

Article 9A And the Enforcement Paradox: How the 26th Amendment Created a Right Without Remedy

M. Hasnain Sajjad

LLB Scholar, University Gillani Law College, Bahauddin Zakariya University, Multan

Email: malikhasnainattari@gmail.com

Abstract

In October 2024, the Constitution of the Islamic Republic of Pakistan was amended with the addition of Article 9A, which is the first explicit constitutional right to a clean, healthy and sustainable environment in Pakistan. The paper asserts that the provision is structurally unenforceable – that is, that it cannot be enforced without the help of other provisions of the amendment – but that the unenforceability of the provision is not an accident but a direct consequence of the amendment which created it. The paper analyses this doctrinally, and finds three failures to be intertwined: the simultaneous limitation of the Supreme Court's Suo Motu powers under Article 184(3), and the complete lack of implementing legislation to make the right operational, and also the various provincial environmental jurisdictions that have emerged as a result of the devolution under the 18th Amendment, which do not provide a coherent alternative. In light of the comparative analysis of the Indian and South African Constitution as well as that of the European Court of Human Rights, the paper shows that, constitutionally speaking, there is a need for institutional structures to ensure that the environmental rights guaranteed by the Constitution are actually enforced and that Pakistan's Article 9A, which is normatively important, lacks, to date, the legislative framework and the judicial access structure to become an enforceable guarantee of environmental rights.

Keywords: Article 9A, 26th Constitutional Amendment, Environmental Rights, Judicial Enforcement, Suo Motu Jurisdiction, Structural Unenforceability, Climate Litigation, Pakistan Constitutional Law, Implementing Legislation, Fundamental Rights.

Introduction

According to German watch Climate Risk Index 2025, Pakistan ranked first globally for climate losses in 2022, with 33 million affected and USD 15 billion in damage. (Adil et al., 2025). Pakistan has faced numerous climate vulnerabilities and structural constraints, which are neither new nor isolated. In 2024, the 26th amendment was promulgated and assented to in one day. However, for the first time in the history of Pakistan's constitution, a clause for environmental protection was added, namely Article 9A. The addition of this particular provision has a salutary effect due to its unqualified nature (it is not subjected to reasonable restrictions similar to freedom of speech, association etc.). This initiative is commendable, as before only an article of broad nature (right to life and liberty) was present and these rights were interpolated only in Article 9. But for the first time, “sustainable,” “healthy” and “clean” words were used. (The Constitution of Islamic Republic of Pakistan, 1973). So, the explicit textualization carries a normative weight for these three terms.

However, the jurisprudence behind all this has a lacuna at the heart of Article 9A. Because an unqualified right is, *ipso facto*, as strong as its enforcement mechanism. This clause is only written on paper but it is, in fact, not operationalized. The 26th Amendment did constitutionalize the environmental protection, but fails to provide any substantial legislative mechanism on implementation. The reason behind this is that 26th Amendment curtailed the powers and jurisdiction of Supreme Court of Pakistan. It reconstructed Article 184(3) by giving *Suo Moto* jurisdiction to a constitutional bench. According to ICJ (International Commission of Jurists, 2024) regarding 26th amendment, they observe:

“They erode the judiciary’s capacity to independently and effectively function as a check against excesses by other branches of the State and protect human rights.”

The 26th amendment narrowed the remedial discretion, previously exercised under both provisions. Since the jurisdiction is limited to certain criteria and the *Suo Moto* action is reduced, it creates a contradiction between both of them. Both concepts, 9A and 26th amendment emerge from the same legislative act, yet they are very different in nature to each other. Because what about those whose sole source of justice was the Supreme court itself for their environment destruction and the very primary judicial mechanism for enforcing fundamental rights is structurally constrained.

Many scholars and journalists have debated and described about the article under discussion generally. But the actual doctrinal assessment is lacking. The nexus between these topics is paradoxical yet most of the people fail to recognize it. This paper argues that Article 9A, though constitutionally significant, is structurally unenforceable, the 26th Amendment simultaneously created the right and limited the primary judicial mechanism through which it could have been vindicated, while Parliament has failed to enact any implementing legislation to fill that void. It will have a normative approach throughout the entire paper, deciphering the core of what the law ought to be and why the environmental framework particularly, has failed to perform in Pakistan.

Methodology

This paper is based on the methodology of Doctrinal Analysis often called “black-letter” Law. Doctrinal research is the systematic process of identifying, analyzing, and synthesizing primary and secondary legal sources (case law, statutes, and commentaries) to solve legal problems. (Majeed et al., 2023) The doctrinal Analysis is a Positivist Legal Tradition which evaluates the logic and consistency of the question. Furthermore, it is primarily suited for this research because it deals with constitutional interpretation-based research question. This methodology is far different from other forms of systematic methodologies i.e., qualitative/quantitative analysis, empirical analysis etc. According to Paul Chynoweth, the doctrinal research is different from empirical research in a sense that it is only concerned with addressing the research question dealing with what is the law and is meant to learn and advance the legal doctrines for the legal community. (Chynoweth, 2008). The key reason of not using the empirical research is that unlike this methodology which uses numbers, observations and deduction from experiment, doctrinal research has a normative approach. It examines what the law ought to provide rather than measuring what it produces in practice. This makes it the appropriate method for a research question concerned with structural legal adequacy.

The doctrinal research uses primary sources (Statutes, Bare Acts, legislation) and secondary sources (commentary, articles, policy papers). However, it also uses the strategy of comparative analysis around the framework of other nations’ legislation. Because it is very important to understand how the law works under different environments. The central aim of this paper is to analyze that what are those elements which are responsible for the unenforceability of Article 9A. The comparative analysis in subsequent section examines how different countries operate and enforce their legislation for environmental structure and design.

Doctrinal research operates within defined methodological boundaries. The paper neither includes empirical data nor practitioner interviews and does not quantitatively analyze litigation outcomes. These are not deficiencies but the epistemological tone of doctrinal enquiry and its conclusions, which are arrived at through the reading of the law, the reasoning of the courts, and the logic of the constitution, and not through statistical observation. Future research of compliance rates of institutions, patterns of litigation following the amendment, and practitioners’ attitudes toward enforcing the amendment would be useful for supplementing the findings of this study.

From Interpolation to Constitutionalisation: The Judicial Construction of Environmental Rights Pre-Article 9A

For 3 decades before Article 9A the environmental protection did not exist as a constitutional guarantee but was an implicit and explicit result of judicial intervention. It was built case by case by various judges on individual capacity, rather than a firm statutory framework. But before that, many other legislative frameworks were present. The main environmental legislation piece was PEPA 1997 (Pakistan Environmental Protection Act). It had integrated many clauses ranging from discharge of any waste material above National Environmental Quality Standard to penalties and punishments for any actions against environment protection. This legislation was a federal work. (Shaikh, 2024). The reason of why statutory legislation was not insufficient to produce constitutional standing is because there was no implementing framework. Despite that, the environmental constitutionalism remains nascent before article 9A. However now, it is constitutionalized but operationally hollow. The reason is because environmental protection was read into the article 9 (right to life), and most of the time it has become a self-evident truth that in absence of proper legislative framework, it invites judicial interpretation.

The basis of the said incorporation, pre- article 9A was founded by a landmark caselaw known as *Shehla Zia v. WAPDA*, where petitioners argued that a nearby grid station posed a potential life-threatening risk due to hazardous electromagnetic waves. (*Shehla Zia v. WAPDA*, 1994). The court followed the “International Precautionary Principle” and gave the judgement that the right to life not merely existed for the vegetative state but also cared for a clean and healthy environment. Supreme Court intervened through Article 184(3) using the PIL medium. Additionally, the court used such powers because sometimes the public cannot make the required efforts for invoking their rights due to poverty or ignorance, this article 184(3) was precisely presented for this situation.

Furthermore, the *Asghar Leghari v. Federation of Pakistan* case expanded the horizon of Article 9. (*Asghar Leghari v. Federation of Pakistan*, 2018). Where the petitioner argued that the concerned departments failed to implement Climate Change Policy. The judiciary stepped in not as a legislative body, but to assume the role of supervisory body over the executive branch and established a monitoring system to coordinate with relevant department and look over the matter. The judiciary also formulated a committee comprising of experts, NGOs and officers for the implementation of national climate change policy. The Leghari judgment is particularly germane to the question of enforcement because it reveals both the potential and the limits of judicial remedy, however committee did succeed and in 2018, high court dissolved the original committee into a standing permanent department. (ESCR-Net, 2023). The fact that the court needed to intervene for the conversion to a standing committee till 2030 asserts that the court had provided judicial oversight for 3 years in the absence of any working legislation. The inherent weakness of court appointed commissions lies in its dependence of continuous judicial oversight.

But one may argue that the cases provided under the pretext of pre 26th amendment were a broader version of clause of life and protection. And later on, when article 9A was introduced, the said effect of institutional deficit is mitigated. But in reality, it was the legislative silence coupled with institutional fragility, which plummeted the implementation of executive initiative across Pakistan. A caselaw, after the Promulgation of Article 9A contradicts the claim. In (PLD 2025 SC 36), the court called out the executive and explicitly noted that the executive, specifically the Forest Department was functionally absent in its protective duties. By stating the department views forests through the lens of the “*former colonizers*” (*Mehr Badshah v. Government of KPK*, 2025), (treating them as a resource to exploit rather than an ecosystem to protect), the Court highlighted the executive's fundamental failure. The right was implicitly read through the lens of judicial activism.

The first environmental draft was formed in 1983 but it remained practically dormant. The PEPA 1997 tried to provide the grievance through tribunals but the EPA did not formally execute the responsibilities it was given. The exercising of environmental rights was heavily relied on courts’ *Suo*

Moto action, PIL etc. it was all identified and acknowledged. But the author did not address the main concern regarding why the courts have to return to a same problem repeatedly. (Malik, 2025). Because the fundamental concept is absent. There is no legislative framework for the explicit enforceability of Article 9A. Naveed et al. (2025) ascertained the same thing but also recognized the unqualified nature of Article 9A and neediness of judicial remedies for the enforcement of said provision. (Baig, 2025) But the study did not engage with the effect produced by 26th amendment on article 184(3). Whether the courts now possess the power to initiate a case on their own. When Article 9A became law, it was added to a shaky foundation held together by judges doing their best to protect the public. While it is true that the amendment looks wonderful on paper, that isn't the real issue. The real question is whether this new right actually fixes the broken machinery of the state, or if we are still expecting the courts to save us when the government fails.

The Curtailed Guardian: How the 26th Amendment Structurally Disabled the Primary Enforcement Mechanism of Article 9A

Form the inception of judiciary, judicial review and *Suo Moto* are the key factors to hold accountable the unfettered nature of executive and legislation. Especially in Pakistan, whenever these two elements of government have failed to perform their required tasks, judiciary stepped in and held the constitutionalism together. But the given power has become fragile since the assent of 26th Amendment. Prior to this event, whenever there was abrogation of fundamental rights of any kind judiciary played a key contribution in ameliorating the impact. (Baig, 2025), specific to the cases of environmental problems both High Court and Supreme Court had a pivotal impact. Whether it is about Shehla Zia v. WAPDA or Asghar Leghari v federation of Pakistan, the cases resulted in a landmark decision which created a ripple effect for the enforceability of environmental mechanism. But the reality is that judiciary alone is not sufficient enough to carry out the obligations of both executive and legislative, particularly, the environmental situations in Pakistan.

But after the declaration of 26th Amendment, the power of Supreme Court to try cases of immense importance on their own was constrained to a limit. According to the Santiago Canton, ICJ's Secretary General, that authority which is now given to a constitutional bench, sparks the controversy of extreme political involvement. But the criticism is not drawn from political sources alone. Many legal scholars, advocates and judges have debated about the grave effect it carries. This phenomenon of curtailment of powers by the 26th Amendment is much more important to understand. Because powers bestowed upon judges through Article 184(3) was a vital tool to protect fundamental rights. (Baig, 2025). It also confirms that the curtailment of powers is academically documented and is not a political critique. The study then draws a parallel of judicial reconstructing from Hungary and Poland that while it shows increase in parliamentary oversight but simultaneously it constrained the only way for public to enjoy their fundamental rights. (Baig, 2025). But it does not explain the dynamics between the restriction on *Suo Moto* powers and unenforceability of remedies under Article 9A.

The main reason behind inoperativeness of the rights given under article 9A is that there are no procedural laws to implement or specific executive department to ensure its functionality without judicial overreach.

A Right Without Architecture: The Legislative and Implementation Silence That Renders Article 9A Inoperative

In 1972, a UN conference was held in Stockholm, establishing a mechanism for environment and its relation to the human beings. This conference initially related both of the factors and recognized humans to have healthy and clean surroundings. (Handl, 2012). Following this UN conference, Pakistan enacted their own independent legislation for environmental issues in response to international pressure and treaty obligations. And "Pakistan Environmental Protection Ordinance 1983" came into existence. (Zaheer, 2019). After that, the Rio Earth summit in 1992, Pakistan upgraded this ordinance into a permanent act formally known as "PEPA 1997." (Pakistan Environmental Protection Act, 1997). This was a federal legislation work and implemented all over

the state. Later, following the 18th Amendment in 2010, when the concurrent list was abolished eventually the environmental architecture was devolved into the provincial governments, which drafted their own frameworks e.g., the “Punjab Environmental Protection Act 2012”, and the “Sindh Environmental Protection Act 2014” following their parent act. The factor which must not be overlooked that every standalone piece of legislation drafted by different provinces had individual status. For instance, the Punjab Environmental Protection act was a mere amendment of the original parent act. While the Sindh Environmental Protection act was an independent framework approved by the Sindh Provincial Assembly in 2014. Consequently, it illustrated an intense scenario where the pathways followed by each province was different from the federally enacted act which illustrates that even before the sculpturing of Article 9A, Pakistan led a complex path with various obstructions and confusions outlining environmental infrastructure. (Asghar et al., 2025).

Despite the abundant rulings and Acts, Pakistan still is very far from implementing the Article 9A. The bridge between a clause and its execution relies on the legislative framework which provide directions, scope, enforcement mechanism and its limitations. The structural gap between the promises made by provisions and its practicality arises from the “Incomplete Implementation.” The meaning behind this terminology is that the officials mandate outcomes to happen but due to sudden interventions, unmet deadlines, standard procedural failures and most of the time, a politicized involvement does not allow important objectives to occur. (Farber, 2016). In case of Article 9A, it deals with complete legislative silence, which is far worse than Dr. Faber’s incomplete implementation.

As it has been conclusively established earlier, that Article 9A is unqualified in nature. It has no restrictions whatsoever. Because imposing restriction on this article serves no clear purpose. A comparative analysis can be drawn to understand better. We have freedom of speech in Article 19 of Constitution of Pakistan. This article is subjected to various restriction given its bold scope and possible wrong use by general masses. But in terms of article 9A, what can be meaningfully applied to this restraint as it just talks about “Clean, Healthy and Sustainable environment.” But this is particularly the concern and this absence of restriction itself is a problem. Once made uninhibited, the horizon is farther than one can imagine. The reason is because there is no further legislation to enforce it with an institutionalized approach.

Even when the legislation is formally made and introduced to combat climate change, there are certain grounds upon which the given measures are not adopted. In 2017, after the verdict of “Asghar Leghari v. federation of Pakistan”, Pakistan climate change act was introduced. But the result is as similar as it was before. This precisely describe that legislation alone does not render Article 9A inoperative. There are other reasons such as, lack of planning for a long-term future and focusing at the problem just for the time being. The decision power is solely driven by the influential bodies and the minorities are ignored. And the most critical problem of all i.e., the financial capacity to lower this structural burden. (Barkat et al., 2025). Legislative action is imperative to necessitate the formal performance of Article 9A without the intervention of Judicial bodies, provided if they remain insulated from political interventions.

But political intervention is one of the primary barriers which hurdles between legislation and its implementation. Denicia Kassie argues that other than self-interest and political overreach, the failure to apply domestic environmental law cascades from ambiguity to understand the basic and foundational concepts, laws which are weak and cannot be enforced due to its inadequate and limited scope, insufficient research and non-compliance with the concerned authorities. Moreover, Pakistan is known to have a grave vulnerability of short-term regimes which frequently changes with the course of time. It is a known fact that no elected government in Pakistan had a chance to fulfill its given term which explains why any long-term environmental plan was not devised to its fulfilment. Kassie identifies another important aspect which she terms as “*Foundational Treaty Principle*.” (Kassie, 2024).

Pakistan took part in every major environmental convention, summits and conference and signed as much treaties as well. Those same international rules in turn turned out to be unsuitable for domestic governance, however. The concept that has been developed by Kassie perfectly reflects Pakistan. This is not because Pakistan simply forgets about the treaties, in fact it is because the system of provincial government in Pakistan and the extremely high energy consumption of its economy simply cannot afford to fulfil the obligations of the treaties without significant external assistance. For instance, in order to reduce the power outages in Pakistan which are a big problem, the country has invested heavily in domestic coal (Thar coal project). Politically and practically, it is almost impossible to enforce the strict international emission rules when the immediate and urgent need is to ensure the factories remain operational, export revenues come in, and there are lights on.

Article 9A came at a time when a legal system already finds itself in difficulty in governing that which predates itself. Each province was in a different position; the federal structure of environmental law enforcement had been broken down without a clear structure to replace it; and the institutions responsible for enforcing environmental law had been dormant for several years or underfunded. In this, the 26th Amendment added an un-legislated, un-enforceable, and no institutionalized fundamental right. This is not the “incomplete implementation” that Kassie talks about, where requirements are present, but are not implemented. Here it's a right that was constitutionally guaranteed but that lacks any system or mechanisms for meaning. The one entity that has never been missing since the advent of the Republic to fill the vacuum left by the legislature, the Supreme Court, has acquired a chilling new restriction on its power and discretion via the same amendment that gave it the power. The legislature has not acted. The executive has not built. And the judiciary has been pulled back. Article 9A therefore does not suffer from weak enforcement. It suffers from the absence of any enforcement pathway at all, which is a different problem entirely, and one that no amount of judicial goodwill or provincial initiative can fix without fundamental legislative intervention.

The Cost of Clean Air That Nobody Pays

Pakistan experiences problems with air pollution not dirt. The poor governance issue is showing itself as dirty air. The significance of the difference is paramount, as it is not engineering, one can fix and cannot fix the other. On November 14, 2024, when the Centre for Economic Research in Pakistan's office in Lahore recorded an Air Quality Index of 2,061, this level was so far down the hazardous category that one had to be made up (Yu et al., 2024). According to the World Health Organization, PM2.5 concentration should not exceed five micrograms per cubic metre at yearly averages. In 2024, Lahore's average annual score was 102 (IQAir, 2024). That's not a case of rounding. It is a policy failure that has taken almost 20 years to create. Economic consequences are inevitable. According to the World Bank, outdoor air pollution in Pakistan is causing around 22,000 adults to die prematurely every year. Further, Pakistan loses roughly 163,432 disability-adjusted life years because of the outdoor pollution. That's why, the expense and productivity losses due to pollution cost about 6.5 per cent of GDP of Pakistan every year (World Bank, 2023).

According to Iqbal (2024), air pollution in Pakistan has been linked to over 128,000 deaths each year, while increased risk of death is due to PM2.5. These are not approximations. Pakistan's air cleanliness has reached proportions whereby Impact humans directly. Their cost is what we have today pay for a constitutional right that exists more in theory than anywhere else in practical life. According to the Air Quality Life Index (AQLI) 2024, life expectancy in Pakistan is shortened by low air quality by an average of 3.9 years. Many Pakistan cities are experiencing a high concentration of fine particulate matter, going up as high as seven years in Lahore, Peshawar, Gujranwala, Rawalpindi (AQLI, 2024). The WHO air quality standards were only met by Lahore for seven days in the last five years, despite having a population of over thirteen million. On single month towards the end of 2024, November, there were seventy-thousand respiratory cases admitted in hospitals in Punjab (East Asia Forum, 2025).

Article 9A was inserted into the Constitution during the same October that produced these numbers. What makes this legally significant is that environmental harm of this scale would, in most constitutional systems, trigger enforceable judicial relief. In India, the Supreme Court's directions in *MC Mehta v. Union of India* (1987) produced actual vehicular phase-out timelines and industrial relocation orders in Delhi. In South Africa, the National Environmental Management Act 1998 created enforceable duties on the state backed by citizen standing. In Pakistan after the 26th Amendment, Article 9A creates the right, Article 184(3) *Suo Motu* powers have been curtailed, and no implementing legislation exists. The citizen has a guarantee and no forum. The state has an obligation and no mechanism.

What a Right Without Jurisdiction Looks Like

The phrase ‘rights without remedies are meaningless’ is an almost legal cliché that is so often used it is in danger of losing its edge. Keong et al. (2016) pinpointed the time when the draft Constitution of Malaysia lost its remedy provisions. The Working Party revision moved enforcement from authorized text to ordinary legislation because of the belief that ordinary law would provide. This was not the case however, and the authors demonstrate the decades of judicial uncertainty and access failure that ensued. In 2024, Pakistan has done this: replicated that structural choice, almost to the letter; Article 9A constitutionally entrenched; enforcement an implication rather than a provision; and the vessel which has historically carried the enforcement burden – Article 184(3) *Suo Motu* jurisdiction-simultaneously constrained by this very amendment. "Research articles show a similar pattern in their findings." Young (2019) argues that the right-remedy gap in the enforcement of economic and social rights in South Africa is not a ‘legal oddity’, it is a “structural feature of rights adjudication in South Africa”. In particular, the gap widens when rights are acknowledged but remedial institutions are either non-existent or disabled. Landau (2011) demonstrates across Colombia, Brazil, Argentina, Hungary, and India that when courts adopt weak-form remedies which do not require bureaucratic actors to change their behavior, social rights enforcement benefits middle-class and upper-class groups, but not lower-class groups. The courts need to issue structural injunctions which will direct the bureaucratic actors to change their conduct for the sake of rights benefiting the persons it is meant to benefit. The inclusion of Article 9A took place in the absence of a tribunal and a mechanism for complaints. This analysis is strengthened by cross-examination.

A study by May (2019) covering eighty-eight countries with constitutionally entrenched environmental rights found the implementation record to be mixed at best. Moreover, it noted that outcomes were more a function of the quality of the institutional machinery that underpinned the textual guarantee, rather than its strength. In those countries that have environmental tribunals, standing rules and legislative enforcement mechanisms, environmental outcomes are substantively better than where relies are on general court jurisdiction. Kassie (2024) identifies ambiguity in foundational concepts as the main cause of failure of environmental laws. More particularly, he mentions the gap between textual commitment and operational mechanism of law. This results in misinterpretations, misinformation and ultimately, non-compliance. The ambiguous formulation of Article 9A, being stated in a single sentence without a statute, is an example. The 26th Amendment was a two-way street for enforcement failure, it is submitted. It curtailed the power of the chief court to enforce the substantive right while also expanding it. It is not a drafting error. The drafters of the amendment knew of Article 184(3) when drafting Article 9A. The actual result is a text which guarantees a protection to every person whilst taking away the most obvious means by which that person could access this.

Comparative Horizons: How Other Jurisdictions Transformed Environmental Rights into Enforceable Law

Other jurisdictions have faced the same problem and moved past it. India is the clearest example. Article 21 of the Indian Constitution was never drafted with environmental protection in mind, yet the Supreme Court in (*M.C. Mehta v. Union of India*, 1987) expanded it to cover the right to a clean environment through judicial interpretation alone. This judicial innovation culminated in a more

lasting measure – the National Green Tribunal Act 2010 establishing a dedicated institution having technical expertise, statutory powers and institutional permanence, which no High Court bench could emulate. First of all, the projects are subject to the National Green Tribunal Act, 2010. The sequence matters. The structure was created by legislation and time was bought by judicial intervention. The lessons to be learned from South Africa were different but no less valuable. The Constitution 1996 also expressly included the right to a healthy environment in Section 24, which was followed by the National Environmental Management Act 1998, which was passed by Parliament within two years of the Constitution, and in turn, entrenched the right in law by providing for enforcement mechanisms, institutional mandates and citizens' access to the law. In accordance with the National Environmental Management Act, 1998. In both, constitutional recognition was seen as a first step, a process. But in Pakistan, it is the final step.

The Borrowed Scaffolding: Lessons from Three Jurisdictions

Comparative law does not involve importing solutions. This helps us identify various prevailing conditions. The Pakistan scholarship often holds up India, South Africa and Switzerland as its models and the one thing Article 9A does not have that the latter do have is institutional scaffolding to transform constitutional text into operational relief. The arrangement of words is more important than words. The National Green Tribunal Act, 2010 is the closest precedent in India. Conceived under Article 21 through rulings *MC Mehta v. Union of India* (1987), NGT is a dedicated tribunal with original jurisdiction over environmental disputes, mandatory timelines for disposal of cases, and the petitioner is not required to exhaust high court remedies beforehand. Scholars (Setzer and Vanhala in 2019) conducted a global survey relating to climate litigation. According to the results, specialized expert judicial or quasi-judicial bodies achieve better compliance than general courts. This is able to happen because of their development of institutional expertise. Pakistan does not have one.

Provincial laws that establish Environmental Protection Tribunals do not adequately fund, staff or constitutionally anchor them. South Africa's National Environmental Management Act is a different thing model. The Managing a Diverse Workforce program is an interactive and engaging course that assists managers with managing a diverse workforce effectively. With successful strategies, tools and frameworks, the program assists managers to alleviate workplace conflicts and challenges and derive maximum productivity from a diverse team. The workshop covers case studies on creating a conducive workplace for all employees. Produce. A fresh court. The NEMA statute itself mandates for enforcement. Interdict and mandamus remedy for director liability compliance notices issued citizen standing by exemplars.

Okpaluba (2018) examined the remedial development by the constitutional court. The “just and equitable” standard under NEMA has been defended in jurisprudences governance power in section 172 of the Constitution combined. According to Wesche (2021), the Atrato River judgment was in effect, less about the outcome of the litigation, than about the policy-making accountability that arose as a result of institutional enforcement obligations. As suggested by both, words never create an impact on governments. The *KlimaSeniorinnen* judgement of the European Court of Human Rights in 2024 introduces a third dimension. The court found Switzerland in violation of Article 8 of the European Convention on Human Rights for insufficient climate action, holding that states have positive obligations to implement an effective regulatory framework that protects individuals from climate harm. The logic behind the decision matters for Pakistan, not the outcome. According to (Wewerinke-Singh & McCoach 2021), the Court held that a right to a healthy environment under human rights law requires demonstrated institutional capacity to protect the right and enforce it, not just constitutional recognition. The first requirement is fulfilled by Article 9A of Pakistan but not even the second requirement is addressed.

From Stopgap to Structure: Climate Litigation and the Case for Standalone Provincial Environmental Courts

Article 9A does not give any definition for "clean," "healthy" or "sustainable." It mentions no duty-bearer other than the "implied" duty of the state and there is no baseline on which a court could assess the violation. Its functionality and abdicate legislation and dependency completely on the interpretation of duty bearers, which results in an implausible multiplicity of duties which duty bearers are not able to determine what they are supposed to do. There is already a weak and uncoordinated governance system, lacking an accountability chain, as a result of the Climate Change Act 2017, the provincial Environmental Protection Acts, and the devolution of environmental powers under the 18th Amendment (Barkat et al., 2025). Article 9A, which contains the same faulty mechanism does not address the issue.

The first step in Pakistan's existing constitutional system would be to file climate litigation in the High Courts (HC) under Article 199 of the Constitution. It was held in *Leghari v. Federation of Pakistan* (2015) that this jurisdiction extends to executive inaction in regard to the commitments regarding climate change. In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (2024), the European Court of Human Rights affirmed the positive obligations of the States to prevent individuals from being harmed by climate change, as well as the possibility to challenge the inaction of States before the court. This is because the aim of climate litigation in the Global South is to create a system of accountability, and to do so it has to circumvent institutional gaps without relying on a closed institutional structure (Setzer and Lin, 2019). Nonetheless, litigations are a temporary remedy. Requires petitioners with standing, with resources, and is inconsistent across jurisdictions and comes without any enduring enforcement mechanisms.

The answer to the structure is a separate Environmental Court in each province. The good news is that this model continues to hold true for a developing economy in a fiscal crisis like Bangladesh's Environment Court Act 2000. There is no need for building from scratch in Pakistan. There are already provincial Environmental Protection Tribunals that have been provided for by law, but these are seldom active. Ringing fenced budgets based on existing EPA allocations, guaranteed judicial tenure, and defined jurisdiction will cost them, not reorganization, to elevate them to become fully empowered courts. One court in each province also gives due consideration to the devolution logic of the 18th Amendment and addresses the unique environmental concerns of each province: Baluchistan's water scarcity, Punjab's smog, Sindh's coastal exposure and Khyber Pakhtunkhwa's deforestation.

Conclusion

The problem with Article 9A has been its unqualified nature, a characteristic it was granted in the Constitution. There must be a commensurate enforcement apparatus for an unrestricted right. Instead, it got silence – no Act of Parliament, no body to hear the cases, no machinery, no person, and no baseline for judicial review to work with. It is evident from the pre-Article 9A record. Throughout three decades, the courts found ways to address the shortcomings of the legislature by interpreting Article 9 as including the environment in the protection of Shehla Zia, creating supervisory commissions via Leghari and intervening when the executive didn't do its job. That is a record of substitution, NOT solution. This analysis is most paradoxical on the effect of the 26th Amendment on Article 184(3). Private litigants have never been the major protagonists of environmental litigation in Pakistan through the regular litigation process. It has been stimulated by the initiative of judges within the area opened up by the *Suo Motu* jurisdiction. The Amendment was a restrictive interpretation of the right to freedom of religion that was included in the same Act of Parliament that was supposed to expand the right.

A comparative record creates a standard of success, that's clear. India shows that if you get the judiciary to buy time, you will have to get the legislation to put it in place. South Africa shows that there has to be an accompanying statute to a constitutional recognition that outlines the duty bearers,

remedies and access rules. The European Court of Human Rights has already established that it is not only text that suffices, but rather that the European Court will require the states to prove that they have the capacity to do it. Except the first condition, Pakistan fails to meet all the other requirements.

The paper does leave open the question for future scholarship whether the constitutional bench established by the 26th Amendment has enough interpretive latitude to evolve a doctrine of positive legislative obligation of Parliament to take the initiative in enacting implementing legislation and not wait for it. In Colombia, India and South Africa, this has been done in different ways through their respective constitutions. The future of environmental litigation in Pakistan will have to find answers to this question, as the new generation of judges will need to determine if the judiciary of Pakistan can maintain that capacity now or if the 26th Amendment has taken it away. This paper concludes that the question cannot be put on the back burner and that the price of putting it on the back burner is not in legal terms but in the air that is inhaled by 13 million people in Lahore every November.

References

- Adil, L., Eckstein, D., Kuenzel, V., & Schaefer, L. (2025, February 12). *Climate risk index 2025: Who suffers most from extreme weather events?* Germanwatch e.V. <https://www.germanwatch.org/sites/default/files/2025-02/Climate%20Risk%20Index%202025.pdf>
- Air Quality Life Index. (2024). *2024 annual update: The state of global air quality and health*. University of Chicago, Energy Policy Institute.
- Asghar Leghari v. Federation of Pakistan*, W.P. No. 25501/2015 (Lahore High Court 2015, standing committee order 2018).
- Asghar, M., Elahi, M. M., & Ghani, F. (2025). Federalism and climate governance in Pakistan: Accessing strategies, responses and implementation challenges to environmental devolution after 18th amendment. *Indus Journal of Social Sciences*, 3(4).
- Baig, G. (2025). The role of judiciary in ensuring rule of law in Pakistan. *International Journal of Law and Policy*, 3(11). <https://doi.org/10.59022/ijlp.391>
- Barkat, A., Jatoti, A. A., & Anjum, R. (2025). The role of the judiciary in advancing climate justice in Pakistan: A case study of Leghari v Federation of Pakistan. *Annual Methodological Archive Research Review*, 3(8), 214–230. <https://doi.org/10.63075/grfdhr60>
- Chynoweth, P. (2008). Legal research. In A. Knight & L. Ruddock (Eds.), *Advanced research methods in the built environment*. Wiley-Blackwell.
- East Asia Forum. (2025, April 22). *Can Pakistan make the sky blue again?* <https://eastasiaforum.org/2025/04/22/can-pakistan-make-the-sky-blue-again/>
- Environment Court Act 2000, Act No. 11 of 2000 (Bangladesh).
- ESCR-Net. (2023, January 30). *Leghari vs. Federation of Pakistan*. <https://www.escr-net.org/caselaw/2023/leghari-vs-federation-pakistan/>
- Farber, D. A. (2016). The implementation gap in environmental law. *Journal of Korean Law*, 16(1).

- Handl, G. (2012). *Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and Rio Declaration on Environment and Development, 1992*. United Nations Audiovisual Library of International Law. <https://legal.un.org/avl/ha/dunche/dunche.html>
- International Commission of Jurists. (2024). *Pakistan: 26th constitutional amendment is a blow to the independence of the judiciary*. <https://www.icj.org/pakistan-26th-constitutional-amendment-is-a-blow-to-the-independence-of-the-judiciary/>
- IQAir. (2024). *2024 world air quality report*. IQAir AG. <https://www.iqair.com/newsroom/pakistan-air-quality-alert>
- Iqbal, M. P. (2024). Air pollution: Challenges to human health in Pakistan. *Journal of the College of Physicians and Surgeons Pakistan*, 34(5), 507–508. <https://doi.org/10.29271/jcpsp.2024.05.507>
- Kassie, D. (2024). Unravelling the legal labyrinth: Investigating barriers to effective adoption and enforcement of international environmental law in domestic jurisdictions. *Journal of Environmental Management*, 352, Article 119944. <https://doi.org/10.1016/j.jenvman.2023.119944>
- Keong, G. C., Manap, N. A., & Ahmad, S. (2016). The provision of remedies for enforcement of fundamental rights in Malaysia: Challenges and prospects. *Mediterranean Journal of Social Sciences*, 7(2), 30–40. <https://doi.org/10.5901/mjss.2016.v7n2p30>
- Landau, D. E. (2011). The reality of social rights enforcement. *Harvard International Law Journal*, 53(1), 190–247.
- M.C. Mehta v. Union of India*, AIR 1987 SC 1086 (Supreme Court of India).
- Majeed, N., Hilal, A., & Khan, A. N. (2023). Doctrinal research in law: Meaning, scope and methodology. *Bulletin of Business and Economics*, 12(4), 559–563. <https://doi.org/10.61506/01.00167>
- Malik, F. (2025). *The promise of Article 9A: Bridging constitutional rights and environmental governance*. Human Rights Commission of Pakistan. <https://hrcp-web.org/hrcpweb/wp-content/uploads/2020/09/2025-The-promise-of-Article-9A.pdf>
- May, J. R. (2019). Environmental rights and wrongs: Implementing environmental constitutionalism. *Social Science Research Network*. <https://doi.org/10.2139/ssrn.3330046>
- Mehr Badshah v. Government of KPK*, PLD 2025 SC 36 (Supreme Court of Pakistan).
- Nampewo, Z., Harrington, J., & Kasozi, A. (2022). Respecting, protecting and fulfilling the human right to health. *International Journal for Equity in Health*, 21(1), 98. <https://doi.org/10.1186/s12939-022-01690-5>
- National Environmental Management Act 107 of 1998 (South Africa).
- National Green Tribunal Act 2010, No. 19 of 2010 (India).

- Naveed, H., Bibi, B., & Ali, S. (2025). A doctrinal critique of Article 9-A of the constitution and its role in advancing environmental justice in Pakistan. *Annual Methodological Archive Research Review*, 3(12).
<https://amresearchjournal.com/index.php/Journal/article/view/1375/1396>
- Okpaluba, C. (2018). Developing the jurisprudence of constitutional remedies for breach of fundamental rights in South Africa: An analysis of Hoffman and related cases. *Southern African Public Law*, 33(2), 1–30.
- Pakistan Environmental Protection Act 1997, Act No. XXXIV of 1997 (Pakistan).
- Setzer, J., & Lin, J. (2019). Climate litigation in the Global South: Constraints and innovations. *Transnational Environmental Law*, 9(1), 77–101.
<https://doi.org/10.1017/S2047102519000268>
- Setzer, J., & Vanhala, L. C. (2019). Climate change litigation: A review of research on courts and litigants in climate governance. *Wiley Interdisciplinary Reviews: Climate Change*, 10(3), e580. <https://doi.org/10.1002/wcc.580>
- Shaikh, N. (2024, November 1). Article 9A of the constitution of Pakistan: A step in the right direction. *Paradigm Shift*. <https://www.paradigmshift.com.pk/article-9a-constitution/>
- Shehla Zia v. WAPDA*, PLD 1994 SC 693 (Supreme Court of Pakistan).
- The Constitution of the Islamic Republic of Pakistan 1973 (as amended by the Constitution (Twenty-Sixth Amendment) Act, 2024).
- Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App. No. 53600/20 (Eur. Ct. H.R. 2024).
- Wesche, P. (2021). Rights of nature in practice: A case study on the impacts of the Colombian Atrato River decision. *Journal of Environmental Law*, 33(1), 113–136.
<https://doi.org/10.1093/jel/eqaa029>
- Wewerinke-Singh, M., & McCoach, A. (2021). The State of the Netherlands v Urgenda Foundation: Distilling best practice and lessons learnt for future rights-based climate litigation. *Review of European, Comparative and International Environmental Law*, 30(2), 275–283.
<https://doi.org/10.1111/reel.12388>
- World Bank. (2023). *Pakistan: The cost of air pollution to the economy and human capital*. World Bank Group.
- Young, K. G. (2019). The right-remedy gap in economic and social rights adjudication: Holism versus separability. *University of Toronto Law Journal*, 69(4), 465–508.
<https://doi.org/10.3138/utlj.2018-0088>
- Yu, W., Xu, R., Ye, T., et al. (2024). From bad to worse: The unbreathable air of Lahore. *The Lancet*.
[https://doi.org/10.1016/S0140-6736\(24\)02601-1](https://doi.org/10.1016/S0140-6736(24)02601-1)

Zaheer, F. (2019). Legislation and the practices of environmental governance for sustainable development in Pakistan: A post 18th amendment assessment. *Journal of Political Studies*, 26(2), 97–110. https://pu.edu.pk/images/journal/pols/pdf-files/8-v26_2_19.pdf