International Journal of Language and Legal Studies (IJLLS)
Available Online:
https://ijlls.online/index.php/journal/index
ISSN Print: 3105-7950
ISSN Online: 3105-7969
Platform & Workflow by: Open Journal Systems

South Asia and Global Climate Law: Duties, Rights, and Justice Frameworks

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ABSTRACT
The region of South Asia, which is among the most environmentally vulnerable parts of the world (e.g.: eco-sensitive / climate-vulnerable), is facing growing environmental threats in terms of rising sea levels (increased sea-level rise), intensified monsoons (unpredictable monsoon patterns), glacial retreat (glacial recession), and extreme heat waves (prolonged heat events) all of which are threatening the ecosystem and developmental direction of the area. The area is a contributory source to the historical greenhouse gas (GHG) emissions (carbon footprint / cumulative emissions), but experiences the brunt of climate change, casting serious challenges of fairness (equity / distributive justice), legal responsibility (obligation / accountability) and climate justice in the context of international law. The paper analyses the relationship between the international climate law (global climate governance / transnational environmental law) and the theory of climate justice, addressing especially the vulnerable status of South Asia in the current global climate regime. Based on the Paris agreement, the United Nations Framework Convention on Climate Change (UNFCCC) as well as the applicable jurisprudence, the paper examines the legal obligations (obligations / commitments) of South Asian states, especially their mitigation obligations (commitment to cut emission), entitlement to climate adaptation financing (access to climate adaptation funding), and the obligation to protect climate-displaced peoples (protection of climate migrants / climate induced displaced persons) in the region. It critically reviews how the principles of equity (fairness / distributive balance) and common but differentiated responsibilities (CBDR) are working and the structural obstacles which prevent effective South Asian involvement in the global climate governance. Also, this paper addresses climate justice as a normative theory (ethical paradigm) and as a legal ideal (emerging legal norm / new legal objective) -disproportionate harm of vulnerable populations (marginalized populations / at-risk communities): women, rural people, and indigenous people. It further investigates the new home climate jurisprudence (national climate litigation / environmental case law) in the area, the rising popularity of international climate litigation and the rise in the need to have enforceable obligations (binding commitments) to deal with loss and damage. To sum up, the paper posits that the international legal procedures should be converted into a model based on justice (equity-based model / fairness-based regime) that is more attuned to the local weaknesses, the historical disparities in emission rates, and the timely necessity of a sense of accountability in the Anthropocene.

Keywords : *Climate Change, International Environmental Law (or Global Climate Governance), South Asia (or Climate-Vulnerable Regions), Climate Justice (or Environmental Justice / Equity in Climate Governance), Legal Responsibilities (or Climate Obligations / Accountability)*

Introduction

An acute asymmetry between the main contributors of global greenhouse gas emissions and their most exposed victims became a central act in the play of climate change in the twenty first century. In no other part of the world is this imbalance more evident than in South Asia a place characterized by high population densities, sensitive eco-systems and a high degree of socio-economic inequality. Countries like Bangladesh, Pakistan, Nepal, India and Maldives are already experiencing drastic effects of climate change, in the form of increased variability of monsoon rainfall, glacial melting, increasing sea level, and extreme weather conditions. Not only do these phenomena pose threats to the quality of the environment in the area but also they challenge the extent to which international law can be used in solving the problem of international climate governance.

The evolving, yet asymmetrical tendency of composing the law to respond to climate change - which represents the most prominent attempt to juggle sovereign discretion with collective responsibility and distributive equality - is driven by the legal architecture of responding to climate, which is comprised primarily of the United Nations Framework Convention on Climate Change (UNFCCC), followed by the Kyoto Protocol and finally the Paris Agreement. Even though these instruments evidence substantial normative progress, such as the acknowledgment of the concept of the principle of common and differentiated responsibilities and respective capabilities (CBDR-RC), they do not guarantee substantive justice to the regions (e.g., South Asia) with capacity shortfalls and structural disparities hampering their effective involvement and execution.

Climate justice in this respect can be defined as an agnoscope, as a normative requirement. It tries to position climatic change not only as an environmental or scientific issue but also a legal or ethical aspect involving human rights, development, and intergenerational fairness. The emergent body of law on climate justice highlights the importance of the restructuring of the legal norms (or creation of new norms), to address the asymmetry of vulnerability in the Global South, representational absence of marginalized communities in decision-making, and the necessity to uphold binding responsibilities, especially on issues including access to climate finance and adaptation, as well as compensation of loss and damages.

In spite of the South Asian states being formal members to the key climate change agreement, they have had limited access to technology, insufficiently funded adaptation plans, and little influence in determining the significant agenda in global negotiating tables. In addition, up-and-coming trends like climate change-driven displacement, transnational environmental degradation, and causation of liability on weather catastrophes highlight strong loopholes both in foreign and local law. Such loopholes not only weaken the execution of protection of vulnerable groups but also destabilize legitimacy, and coherence of international law response to the climate crisis.

The current paper poses questions on whether the prevailing international climate law can support the South Asian climate experience. It follows by focusing on the environmental weaknesses of such a region, assessing the duties and restrictions present in the international legal order, and discussing ways in which climate justice may be put into practice both at the legal and the policy level. Through this, it will provide a critical analysis of the manner in which international law needs to develop in order to shape an effective and fair climate future to the region.

Climate Vulnerability of South Asia: Scientific and Legal Dimensions

The South Asian part of the world is finding itself in a pseudo-dilemma of world climate debate, being both a minimal contributor to the global greenhouse gases phenomenon and a victim bearing the huge cost of global warming. Such susceptibility is not only human-environmental, but it also cuts across legal, political, and developmental issues which need critical and timely examination. The area is experiencing openness to sea-level rise, strengthening monsoons, recession of Himalayan glacier, and severe outbreaks of spiraling heatwaves, which already started to displace population, dislocating agricultural systems, and burdening infrastructure over different national boundaries.

An example is Bangladesh, which is at existential risk to rising seas, as it is estimated that it is likely to lose close to two tenths of its land area by 2050, displacing a population of more than 15 million inhabitants in the process. On its part, in Pakistan, the number and magnitude of floods have been on the rise, with the recent flood in 2022, which engulfed one-third of the nation and impacted more than 30 million people in its wake. Such climate shocks are increased under conditions of socio-economic vulnerabilities, such as poverty and food insecurity, urban overcrowding and poor governance systems. Carbon-negative Nepal and Bhutan are experiencing a fast pace of the glaciers melting and an increase in the threat of glacial lake outburst floods (GLOFs), and the Maldives is battling the prospect of complete submergence in just a few decades.

Intergovernmental Panel on Climate Change (IPCC) has strongly supported this scientific consensus by categorizing South Asia as one of the high-risk areas with regard to climate-related displacement, water shortage, ecosystem collapse, and healthcare emergency. But science cannot protect itself with mere weakness, an example of which is scientific vulnerability that is not automatically a source of protection on the side of the law. On the one hand, current international law recognizes the predicament of vulnerable states as specified by the Paris Agreement but, on the other hand, does not place any obligations beyond serving as the guidance without any enforceability and does not offer the necessary financial guarantees depending on the conditions of South Asia. The voluntary character of climate finance, limited effectiveness of enforcement instruments of multilateral environmental agreements, absence of legal status of climate-displaced persons render the affected groups of persons under the normative vacuum.

In addition, women and other vulnerable groups within South Asia are highly stratified on the basis of gender, caste, ethnics and class. Women and native populations are usually the initiators to feel the adverse effects of climate stress, but, at the same time, they are marginalized in national policymaking and even in the global-scale negotiations. This legal invisibility enhances the structural inequalities encompassed by climate governance systems and highlights the need of a justice perspectival approach to vulnerability one that goes beyond the technical resilience to embracing a substantive legal empowerment.

This fact implies that the legal description of climate vulnerability in South Asian countries should not be framed as a colorless statistical fact but as a phenomenon that is the result of global disparities, injustices related to the emission of greenhouse gases in the past, and inability of international laws to address regional imbalances in a meaningful way. This axiom leads to the next investigation as to the normative and structural constraints of the existing international climate legislation.

International Legal Framework Governing Climate Change

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The UNFCCC enacted in 1992, established the normative basis formulating the principles of common but differentiated responsibilities and respective capabilities (CBDR-RC) and precaution. Although the Convention provided a platform on how the countries could work together, it only set general requirements, where no binding commitments to reduce the emissions possessed by the developing countries. The legally binding targets took the Kyoto protocol (1997) to a new level, although its applicability degraded because of the low number of countries engaging in mitigation efforts and because it did not essentially hold the Global South accountable. On the contrary, the Paris Agreement (2015) reflected an important transition: now there is a bottom-top structure of nationally determined contributions (NDCs) common to all parties, but the historical responsibility is noticed and the differentiated ability is taken into account.

On the one hand, the Paris Agreement represents a more flexible and inclusive framework, but on the other, it is deeply ambiguous in terms of the legal aspect. Most importantly, the agreement does not have serious enforcement mechanisms and thus obedience is more of a political will and peer pressure. Moreover, its consideration of key concerns, including loss and damages, climate driven displacement as well as climate fund finance to adapt the activities of vulnerable states is either poor or non-binding. Article 8 of the Paris Agreement recognizes that the issue of loss and damage has to be addressed;} however, it clearly does not involve the concept of liability or compensation, which weakens the legal remedy of the countries that are heavily impacted by the effects of global warming such as those in South Asia.

The Climate Finance Mechanism which entails the Green Climate Fund (GCF) is supposed to be of support to the developing countries, yet it has been found unable to generate resources as required. South Asian states especially, experience complicated eligibility processes, discrepancies in the time of disbursements, and hitting difficulties in relating financing to local susceptibility. Also, lack of binding financial commitments of the developed economies has also made the climate finance mechanisms less effective. The customs of the regime that are justified by appeals to stability and order belie equity and justice time after time, as the formal structure of the regime favors economic and geopolitical dominance over weakness and dependency.

International environmental law also crosses paths with other legal regimes e.g. international human rights law, refugee law, and customary international law, but this intersection is not well developed in practice. As can be seen, the international refugee law does not presently afford climate-induced displacement as a justification to asylum, thereby pitting millions of any prospective migrants in coasts and drought-stricken South Asian states into an open net. This void at the legal level represents a wider stasis within the international legal mechanism, which finds it hard to keep up with the realities of climate change in the Global South that are diverse and dynamic.

Altogether, the international legal regime on the climate change has developed on a normative level, but it has remained structurally biased, fragmented, and politically fragmented, not expecting the strong interests and high levels of vulnerability in the most affected areas within short periods of time. In the case of South Asia, this framework is both an avenue of advocacy and place of legal blindness, which needs a reinterpretation to meet the vision of climate justice and fair burden-sharing.

South Asian States and Their International Climate Commitments

South Asia countries which made relatively less contribution to historical greenhouse gases have also shown growing interest in international climate regime. All countries of the South Asian region are parties to the Paris Agreement and have made Nationally Determined Contributions (NDCs), which describe their plans regarding climate action. The nature of these commitments however presents an incriminating situation of gap between what the world wants done and what a region can afford to do, and even a crisis between the need of development and the need of climate mitigation.

The largest emitter in the region, India, has yet taken an ambitious, but conditional, pledge to go net-zero in 2070, with extensive investments in renewable energy. Nevertheless, its per capita emission is far below world average and it is still claiming the principle of equity and CBDR as a basis of its international stand. With less than 1 per cent of world emissions, Pakistan has also already submitted a revised NDC through which it plans to halve the estimated emission by 2030 subject to international assistance. Nevertheless, fiscal limits and political volatility continue to block national planning measures to cope with the dangers of global warming in Pakistan, as was the case after the 2022 floods.

Bangladesh has been a proactive participant in the diplomatic sphere of climate and frequently stands on behalf of Climate Vulnerable Forum (CVF) and appeals to more serious international commitment in the light of adaptation and loss and damage, and funding. Its updated NDC is an indication of its low-carbon growth besides focusing on climate resilience and adaption. Likewise, Nepal and Bhutan have committed to stay carbon-neutral and their national policy has been wholly coordinated with ecological protection and renewable energy. Being one of the most endangered states in the world, The Maldives have demanded the legally binding guarantees on loss and damage, stating that they cannot be preserved by Article 8 of The Paris Agreement.

Nonetheless, implementation is the other major challenge despite these formal undertakings. The limitation of access to climate finance, a technological dependency, as well as institutional fragmentation, and imperfect data systems are some of the usual barriers that South Asian countries face. The translation of NDCs to implantable national policy or national plans has been a challenge to many. Also, the climate governance is not linked to the other development planning efforts, diluting the prospects of integrating rights-based strategies.

Another worry is that numerous South Asian NDCs operate on a conditional basis. Most of the pledged reductions of emissions respond to the international finance and transfers of technology. The provision of such assistance, however, has not been applied consistently, with the Green Climate Fund (GCF) and other facilities not living to the expected $100 billion a year commitment. This discrepancy not only opens the door to poor implementation but also creates a lack in the international system of trust and legitimacy that compounds the idea of structural unfairness.

The pledges of South Asian states are therefore out of ambition and limitation the vulnerability is there, justice is in the picture, but limitation is within global inequalities of power and resources. Their story echoes better to bolster legal and institutional arrangements at the country and international level, to make sure that the resolution to meet climate commitments is not merely being made, but is fairly funded and successfully delivered.

Climate Justice and Equity — The Developing World’s Legal Claims

Climate justice has become a constant theme of international climate debate especially in the developing nations. The fundamental aspect of climate justice is to recognize the past

responsibility and unequal abilities, as well as the overburdening on the side of vulnerable groups. States in South Asia, where rising sea levels, severe weather events, and changes in the timing of the monsoon have an acute impact, have more and more come to present their legal and diplomatic claims in the terms of this justice narrative. They are demanding things beyond mitigation and adaptation, and these include recognition, redistribution, and redress in the global legal system.

The historical emissions and the correlation with the existing climate vulnerabilities are one of the building blocks of climate justice. The leading developed countries with the largest share of accretive emissions have expanded their economies at the expense of the Global South exporting climatic expenditures. This has spawned requests of legal liability under international environmental law and the natural policy of non-harm, because doing nothing is considered as violation of general worldwide behavior. The DP Principles have been invoked by South Asian voices, particularly Bangladesh and Maldives voices, at multilateral discussions tantamount to better enforcement and a redistribution of legal norms.

Potential application of international human right law, climate torts and state responsibility theories are some of the theories that have been advanced by law scholars to include the ability to attribute climate harm on an extraterritorial basis. In 2023, the United Nations General Assembly supported the request by an advisory opinion to the International Court of Justice (ICJ) on the responsibilities of states with respect to climate change. The development is a landmark sign that the international law must change in order to be able to cover structural injustice. South Asian states have mulled this initiative over as it sends the message that the global states are accountable.

Justice claims are also highly encompassing of equity in climate finance. South Asian states say that weight in cost of adaptation and loss is not being incorporated in any way by the current financial mechanisms. Also, procedural impediments do not treat the low-income countries almost fairly enough. It is no longer voluntary aid but legal rights, with proposals to reimburse loss and damage with legally-binding payments. Albeit the Article 8 of the Paris Agreement recognizes this matter; it does not hold any liability; which many scholars and negotiators have acclaimed as a penalty.

Courts and tribunals sit at the intersection of human rights and climate justice, and are becoming actively utilized as space to develop a legal claim. Other recent cases of climate litigation include Leghari v. Also known as Federation of Pakistan, these people have claimed their right to a clean environment, a source of livelihood, as well as inter-generational equity. On the one hand, this set of cases indicates that promising jurisprudential trends can be observed; on the other hand, it shows the weaknesses in domestic legal frameworks when addressing transboundary harm. This is because, neither cross-border liability in respect of climate damages has been clearly defined at the international jurisprudence nor has legal redress been improved in respect of South Asian populations.

Therefore, legal ascription of climate justice by the South Asian states is factual and not a rhetoric approach. It is aimed at recontextualizing international climate law in the historical responsibility, human rights, and fairly sharing the burden. But this desire meets opposition among influential greenhouse gas producers and an international legal framework that remains in the grip of sovereignty and voluntary obligation, which begs the pressing question of how international climate justice will evolve in the future.

Regional Cooperation and Legal Innovation in South Asia

Although South Asia is among the most climate-vulnerable regions globally, there have been little but emerging manifestations of regional legal and institutional collaboration when it

comes to climate governance. The structural impediments, which can be discussed as geopolitical tensions, economic differentiation, institutional fragmentation, etc., have traditionally hampered effective legal mechanisms of environmental cooperation. Nevertheless, or rather, due to increasing climate-oriented catastrophes and common ecological future, South Asian countries are slowly being drawn to regulated, collaborative solutions based on international legal guidelines as well as regional need.

The South Asian Association for Regional Cooperation (SAARC) is continuing to serve as the premiere avenue of intergovernmental interaction. Despite being politically limited especially due to the India Pakistan tensions it has attempted to integrate environmental concerns in the form of the SAARC Action Plan on Climate Change (2008) and the SAARC Disaster Management Centre. These mechanisms though, have mostly been proclamatory with no authorities to stand by them or even the required finances. Criticism against SAARC has been addressed to its institutional paralysis which it seems to necessitate legal change and functional merger with, as learning of, other regional groupings, such as ASEAN or the EU.

The recent years showed more bilateral and sub-regional legal cooperation. India and Bangladesh have been collaborating in management of cross national waters, and Bhutan and Nepal have been aligned in their climate and energy policies and have collaborated in shared amount of hydropower. The Indus Waters Treaty though not directly a climate specific instrument has been referred to in the context of glacial melt and water stress in the context of climate change. The examples illustrate the possibility of adaptation governance based on the existing legal frameworks but only reinterpreted in terms of the modern environmental risks.

Non-state actors as well as cross border civil society networks have brought about legal innovation, too. The regional legal harmonizing, policy dialogue, and strategic litigation have been encouraged through such initiatives, as the South Asia Climate Action Network (SACAN). Indian, Pakistani, and Bangladesh universities and legal research centers are starting to work together in undertaking common climate risk assessments, legal capacity building, and in coming up with model laws to harmonize the national policies with international climate commitments. These soft law instruments are considered to be a top-down norm making technique that may be advanced into an underlying, conventional regional legal expectations especially when it is accompanied by an immediate state practice and opinion juris.

It is further becoming increasingly apparent that human rights regimes should be incorporated into regional environmental regulation. Rights-based governance influences as well transparency and participation as transparency and accountability are slowly making their way into the regional discourse, which are gradually gaining traction as rights-based form of climate policy. To enforce climate justice, legal scholars have promoted to create a South Asian climate court or tribunal, in the model of the African Court on Human and people's Rights, to oversee environmental disputes. This is an idea still on the drawing board, but the fact that it has increased in popularity signifies a craving in the region for legal novelty at the institutional level.

To conclude, although there is little to no formal legal cooperation in South Asia, with regard to the climate crisis, more innovative forms of legal cooperation is emerging, both on a state and grassroots level, preparing a more concerted legal approach. To put these efforts to practice, the South Asian states should get out of a political impasse and make an investment in regional legal apparatus to present both the international climate commitments and the regional shared vulnerability.

Recommendations

In order to step up to the mounting climate crisis and legal asymmetries to the South Asian region, national and regional approaches to law require a strategic reset. The recommendations provided below can be taken as a blueprint of how to integrate climate justice, legal responsibility, and collaborative resilience into the region climate governance.

1. Codify Climate Responsibilities under National Law

The South Asian countries should go beyond IC policy rhetoric to integrate commitments to legally binding climate duties at the national level. This involves the formulation of climate change framework legislations, which outline both the mitigation and the adaptation targets, mechanisms of enforcement, and inbuilt international commitments into the national laws. Although the Draft National Climate Change Framework Law will be a decisive move in India, the same urgently is required in Pakistan, Bangladesh, Nepal and Sri Lanka in order to pursue legal coherence as well as enforceability. The national climate laws must also ensure the priorities of extension of equity among generations and the rights of vulnerable people.

2. Strengthen Regional Legal Instruments and Institutions

To revive SAARC as climate governance organization, the actions would involve some level of both legal innovation and political determination. The South Asian states ought to take into consideration the desirability of formulating a binding regional convention on climate change which exceeds the scope of soft law instruments and ensures coordination, especially in areas of emissions, disaster management and transnational management of resources. A game breaker would be establishing a South Asian Climate Council that has legal capacity to inspect compliance as well as arbitrate among the disputes. Such institutional design could be informed by teaching drawn by the ASEAN Agreement on Transboundary Haze Pollution or the EU Climate Law.

3. Pursue Advisory and Contentious Proceedings at International Forums

Considering the mal-propped nature of the region and its low diplomatic bargaining power, international litigation and advisory opinion is one of the pretexts through which states in the region can capitalize in the South Asian region to understand legal responsibilities. They may collectively engage or prosecute claims through the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS) or regional courts on the subject of human rights to develop climate jurisprudence on extraterritorial responsibility, analogous to any business that causes loss and damage, and right to a viable environment. This would be a boost to the demands of the region in terms of accountability of history, as well as repayment in monetary terms.

4. Advance Climate Finance as a Legal Right

Climate finance must not be considered under the development aid, rather, it must be treated as a binding legal entitlement, based on ideas of equity and the principles of common but differentiated responsibilities. South Asian countries must agitate binding commitments under Article 9 of the Paris agreement and insist on holding pledges made under Green Climate Fund accountable. They also have to be able to come up with legal mechanisms that guarantee open and fair distribution of climate financing within their countries as adaptation and resilience-building among marginalized groups.

5. Institutionalize Cross-Border Legal Education and Research

A South Asian Centre of Climate Law and Justice that would include universities, think tanks and civil society organizations, would likely facilitate the harmonization of legal standards, the enhancement of regional legal capacity and jurisprudential development. A center may also act as a source of knowledge on best practice and culminating legislation, in addition to encouraging a regional epistemic community of climate lawyers and academic folk.

Conclusion

The situation of South Asian area is a strategic cross-junction since the challenge of climate change, as a whole, converges with the history of legal vagueness, lack of governance and the geopolitical complexity of the area. The climatic effects are disproportionately experienced in the region, in the sense of rising sea level, the melting away of the glaciers, an unstable monsoon season and the escalating socio-economic inequalities, yet the region is contributing quite ineffectively to the global emissions. The above unequal asymmetry is a reminder of the fact that climate justice should be incorporated into the legal and policy system of the area. The strategic toolbox offered by the international law can be used by the South Asian states to build an argument of historical responsibility, a claim of fair climate finance, and an influence on the international climate norms. The success however of this framework is pegged on the political will that aims at co-opting international commitments, actively participate in the creation of norms and adopt the collective positions in multilateral arenas. It is not a compliance problem, but a re-conceptualization of the international law as it is, as a Global South in which vulnerability is not the basis of exclusion, but right of claim. Legal creativity, local cohesion and a revolutionary vision of justice should be the way ahead. The South Asian states must leave behind a reactive, piecemeal approach to the realization of harmonious legal regimes, increased cooperation among the regional, also to empower the vulnerable groups. The human rights, environmental ethics, and intergenerational equity will have to be incorporated into the law documents to promote climate justice. Lastly, South Asian climate pressure cannot be altered by any country without alteration of its law. Having a moral and practical interest in having the say in a more equal international legal order, which would not only tend to the climate change, but will also tend to the causes of the climate change more fundamentally and redistribute international responsibilities in the name of justice, South Asian nations have all the reasons to be demanding a more equal international legal order, and thus claim leadership in climate resilience.

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