
UNRECOGNISED AND UNPROTECTED: TOWARDS A SOUTH ASIAN FRAMEWORK FOR CLIMATE REFUGEES.

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ABSTRACT

Climate Change now-a-days is an emerging environmental issue that increasingly displacing millions across South Asia, transforming it ecological to humanitarian crisis. Whether rising sea levels, floods or cyclones in Sundarbans and Maldives, they demonstrate how the climate change has serious impact on displacement across the region. This paper examines the legal and policy gaps surrounding the climate displacement in South Asia and the challenges to human rights and state sovereignty. It explores how fragmented national policies along with the absence of a cooperative regional framework have failed to address the realities of climate induced migrations. By analysing the legal and policy frameworks of India, Bangladesh and Nepal the study has identified three key challenges to be resolved which are: (1) the absence of a regional legal framework recognising climate refugees; (2) inadequate integration of human rights obligations within domestic refugee and disaster management frameworks; and (3) the lack of effective cooperation under SAARC to manage cross border environment migration. By referring the African Union's Kampala Convention and the Nansen Initiative, this paper proposes a regional protocol on Climate Refugees under SAARC to institutionalise burden sharing, legal recognition and resettlement mechanisms. It also recommends amendment of national refugee and disaster management laws to include climate displacement as a legitimate ground for protection. This research concludes that recognition of climate refugee is not only a humanitarian necessity but a sovereign obligation which is essential to ensure justice, dignity and security in one of the world's most climate vulnerable regions.

Keywords: Climate Refugee, Statelessness, South Asia, Human Rights, SAARC, Environmental Displacement, Regional Cooperation, International Law.

Introduction:

The 21st century is witnessing significant alteration of patterns of human mobility due to climate change. In regions, especially South Asia, which is vulnerable due to climate induced disasters like cyclone, flood, rise in sea level, the displacement of population has been increasing in large scale. Despite this growth of movements, international law doesn't recognise climate refugees as a distinct legal category. The climate affected community is left out of the scope of protection regimes. Though instruments like Paris agreement¹ acknowledges the impact of climate change it still emphasise on resilience building instead of recognising and protecting the climate displaced individuals. Countries like Nepal, India, Bangladesh are the most vulnerable nations on the basis of climate change and extreme weather events. National legal policies of these nations like National Climate Change Policy of 2019², National Adaptation Plan of Nepal³, Disaster Management Act⁴ and Foreigners Act⁵ of India, Disaster Management Act of Bangladesh⁶ are aimed at adaptation and resilience building without protecting climate affected population especially in cross border context.

Being a regional institution the policies South Asian Association for Regional Cooperation, like its Agreement on Rapid Response to Natural Disasters 2011⁷ emphasises on short term protection instead of recognising and providing long term protection to the climate affected people who are displaced. Whereas Kampala Convention⁸ is a binding treaty for recognition of climate affected displacement and as a soft law approach Nansen initiative⁹ addresses cross border displacement in a comprehensive manner.

Despite large scale growth in climate displacement the South Asian region lacks a comprehensive statutory framework to address the climate induced displacement. This paper emphasises the need of coordinated regional approach to recognise and protect the climate

¹ Paris Agreement, Dec. 12, 2015, T.I.A.S. No. 16-1104, 55 I.L.M. 740.

² Ministry of Forests & Environment, Government of Nepal, *National Climate Change Policy, 2019* (2019).

³ Ministry of Forests & Environment, Government of Nepal, *National Adaptation Plan (NAP) 2021–2050* (2021).

⁴ Disaster Management Act, No. 53 of 2005, India Code (2005).

⁵ Foreigners Act, No. 31 of 1946, India Code (1946).

⁶ Disaster Management Act, No. 34 of 2012, Bangladesh Code (2012).

⁷ SAARC Agreement on Rapid Response to Natural Disasters, Nov. 10, 2011.

⁸ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Oct. 23, 2009.

⁹ The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (2015).

induced migrated population effectively and to respond to this emerging challenge.

International Legal Framework:

The Article 1A (2) of the Refugee Convention of 1951¹⁰, defines refugee as those due to well-founded fear of persecution, are compelled to leave their country of nationality or habitual residence. This Article includes persons who are displaced for the reasons of race, religion, nationality, membership of a particular social group or political opinion or who are outside of the country of his nationality, unable to avail himself the protection of that country or unwilling to return to it or not having any nationality. But the climate refugees leave their country of nationality for adverse climate conditions like flood, heat-wave, sea-level rise or desertification which are not covered under the persecutions outlined in Article 1A (2). However, the principles underlying in this Article like, involuntary movement, lack of protection in the country of nationality, can be interpreted in the way for the protection of climate-displaced individuals.

The Article 3 deals with protections to the refugees by the contracting states without any discriminations on the grounds of race, religion or country of origin. Here the principle of equality of treatment is established which ensures same treatment to refugees as nationals of the host country whether it is access to the court and legal protection or administrative system. This provision has significant relevance with climate displaced refugees, who have no formal recognition under international refugee law, as a result of which, they face limited access to justice, protection from discrimination and social service in the receiving country. They should also get equitable legal protection and access to the courts, seek redress from any kind of discrimination, any disputes relating to employment, arbitrary detention and forceful removal.¹¹

Article 31 of the Convention provides protection of refugees against any penalties for their illegal entry or presence in the contracting country without any authorization. The refugees should get reasonable period to show valid cause of their unauthorized entry. Unlike traditional refugees, climate refugees, due to abrupt or gradual environmental changes, leave their country of nationality with no opportunity for legal entry or documentation in the receiving state. As the Article 31 was designed for the protection of refugees, it should also extend to the climate

¹⁰ Convention Relating to the Status of Refugees art. 1A (2), July 28, 1951, 189 U.N.T.S. 137.

¹¹ Convention Relating to the Status of Refugees art. 3, July 28, 1951, 189 U.N.T.S. 137.

refugees with humanitarian and non-punitive approach as they cross borders under the life-threatening environmental condition. Therefore, the states of refuge must adopt flexible immigration and asylum procedure which would provide temporary protection and immediate humanitarian relief to ensure the principles of non-refoulment and human rights protection.¹²

The principle of “non-refoulment” is embodied in Article 33 of the convention, that prohibits contracting states to expel or return a refugee to the territory where their life would be threatened on the grounds of religion, race, nationality, membership of a particular social group or political group. Under this Article a refugee is ensured not to be returned forcefully to his country of nationality that he left due to insecurity and threat to his life. In the context of climate- refugee it is very crucial, though it is not within the ambit of well-founded persecutions under Article 1A (2) of this convention, because they may face extreme weather conditions, environmental collapse, rising sea levels, floods upon return to their country of origin. This could expose them to serious threat to their life. International refugee law must be evolved to address emerging form of displacement driven by the impacts of climate variations.¹³

The 1967 protocol was adopted to address the temporal and geographical restrictions in 1951 convention and universalize the protection of refugee. The convention had restricted temporally to events occurring before 1st January 1951 and geographically to Europe unless a state expressly extended its obligations. The protocol removed the phrases in the Article 1 of the convention which were dealing with the temporal restrictions and included events occurring even after 1st January 1951. This ensured no time restriction in the protection of refugee. The protocol also eliminated geographical limitation by embodying the global application instead of territory specific. Additionally, the convention provided states declaration regarding geographical application of refugee protection not only to Europe but also to anywhere else. Whereas, the protocol removed the restriction entirely requiring no state declaration or discretion in case of new parties to protect refugees from a particular region with ensuring previous state-specific limitations under the 1951 convention. But the protocol did not make any change to the grounds of persecutions for recognition of refugees. It still recognises individuals as refugees who face persecutions on the ground of race, religion, nationality, membership of particular social group or political opinion and leave their country of origin, excluding climate induced persecutions like flood, sea level rise, heat-wave and other

¹² Convention Relating to the Status of Refugees art. 31, July 28, 1951, 189 U.N.T.S. 137.

¹³ Convention Relating to the Status of Refugees art. 33, July 28, 1951, 189 U.N.T.S. 137.

environmental degradations which threaten the lives of individuals.¹⁴

Earlier Refugee status was determined on the basis of some fixed or particular categories like belonging to a particular social group or nationality who no longer enjoyed human rights and protection in their country. The rigid approach to determine the status of refuge was replaced by a human centric approach based on individual fear of persecution for some reasons. The fear of persecution which is subjective in nature must be supported by objective element which means the fear must be well found. Therefore, the status of refugee is determined by combined assessment of personal fear of applicant and the external reasonable fact.¹⁵

Leaving one's home and country is a serious step. People usually do not leave voluntarily unless there is a strong compelling reason like a fear or extreme hardship. Leaving just for fun or adventure or curiosity is not typical. Although people may leave their home for understandable reasons like famine, natural disaster, the legal definition of a refugee focuses only on specific that is persecution. So other regions however competent do not legally make someone refugee. The term "well-founded fear of Persecution" is exclusive. If someone leaves for reasons other than persecution such as hunger, flood or earthquake those reasons do not count under the refugee definition. The focus is only on fear of persecution for specific ground like race, religion, nationality, political opinion or membership of a particular social group. People displaced only by core natural disasters are not considered as refugee under this legal definition. However, if these people also face persecution for example government discrimination against them then only qualify. Even if reasons like famine floods are natural disasters, do not make someone a refugee by law. Still, they are important but everything about the person's situation must be considered, not just one reason.

The refugee convention requires individualised fear. Though climate change affects the whole community, its impact is not same, for example, repeated drought may affect the life of a farmer whose survival entirely depends upon farming, forces him to leave his house, whereas for salaried by the government living on the same locality the drought may not a threat to his life. So, climate change creates fear in the mind of individual which is legally relevant under the requirement of the convention. For some people or community any losses due to climate change may affect their political or regional religious belief, for example, losing Lands due to climate

¹⁴ Protocol Relating to the Status of Refugees art. 1, Jan. 31, 1967, 606 U.N.T.S. 267.

¹⁵ U.N. High Comm'r for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection* ¶¶ 37–38, U.N. Doc. HCR/1P/4/ENG/REV.4 (2019).

impact may affect the beliefs of a tribal community, small island community. Because land is not just a property for them but their identity and some climate migrants leave their house before total collapse which doesn't mean there is no fear. They are not voluntary economic migrants but their escape is fear based.¹⁶

Subjective element of the persecution (fear) is prioritised by the convention as the core of the definition under Article 1A (2). Under the convention, fear should be intentional and human conducted, whereas, in climate induced displacement no persecutory agent is engaged like in targeted harm. Here the environmental process which is causing harm is unintentional. The subjectivity of the persecution-based framework statutorily excludes climate displaced individuals as the harm is ecological, not political. So, the centrality of subjectivity is misaligned with the climate induced harm.

Under refugee law to grant the status of refugee, an assessment of credibility is conducted to evaluate the testimony concerning individualized persecution. However, harm due to environmental degradation rather than targeted individually. There is a lack of doctrinal tool to recognise climate related degradation under legally cognizable persecution. The credibility assessment under the convention only requires narrative evidence of targeted harm, thereby climate claims are marginalised.

Personal background as per the regime of convention is relevant until establishment of persecution-based vulnerability on the grounds mentioned. In the context of climate displacement, background relates to exposure to environmental risk, not to targeted discrimination. The legal relevance of this background is curtailed as it is itself not a ground in the convention. That's why, there is a structural deficiency in the convention as it excludes vulnerability linked environmental displacement by only acknowledging identity linked persecution.

Refugee law acknowledges the perception of fear by the claimant which must be related to the persecution as defined in the convention. The persecution of fear grounded in the convention only recognises targeted oppressions. Whereas, in the context of climate, the interpretation of an individual arises due to environment deterioration. The elasticity of the convention does-not extend to non-human environmental processes. Therefore, ecological threat to life fails to

¹⁶ U.N. High Comm'r for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection* ¶ 39, U.N. Doc.

satisfy the normative threshold as embedded in the Article 1(A)2. In this way, it distinguishes the force displacement due to persecution and migration driven by environmental and economical-factors. Due to this classification, climate refugees are disqualified structurally from being recognised as refugee under the convention. The persecute paradigm to inquire the fear excludes the ecological composition.

The objective element of reasonableness is structured around persecution not environmental harm it means the fear must be a reason. The concept of “interpretative elasticity” within the framework of well-founded fear is introduced in Handbook. Even if the harm not fully completed, the fear may be still justified. In case of climate induced displacement individuals frequently leave their home before environment reaches irreversible situation. As the conventional framework only justifies the fear through the lens of persecution on the grounds provided in Article, the climate-based fear fails to fit within the threshold of discriminatory and intentional harm.¹⁷

National Legal Policies and Frameworks

Nepal:

Nepal is not a party to the convention relating to the status of refugee and its protocol relating to the status of refugees. This creates a structural legal gap in the regime of protection of refugees. Nepal has no binding obligation to incorporate the definition of refugee as provided in the convention into domestic law. It's non-party states even eliminate any kind of obligation to interpret the conventional framework to determine claims for protection. Therefore, the exclusion of climate refugee is substantive as well as procedural. The non ratification of Nepal of the convention relating to the status Stateless and the convention on the reduction of statelessness compounded the situation. Climate related displacements also give rise various risks like document loss, nationality loss and insecurity. Nepal doesn't have any legal framework for these vulnerabilities. Climate refugees do not face only denial of refusal status, but also loss of protection of their nationality. Protection is provided only through executive actions and human rights norms, not on the basis codified legal mechanism.¹⁸

¹⁷ U.N. High Comm'r for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection* ¶ 41, U.N. Doc. HCR/1P/4/ENG/REV.4 (2019).

¹⁸ National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Nepal, U.N. Doc. A/HRC/WG.6/___/NPL/1 (Year).

The recognition of refugee in Nepal is conducted on the basis of international intervention as Nepal does not have any national refugee determination mechanism. Under existing mechanisms of Nepal, refugees and asylum seekers are considered as irregular migrants. The individuals are categorised under general immigration mechanism which shows their priority on regulatory compliance over humanitarian assessment. Instead of refugee status, over stay fine is imposed which reflects the absence of protection-based framework. The absence of appropriate refugee status determination process denies the rights like housing, livelihood, health and education of refugees. In 2007, Supreme Court of Nepal ordered to enact such legislation to acknowledge and protect the rights of refugees. Still there is a prolonged governmental inaction in paradigm of asylum governance. There is a lack of statutory framework through which climate refugees can be protected.¹⁹

From the observation it is highlighted Nepal doesn't have any legal and procedural framework to recognise even the Conventional refugees. Consequently, climate refugees who are not acknowledged under 1951 Convention and any domestic law of Nepal, have no legal pathway for protection.

Article 16 of the Constitution of Nepal deals with right to live with full dignity, guaranteed to every person. It means this right applies to any person who is physically in Nepal whether citizens, foreigners, asylum seekers or climate displaced persons. The state is under normative obligation to protect the human right. The normative approach can be taken in an ad hoc way, temporary protection without legal status. There is no procedural legal framework to protect climate refugees by recognising their claim. There is difference between normative humanitarian approach of protection and formal status recognised by legal procedure.²⁰

The right to clean environment is enshrined in the Article 30 of the Constitution of Nepal. It is citizen centric, excluding non-citizens to protect their environmental rights. This distinction is very crucial while analysing in the context of climate displaced non-citizens. They are displaced due to environmental degradation like floods, cyclones and various extreme weather conditions. But when they enter Nepal, they cannot claim the constitutional right to clean environment. As they are out of its scope Application. The absence of universal approach leaves climate refugees unrecognised because there is a lack of formal refugee status as well

¹⁹ Advocate Prakash Mani Sharma v. Government of Nepal, Writ No. 074-WO-0660, Supreme Court of Nepal (2018).

²⁰ Nepal Const. art. 16.

as access to constitutionally guaranteed rights.²¹

Basic health services and medical treatment sanitation are guaranteed as fundamental right under Article 35 of the Constitution of Nepal. The climate displaced are affected by respiratory illness, lack of sanitation, malnutrition, water contamination. But the article only applies to the citizens of Nepal. When a person affected by climate change and environmental degradation enters into Nepal cannot claim the right under Article 35. This reflects commitment of Nepal towards internal social welfare not to protect climate refugees.²²

The right to food guaranteed under article 36 of the Constitution of Nepal is significant in the context of climate induced displace. Due to citizen centric welfare framework this constitutional protection is limited to Nepal citizens. The people entering into Nepal, affected by environmental harm in their country cannot invoke the right under this Article, state supported relief assurance and food distribution. The protections may be extended as a humanitarian-measures not as a guaranteed legal right.²³

Article 37 of Constitution of Nepal guarantees the right to appropriate housing which is explicitly limited to citizens of Nepal. For internally displaced citizens who are affected by natural disasters are entitled to the right to get state assistance, reallocation, rehabilitation and reconstruction programmes. Climate refugees crossing border and entering into Nepal cannot claim this right due to its citizen restricted entitlement.²⁴

Nepal's national action plan seeks to integrate climate adaptation national development planning aligning with Paris Agreement adopted under United Nations Framework Convention on Climate Change. This plan provides strategy to address the impacts of climate change and to implement effective measures by establishing long term goals extending up to 2050 along with medium and short-term actions to reduce climate vulnerability. The action plan identifies 64 priority programmes with a projected budget of US dollar 47.4 billion to implement them in various sectors such as agriculture, water resources, disaster risk reduction, infrastructure, health, rural and urban settlement. However, the plan focuses on management of climate impact within its borders without addressing cross border climate displacement. It's resilience building

²¹ Nepal Const. art. 30.

²² Nepal Const. art. 35.

²³ Nepal Const. art. 36.

²⁴ Nepal Const. art. 37.

strategy is limited to address emerging humanitarian challenges associated with Climate refugees.

Nepal is one of the most climate Region due to its mountainous geographic location, socio-economic fragile condition and dependence of people on climate sensitive sectors for their livelihood. Nepal was ranked 10th country among most affected nations from 2000 to 2019 which demonstrates its high vulnerability to climate related disasters. Due to mountainous Landscapes, particularly susceptible to landslides, more than 80% of population of the country are exposed to extreme natural hazards like earthquake, floods, landslide, drought. Nepal also has been experiencing emerging hazards like in 2019, first tornado in Nepal was recorded caused significant damages to homes and public infrastructure. Also forest fires over past two decades have been recorded across the country.

Climate vulnerability of Nepal is more intensified by its socio-economic condition. Rural communities of mountain regions are exposed to environmental risk reducing their capacity to adapt changing climate conditions. Due to poverty poor infrastructure and limited access to resources, changing climate conditions and irregularity in rain affects the primary source of livelihood of rural Household agriculture. Agricultural productivity affected by extreme climate events contribute to food insecurity and instability in the economic condition of rural farmer communities. Rural urban migration due to high exposure to climate risk has led to expansion of informal settlement in flood prone areas increasing the vulnerability of urban population. Nepal is likely to experience a significant increase in the temperature change in precipitation pattern, glacial retreat, which will affect its infrastructure, water resources, agriculture, tourism and prevent it to achieve sustainable development goals. This may increase the patterns of displacement and migration with and beyond national boundaries.

It is necessary to examine the policy responses identified by the Nepal Adaptation plan for various sectors like agriculture, water resource, urban settlement and development which are designed to support sustainable development in the face of climate uncertainty. Agriculture and food adaptation programme seeks to improve the agricultural productivity, climate resilient farming practises, supporting farmers through technical innovations. Large proportion population of Nepal depends upon agriculture for their livelihood. So, the programme intended to support national development objectives by transforming agricultural sector into more resilient and sustainable system. However, the programmes failed to address the human

mobility caused by climate impacts which may arise from agricultural losses due to environmental degradation. A critical and significant component of Nepal's climate adaptation plan is water and energy sector which facing several climate risks like declining water availability, glacial lake outburst flood, sedimentation in rivers affect the sector. Environmental change has impact on hydropower infrastructure, irrigation system, rural livelihood of Nepal on which the country is highly dependent. Therefore, the action strategy proposes various policies to strengthen the climate resilience within the sector include improvement of irrigation through water pumping technologies, enhancement of monitor and early warning systems for glacial outburst floods, decentralisation of energy system in rural areas and promotion of other climate resilience energy technologies.

Though certain measures identify vulnerable settlement, develop resettlement strategies in flood prone areas, they remain limited to internal disaster management and infrastructure development. Persons forced to move due to climate impacts remain outside the formal protection region as the policy framework do not provide any recognition to the individuals displaced due to climate change as refugees. This structural gap is crucial in the context of Himalayan region climate displacement.²⁵

Nepal's sensitivity to climate impacts are due to its dependence on natural resources, fragile topography, social and economic vulnerabilities and weak infrastructure. Climate related disasters affect the human lives, settlement compelling them to relocate. The economic and environmental consequences are not addressed through the lens of climate induced displacement rather the adaptation initiative despite international commitments under Paris agreement Nepal policies do not establish any institutional mechanism to recognise and protect climate refugees.²⁶

One of the important legislation of Government of Nepal is Disaster risk reduction and Management Act of 2000, which only deals with immediate humanitarian assistance like rehabilitation, temporary shelter and relief distribution rather than bridging the gap between disaster management and human mobility governance²⁷.

²⁵ Ministry of Forests & Environment, Government of Nepal, *National Adaptation Plan (NAP) 2021–2050* (2021).

²⁶ Ministry of Forests & Environment, Government of Nepal, *National Climate Change Policy, 2019* (2019).

²⁷ Disaster Risk Reduction and Management Act, 2017 (2074), Nepal.

Bangladesh:

The climate vulnerability of Bangladesh is addressed through the multi-sectoral and mitigative approach Bangladesh climate change strategy and action. The protection of climate vulnerable communities who are exposed to various climate hazards such as cyclone, flood, rise in sea level, is emphasised only through resilience building, livelihood security and disaster risk management. Particularly coastal and riverine regions of the country witness large scale displacement due to climate impacts. Though climate affects human vulnerability is recognised, it neither establishes separate right based framework nor recognises climate refugees as a distinct legal category. Instead of addressing the long term displace through planned relocation, legal status of affected people, the policy puts stress on adaptive and preventive strategy such as infrastructure and capacity building, disaster preparedness. There is a structural lack of bridging the gap between climate change and human mobility leaving the climate affected population in adequately addressed²⁸.

Growing scale of internal displacement due to climate change in Bangladesh is explicitly acknowledged and comprehensive approach is adopted to address pre-displacement risk reduction and post-displacement rehabilitation as well as emergency response. Being confined only to the internal displacement, the recognition of climate refugee is avoided under international and domestic laws²⁹.

One of the key legislations for disaster risk reduction in Bangladesh is Disaster Management Act of 2012, which provides institutional framework. National and Disaster management Committees, constituted under this Act, Emphasis on disaster preparedness, risk reduction planning and implementation of strategies. Being reactive and relief oriented in nature, this act focuses on short term recovery response and post-disaster rehabilitation rather focusing on long term solution. There are no provisions establishing legal status enforcing rights, reallocation and socio-economic integration of climate displaced population.³⁰

²⁸ Ministry of Environment & Forests, Government of Bangladesh, *Bangladesh Climate Change Strategy and Action Plan 2009* (2009).

²⁹ Ministry of Disaster Management & Relief, Government of Bangladesh, *National Strategy on the Management of Disaster and Climate-Induced Internal Displacement* (2015).

³⁰ Disaster Management Act, No. 34 of 2012, Bangladesh Code (2012).

India:

In India national disaster management authority is established to formulate policies, co-ordinate and implement disaster management strategies Further this Act mandates preparation of a national plan, integration of disaster is production strategy with development planning and emphasises on relief measures. Predominantly being administrative and response-oriented, this statue does not recognise climate refugees as distant legal category to provide them long term protection.³¹

The National Action Plan on climate change India is structured around eight national missions on various sectors including sustainable agriculture, water, habitat, Himalayan ecosystem. The strategy seeks to address climate change through a combination of mitigation and adaptive approach. By acknowledging the impact of climate change on vulnerable communities in agriculture, water resources, urban settlements. The absence of Acknowledgement of climate refugees as separate category makes this Act sectoral and developmental in orientation. Though this action plan strengthens India's climate governance architecture by focusing on economic resilience and environmental sustainability, it fails to address the recognition and protection of climate induced displaced population³².

Due to absence of statutory legal framework to recognise climate refuge, the asylum seekers and refugees are treated under Foreigners Act of 1946³³. The statue provides discretionary powers to executive board to regulate the stay and deportation of non-citizens. Under this Act, people displaced due to climate change, asylum seekers are treated as foreigners. This results to lack of separate right based legal framework for climate refugees.

The statutory rules in India mandates relative travel documents for cross border movements Climate refugees entering into India.³⁴ Without valid documents they are treated as unauthorised migrants instead of individuals in need of humanitarian protection as there are no exceptions for them. The combined operation of the statutes leaves the climate refugees exposed to detention and deportation by classifying as irregular entrants.

³¹ Disaster Management Act, No. 53 of 2005, India Code (2005).

³² Prime Minister's Council on Climate Change, Government of India, *National Action Plan on Climate Change* (2008).

³³ Foreigners Act, No. 31 of 1946, India Code (1946).

³⁴ Passport (Entry into India) Act, No. 34 of 1920, India Code (1920).

Right to life and personal liberty is guaranteed under Article 21 of the Indian Constitution³⁵. It is judicially evolved and case specific. Though non-citizens are provided certain basic rights, the lack of statutory framework leaves the community remain in precarious legal position. This reflects a crucial gap in India's legal system in providing protection to climate refugees.

Failure of SAARC:

A limited and response oriented approached natural disaster management is adopted by the South Asian Association for Regional Cooperation. The scope of SAARC agreement on Rapid Response to Natural Disaster 2011 is confined to short term response mechanism without addressing the consequences of disaster through durable solutions such as migration or rehabilitation of displaced population. The absence of any provisions regarding recognition of the climate refugees reflects its formal gap to provide protection to the population affected by the climate change in South Asian region. Also, the non-binding nature of SAARC Disaster Management Centre³⁶ limits its regulation on member states. Climate induced displacement is regulated solely at the national level.

Nansen initiative³⁷ stands in contrast with SAARC's failure to recognise climate affected population. The convention is the first legally binding regional treaty that recognises internal displacement due to natural disasters, obligating the member states to protect, resettle and rehabilitate the climate affected population. Also, the Kampala Convention³⁸ provides protection-oriented approach to cross border climate displaced through non-binding in nature. Whereas SAARC falls a short to provide legal recognition and protection to the climate Displaced population.

Recommendation:

A regional coherent and right based framework is needed to address climate induced displacement. South Asian Association for Regional Cooperation should develop a binding legal instrument to explicitly recognise climate refugees. Like Kampala Convention the instrument should obligate its member states to protect, rehabilitate, relocate the climate

³⁵India Const. art. 21.

³⁶ SAARC Disaster Management Centre (SDMC).

³⁷ The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (2015).

³⁸ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Oct. 23, 2009.

affected persons. The climate induced displaced people should be formally acknowledged as a distinct legal category. Though international laws are silent about the protection of climate-refugees states can adopt regional protection similar to that approach taken under Nansen initiative.

South-Asian nations like India, Bangladesh and Nepal should must integrate climate displacement into their national legal policies they should incorporate displacement sensitive provisions to strengthen the social protection mechanism as well as ensure access to the basic rights like shelter, food, healthcare etc which are essential to address the growing challenges of the climate affected cross border movements in South Asia.

Conclusion:

This paper has Demonstrates the inadequacy in addressing the consequences of climate change in highly vulnerable regions like South Asia countries like India, Nepal and Bangladesh which have adaptive digest risk management policies which are resilience building oriented. As a result, climate displaced persons are not recognised as a distinct legal category. Also at the regional level South Asian Association for Regional Cooperation Policies are limited to disaster response failing to address the long-term protection of climate refugees. The absence legal framework to recognise and protect the climate displaced persons in South Asian region reflects a structural gap in international and regional framework where the climate induced - degradation is addressed only as an environmental and developmental concern. The climate affected population are exposed to displacement, marginalisation, deportation and they're denied basic rights. This paper addresses Climate induced displacement requiring a proactive and right based legal framework to be recognised and protected by developing coordinated legal mechanisms under international, national and regional institutions like SAARC.