

CLIMATE CHANGE AND RIGHT TO LIFE IN PAKISTAN: A CRITICAL ANALYSIS OF ARTICLE 9 AND 9A OF THE CONSTITUTION OF PAKISTAN 1973

MUHAMMAD AIZAZ | maizazkhan1997@gmail.com

Muhammad Aizaz is a practicing advocate high court and an LLM student at Bahria University Islamabad Campus. He has completed his LLB Hons from Edwardes Colleges Peshawar affiliated with the University of Peshawar.

ABSTRACT

Pakistan stands at a devastating intersection of ecological fragility and constitutional inadequacy. Ranked among the world's most climate vulnerable nations despite contributing less than one percent of global greenhouse gases emission, Pakistan faces threats to life, health and dignity of its population. This article critically examines whether article 9 of the Constitution of Islamic Republic of Pakistan 1973 which guarantees the "no person shall be deprived of life and liberty save in accordance with law" is capable of encompassing the right to clean, healthy and sustainable environment and situates this analysis alongside the newly inserted article 9A introduced by the Twenty-Sixth Constitutional Amendment 2024, which explicitly enshrines this right as a justiciable fundamental right. Drawing upon constitutional jurisprudence, superior courts decisions, comparative analysis and international environmental law. This article argues that Pakistan's courts progressively expanded article 9 to encompass environmental rights and that article 9A now places those judicial gains on explicit constitutional footings. Its concludes that while article 9A marks a historic milestone, systematic institutional failures, legislative lacunae and weak enforcement mechanism continues to threaten the effective realization of this guarantee.

Keywords: Article 9, Article 9A, Right to Life, Clean Environment, Climate Change, Judicial Activism, Climate Justice, Twenty-Sixth Amendment.

1. INTRODUCTION

The intersection of climate change and human rights has emerged as one of the most pressing jurisprudential challenges of the twenty first century. For Pakistan, this intersection is not abstract, it is lived daily. The catastrophic floods of 2022 which submerged one-third of Pakistan's landmass displaced over thirty-three million people and caused economic losses exceeding thirty billion US dollars offered the world an unambiguous preview of climate change's human cost.¹ At its core, climate change in Pakistan is a crisis of rights: the right to

¹ UNOCHA, *Pakistan: 2022 Flood Response Plan* (United Nations 2022) 3; Asian Development Bank, *Pakistan: Catastrophic Flooding in 2022* (ADB 2023).

life, to health, to food, to water, and to a dignified existence are all imperilled by rising temperatures, erratic monsoons, glacial lake outburst floods, and prolonged droughts.

Article 9 of the Constitution of Pakistan 1973 provides the foundational guarantee: "No person shall be deprived of life or liberty save in accordance with law." While apparently terse, this provision has been interpreted by Pakistan's superior courts with remarkable breadth. Building upon the tradition inaugurated in *Shehla Zia v WAPDA*,² and extended through a line of public interest litigation. The right to life has been expanded to encompass environmental protection and more recently climate related harms.

This article critically analyses the scope, judicial evolution and structural limitations of Article 9 as a mechanism for climate justice, and situates that analysis within the transformative development of Article 9A inserted by the Twenty-Sixth Constitutional Amendment 2024 which now explicitly guarantees every person the right to a clean, healthy and sustainable environment as a justiciable fundamental right. The article proceeds through five stages: literature review; methodology; doctrinal analysis of key case law, critical assessment including Article 9A; and conclusions with recommendations. Throughout, it maintains that while judicial expansion of Article 9 has been constitutionally creative and normatively valuable, Article 9A now provides the explicit constitutional foundation that courts had long been constructing by interpretation, and that both provisions together must be supported by robust legislative architecture to meet the demands of effective climate governance.³

² *Shehla Zia v WAPDA* PLD 1994 SC 693.

³ Mary Robinson Foundation, *Principles of Climate Justice* (2011).

2. DOCTRINAL FRAMEWORK AND SCHOLARLY CONTEXT

2.1 *Pakistan's Climate Vulnerability and the Stakes of Constitutional Protection*

The literature on Pakistan's climate vulnerability is extensive and alarming. The German-watch Global Climate Risk Index has consistently ranked Pakistan among the most climate affected countries.⁴ Scholarly work by Ali and Shah (2019) establishes that the Indus River Basin Pakistan's agricultural lifeline faces flow variability of up to forty per cent by mid-century due to glacial retreat.⁵ The IPCC Sixth Assessment Report (2022) identifies South Asia as a region where compound climate risks will breach adaptation limits for millions of people within decades.⁶

Academic commentary has further highlighted the structural injustice in Pakistan's climate predicament. Lieven (2011) situates Pakistan's vulnerability within broader patterns of state fragility, poor governance and geographic exposure.⁷ Meeran (2021) examines how the global north's historical emissions have transferred climate risk to the global south raising profound questions of international responsibility.⁸

2.2 *The Jurisprudential Lineage of Article 9 and Environmental Rights*

The jurisprudential literature on Article 9 environmental dimension is dominated by analysis of Shehla Zia and its progeny. Lau (1996) was among the first scholars to observe that the Supreme Court transplanted elements of Indian constitutional environmental jurisprudence into Pakistani law.⁹ Hassan (2011) provided a comprehensive account of how superior courts have deployed the right to life against urban pollution, industrial effluent, and hazardous waste.¹⁰

More critical perspectives have been advanced by Mustafa and Wrathall (2011), who argue that judicial decisions on environmental rights in Pakistan tend to be reactive and enforcement-poor producing symbolic victories that do not translate into durable protection.¹¹ Courts can declare rights but cannot administer ecological systems.

⁴ David Eckstein, Vera Künzel and Laura Schäfer, *Global Climate Risk Index 2021* (Germanwatch 2021) 6.

⁵ Shahbaz Ali and Mobushir Riaz Shah, 'Glacial Melt and Hydrological Stress in the Indus Basin' (2019) 41 *Water International* 203, 218.

⁶ IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Cambridge University Press 2022) ch 10, 1465.

⁷ Anatol Lieven, *Pakistan: A Hard Country* (Allen Lane 2011) 14–22.

⁸ Richard Meeran, 'Climate Change and the Allocation of Historical Responsibility' (2021) 33 *Journal of Environmental Law* 1, 14.

⁹ Martin Lau, 'The Fundamental Right to a Healthy Environment in Pakistani Jurisprudence' (1996) 45 *International and Comparative Law Quarterly* 190, 195.

¹⁰ Parvez Hassan, 'The Environmental Rights Approach of Pakistani Courts' (2011) 23 *Journal of Environmental Law* 371, 375–380.

¹¹ Daanish Mustafa and David Wrathall, 'Indus Basin Floods of 2010' (2011) 35 *Disasters* 499, 511.

2.3 International Frameworks and Comparative Constitutional Context

International scholarship on constitutional environmental rights provides important comparative context. Boyd (2011) surveyed constitutional environmental provisions across 193 states finding that explicit rights to a healthy environment correlate with stronger governance outcomes.¹² The UN Human Rights Committee's General Comment No 36 (2019) affirmed that the right to life encompasses protection from environmental degradation.¹³

The International Court of Justice Advisory Opinion on Climate Change (2024) further consolidated the view that states bear obligations to protect individuals from foreseeable climate harms.¹⁴ This emerging international consensus places normative pressure on domestic courts to interpret Article 9 expansively.

3. JUDICIAL EVOLUTION OF ARTICLE 9: FROM RIGHT TO LIFE TO ENVIRONMENTAL PROTECTION

3.1 The Textual Point of Departure

Article 9 provides in its entirety: "No person shall be deprived of life or liberty save in accordance with law." Unlike the constitutions of India, South Africa or Colombia, Pakistan's Constitution contains no express right to a healthy environment. Article 9's environmental content has therefore been entirely judge-made derived through teleological interpretation of the word "life." The seminal elaboration came in *Shehla Zia v WAPDA*, where Justice Saleem Akhtar held that Article 9 encompasses "the right to a healthy environment, clean atmosphere, and to have access to the pure water."¹⁵ Drawing upon *Subhash Kumar v State of Bihar* AIR 1991 SC 420, the Court read Article 9 as a living provision whose content expands with evolving societal needs. This methodological premise underpins all subsequent climate related constitutional arguments.

3.2 *Shehla Zia v WAPDA* (PLD 1994 SC 693)

The facts concerned a proposed construction of grid station near a residential area in Islamabad. The Supreme Court exercising jurisdiction under Article 184(3) held that the threat to human health from environmental hazards engages the right to life. The Court invoked the precautionary principle holding that the state must act to prevent environmental harm even in conditions of scientific uncertainty.¹⁶ Critically, the Court located the state's obligation not merely in negative restraint but in positive action: the duty to take measures to protect life from environmental threats.

¹² David R Boyd, *The Environmental Rights Revolution* (UBC Press 2011) 37.

¹³ UN Human Rights Committee, *General Comment No 36* UN Doc CCPR/C/GC/36 (3 September 2019) para 62.

¹⁴ International Court of Justice, *Advisory Opinion on the Obligations of States in Respect of Climate Change* (2024, forthcoming); UN General Assembly, *Request for Advisory Opinion on Climate Change Obligations* UN Doc A/RES/77/276.

¹⁵ *Shehla Zia v WAPDA* PLD 1994 SC 693, 703 (Saleem Akhtar J).

¹⁶ *Ibid*, *Shehla Zia v WAPDA* PLD 1994 SC 693, 707–710.

This positive dimension of Article 9 suggests the state bears an affirmative constitutional duty to regulate greenhouse gas emissions, enforce environmental standards and implement climate adaptation measures. Failure to do so may constitute a constitutional violation.

3.3 West Pakistan Salt Miners Labour Union v Directors Industries and Mineral Development (PLD 1994 SC 378)

The Supreme Court granted relief to salt miners whose health was imperilled by industrial water pollution in the Khewra region. Reading Articles 9 and 14 (right to dignity) together, the Court held that environmental degradation threatening livelihoods violates fundamental rights. Justice Zia observed that the right to life "includes the right to livelihood and the right to a healthy environment free from pollution."¹⁷ This 0

case is significant for climate analysis because it connects environmental harm to economic and social rights. A linkage essential to any comprehensive climate justice framework. Climate change disproportionately affects smallholder farmers, fishing communities and low-income urban dwellers whose livelihoods depend directly on ecological stability. Climate-induced destruction of such livelihoods may be cognisable under Articles 9 and 14.

3.4 Aamir Nawab v NESPAK (PLD 2009 SC 306)

This decision involved a challenge to the environmental impact of a large infrastructure project. The Supreme Court reiterated that state agencies must comply with environmental regulatory requirements as a condition of giving effect to the right to life treating compliance with the Pakistan Environmental Protection Act 1997 as coextensive with compliance with Article 9.¹⁸ The reasoning establishes an important doctrinal bridge between Article 9 and environmental legislation implying that legislative failure to enact adequate climate law or executive failure to enforce existing legislation is reviewable as a constitutional default. This provides a potential basis for challenging Pakistan's inadequate implementation of its Nationally Determined Contribution under the Paris Agreement 2015.

3.5 Critical Assessment: Strength and Structural Limitation

The case law reveals both the creative potential and structural limitations of Article 9 as a climate justice mechanism. Pakistan's superior courts have demonstrated willingness to embrace dynamic constitutional interpretation, import international environmental law principles, and impose positive obligations upon the state. The resulting jurisprudence establishes that the state's failure to address climate change is potentially a constitutional violation.

¹⁷ *General Secretary, West Pakistan Salt Miners Labour Union v Director, Industries and Mineral Development* PLD 1994 SC 378, 392 (Zia J).

¹⁸ *Aamir Nawab v National Engineering Services Pakistan* PLD 2009 SC 306, 321–323.

However, critical limitations must be acknowledged. First, Article 9's protection is reactive and case-specific. Constitutional litigation addresses harms after they occur and cannot provide the systemic, prospective regulatory framework that climate governance requires. Second, enforcement of court orders in environmental cases has historically been poor.¹⁹ Third, access to constitutional courts is limited by financial, geographic, and informational barriers, meaning the communities most affected by climate change are least able to access available remedies. Fourth and most fundamentally, Article 9 cannot generate the fiscal transfers, technology investments, and international diplomatic commitments that Pakistan's climate adaptation requires.

4. ARTICLE 9A: CONSTITUTIONAL CONSOLIDATION AND ITS IMPLICATIONS

4.1 The Twenty-Sixth Amendment and the Explicit Right

The doctrinal edifice constructed through the interpretation of Article 9 underwent a historic transformation in October 2024 when Parliament enacted the Twenty-Sixth Constitutional Amendment, inserting Article 9A into Part II, Chapter 1 of the Constitution as a justiciable fundamental right. Article 9A provides in its entirety: 'Every person shall be entitled to a clean, healthy and sustainable environment.'

This provision marks the first time that environmental rights have been explicitly constitutionalised in Pakistan, moving from judicially implied protection under the right to life to express textual entrenchment within the Fundamental Rights chapter. The constitutional significance of Article 9A is substantial and operates on several related levels.

4.2 Resolving the Textual Deficit

First, Article 9A resolves the textual deficit that courts had long managed through creative interpretation of Article 9. That provision's environmental content was entirely judge-made; it required courts to stretch a terse guarantee of life and liberty to encompass clean air, clean water and ecological stability. Article 9A removes that interpretive burden entirely: the right to a clean, healthy and sustainable environment now has an independent constitutional home.

4.3 Intergenerational Equity and Expanded Scope

Second, Article 9A broadens the scope of justiciable protection beyond what Article 9 alone could sustain. The right to life, even interpreted expansively, is ultimately tethered to the protection of human survival and dignity in the present. Article 9A's reference to a 'sustainable environment' introduces a forward-looking, intergenerational dimension: the constitutional guarantee now extends not merely to current threats to life but to the preservation of ecological conditions for future generations.

This aligns Pakistan's constitutional framework with the approach taken in South Africa where section 24 of the Constitution explicitly protects ecological integrity for present and future

¹⁹ Parvez Hassan, 'The Environmental Rights Approach of Pakistani Courts' (2011) 23 *Journal of Environmental Law* 371, 390–394; Daanish Mustafa and David Wrathall, 'Indus Basin Floods of 2010' (2011) 35 *Disasters* 499, 511–515.

generations and with the Colombian Supreme Court's landmark recognition of the Amazon rainforest as a rights-bearing subject in *Future Generations v Ministry of the Environment* (2018). Article 9A's sustainability mandate thus positions Pakistan within a global constitutional movement toward the explicit recognition of intergenerational environmental rights.

4.4 Article 9A as a Constitutional Umbrella

Third, Article 9A functions as a constitutional umbrella that consolidates and elevates the existing statutory environmental framework. Environmental petitions previously required litigants to anchor their claims to Article 9's implied environmental content; they may now invoke Article 9A directly. The provision also strengthens the constitutional basis for challenging state failures under the Pakistan Environmental Protection Act 1997, the Climate Change Act 2017 and their provincial analogues recasting legislative deficiencies as potential violations of an express fundamental right rather than mere statutory non-compliance.

The Human Rights Commission of Pakistan has accordingly called for urgent reforms to environmental monitoring, judicial enforcement frameworks and intergovernmental coordination to ensure that Article 9A is implemented in substance and not merely in form.

5. CRITICAL ASSESSMENT: THE STRUCTURAL LIMITATIONS OF CONSTITUTIONAL RIGHTS

5.1 The Creative Potential of Articles 9 and 9A

The case law examined above reveals the creative constitutional potential unlocked by Articles 9 and 9A in combination. Pakistan's superior courts have demonstrated a consistent willingness to embrace dynamic constitutional interpretation, import international environmental law principles and impose positive obligations upon the state. The resulting jurisprudence establishes that the state's failure to address climate change is potentially a constitutional violation and that affected communities have constitutional standing to seek redress. Article 9A further consolidates these gains at the textual level, providing both a stronger foundation for litigation and a clearer mandate for legislative and executive action.

5.2 The Structural Limitations

Critical limitations must nonetheless be acknowledged with rigour. Four structural constraints persistently undermine the effectiveness of constitutional environmental rights in Pakistan.

First, constitutional protection under both Article 9 and Article 9A is reactive and case-specific. Constitutional litigation addresses harms after they occur and cannot provide the systemic, prospective regulatory framework that climate governance requires. Courts adjudicate disputes; they do not design or administer the national adaptation plans, green finance mechanisms and cross-provincial coordination structures that effective climate response demands.

Second, enforcement of court orders in environmental cases has historically been poor.²⁰ Declarations of constitutional violation are often followed by prolonged non-compliance, diluted remedies or administrative obstruction. Article 9A, like Article 9 before it, cannot self-enforce.

Third, access to constitutional courts is limited by financial, geographic and informational barriers, meaning the communities most affected by climate change are frequently least able to access available remedies. Legal aid frameworks, environmental public defenders and simplified access mechanisms are institutional prerequisites that neither constitutional provision independently creates.

Fourth and most fundamentally, neither Article 9 nor Article 9A can generate the fiscal transfers, technology investments and international diplomatic commitments that Pakistan's climate adaptation ultimately requires. Constitutional rights frame what must be achieved; they cannot substitute for the political will and budgetary commitment required to achieve it.

6. CONCLUSION & RECOMMENDATIONS

This article has demonstrated that Article 9 of the Constitution of Pakistan 1973 was progressively interpreted by the superior courts to encompass a judicially enforceable right to protection from environmental harm, including climate-related harm. That judicial evolution has now been constitutionally ratified and extended by the Twenty-Sixth Amendment which inserted Article 9A as an express fundamental right to a clean, healthy and sustainable environment. The decision from *Shehla Zia* (1994) establishes that the right to life imposes both negative and positive obligations upon the state. This judicial evolution is constitutionally principled internationally consonant, and normatively valuable.

Article 9A represents the constitutional coming-of-age of environmental rights in Pakistan. It transforms what had been judge made doctrine into an express textual entitlement, broadens the scope of protection to encompass sustainability and intergenerational equity, and provides an independent constitutional anchor for environmental litigation that is no longer contingent upon expansive interpretation of the right to life alone. Yet the insertion of Article 9A does not dissolve the structural challenges that have long constrained effective climate governance. Legislative inadequacy, enforcement gaps, institutional under-resourcing and barriers to access remain. The right to a clean, healthy, and sustainable environment like the right to life before it provides a constitutional foundation. It cannot substitute for the legislative architecture and political will that effective climate action demands.

Three principal recommendations emerge in light of the constitutional developments analysed above. First, the constitutional foundation for environmental rights is now in place. The Twenty-Sixth Amendment insertion of Article 9A satisfies the longstanding call for an explicit right to a

healthy environment within Fundamental Rights. The task ahead is to give that foundation substantive effect through legal, institutional, and judicial reform. Second, the Climate Change Act 2017 should be substantially reformed to establish binding emission reduction targets, independent oversight, inter-provincial coordination mechanisms consistent with Article 9A's sustainability mandate and enforceable timelines aligned with Pakistan's commitments under the Paris Agreement 2015. Third, the federal and provincial governments should urgently invest in the institutional capacity enforcement agencies, environmental tribunals, monitoring infrastructure and legal aid frameworks required to implement Article 9A in practice and not merely on paper.

In sum, Articles 9 and 9A together now constitute Pakistan's constitutional framework for environmental and climate rights. Article 9 as interpreted through three decades of superior court jurisprudence established that the right to life encompasses environmental protection, But the constitutional heroism whether through Article 9 or Article 9A has its limits. Pakistan's right to a clean and sustainable environment will remain meaningful only if it is supported by the legislative architecture, institutional capacity and political will is necessary to confront the climate crisis with the urgency it demands. As the UN Special Rapporteur on Human Rights and the Environment has observed, "climate change is the greatest human rights challenge of our time."