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Climate Change and Legal Framework: From Shehla Zia to Evaluating the Impact of New Article 9A

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by

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“Any city gets what it admires and what it pays for and ultimately deserves. And we will probably be judged not for the monuments we build but the monuments we destroy.”¹

-Ada Louise Huxtable

I. Introduction

Amongst the debate surrounding the 26th amendment and the judicial debate going on, Article 9A, the new inclusion has gone unnoticed. The new law works as a constitutional umbrella in order to address in force environmental legislations and further addressing the environmental hazards. The new article also provides protection to the most vulnerable part of society, people with low-income backgrounds in rural areas, who are often at the receiving edge of the environmental calamities. Before Article 9A, environmental petitions were based on various federal and provincial legislations. However, with the *suo motto* powers of supreme court being taken away it would be interesting to note how the judiciary interprets this new article and how it comes into force.

II. What Does Right to Clean Environment Cover in International Law?

A universal definition is yet to be adopted but there are certain ingredients of the right to a healthy environment ². These are divided in two parts:

¹ Quote by Ada Louise Huxtable, Pulitzer Prize Winning Architecture Critic

² A/HRC/43/53 (2019).

Substantive Rights	Procedural Rights
Safe climate	Access to information
Healthy ecosystems and biodiversity	
Access to justice	
Safe and sufficient water	Public participation
Healthy and sustainable food	
Non-toxic environment	

On 28 July 2022, the General Assembly³ adopted a landmark resolution recognizing the human right to a healthy environment.⁴ In 1972, the UN held its first global environmental conference in Stockholm. States adopted the Stockholm Declaration on the Human Environment, in which the first principle states that people have:

“The fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”⁵

Thereafter it had taken two decades to create awareness and consensus among the countries when in 1992 Rio Declaration was adopted. Moving forward many countries adopted the right and it became a part of their legislature. The right was legally recognized in more than eighty percent of UN Member States (156 out of 193 States), prior to the global recognition by the HRC and the GA.⁶

III. International Case Study:

- 1) In Australia During hearing of *Gloucester v Resources limited*⁷ the court famously turned down the decision to develop a coal mine. One of the key principles to reject

³ The GA is the principal policy-making body of the UN. It has universal membership of all 193 UN Member States and is mandated to consider new human rights issues.⁹ GA resolutions often call on or require States to take legislative or policy measures to implement domestic constitutional, legislative and policy reform.

⁴ UNGA, The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28 July 2022).

⁵ 2 Declaration of the United Nations Conference on the Human Environment. UN Doc.

A/Conf.48/14/Rev1 (1973); 11 I.L.M 1416 (1972). Available at <http://hrlibrary.umn.edu/instree/humanenvironment.html> 13

⁶ See Annex II in A/HRC/43/53 (2019).

⁷ *Gloucester Resources Limited v Minister for Planning*. [2019] NSWLEC 7. Find at :

https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2019/20190208_2019-NSWLEC-7-234-LEGRA-257_decision.pdf

the arguments of the company was the commutative emissions from a myriad of individual sources. The court further rejected the defence of compromising on climate in the pretext of production of high quality coal, insuring that adhering to climate standards is utmost priority.

- 2) A case was brought against the American Environmental protection agency (EPA) ⁸amid the increasing global warming. The court held that EPA could not deny regulations under Clean Air Act (CAA) on grounds that aren't mentioned in the act. The court in a landmark ruling declared that CO₂ and other green house gases are air pollutants under CAA and EPA can be sued for the increase.
- 3) A landmark case in India regarding Air pollution by industries surrounding Taj Mahal is *M.C. Mehta v. Union of India Case*⁹. The court while deciding in favour of the plaintiffs put stress on two key principles. Principle of precautionary measure and sustainable development. The former requires the government to take actions before hand if there's a risk of damage and lack of any scientific data can't be used a reason to delay actions necessary. Further clarifying sustainable development the court said that any industrial or other development should meet the standards of sustainability that are to meet the present needs without compromising on future generations need of natural resources. The prominent lawyer M.C Mehta is also known as the *Green Avenger of India*. The case played a key role in developing environmental law in India.
- 4) In 2023, courts in Costa Rica, Panama, and Montana used the right to a healthy environment to protect endangered hammerhead sharks, overturn a law for an open pit mine, and challenge fossil fuel development.

IV. Pakistan's International Stance

Pakistan has been working on the development of a climate policy since 1991. According to UN database¹⁰ Pakistan is one of a handful of developing countries to prepare a comprehensive National Conservation Strategy (NCS) in 1992 in Cooperation with national and international organizations. To achieve the goal of environmental protection, Pakistan has signed international agreements, i.e.,

- the UN Framework Convention on Climate Change (UNFCCC), 1994;
- Montreal Protocol on Ozone Depleting Substances;
- Basel Convention on Biological Diversity, 1994;
- International Convention to Combat Desertification, 1994.

⁸ MASSACHUSETTS v. EPA. 549 U.S. 497 (2007). Find at: <https://tile.loc.gov/storage-services/service/ll/usrep/usrep549/usrep549497/usrep549497.pdf>

⁹ Find at: <https://indiankanoon.org/doc/1084083/>

¹⁰ "Country Profile - Pakistan" <<https://www.un.org/esa/earthsummit/pakis-cp.htm>>

In order to promote environmental protection, the Government created the federal Ministry of Environment, Local Government and Rural Development and its technical branches Pak-EPA; four Provincial Departments of Environment, and EPAs.

V. Pakistan History of Suffering Via Drastic Environmental Change

For countries such as Pakistan, climate change is becoming an increasingly harsh reality. Although Pakistan contributes only about 0.88% of the world's greenhouse gas emissions, it is the 5th most vulnerable country to climate change.¹¹ Pakistan has suffered a lot as a result of abrupt climate changes and disasters arising from gradual environmental derogation over time. The summers are getting hotter and the winters are getting colder day by day. Heat waves and smog are some of the prominent effects of a worsening environment. The sea levels have been higher, glaciers are melting, wildlife and plants are struggling to sustain themselves.

➤ Floods

The recent 2022 floods impacted some of the most vulnerable places in Pakistan. The poorest and unstable people were hit by the devastating effects of environmental change. The total damage from the floods is estimated at PKR 3.2 trillion (US\$14.9 billion), with a total loss of PKR 3.3 trillion (US\$15.2 billion). 33 million people have been affected with almost 8 million people displaced from their homes¹². Further, According to the World Bank report on 2022 floods estimated needs for rehabilitation and reconstruction in a resilient way were at least USD 16.3 billion.¹³ The 2022 events were the most devastating in Pakistan's 75-year history and scientists blamed it on climate change.¹⁴

➤ Smog

Smog is the pall of automotive or industrial origin that lies over cities. The term was popularized in 1911 by Des Voeux's report of Great Britain, based on more than 1,000 "smoke-fog" deaths that occurred in Glasgow and Edinburgh during the autumn of 1909¹⁵.

In recent years, several Pakistani cities have experienced alarming levels of air pollution. Smog is one of the prominent result of that. According to data from the World Air Quality Index (AQI), Lahore, Faisalabad, and Karachi are consistently ranked among the most

¹¹ https://scp.gov.pk/Conference2024/downloads/Climate_Chage_in_Pakistan.pdf

¹² https://unhabitat.org/sites/default/files/2023/06/4._pakistan_country_report_2023_b5_final_compressed.pdf

¹³ <https://openknowledge.worldbank.org/server/api/core/bitstreams/2d1af64a-8d35-5946-a047-17dc143797ad/content#:~:text=This%20Country%20Climate%20and%20Development,was%20led%20by%20Yunz%20Lang.>

¹⁴ <https://earth.org/elections-2024-pakistans-next-government-faces-pressing-environmental-issues/>

¹⁵ <https://www.britannica.com/science/smog>

polluted cities in the country¹⁶. While these cities frequently exceed the World Health Organization’s (WHO) air quality guidelines, Air Quality Life Index (AQLI) data suggests that all of Pakistan’s 238 million people live in areas where the annual average particulate pollution level exceeds the WHO guideline, while 98.3% of the population lived in places where air pollution exceeds the country’s own safety standards¹⁷. PM2.5 concentration in Lahore as of November 2024 is 45.4 times the WHO annual air quality guideline value¹⁸. At least two distinct types of smog are recognized by scientists: sulphurous smog and photochemical smog¹⁹. Lahore and other cities of Pakistan are being effected by the later. The effects range from short-term irritation in the trachea to long-term genetic mutations.²⁰

One of the major distress caused by smog in urban areas is the reduced visibility resulting in disrupting the routine flow of traffic and increased accidents. Other major diseases harboured by smog are.²¹

Short-term exposure to air pollution can cause:	Long-term exposure to air pollution can cause:
<ul style="list-style-type: none"> • Coughing • Wheezing/difficulty breathing • Irritation to eyes, nose, and throat • Headache • Dizziness • Fatigue 	<ul style="list-style-type: none"> • Respiratory diseases (asthma, emphysema) • Cardiovascular damage • Harm to liver, spleen, and blood • Nervous system damage • Cancer • Birth defects • Death

➤ **Droughts**

Related to the extreme heat, Pakistan is experiencing a significant increase in the frequency and severity of droughts. It ranks 43rd among countries in drought risk.

¹⁶ <https://earth.org/elections-2024-pakistans-next-government-faces-pressing-environmental-issues/>

¹⁷ <https://aqli.epic.uchicago.edu/country-spotlight/pakistan/>

¹⁸ “Lahore Air Quality Index (AQI) and Pakistan Air Pollution.

IQAir.”n.d.https://www.iqair.com/pakistan/punjab/lahore?srsItd=AfmBOorPiWLassLCAfu_zySVzckZ0GGPGEV760wMaOOnWvI1hqjIQFSI.

¹⁹<https://www.britannica.com/science/smog#:~:text=At%20least%20two%20distinct%20types,bearing%20fossil%20fuels%2C%20particularly%20coal>.

²⁰ Javed, A., Aamir, F., Gohar, U. F., Mukhtar, H., Zia-Ui-Haq, M., Alotaibi, M. O., Bin-Jumah, M. N., Marc Vlaic, R. A., & Pop, O. L. (2021). The Potential Impact of Smog Spell on Humans' Health Amid COVID-19

Rages. *International journal of environmental research and public health*, 18(21), 11408.

<https://doi.org/10.3390/ijerph182111408>

²¹ <https://scied.ucar.edu/learning-zone/air-quality/effects-air-pollution>

Droughts severely affect food security. In January 2019, 3 million people in Sindh and 1.8 million in Balochistan were impacted by moderate to severe droughts.²²

➤ **Water Demand**

The use of water for non-agricultural purposes is likely to increase significantly with climate change. Under a high-growth (4.9 percent per year) and high-warming (3°C by 2047) scenario, water demand is projected to increase by almost 60 percent, with the highest rates of increase coming from the domestic and industrial sectors. Climate warming will account for up to 15 percent of this increase in demand. This heightened demand will result in unintended consequences that deprive downstream areas of water right.²³

➤ **Food Insecurity**

One of the significant impacts of climate changes is food insecurity. Estimated 40% population suffers from food insecurity to some extent. In the Global Hunger Index 2024 Pakistan ranks 109th out of 127 countries in terms of food security.²⁴ The changing weather patterns due to pollution, unpredictable rainfalls, increased heat, diseases in livestock's and lack of health facilities adversely effect the agricultural production and ultimately halt the economic growth. With significant part of country being attached to agriculture and relying on the production outcomes, the climate issues need to be addressed urgently.

➤ **Economic Impacts of Disaster**

The climate changes subsequently lead to an economic halt and further deteriorates the condition. Over the years Agriculture, one of the major contributing factor in our economy, has suffered great loss via floods and droughts. This ultimately impacts the exports and leads to decline in growth. According to a November 2022 report of the world bank, the CCDR noted that the combined risks of extreme climate-related events, environmental degradation, and air pollution were projected to reduce Pakistan's GDP by at least 18 to 20% by 2050.²⁵ Under such circumstances the inclusion of Article 9A is a promising step towards a better future. The interesting point to look forward would be how differently the judiciary interprets it in contrast to the international definition, parallel to the worsening condition of the country.

²² <https://openknowledge.worldbank.org/server/api/core/bitstreams/2d1af64a-8d35-5946-a047-17dc143797ad/content#:~:text=This%20Country%20Climate%20and%20Development,was%20led%20by%20Yunz%20Lang>.

²³ Ibid

²⁴ <https://www.globalhungerindex.org/pdf/en/2024/Pakistan.pdf>

²⁵ <https://openknowledge.worldbank.org/server/api/core/bitstreams/2d1af64a-8d35-5946-a047-17dc143797ad/content#:~:text=This%20Country%20Climate%20and%20Development,was%20led%20by%20Yunz%20Lang>.

VI. Previous Legal Framework of Pakistan

The environmental law concerning Pakistan majorly consists of the provincial and federal legislations. The prominent law concerning environmental issues and policies is the federal law, Pakistan Environmental Protection Act (PEPA), 1997.²⁶

Further more section 277 and 278 of The Pakistan Penal Code (PPC)²⁷ 1860 also cover the right to a clean environment. Several other legislations are in place on the provincial level. Projects like Plant for Pakistan²⁸, Plantation drives by several NGO's and other practical steps to bring a change and create awareness are in place. However, with the increasing population and further deteriorating condition of environment the steps taken aren't enough as the history of disasters reflect.

VII. Pakistan's Jurisprudence on Climate Change

In the judicial pretext, the case of *Shehla Zia v. Wapda*²⁹ was a landmark case in Pakistan where right to a clean environment was derived from the right to life (article 9). In that case, although the linkage of environment to article 9 was drawn out, but the court set an example and provided a ground for further issues on climate change and environmental hazards. Referring to Indian Jurisprudence the court stated in *Himachal Pradesh and another v. Umed Ram Sharma and others*³⁰. 'the definition has been extended to include the "quality of life" and not mere physical existence.

Further in the case of *Province of Sindh v. Sartaj Haider*³¹ The court took notice of the 2002 devastating floods and retreated that climate change is the biggest threat to the fundamental rights of the people. The court further stressed that the government should derive effective policies before the disasters. The National Disaster Management Plan, 2012 falls short of devising any meaningful directions to suggest adaptation measures to address and guard against the changing climate. Further the policy objectives of the

²⁶<https://pja.gov.pk/system/files/The%20Handbook%20On%20Environmental%20Law%20%28v4%29.pdf>

²⁷ Fouling water of public spring or reservoir:

Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to 89[one thousand five hundred rupees] 89, or with both. Making atmosphere noxious to health:

Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine, which may extend to 90[one thousand five hundred rupees]

²⁸ Ministry of Climate Change and Environmental Coordination. n.d. "Ministry of Climate Change and Environmental Coordination."

<https://mocc.gov.pk/ProjectDetail/M2QzOWJmMjUtZTU3MC00NmFkLWE4YmMtZDFhMmRlOGU2NGRh>.

²⁹ PLD 1994 Supreme Court 693. Find at : <https://lpr.adb.org/sites/default/files/resource/597/pakistan-shehla-zia-vs.-wapda.pdf.pdf>

³⁰ (AIR 1986 SC 847).

³¹ 2023 SCMR 459

National Disaster Risk Reduction Policy, 2013 includes promoting development planning that considers and addresses risks alongside environmental and climate change concerns but no plan or practical implication of it is seen in public domain. The Court further emphasized that the respective authorities should also cater to food shortage, ensuring that global funds are spent in building better infrastructure and guaranteeing that the floods of 2022 are not repeated next year.

VIII. Inclusion of Article 9A

Now Article 9A, a new and separate article has been included to address the environmental challenges. It appears as a promising step for a cleaner future, given the previous lack of attention of government to the subject. It provides a ground for all the environmental concerns like sustainable development of infrastructure, pollution control, consideration of the future risks and effective planning to cope with disasters, providing clean roads, air and water. With agriculture being the backbone of the economy of the country this law also shelters the farmers and their right to clean water not polluted by industrial wastes. It is also an instrument to regulate all industries and factories and impose carbon taxes on them, limiting their pollution. It is also helpful in obliging to the international standards of environmental protection expected from Pakistan by the foreign world.

However, the 26th amendment that brought forward this positive change also brings forth the limited power to the judiciary, with the exclusion of *Suo motu* powers under article 184(3). Given the historical pretext of the country, judiciary has often played a valuable role in imposing environmental laws and adhering to international environmental standards. *Suo motu* has been used as a positive instrument in this context (i.e. *Suo Moto Case No. 25 of 2009*³² where the Shehla Zia case was referred as a precedent). Now, its doubtful if this new article could be made as effective as it is indented to be with limited judicial activism. With the doors of judiciary being restricted towards the general public. The government needs to introduce effective policies to pursue the cause of this article, in order to improve the ever so threatening conditions that have been proven to be fatal time and again.

IX. Policy Recommendation

- The National Committee on the Establishment of Carbon Markets (NCEC) was established in 2018, with equal representation from the federal ministries, the provincial governments, and the private sector.³³ Amid the current smog crisis the

³² https://www.supremecourt.gov.pk/downloads_judgements/SMCNo25of2009.pdf

³³ Dlewis. 2022. "How Pakistan Can Benefit From China'S Carbon Trading Market?" Vision of Humanity. August 23, 2022. <https://www.visionofhumanity.org/how-pakistan-can-benefit-from-chinas-carbon-markets/>.

government actively needs to impose and rigorously enforce carbon taxes on high-emission industries and establish green standards for all major sectors (e.g., energy, transportation, manufacturing).

- To prevent the health crisis from smog the government should stop further roads construction, put periodic shutdowns of pollution-intensive industries and enforce the use of air filters in industries.
- Improve early warning systems should be improved to reduce the fatal consequences of climate changes. Further regular training and awareness campaigns to effectively cater agricultural waste should be held in these backward yet high-risk areas. Improve flood-prevention via construction of Natural Based Solution (NBS) i.e. eagrass meadows, coral reefs, salt marshes, and mangrove forests.³⁴
- Partnering with developed countries to bring in solutions, such as renewable energy technologies, advanced agricultural technology like in China³⁵, water-saving irrigation systems, and sustainable urban design.

³⁴雲端數位科技. n.d. “|Exploring Nature-based Sol ution| Seawalls | EnergyOMNI 全能源 | Enera Media Ltd. 恩能新元傳媒有限公司.” OMNI. <https://www.energy-omni.com/en/product/detail/AT005016?categoryId=cC0Zx7cZQ0jMFsga>.

³⁵“Smart Farming Advances China’s Modern Agricultural Development.” n.d. <https://english.news.cn/20230217/975b5bb7f7a345cdb83530dae9a33d4d/c.html>.