-displacement.org/>.

the idea that the legal system is a “no man’s land” is false. The current situation hasn’t changed recently. The proportion of people who are displaced due to natural catastrophes is lower than that of those who are displaced due to other world events, such as violence and conflict.

By the end of 2021, there will be 4.6 million asylum seekers and 53.2 million internally displaced persons, according to the UNHCR’s 2022 Global Trends report. If this trend is to let to continue, humanity will surely suffer significantly in the absence of suitable preventative measures. In this instance, drawing attention to the vulnerability of South Asian countries as a result of the lack of a formal regional agreement to address migration resulting from natural disasters and conflict may lead to more serious problems down the road. Both conflict-related migration and environmental migration should receive enough consideration in these regions.

The large number of migrants in South Asia poses a danger to the governments’ capacity to treat them equitably and in accordance with other internationally accepted standards for a number of reasons. This article attempts to identify the legal actions taken thus far by South Asian countries, especially India, with regard to climate refugees and ascertain the extent to which environmental constitutionalism has been implemented for the development of regional mechanisms by incorporating provisions to support refugees and climate migrants into the constitutions of each of these South Asian countries.

Limitations

This essay does not address the causes of climate change or its scientific elements, the migration process, the difficulties experienced by migrants, their vulnerabilities, etc. It is well acknowledged that the problem of displacement caused by climate change disproportionately affects South Asian regions. Therefore, in addition to analyzing the policies and programs designed especially for them, this article looks at the situation of climate migrants and refugees from South Asian nations, especially India, as of 2022.

Examining the data from reports on climate migration

To ascertain what more should be done to meet the requirements of this population, it is crucial to look at research on migration, displacement, and climate change projections. The majority of recent displacements caused by natural disasters take occurred in Asia, mostly as a result of weather-related events, but also as a result of earthquakes, volcanoes, and other geophysical disturbances. India, China, and Nepal accounted for 3.7 million, 3.6 million, and 2.6 million of the total number of people who had recently moved in 2015 (IDMC, 2016).⁹

In its fourth assessment report, the IPCC noted the “potential for population migration” due to increased areas affected by droughts and increased severity of tropical cyclone activity (IPCC 2007: 18).¹⁰ According to the well-known Stern Review, global warming would result in a significant number of people being displaced from their homes, either permanently or temporarily (Stern 2006). These theoretical calculations are strongly supported by empirical data from a number of international publications.

More than 140 million people in Africa, Latin America, and South Asia may flee their countries by 2050 to avoid the worsening effects of climate change if immediate action is not taken to stop global warming and help people adapt, according to estimates in the World Bank’s Groundswell: Preparing for Internal Climate Migration Report 2018. Sub-Saharan Africa, South Asia, and Latin America which together account for 55% of the population of the developing world are the three regions that are most vulnerable because of their size, wealth, and resource availability.

According to the Asian Development Bank (ADB), sea level rise will put 21 million people in Indonesia, 22 million in China, and 37 million in India at risk by 2050. Additionally, it was noted that, if the right policies are not implemented, climate change caused by human activity will become the biggest global concern of this century and beyond (Manasi,

⁹ Global report on internal displacement. (2016).<https://www.internal-displacement.org/globalreport2016/>

¹⁰ IPCC Fifth Assessment Report.(2014). AR5, p. 15,. <https://www.ipcc.ch/assessment-report/ar5/>.

2019). The World Migration Report 2020 states that the largest source of new internal displacements in Asia was caused by disasters. Second and third place (853,000) went to India (2.7 million) and Indonesia (1.7 million), respectively.

People in Southern Asia are especially at risk from natural catastrophes and slow-onset and rapid-onset disasters linked to climate change. In 2018, natural catastrophes accounted for the majority of displaced individuals in Southern Asia. It is estimated that sudden-onset threats caused an additional 3.3 million displacements in Southern Asia in 2018, with the majority of those displaced living in Bangladesh, India, Afghanistan, and Sri Lanka. Southern Asia is the region with the largest population at danger of displacement due to sudden-onset hazards, with Bangladesh, India, and Pakistan having the highest risk of disasters. The biggest of the region's calamities struck India, when floods and tropical storms forced nearly 2.7 million people to flee their homes.

Due primarily to drought conditions, Afghanistan has the second-highest number of disaster displacements in the subregion, with 371,000 new displacements. Tens of thousands of people have had to relocate in Bangladesh and Sri Lanka due to the monsoons. Migration and mobility have been acknowledged as essential coping strategies in Southern Asia in response to environmental change events such as sea-level rise, coastal erosion, flooding, and groundwater depletion, all of which present significant challenges in the region. By 2050, it is predicted that the South Asian monsoon would intensify, adding up to 20% more rainfall to Bangladesh and eastern India.

Disaster-related displacement outnumbered conflict-related displacement, and Northern America ranked second only to Asia in terms of new internal displacement brought on by disasters. In 2018, the majority of new internal displacements in Oceania were caused by natural catastrophes rather than conflict. According to the most current World Migration Report, 2022, disasters brought on by climate change are displacing more people than conflicts, reversing a historical pattern. In 2020, there were 40.5 million displaced individuals, up from 31.5 million in 2019. About 46,000 people

have been relocated again as a result of extreme temperatures, and 32,000 more were displaced in 2020 due to droughts.

14.6 million people were displaced by storms, and 14.1 million by floods. The Internal Displacement Monitoring Center's routine data collection was cited in the report (IDMC, 2022). Disaster-related displacement was highest in Asia. By the end of 2020, China reported five million new disaster-related displacements. Nearly four million people were displaced by disasters in India. Furthermore, disasters like landslides, flooding brought on by the monsoon, and strong cyclones caused a significant number of people to be displaced in 2020 in Bangladesh (more than 4 million), India (almost 4 million), and Vietnam.

Statistical Data on Migration, Climate Change Migration in South Asian Countries 2000-2022

Migration in South Asia

The top five South Asian countries recording the largest internal displacement owing to weather-related disasters are listed in Figure 1 as evidence for the aforementioned facts.

The figure 1(below) is created using the information from Table 1 as a basis.

Displacement due to weather-related disasters in South Asia

The top five South Asian countries recording the largest internal displacement owing to weather-

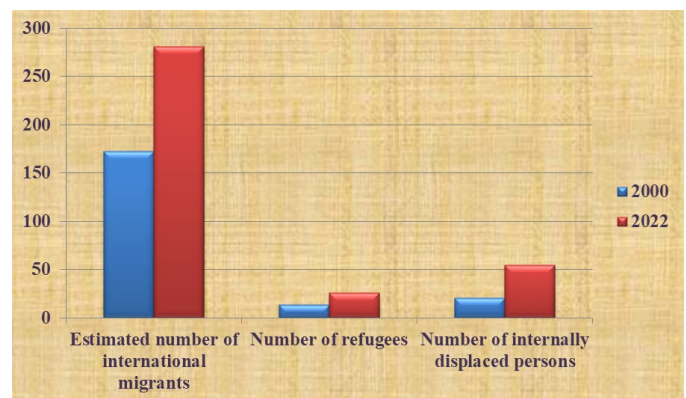


Figure 1: Total migration in 2000 and in 2022

Table 1: International Migration 2000-2022 (Millions)

	2000	2022
Number of international migrants	173 million	281 million
Number of refugees	14 million	26.4 million
Number of internally displaced persons	21 million	55 million

related disasters are listed in Figure 1 as evidence for the aforementioned facts.

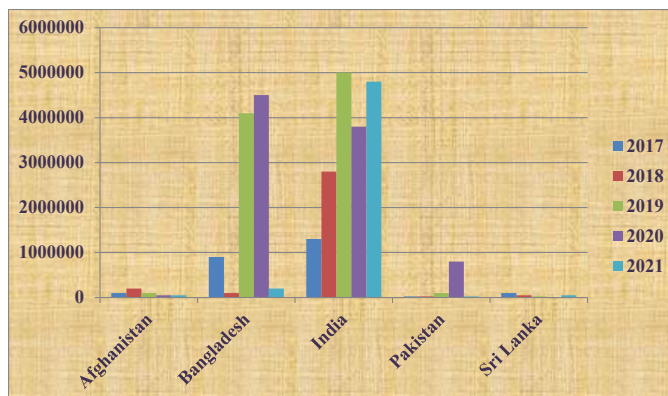
Figure 2 illustrates how South Asia is currently affected by migration as a result of climate change by using these numbers as an example. All of these figures indicate that, if necessary steps are not made, migration and related issues would only worsen in the days to come.

Regional South Asian organisations for migration

Even if they are not solely focused on encouraging migration, regional organizations that deal with migration are all somewhat concerned with the problems that migration has brought about in South Asian regions, which makes them worth looking at. With its eight members Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka the South Asia Association for Regional Cooperation (SAARC)¹¹ is the most significant forum for cooperation in Southern Asia. It tackles issues related to politics, the economy, society, culture, and migration. The SAARC deals with migration and other issues through the SAARC Convention on Preventing and Combating Trafficking of Women and Children for Prostitution and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.

In their 2014 Kathmandu Declaration, the heads of state and government of the SAARC agreed to “cooperate and cooperate on safe, orderly and responsible management of labour migration from South Asia to ensure safety, security and wellbeing of their migrant workers in the destination countries

¹¹ South Asia Association for Regional Cooperation (SAARC). (1967). https://www.eeas.europa.eu/eeas/south-asian-association-regional-cooperation-saarc_en.



Source: 2022 Internal Displacement Monitoring Centre: Global Internal Displacement Database.

Figure 2: (a) Internal Displacement of People Due to Weather-Related Events in South Asia; (b) Top Five Countries Recording the Highest Displacement.

outside the Region” (SAARC, 2020). This treaty has two addenda: the SAARC Plan of Action for Cooperation on Migration-Related Matters and the SAARC Plan of Action on Labour Migration. The only permanent international organization in the Asia-Pacific area that deals with security issues, including terrorism, disaster assistance, transnational crime, and piracy, is the ASEAN Regional Forum (ARF), which was founded by ASEAN in 1994. Bangladesh, India, Pakistan, and Sri Lanka are among the ARF’s members.

Global and inter-regional efforts in supporting migration

India participates in the yearly East Asia Summit (EAS)¹², which frequently follows the ASEAN summits. The cooperation of 16 Asian and Oceanian nations with Russia and the United States led to the establishment of the Economic Research Institute for ASEAN and East Asia (ERIA), which also studies migration.

Collaboration also includes a “Sub-Group on Human Trafficking and Illegal Migration,” which is coordinated by India and focuses on combating terrorism and transnational crime. A “Convention on Mutual Legal Assistance in Criminal Matters” has been drafted but not yet ratified.

All UN Member States and observer organizations

¹² East Asia Summit (EAS). (2005). <https://eastasiasummit.asean.org/>.

are welcome to participate in the Global Forum on Migration & Development (GFMD)¹³, a government-led, voluntary, informal, and non-binding process that focuses on the complex issues of international migration and how it relates to development. Every nation within the subregion is a member of the GFMD. The GFMD Steering Group has members from India and Bangladesh. The Bali Process on People Smuggling, Trafficking in Persons, and Related Transnational Crime (Bali Process) is a regional forum for policy debate, information sharing, and hands-on collaboration. Its 49 member states and organizations span the entirety of Southern Asia.

In addition to raising awareness of smuggling, trafficking, and related transnational crime, it includes practical themes including information sharing, intelligence collection, best practices, law enforcement coordination, protection and asylum concerns, and more. Afghanistan, Bangladesh, India, the Maldives, Pakistan, and Sri Lanka are also members of the Bali Process Ad-Hoc Group, which brings together the most impacted member countries and relevant international organizations. Through initiatives and specialized working groups, it seeks to address particular irregular migration challenges in the area.

One informal intergovernmental mechanism is the Asia-Europe Meeting (ASEM¹⁴). One platform for discussing the topic of migration is the ASEM Conference of the Directors General of Immigration and Management of Migratory Flows. Pakistan, India, and Bangladesh are among the participants. An interregional forum for discussion and practical cooperation on migration between Europe and Asia is the Budapest Process¹⁵. Among its 55 members are Pakistan and Afghanistan. Observers include Bangladesh, India, and the Islamic Republic of Iran (Migration data portal of Southern Asia, 2021).¹⁶

13 Global Forum on Migration & Development (GFMD). (2007). <https://www.gfmd.org/>

14 Asia-Europe Meeting (ASEM). (1996). https://www.eeas.europa.eu/eeas/asia-europe-meeting-asem_en.

15 Budapest Process. (1993). <https://www.budapestprocess.org/>

16 Migration data portal of Southern Asia. (2021). <https://www.migrationdataportal.org/regional-data-overview/south-ern-asia>.

Refugees and Climate Migrants; India's Policy

India has built a solid reputation as a proactive participant in fulfilling its obligations under international human rights regulations. Following India's independence, a sizable population of individuals from nearby countries migrated there. India has become the most popular destination for refugees from other nations due to its geographic position, democratic governance, religious tolerance, and friendliness (Bhardwaj and Shaswat).

The country extended safety to refugees from Tibet, TAMILIA, Kenya, Nepal, and Bhutan, and it granted citizenship to those who survived the divide (Indian partition). Afghanistan, Tibet, Myanmar, and Sri Lanka account for the majority of India's refugee and asylum seeker population. Nevertheless, the government only acknowledges refugees from Sri Lanka and Tibet (Kaur, 2022). Over time, India's refugee crisis and the number of persons applying for asylum at its borders have only gotten worse. Although India has remained committed to helping refugees, individuals who are trying to find safety in India face challenges due to the country's dual system of refugee identification (Shanker & Vijayaraghavan, 2020).

While acknowledging India's generally positive history of welcoming and safeguarding refugees, the book *Refugee Law in India: The Road From Ambiguity To Protection* (2017) also examines the conflicts between these positive aspects and the use of state power in post-colonial India. By analyzing the numerous exchanges between the government and refugees, the author demonstrates that India's history of providing care is also one of "limited caring," "calculated kindness," or "strategic ambiguity." (Macmillan, Sarker, 2017).

Different types of aid have been provided to different refugee groups as a result of numerous political and administrative actions that have impacted the situation of refugees in India. (Field; Mookherjee and Tiwari, 2017). For example, certain refugee groups are criminalized and denied access to essential services, while others enjoy complete legal protections (Ananthachari, 2001). Scholars have made a meager effort to examine the issues

and challenges further, as well as to critically analyze how India handles its refugee and asylum-seeker community and their rights within the country (Haas, 2021).

It is evident that there is no single policy that governs how India handles refugees. Prejudice arises between the groups as a result, and refugees who are targeted by it have a difficult time obtaining basic rights. When there is recognition, the government rarely gets involved.

after being recognized and identified, these refugees are occasionally charged with unlawful immigration or overstaying. Like the National Human Rights Commission's (NHRC) advocacy for Sri Lankan Tamil refugees. Perhaps the most badly affected group of refugees in India are the Rohingyas. The entire purpose of refugee legislation will be undermined if India decides to release them, leaving them vulnerable to persecution once more. India generally abides by international agreements concerning refugees without providing its actions a formal legal framework. Although everyone who is not an Indian citizen is considered a foreigner, refugees are not the same as other types of aliens (Bhardwaj and Shaswat). Since India now lacks clear regulations governing climate migrants and refugees, resolving this issue would surely benefit millions of people.

India and Climate Change Concerns

The growing number of refugees and asylum seekers strains India's resources, and the developing country has not yet made sure that all of its citizens have access to the basics. Second, because there are no codified laws or regulations to control their status and entry into the country, or to ensure their rights and rehabilitation, the government handles these problems as needed. Thirdly, the existing regulations that grant refugees the same status as foreigners lead to innumerable human rights breaches. The influx of migrants and asylum seekers is one of the nation's oldest problems.

India ranks third globally in terms of greenhouse gas emissions. But the nation also produces a significant amount of renewable energy. The Like-Minded Developing Countries (LMDC) group, of which India is a member, promotes more control

over the allocation of funds for climate change adaptation and mitigation.¹⁷

Indian policy has not yet incorporated a just transition strategy for phase-out of coal, which would seek to address regional inequities and manage job losses in an inclusive and equitable manner. But as of this writing, the idea is becoming more popular in the run-up to COP27, and several government ministries have expressed interest in it, including the Ministry of Coal, the Ministry of Environment, Forests, and Climate Change, and the Ministry of Petroleum and Natural Gas. Another significant step toward the creation of an official policy framework to transition away from coal use and production is India's participation in the G7's Just Transition Energy Partnership (JETP).¹⁸

Nepal and Climate Change Concerns

Recent years have seen a rise in landslides, flash floods, droughts, and soil erosion nationwide, all of which have had a greater impact on Nepalese lives and means of subsistence. Nepal is extremely susceptible to the effects of climate change; according to recent research from the Asian Development Bank, by 2050, the country may lose 2.2% of its yearly GDP as a result of climate change. The Second Nationally Determined Communication¹⁹ (NDC) of the Paris Climate Agreement was ratified by Nepal in 2020. According to Nepal's Second National Communication to the UNFCCC (2014) (NC2),²⁰ the sectors most vulnerable to climate change are energy, agriculture, water resources, forestry, biodiversity, and health.²¹

17 How is India tackling climate change?.(2022).<https://www.lse.ac.uk/granthaminstitute/explainers/how-is-india-tackling-climate-change>

18 Just Transition Energy Partnership (JETP).(2022). <https://www.iisd.org/articles/insight/just-energy-transition-partnerships>.

19 Second Nationally Determined Communication (NDC). (2015). <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs>.

20 Nepal's Second National Communication to the UNFCCC. (2014).<https://www.climatenepal.org.np/project/second-national-communication-unfccc>.

21 Climate Change knowledge Portal.(2011). <https://climate-knowledgeportal.worldbank.org/country/nepal>.

Temperatures could increase by 4.6°C if global climate change action is not taken. The economies of the six nations Bangladesh, Bhutan, India, the Maldives, Nepal, and Sri Lanka could contract by an average of 1.8% year by 2050 and 8.8% annually by 2100.²²

In an era of increased risks due to global climate change, the South Asian developing members of the Asian Development Bank (ADB) face the challenge of attaining and maintaining rapid economic growth in order to reduce poverty and achieve other MDGs. The region has a population of 1.43 billion, of which one-third live in poverty. Growth targets will be more difficult to meet as a result of anticipated large economic losses in important industries like agriculture, energy, transportation, health, water, coastal and marine, and tourism.²³

Concerns about Afghanistan and climate change

Extreme weather conditions in Afghanistan are changing significantly as a result of severe droughts and warming temperatures. August 2022 was the wettest August since 1961, with neighboring Pakistan receiving more than three times its usual amount of precipitation. Unusually high rainfall and flooding also occurred in Afghanistan that month, though not to the same degree, especially in the central, eastern, western, and south-eastern regions. Because trees slowed down the rapid flow of rainwater and absorbed a large amount of the springtime snowpack, floods were less frequent in the Fayzabad District of Jawzjan Province in the past. It is currently one of the areas most vulnerable to flooding, though, as a result of widespread deforestation that has caused flooding in most of the country in recent years. The implementation of the COP27-agreed Loss and Damage Fund for vulnerable countries is essential in order to assist the Afghan people in developing early warning systems and determining the best ways to

22 Asian Development Bank (ADB).(2014).Climate Change in South Asia: 12 Things to Know, <https://www.adb.org/features/climate-change-south-asia-12-things-know>.

23 Assessing the Costs of Climate Change and Adaptation in South Asia.(2014). <https://www.adb.org/publications/assessing-costs-climate-change-and-adaptation-south-asia>.

protect their means of subsistence.²⁴

Pakistan and Climate Change

Pakistan is particularly vulnerable to the consequences of climate change, which are having a major impact on the environment and its citizens. A few effects of climate change in Pakistan include the following: Flooding Floods in Pakistan have broken records in recent years; in 2022, 33 million people were affected. By 2035–2044, an extra 5 million people might be at risk of catastrophic river floods. Pakistan has had extreme heat waves, including one in 2015 that killed more than 1,200 people. In 2024, hundreds of Pakistanis died from heatstroke. Droughts: Pakistan is likely to see more droughts in the future. Crop yields: Key cash and food crops such as rice, corn, wheat, cotton, and sugarcane are expected to see a decline in yields.²⁵ Climate change and China China is tackling climate change even though it is the world's largest emitter of greenhouse gases. China is the world's largest annual emitter of greenhouse gases, accounting for 27% of global emissions in 2020. However, some claim that China may have already reached its peak emissions in 2023. China's main commitment to the world climate is to peak its carbon emissions by 2030. China has surpassed its 2030 wind and solar capacity targets. In 2022, China installed about as much solar photovoltaic capacity as the whole world combined.²⁶

Teitiota case as an illustration

The human rights committee correctly draws attention to the fact that this is the most recent ruling regarding the status of climate refugees and how they must be cared for.

24 Afghanistan: The alarming effects of climate change. (2023). <https://www.unocha.org/>.

25 Somani R. Global Warming in Pakistan and Its Impact on Public Health as Viewed Through a Health Equity Lens. *International Journal of Social Determinants of Health and Health Services*. 2023;53(2):154-157. doi:10.1177/27551938231154467.

26 The World Bank report .(2022)."China's Transition to a Low-Carbon Economy and Climate Resilience Needs Shifts in Resources and Technologies",[Worldbank.org/en/news/press-release/2022/10/12/china-s-transition-to-a-low-carbon-economy-and-climate-resilience-needs-shifts-in-resources-and-technologies](https://www.worldbank.org/en/news/press-release/2022/10/12/china-s-transition-to-a-low-carbon-economy-and-climate-resilience-needs-shifts-in-resources-and-technologies).

The case of Mr. Teitiota²⁷ exemplifies how courts are attempting to define and address the confusing legal status of “climate refugees.” In *Teitiota v. Chief Executive Ministry of Business, Innovation and Employment*, Teitiota, a citizen of Kiribati, requested refugee status in New Zealand. He argued that because he had been residing in the country unlawfully since his visa had expired, he should be granted refugee protection.

Teitiota requested refugee and protected person status “on the basis of changes to his environment” because sea level rise and other climate change effects are driving residents of Kiribati from their island home. Teitiota’s eligibility for refugee status under the Refugee Convention had to be determined by the court.

In its earlier ruling, the lower court in New Zealand “expressed worry about expanding the scope of the Refugee Convention and opening the door to millions of individuals facing hardship as a result of climate change” in addition to finding no significant injury or human rights violation.

Despite the fact that climate change is a significant and developing concern, the New Zealand Court of Appeals determined that the applicant did not meet the requirements for refugee status under the 1951 Refugee Convention since the Convention does not address the issue. The New Zealand Supreme Court and the Court of Appeals both acknowledged the “gravity of climate change” and the possibility that “environmental degradation resulting from climate change or other natural disasters could create a pathway into the Refugee Convention or protected person jurisdiction.” Teitiota’s asylum request was ultimately denied.

After Teitiota’s application for refugee status in New Zealand was turned down, he and his family were deported back to Kiribati. He then petitioned the UN Human Rights Committee, alleging that by deporting him, New Zealand had violated his right to life as guaranteed by the International Covenant on Civil and Political Rights (ICCPR). Mr. Teitiota continued by claiming that Kiribati’s whole population was no longer able to live there due to increasing sea levels and other effects of climate

change. The Human Rights Committee found that Teitiota’s court in New Zealand did not infringe upon his right to life under the International Covenant on Civil and Political Rights (ICCPR)²⁸ and under refugee law” because Teitiota “did not objectively face a severe risk of being persecuted if returned to Kiribati.”

The Committee also stated that Teitota was not a “refugee” in accordance with the definition of the Refugee Convention because he had never been involved in a land dispute and there was no evidence that he feared a genuine risk of future serious physical harm from violence related to housing, land, and property conflicts. He could find land on which he and his family could settle. Furthermore, there was no evidence to support his assertion that he was unable to obtain clean water or grow food. There was no evidence that he lacked access to potable water or that the environment he was in or would return to so hazardous that his life was in danger.

The UN decision was noteworthy because it acknowledged the connections between climate change, migration, and human rights, noting that migration that is caused by climate change may happen as a result of increasing sea levels, salinization, degrading land conditions, severe storms, and flooding. It also emphasized how crucial it is for nations to take action to stop and lessen climate change. The Republic of Kiribati’s existing circumstances “are exceedingly severe, and pose a genuine, personal, and reasonably foreseeable risk of a threat to his life under Article 6(1) of the ICCPR,” according to Committee Member Dunan Laki Muhumuza’s dissenting opinion. He disagreed with the majority’s assessment that Teitiota’s deportation to the Republic of Kiribati did not breach his rights, contending that Kiribati was at greater risk than the majority anticipated as a result of climate change.

It is being hailed as a “landmark” judgement that the UN Human Rights Committee’s resolution, which states that governments shouldn’t send refugees back to nations where their lives are in danger due to climate change, is correct. Despite rejecting Teitiota, the Committee acknowledged that environmental deterioration and climate change pose a serious

27 Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment.(2015)

28 International Covenant on Civil and Political Rights, adopted Dec.16.(1966)

threat to both present and future generations. The Committee stated that “without national and international action on climate change, impacts could grow serious enough to jeopardise the right to life, making it unlawful for countries accepting climate refugees to turn them away.”

The Committee acknowledges that, despite the fact that nations like Kiribati still have time to protect their own citizens, “climate change may threaten the right to life” if “strong national and international action is not taken.”

The Committee acknowledges that, despite the fact that some nations, like Kiribati, still have time to take steps to protect their own citizens, “climate change may undermine the right to life, “thus triggering the non-refoulement obligations” of countries receiving climate refugees, in the absence of strong national and international action.” As a result, the UN Human Rights Committee recognized the rights of climate refugees, which was a significant step forward. Examining some of the actions that the world community has already taken and yet to take in coming years to assist climate refugees in this connection.²⁹ South Asian Nations can take up this as serious matter of concern and frame policies and programs to deal with climate change.

CONCLUSION

It's possible that these South Asian nations haven't enacted official legislation to control “refugees” until recently. When viewed from this perspective, the necessity of ratifying the convention is obvious because India has a strong reputation among South Asian countries for welcoming migrants and carrying out its best duties. However, the refugee crisis has evolved into a humanitarian issue, to which all states must pledge, highlighting its human rights and humanitarian aspects. Since India applies international law in a dualist manner, as was already mentioned in the primary material, it is essential that local laws integrate principles like non-refoulement

29 Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment.(2015) <https://climatecasechart.com/non-us-case/ioane-teitiota-v-the-chief-executive-of-the-ministry-of-business-innovation-and-employment/>.

in order to ensure their execution and obedience.

The majority of today's refugee policies are discriminatory and unfair, which goes against fundamental legal concepts including the right to equality (as stated in Article 14 of the Indian Constitution). The assertion that the 1951 Convention is incorporated into Indian law by Article 21 of the Indian Constitution is not totally true. The Indian government must still adopt a legislative stance to offer refugees a sense of belonging and give them a straightforward procedure and legally binding requirements to claim a status, even though the judiciary has done an amazing job defending them.

The arbitrary nature of the nation's numerous ad hoc treatment mechanisms, the drawn-out and inefficient status determination process, the cruel treatment, the lack of rights, and the application of international standards through municipal incorporation are just a few of the problems that a law will address. If political pressure prevents any particular legislative framework from being implemented, environmental constitutionalism—as suggested in the main material—might be a better way to address these problems. Both refugees and migrants should be able to live in dignity wherever they live. As India celebrates 75 years of a remarkable history, it is more important than ever to modernize the ancient Indian philosophy of “Vasudeva Kutumbakam” as national legislation for refugees, especially in the area of refugee protection. In the absence of legal protection through common policies and programs, we hope that refugees and migrants affected by climate change would have a better stay in all of these South Asian regions.

SUGGESTIONS

In addition to updating their national refugee protection legislation, South Asian nations ought to ratify these regional and international accords. South Asia is primarily to blame for the developing global trend of negative far-right sentiments about refugees. Laws against religious refugees are in place in many South Asian governments. In SAARC member states, refugees from religious minorities are seen as a danger to the political system, the majority population, and the internal order.

A national framework must be established by all South Asian countries with the following goals: (a) provide sufficient protection for refugees; (b) standardize the legal and conceptual understanding of refugees; (c) standardize the procedure for determining refugee status (RSD); (d) address cross-border forced migration brought on by climate change and sea level rise; (e) position South Asian countries as frontline nations for refugees worldwide; and (f) enable South Asian countries to fulfill their legal obligations under international law. Lastly, all of these countries can embrace environmental constitutionalism.

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