



RESEARCH PAPER

Legal Avenues to Protect Environment: Investigating the Pakistan Legislation

¹Urooj Bashir, ²Ch. Ahtesham ul Haq Dhariwal* and ³Mian Tariq Javed

1. Assistant Professor, MA Raoof College of Law, The University of Lahore, Lahore, Punjab, Pakistan.
2. PhD Scholar, Assistant Professor, MA Raoof College of Law, The University of Lahore, Lahore, Punjab, Pakistan.
3. Former District Public Prosecutor, Assistant Professor, MA Raoof College of Law, The University of Lahore, Lahore, Punjab, Pakistan.

***Corresponding Author:** ahteshamdhariwal@gmail.com

ABSTRACT

The purpose of research is to summarize all remedies available against environmental crimes in the context of Pakistan legislation, and determine maintainability and overriding effect of the special enactments. Development and environmental damage are interconnected. The ease of life of present generation is the cost being paid by the future generations, in the shape of environmental damage. The sustainable development idea originated to maintain the equilibrium in development and the environment. As a global issue the United Nations Organization set goals, which can be achieved by the active involvement of every member states. The principle 11 and 13 of the Rio Declaration, 1992. Expressly state the responsibility and obligation of member states regarding environmental legislation. The doctrinal legal research methodology is applied to analyze the relevant laws, their interpretation by the courts and application by the government agencies. In this research article the legal options available to the aggrieved person from environmental damage is explored in the light of statutes and case laws. The result shows that the remedies are available under the Pakistan Constitution, The Environmental Protection Act, Pakistan Penal Code, Criminal Procedure Code of Pakistan, and the law of Torts. Apart from these, several other acts in support of environmental protections are available. The specified functions of these acts are to control the illegal trade of wild fauna and flora, Bio Safety, Climate Change, Hospital waste management, and ensure the National environment quality standards, etc. Campaigns to raise public awareness shall begin, Environment as a compulsory subject shall be introduced, Same laws shall be repealed after making the Environmental Protection Act, 1997 (PEPA) more comprehensive and Environmental issues shall be dealt only by the Federal Government as a global issue.

KEYWORDS Environment Laws, Environmental Protection, Pakistan Environmental Protection Act, Article 9A

Introduction

Everything around us is an environment. The literal meaning of an environment is the circumstances in which a person, animal, or plant lives or functions. Healthy environment is necessary for healthy life. It includes air, water, land, living organisms, ecosystem, all social and economic circumstances that have an impact on community life, as well as any connections between any of the aforementioned elements. As life is indispensable without healthy environment and States is responsible to protect life, property and reputation of its citizens, therefore it can only be protected by laws, rules and regulations enacted by the state. According to sec. 2(33) of the Pakistan Environmental Protection Act, 1997 Pollution means the contamination of air, land or water by the discharge or emissions which make the air, land or water unclean and injurious to health and harmful to biodiversity. Salter suggested separate regulations for natural

environment, manmade environment that include the cultural heritage and human environment that include regulations on food contents, products, safety issues, leisure and economic health (Larsson, 1999).

Man is a preserver and also cause of environmental damage. Since the time of our earliest ancestors, human activity has had an impact on the environment. Since then, we have been constantly changing the surroundings to suit our needs. We are currently losing all of our priceless natural resources, which cannot be recovered. As a master man has created number of environmental problems that are still growing, it started from the infectious diseases and reached to the stage of natural disasters (Abelson, 1968).

The environmental degradation is due to the rapid industrial growth, exploitation of the natural resources and technological development (Appannagari, 2017). The main factors contributing to environment degradation are pollution, deforestation, disposal of waste and ruthless use of non-renewable natural resources. Water bodies are contaminated by sewage and waste water. The air is contaminated by smoke from factories, power plants, and automobiles. The land is contaminated with plastic trash, chemical waste, radioactive waste, biomedical waste, and deforestation. This also result in the biodiversity problems, extinction of fauna and flora and also effect the climate. The environment degradation such as the exploitation of natural resources, extinction of endangered species, human health and climate change issues etc. is a global concern. The whole world is keen to protect the environment from further degradation and so that the United Nations Organization emphasized its protection through treaties and conventions.

Pakistan, as a member of United Nations is a signatory of certain treaties. Treaties as a soft law, are agreements which are legally binding. principle of "pacta sunt Servando" (agreements must be kept) underpins their binding nature, meaning states are legally obligated to uphold their treaty obligations. A treaty becomes legally binding for a specific state when that state expresses its consent to be bound, typically through signing, ratification, or accession. Principal 11 and 13 of the Rio Declaration (1992) of the United Nations conference on environment and development made it clear that governments must create national laws pertaining to culpability and compensation for victims of pollution and other environmental harm, as well as pass effective environmental legislation.

In this research article, the enactment of special environmental law and the other legal remedies available to the victims of the environmental damage, will be explored in the context of Pakistan legislation.

Literature review

International Environmental Law

International Law develop to manage the multilateral and bilateral relationships between the countries and addresses the matters of global concerns. It consists of the International treaties, agreements, conventions, States customs and Judicial decisions. These legal instruments are not binding until and unless ratified by the concern state. International environment law is a body of rules, regulations and legal norms to deal with the transboundary, regional and global environmental issues. Historically International environment law develops in different periods. Primarily it addresses the issues of fisheries and marine life, protection of birds which are useful for agriculture and disputes of boundary waters. Second period include the wildlife, protection of endangered animal and plant species. Lastly the world adapted the principle of sustainable development by creating balance between the economy, society and the environment (Poorhashemi, 2024). The international environmental issue was first discussed at the United Nations Conference on the Human Environment held at Stockholm (Handl, 2012). The agenda was

to highlight the environmental issues and their relationship with human rights. The conference recognized the right to development and the right to healthy environment as a fundamental human right. According to the Conference, governments and peoples should work together to protect and enhance the human environment for the benefit of everyone. After 20 years, Rio hosts the United Nations' Environment and Development Conference (Declaration, 1992). Principle 11 of the declaration clearly express that States must pass environmental laws that work. Although the States are free to use their resources as they see fit, as long as they don't harm other states' environment in the process. The Rio Declaration affirms that States ought to take the sustainable development concept into account in the formation of laws and creation of legally binding bilateral or multinational agreements. The balance between the right to development and the entitlement to a wholesome environment must be maintained. Without sacrificing the capacity of future generations to meet their own demands, the requirements of the current generation must be satisfied. The climate change issue was also discussed in the same year and the UNO drafted the framework on climate change (Bodansky, 1993). Afterward on December 12, 2015, the Paris Agreement was agreed by the Conference of the Parties during its 21st session (Change, 2015) was an additional noteworthy global effort to combat climate change collectively. The pact seeks to keep the increase in temperature to 1.5°C and to keep global warming to less than 2°C over pre-industrial levels.

Apart of the above, the International Agreements Pakistan is signatory to are mentioned below.

Table 1
International Agreement Pakistan is Signatory

Bio Diversity Conventions	Atmosphere/Climate Change (UNFCCC)	Land Convention	Chemical and Hazardous Waste Conventions	Regional Seas Conventions
Convention on International Trade in Endangered Species of Wild Fauna and Flora Signed in 1973 Ratified in 1976	Vienna Convention for the protection of Ozone Layer Signed in 1985 Ratified in 1992	United Nations Convention to combat Desertification (UNCCD) Signed in 1994 Ratified 1997	Rotterdam Convention on Prior Informed Consent (PIC) for certain Hazardous Chemicals and Pesticides in International Trade Signed in 1999 Ratified in 2005	Convention concerning the Protection of the World Cultural and Natural Heritage Signed in 1972 Ratified in 1976
Convention on the Conservation of Migratory Species Signed in 1981 Ratified in 1987	Montreal Protocol on Substances that deplete the Ozone Layer Signed in 1989 Ratified in 1992		Stockholm Convention on Persistent Organic Pollutants (POPs) Signed in 2001 Ratified in 2008	United Nations Convention on the Law of the Sea (UNCLOS) Signed in 1982 Ratified in 1997
Convention on Biological Diversity (CBD) Signed in 1992 Ratified in 1994	United Nations Framework Convention on Climate Change (UNFCCC) Signed in 1992 Ratified in 1994			
Cartagena Protocol on Bio-Safety Signed in 2001 Ratified in 2009	Kyoto Protocol to UNFCCC Signed in 1997 Ratified in 2005			

Source: Handbook on Environmental Law by Justice Ayesha A. Malik

Constitution of the Islamic Republic of Pakistan, 1973.

The environment had never been the important issue in Pakistan and so no specific provision was present in Pakistan Constitution. However, the Superior Judiciary has

played a vital role and highlighted the importance of healthy environment under the domain of Human rights. In land mark case of (Shehla Zia and others vs. WAPDA, 1994) the court enhance the extent of right to life under the provision of Article 9 and Article 14 of the Constitution. "No person shall be deprived of life or liberty save in accordance with law," according to Article 9 of the Constitution. Since it encompasses every aspect of human existence, the word "life" is extremely important. Although the term "life" is not defined in the Constitution, it does not refer to vegetative or animal life or the simple existence of an organism from conception to death. Life encompasses all of the comforts and privileges to which a citizen of a free nation is legally and constitutionally allowed to enjoy with dignity. "The dignity of man and subject to law the privacy of home shall be inviolable," according to Article 14. Article 14's fundamental right to uphold and defend human dignity is unmatched and only present in a small number of international constitutions. The combination of Article 9 and the Article 14 enhances the meaning of life and the Court emphasized that not the life but the *Quality of Life* must be protected. The 26th amendment added Article 9A to the Constitution, states the right to a clean, healthy and sustainable environment and is the turning point in deciding the environmental issues (Rajper, Khuhro, & Iftikhar, 2024). The inclusion of the Article 9A is the result of long run effort of the Judiciary. Now an independent constitutional remedy is available in the form of fundamental rights, under the newly added provision of 9A in the Pakistan Constitution. The inclusion of Article 9A demonstrates the Pakistan concerns and commitments to the International Treaties and global vision of sustainable development.

The Common law Principles: Law of Torts

The civil liability can be awarded against the tortious act of the wrong doer, subject to the fulfillment of certain ingredients. Tort action against environment degradation includes private nuisance, trespass, public nuisance and negligence (Deweese, 1992). Pakistan as a common law country follow the civil right remedies available under the law of Torts. The person degrading environment can be held liable against the infringement of civil rights. The remedies available under tort law have some drawbacks. First the precautionary principle shall be applied to protect environment, whereas under the law of torts remedy is available after the civil wrong has done. Second in private nuisance the claimant has to prove the duty of care against him and the defendant has breached his duty that result in a special damage. The claim against public nuisance can only be filed by the Advocate general or after the permission of the Advocate general. This has restricted the rights available to the individuals. Unreasonable interference with the use and enjoyment of land is a private nuisance. Although physical pollution is actionable, it is unclear if health harm by itself will establish a nuisance claim. The effects of climate change, caused by the human lead environmental pollution, on quality life and property can be dealt by common law. In *Smith v. Fonterra* the court decided that climate change makes the tort of public nuisance. It was endorsed by the New Zealand Supreme Court by following the Court of Appeal in applying the House of Lord's approach in *R v. Rimmington*, concluding that "if a nuisance impacts a class of the public and/or violates the public's rights as such, it is public." In a brief analysis, the Court accepted that the rights identified by Smith ("the rights to peace, comfort, convenience, safety, and health of the public.") fell within this scope (Bookman, 2024).

General Laws: The Pakistan Penal Code, 1860.

The protection of life, property and reputation is the core duty of the state. The criminal liability can be awarded against an offence that deteriorates the health or property of the person. Chapter XIV of the Pakistan Penal Code, 1860 deals with the offences affecting the Public Health, Safety, Convenience, Decency and Morals. Section 268 to 291 deals with the public nuisance, polluting water, adulteration of food, and negligent acts etc. that endangers the human life. Furthermore, the provisions which deals with contamination of water does not take intention or mens rea into consideration. Rather it

deals with negligence that every human being is blessed with the power of common sense and duty of care as not to contaminate any natural water channel as to make it dangerous/hazardous to any human or animated life that consumes it (Ali, Rehman, & Gull, 2022). The criminal liability can be extended to the natural as well as artificial person. As section 11 of the Penal Code is very clear and it defines person in terms of body of persons, association, company and any other body so combined under any name. the corporate criminal liability is determined through vicarious liability and principle of master and servant is also applied. The offence of strict liability needs not to be proven the intent of the person committing environmental crime, however different theories are applied to prove the intent in corporate criminal acts.

The Code of Criminal Procedure, 1898.

The Code of Criminal Procedure has information in chapter X about how to keep the peace and order in society. Sections 133 to 143 of the same Code deal with issues of public or general nuisance. Section 133 empowered the magistrate to take cognizance on complaint, of any act which abstracts the public way, act of unlawful nuisance, any trade or occupation which is injurious to health, existence of any building, sign board, tree etc. which endangered the life of the public (Ali, Rehman, & Gull, 2022). Section 133 is typically invoked when there is a significant risk to public health (2012 PLD Pesh 167). It is important to remember that one of the requirements the clause grants the magistrate some extraordinary powers, which are intended to be used in exceptional circumstances where there is serious insurgency and no other ordinary law can solve the subject. It is important to note that only cases that provide no other remedy and a fair time frame will be handled under this clause; if a suitable time frame and choice are available under regular laws, the magistrate is not expected to consider the case. In case of ABDUL Latif v. Additional Session Judge Sahiwal, It was held by the Lahore High Court that PEPA is a special law and override the Cr.P.C 1898 so it is the jurisdiction of the Environmental Protection Tribunal and not the magistrate to deals with the environmental issues and the court set aside the decision of the Session Judge (2001 CLC, 1139).

Special Law: The Pakistan Environmental Protection Act, 1997.

The PEPA, 1997 is the special law that deals with the environmental issues. It was the result of international treaties. It established the executive as well as judicial wings. The environmental protection Council is the policy making body and the environmental protection Agency is the controlling and implementing body. The judicial limbs include the Environmental Magistrates and the Environmental Protection Tribunals. It exclusively deals with the imports and discharge of hazardous material, Initial Environment Examination (IEE) and the Environment Impact Assessment (EIA) of development projects and economic activities, and the pollution created by the motor vehicles. Pakistan has five different environmental protection laws in effect as of the 18th Amendment. The Islamabad Capital Territory is still governed by the original Pakistan Environmental Protection Act of 1997. In 2012, the Punjab and Baluchistan enacted their environmental protection act and in 2014 Sindh and Khyber Pakhtunkhwa enacted their independent acts for environment protection. This result in conflict of interest, efficiency and mismanagement. The environment as global issue originated from the international treaties. The states are responsible for the enactment and implementation of the international covenants and the provincial autonomy after the 18th amendment limited the role of the state. Environment magistrates shall be notified by the relevant High Courts of the Province and shall be magistrates of 1st class. Jurisdiction of the environmental magistrates are explained u/sec 24 of the PEPA, 1997. Any person who fails or contravenes the order or direction given by the council or agency and violate the conditions of the license mandatory for handling of hazardous substances and violation of the NEQS set for the use and emission of air and noise pollutants, are exclusively triable by the Environmental Magistrates. Jurisdiction and powers of the Environmental Tribunal are

explained u/sec 21 of the PEPA, 1997. The violation of standards defined for the maximum amount of discharges or emissions, failure of Initial Environment Examination or Environment Impact Assessment Report before starting a project and import of hazardous material are triable by Environmental Tribunal. The tribunal consist of a Chairperson and two members, one of which shall be the technical member. The role of Environmental Tribunals improved with the passage of time but notwithstanding this encouraging development, Pakistan's environmental tribunals' published rulings also point to flaws in the design and application of the country's environmental framework legislation (Lau, 2021).

Other Relevant Laws

Apart from the above, there are certain laws that indirectly control the environment from degradation. These includes the Canal and Drainage Act, 1873., the Forest Act, 1927., Pakistan Factories Act, 1934 (Amendment 2012)., Pakistan Biosafety Rule, 2005 (Amendment 2024)., The Pakistan Trade Control of Wild Fauna and Flora Act, 2012., Pakistan Climate Change Act, 2017., The Single-use Plastics (Prohibition) Regulations, 2023. Among these the most crucial is the climate change due to the environment degradation by human and non-human activities. The objective in said act is the adaptation and mitigation of the effect of climate change. Pakistan Climate Change Authority has been established u/sec 5 of the Pakistan Climate Change Act, 2017. The main purpose of Authority is to formulate, comprehensive adaptation and mitigation policies, plans, programs, projects and measures designed to address the effects of climate change and meet Pakistan's obligations under international conventions and agreements relating to climate change and within the framework of a national climate change policy as may be approved by the Federal Government from time to time.

Material and Methods

The research is doctrinal legal, based on the primary sources such as the statutes and precedents, the in-depth analysis is done to explore the legal avenues available to protect environment. Pakistan federal laws are examined for analysis. Doctrinal legal research is a research in law. It is a method that focuses on understanding and explaining the law as it exists, primarily by analyzing legal texts like statutes and case laws. It involves identifying, examining, explaining and justifying the enacted legal framework.

Results and Discussion

The environment control legislation consists of the Constitutional Law, Common Law Practices, General Law and the Special Law. As a developing country, environment was never been a concern of importance. The survival in terms of security and economy was the basic issues. However, as a member of United Nations, and party in global issues Pakistan Environmental Ordinance was the first law in Pakistan. Its objective was to establish regulatory bodies and governance of environmental protection, but it was repealed by the environmental protection Act, 1997. Prior to this law the legal remedies available was in the form of tortious liability. The polluter was held responsible against water pollution as explained u/sec 277, and against air pollution u/sec 278 of the Pakistan Penal Code, 1860. These are ineffective because first to prove the negligent act is not easy by the prosecutors and if proved guilty, then the punishment is either imprisonment which may extend to three months or fine up to Rs 1,500. The environmental protection Act, 1997 as a special law prevails but is not exhaustive. On corporate side, It covers the industrial waste that can pollute the land, air and water, and as far individual are concerned than only the motor vehicle emissions exceeding the NEQS. Second the two jurisdictions of trials, the Environmental Magistrates and the Environmental Tribunals adds to the confusions. Third there is no mechanism to independently generate funds and all fines imposed become the part of provincial funds. These factors have affected the

efficiency of executive as well as judicial limbs of the Act. Judiciary has played a vital role to protect environment. The judicial activism initiated from the land mark case of *Shehla Zia v. Wapda*, was the milestone in this regard. The Supreme Court emphasized on the quality of life as a fundamental right, which cannot be provided without ensuring the healthy environment to protect life on the land. The Article 9 read with the Article 14 of the Constitution was interpreted to secure life on earth. The article 9 stated the security of person and the article 14 describe the dignity of man. The said precedent was followed by the provincial High Courts and ultimately a new article 9A is included in the constitution, after the 26th amendment which established the right to clean and healthy environment as a fundamental right. Now the remedy is available under public interest litigation and any person can invoke writ jurisdiction of the Superior Courts under Article 184(3) and 199 to secure the environment.

Conclusion

In Pakistan, the theory and practice of environment develops from different areas of law. Primarily the civil and criminal branches of general laws such as the Law of Torts, Pakistan Penal Code and the Code of Criminal Procedure deals with it. In the era of industrialization and trade the other avenues, for the protection of wild fauna and flora, endangered species and water distribution special acts like the Forest Act and the Pakistan Factories Act enacted. Than the Constitutional Law, starting with the landmark decision of *Shehla Zia v. Wapda* (*Shehla Zia and others vs. WAPDA*, 1994). decide adverse environmental impact cases in the light of fundamental right to life and inviolability of dignity of man under Article 9 and 14 of the Constitution. Lastly the special law was enacted in 1997 titled as Pakistan Environmental Protection Act, to protect environment and as a special law it prevails on general laws. Till 2010, the environmental protection was the federal concern, however after the 18th amendment in the Constitution, this role has been transferred to the provinces, and all provinces enacted their own laws in the light of Pakistan Environment Protection Act, 1997. Now both the federal as well as provinces can enact law. The jurisdiction of federal laws is confined to Islamabad territory only, where it intersects with the provincial laws, otherwise applicable to whole Pakistan such as the Pakistan Climate Change Act, 2017.

Recommendations

Environment is a global issue and the states are responsible for the implementation of international agreements, the decentralization has empowered the provinces so there shall be inter-governmental and intra-provincial partnership for compliance of international treaties (Khayam & Ahmad, 2020). There is a deficiency in devolution of powers to gross root level, through local governments as the better check can be done by the locals only.

The framework of proper funding must be established for effective control by the environmental protection agencies.

The all environment related issues shall be dealt by the Environmental Protection Act, rather than different acts such as the Factories Act and the Forest Act etc. separately.

The development must be sustainable by establishing balance between the development and environment.

Public awareness campaigns are inevitable for the protection of environment. The environment is degraded by the corporates and individuals too. The importance of healthy environment must be conveyed through all kinds of media.

Environment as a compulsory subject be introduced at all levels, schools to universities.

The precautionary principle shall be applied by the regulatory bodies, rather than punishing after the act, such as polluter pays principle.

High population growth is the main cause of environment degradation. Apart from specific environmental protection laws, general acts shall include such provisions that indirectly protect the environment.

References

2001 CLC, 1139.

2012 PLD Pesh 167 (Peshawar High Court).

Abelson, P. H. (1968). Man-made environmental hazards. I. How man shapes his environment. *American Journal of Public Health and the Nations Health*, 58(11), 2043-2049.

Ali, D. B., Rehman, D. A., & Gull, M. P. (2022). The Use of Criminal Jurisprudence for Combating Environmental Issues in Pakistan. *Pak. Journal of Int'L Affairs*, 5(2), 196-206.

Appannagari, R. R. (2017). Environmental pollution causes and consequences: a study. *Asian International Research Journal of Social Science & Humanities*, 3(8), 151-161.

Bodansky, D. (1993). The United Nations framework convention on climate change: a commentary. *Yale J. Int'l L.*, 18(451).

Bookman, S. (2024). Smith v Fonterra and the Climatisation of Tort Law. *Modern Law Review*. doi:<https://doi.org/10.1111/1468-2230.12908>

Change, U. C. (2015). The paris agreement. *United Nations*.

Declaration, R. (1992). Rio declaration on environment and development. *United Nations*.

Deweese, D. N. (1992). The Role of Tort Law in Controlling Environmental Pollution. *Canadian Public Policy*, 425-442.

Handl, G. (2012). Declaration of the United Nations conference on the human environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development, 1992. *Nations Audiovisual Library of International Law*, 11(6), 1-11.

Khayam, M. U., & Ahmad, I. (2020). Decentralization of Environment in Pakistan: Issues in Governance. *Policy Perspectives*, 17(2), 101-116.

Larsson, M. L. (1999). *Legal definitions of the environment and of environmental damage*. Institute for Scandinavian Law. Retrieved October 15, 2020, from <https://www.scandinavianlaw>

Lau, M. (2021). The Role of Environmental Tribunal in Pakistan. *Islamic and Middle Eastern Law*. doi:https://doi.org/10.1163/22112987_02001002

Poorhashemi, A. (2024). *International environmental law*. (Routledge, Ed.) In Public International Law.

Rajper, S. A., Khuhro, M., & 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.

Shehla Zia and others vs. WAPDA, 693 (Supreme Court 1994).