



Review of the 26th Amendment to the Constitution of Pakistan and the Fundamental Right of a Clean and Healthy Environment: A Case Study of New Article 9A

Aftab Haider ^{1*}

¹School of International Law, Southwest University of Political Science and Law, China

* Corresponding Email: aftabhaider516@gmail.com

Received: 13 March 2025 / Revised: 30 April 2025 / Accepted: 28 May 2025 / Published online: 11 June 2025

This is an Open Access article published under the Creative Commons Attribution 4.0 International (CC BY 4.0) (<https://creativecommons.org/licenses/by/4.0/>). © International Journal of Law and Legal Advancement (IJLLA) published by SCOPUA (Scientific Collaborative Online Publishing Universal Academy). SCOPUA stands neutral with regard to jurisdictional claims in the published maps and institutional affiliations.

ABSTRACT

The 26th Amendment introduces Article 9A into Pakistan's Constitution, addressing the right to a clean and healthy environment. This case note contemplates the importance, consequences, and compliance of Article 9A with international environmental norms and constitutional practices. According to the UN conventions and leading judgments, this note evaluates the legal background and the possibility of judicial activism to implement environmental rights in Pakistan. Internationally, Pakistan can influence Article 9A to enhance its international climate change obligations under the Paris Agreement and to present itself as a champion of climate justice. The country can improve its climate change coping mechanisms by advocating for higher shares of international climate funding and affordable green technologies.

Keywords: Environmental Rights; Article 9A; Judicial Activism; Constitutional Amendments; Climate Vulnerability; UN Conventions

1. Introduction

The 26th Amendment of the Constitution of the Islamic Republic of Pakistan is one of the biggest changes in the legal system of the country, as it protects the principle of environmental constitutionalism as one of the constitutional rights and freedoms. The amendment brings a new article 9A to the constitution, which states the right to a clean, healthy, and sustainable environment, which is very important in the country that ranked among the most affected by the impacts of climate change globally. This amendment is not an empty slogan; it addresses the decades of neglect of environmental issues supported by poor constitutional provisions on environmentalism. Pakistan has had environmental legislation for a long time through the *Pakistan Environmental Protection Act (PEPA 1997)* (Mukhtar, 2023),

Provincial Wildlife Acts(Usman et al., 2022), and the *Forest Act 1927*(Kamal & Haq, 2023) but the downside of these legislations is that they have come with little enforceability and coordination, hence leading to bad environmental management. Article 9A(Rajper et al., 2024) is an extension of the more general Article 9 of the Constitution, which has been interpreted by the judiciary in cases like *Shehla Zia v. WAPDA* (1994)(Hussain et al., 2024), which has been held to include environmental rights as a part of the right to life. However, loopholes in the legislation and problems with their implementation often weakened these judicial advances, based on the liberal construction of the legislation in force. With Article 9A, environmental protection now has a constitutional basis in the country and the future seems to hold a better promise of judicial activism. However, this development has to be viewed with caution. While Article 9A enhances the pillar of environmental activism, the amendment brings radical changes in collateral powers within the terms of Article 184(3)(Nadeem et al., 2023) that delimits the power of the Supreme Court in suo moto proceedings in matters of public interest and environmental rights. This makes one wonder if the judiciary will continue to be an activist institution in support of environmental issues as has been the case in the past. In addition, it is important to understand the international context of environmental constitutionalism to which Article 9A belongs. For example, South Africa entrenched environmental rights through section 24 of the Constitution(Du Plessis, 2010), while India has done the same through a broad interpretation of Article 21(Kumar, 2021). It is worth appreciating the inclusion of Article 9A in Pakistani law as a part of this global trend; however, the real question is how effective is this law in its real-life application. For example, even the existing legal frameworks including the *Sindh Wildlife Act 2020*(Usman et al., 2022), the *Khyber Pakhtunkhwa Forest Ordinance 2002*(ul Haq, 2022), and the *Punjab Fisheries Ordinance 1961*(Mann, 2003) are poorly implemented because of a lack of funds, corruption and negligence of law enforcement agencies.

2. Brief History

Environmental law in Pakistan has emerged through the legislation process as well as through judicial activism, the most significant of which is the *Pakistan Environmental Protection Act (PEPA) 1997*(Urooj, 2015) which provided the framework for governing environmental concerns like pollution, environmental assessments, and management of hazardous wastes. However, what has been witnessed is that there has not been effective enforcement of the provisions in PEPA due to bureaucratic delay, inadequate funding, and lack of cooperation between the federal and provincial governments. On the judicial front, such judicial precedence as *Shehla Zia v. WAPDA* (1994)(Hussain et al., 2024) the Supreme Court of Pakistan took an important step to broaden the provisions of Article 9 of the Constitution,



the right to life, and held that it encompasses the right to a clean and healthy environment. The Supreme Court under Article 184(3) recognized the risks posed by environmental threats such as electromagnetic fields and raised environmentalism to the level of the public interest and the fundamental right. But for several decades, Pakistan had no direct constitutional guarantee of environmental rights; it was only protected under the constitution through legal construction. This gap also confined the judicial activism mainly to this area while at the same time introducing a measure of ambiguity in the implementation of environmental laws. Other provincial laws such as the *Sindh Wildlife Act 2020*, *Punjab Forest Act 1927*, and *Baluchistan Wildlife Act 2014* (Ghalib et al., 2019) have also added to environmental governance but frequently failed due to poor institutional framework and confusing competencies.

The addition of Article 9A in 2024 under the 26th Amendment aims to improve these shortcomings by enumerating the right to a clean, healthy, and sustainable environment as a constitutional right. While this is a great leap towards environmental constitutionalism, it also brings some problems. For example, the transformative potential of this constitutional recognition will depend on how courts apply Article 9A with other laws and whether the courts are followed by legislative changes to align the scattered environmental structure of Pakistan. Unless there are better enforcement and accountability measures put in place by Article 9A, the provision may turn out to be wishy-washy instead of revolutionizing the sector.

3. Working Paper of Article 9A

Article 9A preserves the right to a clean, healthy, and sustainable environment as a constitutional guarantee. It builds on the foundations of PEPA and provincial laws, targeting stricter enforcement of air, water, and biodiversity protections. The amendment increases the scope of judicial remedies for environmental violations.

4. Analysis/Commentary

The incorporation of Article 9A in Pakistan is in line with the international standards as outlined in the Stockholm Declaration of 1972 (Seyfang, 2003) and Rio Declaration of 1992 (Momtaz, 1996) because of the protection of the environment with more focus on the enforcement of environmental laws. The amendment deals with obligations under certain important treaties such as the CITES (Smith et al., 2011) and CMS conventions (Mauerhofer, 2019), where a gap in national compliance may exist. For instance, legislation such as the *Sindh Wildlife Protection Act 2020* and the *Baluchistan Wildlife Act 2014* do mention CITES requirements, but the capacity to implement these measures has been constrained. Article 9A also offers a constitutional basis for support of these frameworks and brings them in line with international governance of the environment.



Internationally, the amendment aligns with constitutional provisions of countries such as South Africa which has Section 24 of the Constitution that provides for the right to an environment that does not endanger the health and well-being of citizens, and the Netherlands whose courts have exercised an enforcement of environmental rights in cases such as *Urgenda Foundation v. The Netherlands* (Meguro, 2020). Likewise, the new provision reflects the tendencies in judicial practice mentioned in the analysis, for example, *Milieudefensie v. Shell* (Spijkers, 2021), where courts placed direct environmental responsibilities on companies. Domestically, the inclusion of Article 9A takes its roots in other precedents such as; *Shehla Zia v. WAPDA* (1994) (Hameed et al., 2025), when the Pakistani Supreme Court had to interpret Article 9 of the Constitution, which guarantees the Right to Life, the apex court included this right to a clean environment. This judicial activism under Article 184(3) has in the past supported public interest litigation on issues of environmental pollution and degradation. The new constitutional provision enhances its capacity to uphold environmental rights as it corrects some of the weaknesses inherent in the existing laws and acts including the PEPA 1997 particularly those concerning pollution control, environmental impact assessments, and penalties for the maladministration of harmful waste. Thus, Article 9A not only improves domestic legislation but also offers a stronger platform to make domestic legislation in compliance with international environmental law standards and judicial decisions worldwide.

5. Implications

The integration of Article 9A also increases the effectiveness of existing laws like the Pakistan Environmental Protection Act (PEPA) 1997 and provincial laws including the Sindh Wildlife Protection Act 2020 and the Khyber Pakhtunkhwa Forest Ordinance 2002. These laws relate to areas that may include pollution, conservation of biological diversity and forests but most of the time have not had sufficient constitutional support for proper implementation. Article 9A itself offers a better ground for legal involvement since it allows the judiciary to coerce greater compliance with environmental standards. This constitutional guarantee also promotes case action by affected individuals and groups, especially those of marginalized and vulnerable status, who are most at risk from environmental impacts, and gives them better legal compensation.

From an international point of view, Article 9A follows international environmental governance frameworks, the Sustainable Development Goals, especially Goal 13 on Climate Action, which seeks to take measures to address climate change and its effects. The recognition of environmental rights in an obvious manner strengthens Pakistan's position in international organizations so that it can make stronger claims to support climate justice. Besides, by concerning these rights in the Constitution of Pakistan, it increases its compliance with

international legal frameworks and standards including the Paris Agreement and the Rio Declaration 1992 where incorporation of environmental issues into legal systems in the countries is provided. This alignment also provides credibility to Pakistan in international forums and strengthens its capacity to demand fair climate actions suitable in its specific context of being a low-emitting and highly vulnerable country.

6. Conclusion

The enactment of Article 9A in Pakistan is an important step toward environmental conservation that preserves a new fundamental right to a clean and healthy environment in the country's constitution. This daring step helps the country to enhance the legal foundation upon which environmental activism can be anchored by enhancing the existing laws and legal precedents. However, reducing the scope of the judiciary under Article 184(3) the amendment raises questions about how vigorously these rights will be protected and gives rise to critical questions about the future of environmental justice in Pakistan.

7. Recommendations

To connect the potential of Article 9A with democracy and environmental justice, Pakistan must act for legal change and institutional development. Currently, Pakistan has the Environmental Protection Act (PEPA) 1997, which needs to be amended to give legal sanction to Articles 9A and 10A, with clear provisions regarding pollution control, biodiversity conservation, and climate change. There must also be coordination of the provincial laws to complete its coordination and reduce conflict of laws. The other measures that can support the law include strengthening the enforcement mechanisms, for instance, increasing the resources and abilities of the agencies that protect the environment. Another area to be reformed is the judiciary. The creation of new environmental courts or tribunals that would focus solely on environmental matters can be helpful in the faster disposal of cases and would provide the necessary expertise in these matters. The courts should be provided with guidelines on how to address both environmental issues and development. Further, there is a need to open up environmental justice by easing the laws granted for filing cases and to help the deprived sections of society fight for their rights.

Declaration

Availability of data and material: The data is given in the paper.

Conflict of Study: The author declare that he has no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Ethical Approval and Consent of Participation: Not Applicable

Funding: This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.



References

- Du Plessis, A. (2010). "Local environmental governance" and the role of local government in realising Section 24 of the South African Constitution. *Stellenbosch Law Review*, 21(2), 265-297.
- Ghalib, S. A., Khan, M. Z., Kanwal, R., Zehra, A., Siddiqui, S., Abbas, D., Yasmeen, G., Hussain, B., & Khan, A. R. (2019). Recent observations on the distribution and status of wildlife of Baluchistan. *Canadian Journal of Pure and Applied Sciences*, 13(2), 4813-4846.
- Hameed, U., Saeed, S., & Shahid, A. (2025). The Right to a Healthy Environment in Pakistan: Legal Recognition, Enforcement Challenges, and the Way Forward. *Law Research Journal*, 3(1), 61-71.
- Hussain, Z., Sultan, M. S., Sarwar, M. W., Hassan, M., & Ali, S. (2024). Public Interest Litigation in Pakistan Landmark Cases and Judicial Influence on Governance. *International Journal of Social Science Archives (IJSSA)*, 7(3).
- Kamal, A., & Haq, H. (2023). LEGAL AND ADMINISTRATIVE DEVELOPMENT IN FOREST SECTOR OF PAKISTAN WITH INTERNATIONAL PERSPECTIVE. *Russian Law Journal*, 11(4), 1090-1111.
- Kumar, P. (2021). Interpretation of Indian Constitution Article 21 with Special Reference to the Right to Human Dignity: An Analysis. *Indian JL & Legal Rsch.*, 2, 1.
- Mann, V. S. (2003). *Troubled Waters of Punjab*. Allied Publishers.
- Mauerhofer, V. (2019). Activities of environmental convention-secretariats: laws, functions and discretions. *Sustainability*, 11(11), 3116.
- Meguro, M. (2020). State of the Netherlands v. Urgenda Foundation. *American Journal of International Law*, 114(4), 729-735.
- Momtaz, D. (1996). The United Nations and the protection of the environment: from Stockholm to Rio de Janeiro. *Political Geography*, 15(3-4), 261-271.
- Mukhtar, Z. (2023). Environmental pollution and regulatory and non-regulatory environmental responsibility (reviewing Pakistan environmental protection act). In *American Journal of Industrial and Business Management* (Vol. 13, pp. 443-456).
- Nadeem, M., Qasim, M., & Ibrahim, S. (2023). Original Jurisdiction of the Supreme Court of Pakistan Article 184 (3) of the Constitution of Pakistan, 1973. *Journal of Social Sciences Review*, 3(2), 1054-1064.
- Rajper, S. A., Khuhro, M. R., & Iftikhar, E. (2024). Climate Change, Environmental Constitutionalism, Right to Life, and the inclusion of Article 9A to the Constitution through the 26th Constitutional Amendment. *Qlantic Journal of Social Sciences*, 5(4), 414-425.
- Seyfang, G. (2003). Environmental mega-conferences—from Stockholm to Johannesburg and beyond. *Global Environmental Change*, 13(3), 223-228.
- Smith, M. J., Benítez-Díaz, H., Clemente-Muñoz, M. Á., Donaldson, J., Hutton, J. M., McGough, H. N., Medellín, R. A., Morgan, D. H., O'Criodain, C., & Oldfield, T. E. (2011). Assessing the impacts of international trade on CITES-listed species: Current practices and opportunities for scientific research. *Biological Conservation*, 144(1), 82-91.
- Spijkers, O. (2021). Friends of the Earth Netherlands (Milieudefensie) v Royal Dutch Shell. *Chinese Journal of Environmental Law*, 5(2), 237-256.
- ul Haq, M. I. (2022). Deforestation in Khyber Pakhtunkhwa Province and Government Response—An Auditorial Analysis. *ASIAN JOURNAL*, 45.
- Urooj, R. (2015). Pakistan Environmental Movement Revisited. *Middle East Journal of Business*, 10(2), 33-37.
- Usman, A., Hassan, M., Rehman, Z., & Sial, A. (2022). Legal framework in aid of biological diversity and statutory deficiencies in Pakistan. *Brazilian Journal of Biology*, 84, e262695.

