

Environmental constitutionalism: A comparative study of Pakistan and Bangladesh



Submitted By:

Almas Bano

Reg. No. 355-FSL-LLMHRL-S2

Submitted To:

Dr.Naseem Razi

Associate professor of Law (Supervisor)

Thesis submitted in the partial fulfillment of requirements of LLM

**Department of Law
International Islamic University, Islamabad**

Table of Contents

Dedication	vi
Acknowledgment	vii
List of Abbreviations.....	viii
Abstract	ix
Introduction	x
Significance of Topic	xii
Literature R e v i e w.....	xii
Research Questions	xv
Research Methodology.....	xvi
CHAPTER 1.....	1
Environmental Constitutionalism Theories And International Perspectives	1
1.1 Introduction	1
1.2 International Environmental Law (IEL).....	3
1.3 Sources of International Environmental Law	7
1.4 Characteristics of International Environmental Law.....	7
1.5 International Organizations.....	7
1.6 First International Meeting: The Stockholm Conference 1972:	9
1.7 Conclusion	20
CHAPTER 2.....	22
The Development Of The Right To A Healthy Environment In Pakistan	22
2.1 Introduction.....	22
2.2 The constitution of Pakistan and right to healthy environment	23
2.3 Conclusion	42
CHAPTER 3.....	44
The Development Of The Right To A Healthy Environment In Bangladesh ...	44
3.1 Introduction.....	44
3.2 Right to Healthy Environment in Bangladesh	44
3.3 Judicial activities in Bangladesh regarding Environmental Rights.....	47
3.4 Conclusion	50
CHAPTER 4.....	52
A Comparative Analysis Of Environment And Implementation In Pakistan And Bangladesh	52
4.1 Introduction.....	52
4.1.1 Compliance and Enforcement Challenges	53
4.2 International compliance	53

4.3 Conclusion	60
Recommendation And Conclusion	62
Recommendation	62
Conclusion.....	65
Bibliography.....	68
Articles Books	68
Books	68
Journals.....	70
List of Cases	71

DEDICATION

Dedicated to My Father,(Late)

Acknowledgment

First, I am very thankful to Allah Almighty, the most merciful, who has guided me on right path and bestowed his blessings upon me. He has been the most generous with me and provided me with all the blessings of the world. Without His guidance, this thesis could not have been possible.

Next to Him, I am greatly indebted to Dr Naseem Razi, Associate Professor at International Islamic University, Islamabad, my research supervisor. I am grateful for her support and I pay my gratitude and sincere thanks to her. It is because of her guidance that I can write this research paper. It was a great experience and an honor for me to work under her supervision. I would also like to pass my sincere gratitude to the Dr. Sadiya Tabassum, Associate professor of IIUI for her extreme kindness and helpfulness towards her students. I am also very grateful for her assistance and supervision during the whole time of my research. Also, I am thankful to all the teachers of Law Department who have always been there for the support and help that we need.

In the end, I want to pay my sincere gratitude to every single person who has helped me in writing and finalizing my research paper either directly or indirectly.

List of Abbreviations

BELA: Bangladesh Environmental Lawyers Association

CEDW: Convention against the discrimination against women

CIEL: Customary international Environmental law

EC: Environmental constitutionalism

ICJ: International court of justice

IEL: International Environmental Law

INGO: International organizations

K.P: Kyoto protocol

NGOs: National organization

PIL: Public interest litigation deed

PP: Precautionary principle

PPP: Principle of polluter principle

SDGs: Sustainable Development Goals

UN: United Nations

UNCED: United Nations conferences on environment and Development

UNEP: United Nations Environmental Program

UNFCCC: United Nations Framework convention on Climate change

Abstract

This thesis investigated environmental constitutionalism in Pakistan and Bangladesh. Using a qualitative comparative legal methodology with case studies and analysis of primary and secondary sources, it examined constitutional, legislative, and judicial approaches to the right to a healthy environment. The research identified a gap in Pakistan's Constitution, which lacks explicit recognition of this right, unlike Bangladesh. It concluded by recommending incorporation of the right to a healthy environment into Pakistan's Constitution to align with international obligations and strengthen environmental protection.

Thesis Statement

Pakistan's failure to effectively realize the right to health calls for affirmative state action to fulfill its constitutional and international human rights obligations.

Introduction:

Climate crisis is the most pressing issue for humanity and civilization and Pakistan as well. As we know Pakistan has been facing many socio-economic challenges which now coupled with environmental crisis has further exacerbated the situation. In international law the Stockholm Declaration 1972 is considered a parent document regarding the environment. Interestingly, "Bangladesh through its (Fifteenth Amendment) Act 2011 has inserted environmental provisions in its basic fundamental state policy.¹ which deal The state shall endeavor to protect and protect the environment and to preserve and safeguard the nature resources for the present and future citizens" and taken affirmative action in this regard but, but Pakistan as one of the states that would be one of the major effects of the crisis failed to incorporate any provisions in this regard in their constitution. The question of environmental public interest is being addressed in Pakistan's apex courts. The cases like *Shehla Zia V Wapda* laid the foundation of environmental jurisprudence in Pakistan. In this case Supreme Court established that in future public hearing ought to be held by state bodies when planning projects such as an electricity grid station. Pakistan is a fifth largest country in terms of population and is one of the most vulnerable states to climate change.²

¹Aditi Kapoor, "IFRC Country Assessment of Pakistan," (IFRC, April 1, 2021), 15.

²GBD 2019 Pakistan Collaborators, "The State of Health in Pakistan and Its Provinces and Territories, 1990-2019: A Systematic Analysis for the Global Burden of Disease Study 2019," *The Lancet. Global*

The energy crisis in Pakistan has led to many environment harming projects to grow in the name of economic development. One of such projects is one belt one road initiative in Pakistan. The main part of this project is under process in Sindh (Pakistan) that has turned into a conundrum for the people. In Tharparkar is one of the richest regions in terms of its coal reserves that are apparently available. And has a Hindu majority population. This is massively problematic because the two interests being environmental and economic are in conflict with one another. In lieu of getting more electricity, we are compromising the rights and safety of indigenous population creating environmental and health hazards for them.³

Tharparkar is only one example; there are many other similar battlefields of environmental justice and economic interest in Pakistan. Rive and B. T cotton projects are other examples of the environmental crisis.

The 18th amendment to Pakistan's constitution shifted responsibility for maintaining citizen health and balance to the provinces, resulting in varying strategies and standards across regions due to resource discrepancies. Unlike some South Asian countries, Pakistan's 1973 constitution lacks a specific policy on the green right⁴ However, international agreements like the “Stockholm and Rio declarations emphasize the interdependence of the people and the environment, urging sustainable development with humans at the center of concern.”

Examining the impact of environmentalism on Bangladesh's economy sheds light on the neglected aspect of human rights in Pakistan's legislative agenda. Unlike Bangladesh and India, Pakistan lacks constitutional provisions related to the green right.

Health 11, no. 2 (2023): 229–243.

³Faiza Ilyas, “48pc Pakistani Women Have No Say in Health Matters: UN,” *Dawn*, February 15, 2018, Available at: <https://www.dawn.com/news/1389532> (Last accessed August 10, 2025).

⁴Naushin Mahmood and Durr-e- Nayab, “An Analysis of Reproductive Health Issues in Pakistan,” *The Pakistan Development Review* 39, no. 4II (2000): 675–693.

The 18th amendment decentralized authority to provinces, resulting in varied strategies and standards without a unified national policy. This decentralization complicates setting minimum standards due to resource discrepancies. While Pakistan's 1973 constitution shares principles with its South Asian counterparts, it lacks explicit provisions for a healthy environment. However, international agreements like the Stockholm and Rio declarations highlight the inseparable relationship between human being and their ecosystem, emphasizing the centrality of humans in sustainable development.”

Significance of Topic

The significance of this comparative study is to analyze the environmental laws of both the countries, particularly in the context of Pakistan and Bangladesh. While both states face similar environmental challenges such as pollution, deforestation, and climate impacts. The effectiveness of environmental constitutionalism may vary due to difference in political, social, and economic contexts. Studying these differences can provide insights into the pros and cons of each country perspective to green fundamental governance and inform strategies for improving environmental protection outcomes.

Literature Review

Farrukh M. Salman in his article comparative study of Environmental constitutionalism in south Asia has been clearly mentioned that there is no specific law ensuring the implementation of right to environment nor the right has been constitutionalized. The lack of a green rights in our constitution is the root of a heap of problems. When a human right is inserted into the constitution there is always an obligation of the country to enforce these constitutional obligation towards those rights.⁵

⁵Muhammad Salman ""Farrukh, *Environmental Constitutionalism in South Asia: Comparative Study of*

Exploring historical antecedents, “In the Unfulfilled promise of environmental constitutionalism “Amber Polk sheds light on the origins of rights to healthy environment. During the 19th century, after the industrial evolution, the environmental crisis began, as economic growth increased, causing damage to the environment. Interestingly, in Pakistan's constitution, there is no mention of the environment, despite its parallel importance with economic development.” The concept of environmental constitutionalism developed during the 20th century, coinciding with the shift from manual work to machinery services.⁶

Another official document of “UN United Nations Environmental Program is the seminal document of environmentalism is the Stockholm Declaration, adopted during the United Nations conference on the environment in 1972.⁷ Additionally, under the 18th amendment in our constitution has further altered the situation as it made held not a federal but our provincial subject.

Moreover, in case of Pakistan, it is all more important for the government to provide primary health care to its subject.in realization of its goals under SDGs however; the social political and economic constraints make it very difficult for the state to achieve these goals. Despite all the hurdles it is mandatory for the state to act for its women to have health care and mandatory for the state to ensure that. Furthermore, the (UNCED) is stand for United Nations Conference on Environment and Development issued another crucial declaration, namely the Rio Declaration, in1992”.

One of the most important principles discussed in that declaration is the balance between development and the environment, meaning that economic growth should not adversely affect

India, Pakistan and Bangladesh (Vienna: Central European University).”

⁶Fatima Mehmood, “The Right to Health and Pakistan’s Predicament,” *University College Lahore Human Rights Review* Vol. 4 (2017).

⁷Rabia Tassaduq, Saima Hamid, and Abdul Ghaffar, “Health Laws of Pakistan: Compilation and Commentary,” *Eastern Mediterranean Health Journal* 27, no. 6 (2021): 538–41.

the planet's environment. Both UN declarations are based on the concept of anthropocentrism, asserting that it is a basic human right that their government facilitate primary health care without discrimination. Interestingly, both Pakistan and Bangladesh are parties to the above-named declarations yet Pakistan has not been incorporated it in constitution. Pakistan is on 5th rank in term of largest population in the world. It is currently facing serious political, socio, economic challenges due to that reason it is a fifth most vulnerable to the impact of climate change. Pakistan has huge population but scarce resources. It is unable to feed its population well which over the decades have resulted in massive malnutrition, unhygienic food alternatives which do not fulfill did dietary requirements and increase health risks. And like any other third world state Pakistan is facing issues like land water and air pollution that has exacerbated the health conditions further.⁸ Internationally, “UDHR under its article 26 provides that it is the fundamental right of human beings to have an adequate standard of living and it explicitly provides for the recognition of right to health as a good health is mandatory to ensure an adequate standard of living. I CESER at the same time in its article 12 provides that every citizen has the right to an adequate standard of physical and mental health. Pakistan is a signatory to UDHR and under article 25 UDHR is bound to ensure an adequate standard of living for its citizens which includes right to health as a mandatory requirement” however the state of Pakistan has failed to realize its goal and ensure its true implementation Therefore, now the state must take affirmative action to fulfill its obligation towards its citizens.⁹ Further under 18th constitutional amendment the government of Pakistan has further altered the

⁸ Aditi Kapoor, “IFRC Country Assessment of Pakistan,” (IFRC, April 1, 2021), 15.

⁹GBD 2019 Pakistan Collaborators, “The State of Health in Pakistan and Its Provinces and Territories, 1990-2019: A Systematic Analysis for the Global Burden of Disease Study 2019,” *The Lancet. Global Health* 11, no. 2 (2023): 229–243.

situation as it made held not a federal but our provincial subject. When the issue was left to the provinces, each province has their own strategy and mechanism to make and implement their policies and there is no one national policy or a national same standard existing for all. Further it has made a consensus over the minimum standards more difficult as each province the first in its access and availability of the resources.¹⁰ Further, Health is not only a determinant of the standard of living but it also reflects the divide among the nation regarding economic facilities and exacerbates the social classification on the basis of have and have not as there are only few who can really exercise the right and the rest are deprived and mostly discriminated on basis of their financial condition. The primary causes for the worsening of the conditions of the poor include their working conditions command the availability of their food, its quality and quantity, there lifestyle, and the surrounding they are in.¹¹ Moreover, in case of Pakistan, it is all more important for the state to provide universal healthcare to its citizens in realization of its goals under SDGs however, the social political and economic constraints make it very difficult for the state to achieve these goals. Despite all the hurdles it is the primary duty of the state.¹²

Research Questions

1. What is environmental constitutionalism entail in international law?
2. What is the concept of the environmental constitutionalism in

¹⁰Sania Nishtar, Health and the 18th Amendment: Constructive tensions (2019), Available at: https://www.heartfile.org/wp-content/uploads/2015/01/Health_18Amendment_draft.pdf (Last accessed May 3, 2025).

¹¹ “Commission on Social Determinants of health (WHO) report on *Achieving Health Equity: from root causes to fair outcomes* (Geneva: WHO, 2017), Available at:” https://iris.who.int/bitstream/handle/10665/69670/interim_statement_eng.pdf;jsessionid=52AD745714B044FF25D274599937E083?sequence=1 (Last accessed May 15, 2025).

¹² Babar Tasnem Sheikh and Nabeela Ali, “Universal health Coverage in Pakistan: is the health system geared up to take the challenge,” *Globalization and health* 19 (2023).

Bangladesh and Pakistan?

3. What are the key challenges in implementing the Environmental Constitutionalism in Pakistan?
4. What reforms are needed to address the violation of the green right in Pakistan?

Research Methodology

This thesis employs a qualitative research design, incorporating comparative legal analysis, case studies, to investigate the constitutional, legislative, and judicial frameworks related to Environmental protection in Pakistan and Bangladesh. The research is divided into the examination of the both primary and secondary data sources. Primary data includes, Examination of the constitution of Pakistan related to green rights in both countries. This will involve analyzing the specific articles and clauses within the constitutions of both countries that address environmental rights and responsibilities. Furthermore, the detailed analysis of green laws, Acts, and regulations in the constitution of both countries. In addition to in-depth case studies focusing on specific instances where these green basic rights has been violated in Pakistan are carried out. And secondary data will be based on Comprehensive review of academic articles, books, and reports on Environmental constitutionalism. Lastly, the Study of relevant International Environmental laws and treaties to provide a global context will also be carried out. This will help in understanding how international frameworks influence national environmental protection mechanism.

CHAPTER 1

Environmental Constitutionalism Theories and International Perspectives

1.1 Introduction

Environmental constitutionalism is the new concept of this century under international law, human rights law and environment law. And it is playing an important role to recognize the health environment right as a fundamental right across the world. It is important that climate change cases relying on a constitutional right to a healthy environment and the duty of environmental protection is still new phenomenon Few states in which includes Brazil, France, and South Africa inculcated this into own constitution and imposed duty not only on the state but also on the citizen to protect the environment same other south Asian countries like Pakistan, Bangladesh few years back insert into their constitutions as a separate right in the result of judicial activism.

There is no uniform definition of environmental constitutionalism is given under International law different jurist discussed in own jurisprudence.¹³

In Structural Environmental Constitutionalism, **B. Hudson** argues that it means to protect the environment through constitutional provisions. Under this book he also provided definition of Structural environmental constitutionalism he said SEC deal with the allocation of environmental regulatory authority at different levels of government, specifically in federal form of government. It complements fundamental environmental constitutionalism, which focuses on substantive or procedural rights to a quality environment. This kind of constitutionalism is important for shaping effective and environmental protection frameworks across the world¹⁴.

According to the “**J. May and E. Daly’s** Environmental constitutionalism brings together constitutional, international, human rights, and environmental law”, focusing on substantive and

¹³Sagoff, Mark. "Economic theory and environmental law." *Mich. L. Rev.* 79 (1980): 1393-1419.

¹⁴Louis J Kotzé, *Environmental Constitutionalism in the Anthropocene* (Oxford: Hart Publishing, 2016).

procedural environmental rights, obligations, and responsibilities. It recognizes the importance of domestic courts across the world in the interpretation and execution of constitutional environmental provisions¹⁵. Human Rights council in its resolution No.19/10 accepted that the when our environment is damaged its directly and indirectly effects on the enjoyment of human rights this committee demand from state that they protect the right to life from the effect of nuclear disaster and others environmental pollution. Indeed, the climate change has threatens our other fundamental rights which include our health, safe water, food. “The human rights council has recognized that due to the environmental degradation the most vulnerable group of people which includes children’s, women, and old people has been affecting. The Committee on the elimination of discrimination against women in most of the developing countries women is duty bound to collect of clean water and disposal of family and wastewater but females in most of the countries excluded¹⁶ from decision making this committee demand from state parties of CEDW to provide opportunities to be a part of decision making process”. Furthermore, the most vulnerable group of women which includes poor, older, disabled, and women belong to minority may suffer due to the climate change. Therefore, include them in decision-making regarding climate change mitigation and adaptation. Nations cannot thrive if they undermine the hidden potentials of the women and women can contribute to her society if she gathers support from state. Taking as an example, national Climate Change policy 2012, it hardly takes in consideration the specific needs of women when it takes about the effects of climate of climate on populations. National Drinking water policy 2018 has clearly missed out the issues the female populations of Tharparkar district face due to water shortages this shown that even public policy of the country driven by unconsciousness leading to failure of women liberations.¹⁷

¹⁵Ibid.

¹⁶Muhammad Salman Farrukh, *Environmental Constitutionalism in South Asia: Comparative Study of India, Pakistan and Bangladesh* (Vienna: Central European University).

¹⁷Tassaduq, Hamid and Ghaffar, “Health Laws of Pakistan,” *Eastern Mediterranean Health Journal* 27 (2021): 538-541.

1.1.1 International Law on Right to Healthy Environment

The constitutionalization of Environmental protection is a hot issue of the globe hence there are number of laws, conventions and regional treaties are enacted. Scholars have contributed various frameworks ranging from ecological rights and public trust to sustainable development and climate justice shaping the modern legal system.¹⁸ While Pakistan and Bangladesh have made significant strides in judicial activism for environmental protection, direct constitutional amendments incorporating environmental rights remain a challenge. Strengthening constitutional provisions will enhance environmental governance and ensure long-term sustainability for future generations.

1.2 Public International Environmental Law (IEL)

The public international law has its sub branch which is deal the green rights know as Environmental law, which focuses on the study and implementation of environmental protection measures¹⁹. It is a fact still there is no single accepted definition of the environment under IEL, but various jurists have provided their interpretations. Environmental problems, knows as climate change and global warming, transcend national boundaries, making national laws insufficient to address these issues effectively. IEL plays a basic role in controlling environmental challenges.

For instance, in the month of June 2006, the rapid melting of glaciers, twice as fast as five years prior, highlighted urgency of addressing global warming. Similarly, the shrinking ice layer of Antarctic glaciers underscored the global nature of environmental threats.

¹⁸Muhammad Salman Farrukh, *Environmental Constitutionalism in South Asia: Comparative Study of India, Pakistan and Bangladesh* (Vienna: Central European University).

¹⁹Professor Dan Bodansky, "International Environmental Law," *Indiana Journal of Global Legal Studies* 3 (1995): 105-119.

Globalization, while fostering economic growth, employment opportunities, and technological integration, has also exacerbated environmental challenges. These include climate change, the spread of diseases like Covid-19.²⁰

1.2.1 Historical Development of International Green Law

The concept of international environmental law was began early and mid-twentieth century thus it is dire need of the time due to the increasing warming and climate change. These green laws does not developed by the states only, the international organizations, individuals and groups of civil society along with the non-governmental organizations, (NGOs). It is wide range and interconnected with other area of law likewise, human rights law, the law of armed conflicts, international trade law. Before the twenty century the environment include trees and tigers, plant and ecosystem after the change in living style of human beings and industrial and agricultural development there has been a great deal of legislative activism in Pakistan and Bangladesh in respect of environment protection, those environmental laws and policies are an instruments to p-protect and improve the environment and to control or prevent actions which are polluting the environment. It is fact that till 1999 the human population will reach 6 billion and it was expected that at the mid of twentieth-one century it will increase to 9.4 billion.²¹

As per the report of United Nations that one-third of the world population live in high shortage of fresh water which is an alerting situation for all world.

These issues first time discovered in case namely the Trail Smelter case before it these problem did not much attention. It was the first and unique legal case regarding the international liability for cross-border air pollution caused to another nation, even though no treaty creates obligations

²⁰Fatima Mehmood, "The Right to Health and Pakistan's Predicament," *University College Lahore Human Rights Review* Vol. 4 (2017)".

²¹Roger R. Martella, Jr. and James W. Coleman, "International Environmental Law *A Guide for Judges*, for the Federal Judicial Center (2015), Available at: <https://www.fjc.gov/sites/default/files/2015/INTL%20ENVTL%20LAW%20GUIDE%20FINAL.pdf> (Last accessed June 7, 2025).

to prevent such damage This precedent was issued by the court of the U.S by applying its law of land and international law that it is a primary duty of the each country that for respect other state sovereignty and territory and not harm and injure properties and human living another land. Trail B. case was a dispute which was settled through arbitration. Under this case, the core principle under environmental law developed that a country who responsible for the air pollution is liable for any damage to another country and will compensate to it for its harm.²²

Pulp mills case study (provisional measure) (006, ICJ) in which Argentina and Uruguay were parties, s a case that This case study deal with the mutual interest on the river Uruguay, Under this case both parties depend on the clean water of that river for the economic and social wellbeing of their nation it is held in this precedent that each country taking benefit from that river must respect other rights and use this natural resource not only for the present generation but also for future growth. This case law is best example of where there is right there is duty.²³

.2.1.1 The nexus between Human Rights and climate change

Human rights and clean and healthy atmosphere exist parallel. Global warming across the world is not the only environmental crisis but it is the matter of violation of basic human rights. First time in 2008 this issue was discussed under united “Nations Rights Council (UNHCR) and gave task to the United Nations High Commissioner for Human Rights (OHCHR) to examine the impact of these crisis. These office present their report in which admitted that the climate change has direct dire impact on the human rights.” Despite the fact it is clear mentioned that the two basic right conventions did not deal the sustainable development which are first one is International covenant on civil and political Rights, and second was International covenant on Economic ,social and

²²Dr. Kinza Tasleem, “Environmental Policy Analysis of Pakistan: A Theoretical Perspective,” *Journal of Development and Social Sciences* 3 (2022): 507-521.

²³Edith Brown Weiss, “The Evolution of International Environmental Law,” *Georgetown Law Faculty Publications and Other Works* (2011) Available at: <https://scholarship.law.georgetown.edu/facpub/1669> (Last accessed August 3, 2025).

cultural Rights (ICESCR).²⁴

This issue gained more attention under the UN convention on climate change (UNFCCC) for the first time during 16th UNFCCC conference of parties in Mexico it was recognized that adverse climate change have a multiple direct and indirect on effective enjoyment of human rights.²⁵

1.2.2 The Connection between Customary International Law and Environmental Law:

Beside of such the large number of environmental agreements, convention has been enacted at global, regional and bilateral levels but some treaties only bonding on the party of the treaty and some agreements not binding in nature. In this situation the customary international law play important role. The laws deal with environment are also developed customs that's why, they are the best source of international environmental law. There are few instances mentioned regarding customary international environmental law (CIEL).²⁶

Firstly, Responsibility of a state not to engage in activity that causes damage to the environment of other states, unless the trans boundary environment impact of this activity proves to be insignificant, secondly, the Obligation of the state not to allow any activity that could harm its environment, unless, an environmental impact assessment has shown that the activity in question is allowed, lastly, the Obligation of a state to give its neighboring states prior notice of any activity on its territory that might affect the environment of other states. These are the basic precautions by using them countries can save the universe from the upcoming problems.

²⁴Adeel Mukhtar Mirza, "Environmental Rights and Case of Climate Justice in Pakistan," *Strategic Studies* 40 (2020): 45–62. ""

²⁵Edith Brown Weiss, "The Evolution of International Environmental Law," *Georgetown Law Faculty Publications and Other Works* (2011) Available at: <https://scholarship.law.georgetown.edu/facpub/1669> (Last accessed August 3, 202

²⁶ ""Nnyeneime Usenata, "Environmental Kuznets Curve (EKC): A Review of Theoretical and Empirical Literature," *International Review of Environmental and Resource Economics* 6(3) (2018):195-224.""

1.3 “Sources of International Environmental Law”:

The international court of justice in its article 38 (1) mentioned a significant provision related green right.²⁷ Also Treaties customs and primary principles of law recognized by civilized nations

Firstly, the judicial decisions and teaching of the most highly qualified publicists, another is Treaties, it means an agreement between or among the countries and agreement is a legally binding between countries. As per their binding nature there are three (03) kinds of agreement and it could be: First treaty is Bilateral which may be held between two countries, second kind of treaty is Multilateral treaty in which more than two states will be a parties, and last one is regional treaty it may be on the base of any particular region or place.

1.4 Characteristics of International Environmental Law:

International environmental law has no specific and fixed definition but different jurist and scientist explained it in different wording. Likewise, first basic of it is a soft law means not available in any hard document and it is also a non-binding nature in its nature, secondly, To find IEL on any particular area, we have to examine several treaties, including some that may not seem relevant to the environment, for example, the Geneva Convention. Another feature is developed in the result of reaction to events, incidents, or availability of scientific evidence, rather than in the form of anticipation of general or particular environmental. Lastly, Threats and facing them with an anticipatory legal framework.

1.5 International Organizations

The United Nations and its specialized agencies play a significance role in the development of international environmental law and helping parties of the agreement to reach on common ground on environment issue, additionally, international organizations, INGOs, also monitor the

²⁷Professor Dan Bodansky, “International Environmental Law,” *Indiana Journal of Global Legal Studies* 3 (1995): 105-119.

implementation of international treaties related protection of the environment.²⁸It is also engaged with national government, NGOs in relation to Environmental policy and implementation.

1.5.1 United Nations Environment Assembly (UNEA)

UNEP is a governing body UNEP which is known as the world's biggest decision making authority on the environment. After two year it is enact environmental policies and develop international Environmental laws. Those treaties host by the UNEP discussed below:²⁹

1.5.2 Intergovernmental panel on climate change

It is a scientific environmental authority under the United Nations. It was established in 1988 by two United Nations organization-The world meteorological organization (WMO) and UNEP.

The person working with WMO and UNEP having privilege to get IPCC membership. Its basic aim is to check the impact of human on climate change.

1.5.3 The convention on the conservation of Migratory species of wild animals:

This treaty was signed in the city of Bonnie, Germany in the year of 1979 and it was executed in 1983. In the history of environmental law it is a single worldwide and UN based intergovernmental organization working for the management and conservation of migratory species. And it was established under the United Nations Environment Program.³⁰

²⁸Faiza Ilyas, "48pc Pakistani Women Have No Say in Health Matters: UN," Dawn, February 15, 2018, Available at: <https://www.dawn.com/news/1389532> (Last accessed August 10, 2025).

²⁹Professor Dan Bodansky, "International Environmental Law," *Indiana Journal of Global Legal Studies* 3 (1995): 105-119.

³⁰Edith Brown Weiss, "The Evolution of International Environmental Law," *Georgetown Law Faculty Publications and Other Works* (2011) Available at: <https://scholarship.law.georgetown.edu/facpub/1669> (Last accessed August 3, 2025).

1.5.4 Global Environmental Facility

This is an international organization which is working for the environmental crisis in the world it's also provide support to its member state for the initiatives about sustainable development in their countries. All states which are the member of the UNO are the member of this international organization. This organization provide financial support to states for the biodiversity, land degradation the ozone layer and to solve the climate change issues.

1.6 First International Meeting: The Stockholm Conference 1972

In the year of 1972 the United Nations organized the conference at the Stockholm between 5 to 16 June, in the development of international environmental law it is known as Stockholm Conference it was first sitting on the subject of global warning. During this conference the first and foremost rule was established which was a polluter pay principle it is enforced duty on states that perform their own obligation for the betterment of environment. Although, it is a soft law and it has a non-binding nature but it enforce moral and political duties on states and by using that rule the new international green law can be enacted. After this conference in the year of 1980 the World Conservation Strategy was agreed by the states it deal with to ensure conservation and modification to the earth to protect the wellbeing of the mankind. Next to this conference the most famous program in the title of United Nations program, UNEP was established, currently, this program deal environmental issues across the world. During this time period The doctrine of the sustainable development goal was established in a report published 1987 in the name of the Brundtland Report it is also known as a Common Future, this report means, the development meets the needs of the present generation without compromising the ability of the future generation, it based on the rule precaution is better than cure. The doctrine of sustainable development means development without compromising the future of the upcoming generation. According to this report, sustainability development included the environment, social, economic, cultural, and

technological³¹. In the year of 1992 another most important declaration was adopted during the United Nations conference at Brazil at the place of Rio de Janeiro, that's why it's called Rio Declaration. "It has 27 basic principles for the sustainable developed in which the core principle is human beings are at the center of concerns of sustainable development, another principle of this to achieve sustainable development, (SD) and sustainable development environmental protection shall be an its integral part, thirdly, the right to development must be fulfilled so as to equitably meet development And the environmental needs of present and future generations. Lastly, the fifteen number rule of this conference is to protect the environment, the precautionary approach shall be widely applied by the states according to their capabilities. Another declaration on sustainable development in Johannesburg in 2002 was held, in which it was clearly stated that we assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development, economic development, social development, and environmental protection at the national, regional, and global levels."³²

The below-mentioned conventions deal with the concept of green rights development.³³

1.7 World Heritage Convention (1972)

It deals with a focus of the preservation of all God mad and man-made natural and cultural assets for the humanity.³⁴

³¹"James R May and Erin Daly, "Global Judicial Handbook on Environmental Constitutionalism," Widener University Delaware Law School (2018), Available at: <https://www.ajne.org/sites/default/files/resource/publications/7227/global-judicial-handbook-on-environmental-constitutionalism-2nd-ed.pdf> (Last accessed August 3, 2025)."

³²"James R May and Erin Daly, "Global Judicial Handbook on Environmental Constitutionalism," Widener University Delaware Law School (2018), Available at: <https://www.ajne.org/sites/default/files/resource/publications/7227/global-judicial-handbook-on-environmental-constitutionalism-2nd-ed.pdf> (Last accessed August 3, 2025)."

³³Roger R. Martella, Jr. and James W. Coleman, "International Environmental Law *A Guide for Judges*, for the Federal Judicial Center (2015), Available at: <https://www.fjc.gov/sites/default/files/2015/INTL%20ENVTL%20LAW%20GUIDE%20FINAL.pdf> (Last accessed June 7, 2025).

³⁴ World Heritage convention, 1972.

1.8 Ramsar Convention (1973)

According to their ecological importance and the necessity for long-term management goal is to promote the judicious use of wetlands.³⁵

1.9 Vienna Convention (1985)

The Vienna Convention is another international agreement on environment was signed by the countries in the Vienna in the year of 1985 that's way it is called Vienna Convention. The member state of this convention agreed that they follow the Montreal Protocol to further the Goals of the Vienna Convention. The Montreal protocol is deal to take safeguard the ozone layer and make sure to less produce those substance that are responsible for the ozone depletion.³⁶

1.10 United Nation Framework convention on Climate Change (UNFCCC) (1992) and Kyoto Protocol (1997)

This is the most important convention on the international environmental law. Its basic aim to develop frameworks for addressing climate change that are informed by notions such as the precautionary approach and intergenerational equity, ensuring that current activities do not risk future generations³⁷. “The united Nations Framework convention on climate change (UNFCCC) is an international environmental agreement treaty to achieve the stabilization of greenhouse Gas concentrations in an atmosphere at a level that would prevent dangerous interference with climate system it was signed in first Earth Summit in Ro de jinario on 1992.it is legally non-binding and no enforceable treaty the basic purpose of this treaty is to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”

³⁵ Ramsar convention, 1973

³⁶ Vienna convention, 1985

³⁷ Convention on UNFCC 1992 and Kyoto protocol, 1997.

1.10.1 United Nations Framework on Climate change

It is a multilateral treaty to the on climate change. It was adopted by all state parties of the UN in the year of 1992 during the Earth Summit at Rio de Janeiro. It deal with the greenhouse gas balance in the atmosphere.

During the first Summit conference the idea arose of UNFCCC and this agreement came into force on 21 March 1994.³⁸

1.10.2 Key Article of the UNFCCC

It covers 26 articles. “Following are most important is its second article which deals to achieve stabilization of GHGs in atmosphere; Global temperature should not be allowed to exceed 2 calcic above the pre-industrial level that is the year 1850. Another article refers to principle of CBDR. Common but Differentiated Responsibility, Sustainable Development SD and historical Responsibility it means advanced country should take lead in addressing climate change. Fourth article refers all parties make general commitments to address climate change to mitigation and adaptation techniques. Lastly it seven article Establish COP mechanism and it is highest decision making and supervisory body under convention.”

1.11 Compliance Mechanism

According to the compliance mechanism of the UNFCC that it will be mandatory to all state parties to submit a national inventory of anthropogenic emission sources. Developed countries must assist developing countries in meeting their inventory obligations.

³⁸Roger R. Martella, Jr. and James W. Coleman, "International Environmental Law *A Guide for Judges*, for the Federal Judicial Center (2015), *Available* at: <https://www.fjc.gov/sites/default/files/2015/INTL%20ENVTL%20LAW%20GUIDE%20FINAL.pdf> (Last accessed June 7, 2025).

Developed countries are obligated to provide a detailed description of implementation measures to developing countries.

Least Developed Countries (LDCs) shall submit national adaptation programs outlining their actions, needs, and priorities for adaptation.

Developed countries will assist LDCs through funding and technology transfer.

Developing countries are required to take steps to mitigate greenhouse gas (GHG) emissions.

All parties are encouraged to take measures to promote environmentally sound technologies

1.12 Implementation challenges

Implementation of flexibility mechanism

Lack of coordination and coherence

Policy framework not optimized

Finance obstacles.

1.13 Pakistan and United Nations Framework on the Climate Change

The Government of Pakistan was established Ministry of climate change in 4 August, 2017, under this international obligation Pakistan adopted National climate change policy. Furthermore Pakistan announced to replace fuel engine with electric engine to save environment. “Additionally, Pakistan enacted first environmental law called the Pakistan Environmental protection Act 1997 and in the time period of Imran Khan a big project in the name of Tsunami Billion tree project announced to combat climate change”. Lastly, introduced wind, solar and Hydropower projects and switching to renewable energy sources.

1.14 Montreal protocol

Montreal protocol is an international treaty which deals to protect ozone layer. It was adopted in 16 September 1989 and it enforced on 1 January, 1989. Under this protocol it was agreed to phase out those chemicals which have been the cause of ozone-depleting substances for example chemicals used in refrigerators, air conditioners and foam manufacturing etc. The Montreal protocol says, the production and consumption of compounds that deplete the ozone layer in the stratosphere such as CFCs, halons, carbon tetrachloride and methyl chloroform are to be phased out by 2030. By using the mentioned below we can phase out ODS likewise, Production control, Consumption, Trade import export control, and adoptions to ozone friendly technologies.³⁹

1.15 Convention on Biological Diversity (1992)

As clearly seen from the name of this convention that it deals with the biodiversity and it is called Biodiversity convention in which more than two countries are the parties that's why it is called multilateral treaty.

The convention has three main goals including:

First goal is the conservation of Biological diversity

Second goal is the sustainable use of its components

Third goal is the fair and equitable sharing of benefits arising from genetic resources

This convention is based on the conservation of biodiversity according to that while promoting sustainable use and fair benefit-sharing we can save our environment from global warming.

³⁹GFDRR report on "A Partnership for Mainstreaming Disaster Mitigation in Poverty Reduction Strategies," World Bank (2006), Available on: <https://www.gfdr.org/sites/default/files/publication/GFDRR-A%20Partnership%20for%20Mainstreaming%20Disaster%20Mitigation%20in%20Poverty%20Reduction%20Strategies.pdf> (Last accessed August 7, 2025).

1.16 Convention on the Non-Navigational Use of Watercourses (1991)

It is to promote the sustainable use of international water resources by embracing ideas such as the precautionary principle and justice across and within generations. These conventions emphasize the worldwide commitment to environmental conservation, sustainable resource management, and egalitarian principles to protect.

1.17 The Fundamental Principles of Environmental International Law

There are various principles guiding environmental protection. Even though their applications may vary, the foundations and concepts remain the same. The Environmental international law is responsible to save the environment therefore it has certain principles. During the Stockholm declaration few principles introduced these rules might be societally acceptable or not but after this declaration now it's part of environmental law.⁴⁰ "The basic aim of that rules to save the environment from harm. These environmental principles work together to ensure high environmental standards by directing how courts and other decision makers should interpret the law."

1.17.1 The principle of the polluter pay principle

The polluter pays principle hereinafter referred PPP. In the development of environmental law at national and international level the polluter pays principle plays an important role, it is considered the oldest principle of the environmental law.

It deals that person who pollutes the environment should pay the cost not by their government. In other words it deals that it is a consumer that is to pay for harm occurred due to their conduct to environment PPP as the absolute liability for harm to the environment extends not only to compensate the victim of the pollution but also the cost of restoring the environmental degradation.

⁴⁰Louis J Kotzé, *Environmental Constitutionalism in the Anthropocene* (Oxford: Hart Publishing, 2016).

In the early of history the pollution was not big issue but after the industrial revolution in Europe when no safety regulations and laws were available the employers lived in the worst condition and that time discharge of gases onto the air was considered lawful in simple means the society whole pay the cost of that pollution.⁴¹

1.17.2 The history of the polluter pays principle

Under the organization for Economic cooperation and Development commonly known as OECD first time the polluter pays principle was recognize in 1972.in history first time the Wrongdoer was held responsible for the environmental damage and pollution. Later on under the RIO declaration Article 16 dealing with this principle stated that the polluter state shall be responsible and will bear the cost of the pollution. The PPP also known as Extended Producer responsibility EPR ,it means the producer will improve the west profile products which producer is manufacturing and decreasing waste as well as increasing the possibility for reuse and recycling.⁴²

The polluter pays principle is the principle of the sustainable development that how we protect our environment and safeguard the natural resources. This rule is not sufficient to remove all environmental damage because there is not clarity about the actual polluter. Additionally, the penalties are the restoration of the damage caused to the environment. The polluter pays principle is the principle of the sustainable development that how we protect our environment and safeguard the natural resources.

After OECD it was again mentioned in Brundtland Report then it remained part Rio Declaration This doctrine imposes liability on person who pollutes the environment and pay compensation for damage caused and return the environment to its original state regardless of intent. But there is inadequate about Ambiguity regarding clear identification of actual polluter Amount of compensation is inadequate to the loss actually caused.

⁴¹ Sagoff, Mark. "Economic theory and environmental law." *Mich. L. Rev.* 79 (1980): 1393-1419.

⁴²Ibid.

The polluter pay principle (PPP) has been accepted as a universally sound principle and has gained almost universal recognition. According to this principle, the offending industry is responsible for repairing the damage caused⁴³. The sustainable Development Goals (SDGs). 3. Polluter Pays Principal

This principle was initially meant to restrain public authorities from subsidizing the pollution control costs of private firms. Instead, it requires that companies and businesses internalize the environmental costs of their pollution to the extent required by law.

A polluter can be defined as one who directly or indirectly damage the environment or who creates conditions leading to such damage. In most cases, the businesses will incorporate the costs in the price of the products to some degree and pass them to the consumers. The principal can be implemented through: taxes, charges and payment for cleanup.⁴⁴

1.18 The sustainable Development Goals (SDGs)

The sustainable Development Goals (SDG), also known as the Global Goals. “These 17 SDGs are integrated that is they recognize that action in one area will affect outcome in others, and that development must balance social economic and environmental sustainability. The sustainable Development Goals (SDG), also known as the Global Goals. These 17 SDGs are integrated that is they recognize that action in one area will affect outcome in others, and that development must balance social economic and environmental sustainability⁴⁵.The most important milestone in the history of development of environmental law happened in June 1992 a Rio Earth Summit and it was the most important International United Nations brought together 197 countries to taken measure to minimize negative human impact on the environment. In results of that conference a most important document United Nations Framework convention and climate change.”

Under this document most important principle was founded which is Climate justice, it means

⁴³Ibid.

⁴⁴Ibid.

⁴⁵The 17 Sustainable Development Goals.

countries who have benefited from Emissions in the form of on-going Economic Development and increased wealth have an ethical obligation to share those benefits with countries who are suffering from the effects of these emissions. After 5 years later of Rio Summit in December 1997 countries signed the first extension to the convention it was called the Kyoto protocol. Under Kyoto protocol there are two kinds of countries developed/industrial and other one is developing.

The UN introduced the **17 Sustainable Development Goals (SDGs)** to address global challenges, including poverty, inequality, and environmental degradation. **SDG 11** focuses on creating sustainable cities with clean water, affordable housing, and the protection of natural and cultural heritage.⁴⁶

1.19 Precautionary Principle

According to this principle the Precaution is better than cure, it is another most important International environmental law principle it means “if there is a risk of damage to the environment take legal action even no scientific or conclusive proof available still take action and save the environment in other words better be a safe than being sorry and take action before damage According to this principle the States must take preventive measures instead any evidence available or not for any damage.

The concept of precaution is based on the notion that environmental regulations often have to act on the frontiers of knowledge and in the absence of full scientific certainty.⁴⁷

The concept of precaution operates a part of a science-based approach to regulation, not a substitute for such an approach and in practice, the concept is multi - faceted for instance,

Firstly, the likelihood of environmental harm,

Secondly, the extent of environmental harm”

⁴⁶Pierre-Marie Dupuy and Jorge E Viñuales, International Environmental Law (UK: Cambridge, 2018).

⁴⁷James R May and Erin Daly, “Global Judicial Handbook on Environmental Constitutionalism,” Widener University Delaware Law School (2018), Available at: <https://www.ajne.org/sites/default/files/resource/publications/7227/global-judicial-handbook-on-environmental-constitutionalism-2nd-ed.pdf> (Last accessed August 3, 2025).

Thirdly, the level of scientific certainty or uncertainty needed for precautionary action

Fourthly, whether cost - effectiveness of measures is relevant

Fifthly, whether precaution applies to individual parties or institutions.

Sixthly, whether precaution is being applied in an environmental context to encourage action or a trade context to authorize, but not encourage action.

A) Prevention

Experience and scientific expertise demonstrate that prevention must be the Golden Rule for environment protection for both ecological and economic reasons. “In some instances, it can be impossible to remedy environmental injury once it has occurred. For example, extinction of fauna and flora, erosion, and dumping of persistent pollutants into water bodies create intractable, and even irreversible situations.

Prevention can be implemented through prior assessment of environmental harm, licensing, authorization with conditions for operations and remedial consequences for violation, use of standards and use best available technologies (BAT).

Prevention a generalized goal of domestic environmental laws include the concept that pollution may be reduced, or prevented, at its source, by changing raw materials or production techniques or technologies.⁴⁸

1.20 Environmental Justice and Equity Principle

Environmental justice seeks to ensure that authorities fairly allocate and regulate scarce resources, to ensure that the benefits of environmental resources, the costs associated with protecting them, and any degradation that occurs (benefits and burdens) are equitably shared by all members of society.”

The principle of justice goes beyond the traditional environmental protection to consider the

⁴⁸Muhammad Salman Farrukh, *Environmental Constitutionalism in South Asia: Comparative Study of India, Pakistan and Bangladesh* (Vienna: Central European University).

equitable distribution of pollution, and the often disproportionate burden born by the poor and minority groups in respect to environmental harm.⁴⁹

1.21 Principal of Public Trust

The concept of public trust expresses the idea that the present generation holds the natural resources of the earth in trust for the future generations. “The principle contemplates that certain things, such as natural resources and the exercise of the public power, are held by the governments in trust for the citizenry and not be used for the public benefit.”⁵⁰

In Roman law, certain resources such as rivers, waterways, the seashore, mountains, forests were classified as *res nullis* or *res communes* and were available for the free use of everyone and rights over them could not be given to individuals.

In the common law (British/Kenyan System), the sovereign/government could own certain natural resources such as rivers and waterways but it was a restricted ownership and could not be granted to private entities because the sovereign held the resources in trust for the use and convenience of the general public.⁵¹”

1.22 Conclusion

This chapter emphasizes on political history of the development of the green rights, institutions, worldwide organizations, conventions, bi-lateral treaties, and multilateral treaties which has been performed a basic role for the growth of green laws.

Global Warming has become one of the most pressing challenges facing the world today, with profound Impacts on the environment, and societies. Extreme weather events, glaciers in Greenland were melting twice as quickly, the shrinking of an ice layer of Antarctic glaciers threatens the ecosystem, biodiversity, and human life. To address these issues, international

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹Edith Brown Weiss, “The Evolution of International Environmental Law,” *Georgetown Law Faculty Publications and Other Works* (2011) Available at: <https://scholarship.law.georgetown.edu/facpub/1669> (Last accessed August 3, 2025).

environmental law, including Ramsar Convention 1973, “the Vienna Convention 1985, and the Montreal Protocol 1987. Furthermore, UNFCCC 1992 Kyoto Protocol 1997, the Convention on Biological Diversity 1992, the Convention on the Non-Navigational Use of International Watercourses 1991 has played a basic role in creating frameworks for global cooperation. In addition, the Stockholm Declaration and Rio Declaration played a fundamental role in the development of environmental protection; in addition to that the Stockholm Declaration is known as the Magna Carta of the international environment. The United Nations also introduced the 17th Sustainable Development Goals. However; the implementation of these legal instruments has been inconsistent, with varying levels of commitment and action from different countries.

This chapter emphasizes on political history of international environmental law, institutions, international organizations, conventions, bi-lateral treaties, and multilateral treaties which has been played a primary for the growth of the green laws.”

CHAPTER 2

The Development of the Right to a Healthy Environment in Pakistan

2.1 Introduction

Pakistan is a third world country and as per the ranking the population of the state is 5th largest in the world. It is currently facing serious governmental, economic structure and civic challenges due to all state has on fifth rank facing most vulnerable impact climate crisis. Pakistan has huge population but scarce resources. It is unable to feed its population well which over the decades have resulted in massive malnutrition, unhygienic food alternatives which do not fulfill dietary requirements and increase health risks. And like any other third world state Pakistan is facing issues like land water and air pollution that has exacerbated the health conditions further.⁵² The state of Pakistan does not at any stage nor under any law explicitly recognizes the right to health the judiciary has attempted to incorporate this growing need however the cover given judiciary is not enough or significant in that regard. “In the Shehla Zia vs. Wapda case the right to health is recognized as a necessary aspect of right to life but that is a very vague definition of the right to healthy environment but recently through the 26th amendments in the constitution 1973 under the article of 9 A inculcate the right to healthy environment in our constitution. But this amendment also has been challenged before the honorable court to declare null and void before this amendment in Pakistan the healthy environment rights was linked with other duties like right to life and right to dignity. This chapter explores the development of the right to a healthy environment in Pakistan focusing on constitutional provisions, judicial activism, and environmental laws”.

⁵²IFRC, “Climate Change Impacts on health and livelihoods :Pakistan assessment,” “Red Cross Red Crescent Climate Centre (April, 2021), Available at:” https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.climatecentre.org/wp-content/uploads/RCRC_IFRC-Country-assessments-PAKISTAN-V4.pdf&ved=2ahUKEwj_wZWGmvf-AhWDuaQKHAvD50QFnoECDEQAQ&usg=AOvVaw1Hz95qKigO5g4quyB13YEr (Last accessed August 11, 2025).

2.2 The constitution of Pakistan and right to healthy environment

The Article 2 A of the constitution of Pakistan 1973 deals that the Islam is the state religion of Pakistan and in “The Holy Quran also emphases to clean environment and ALLAH almighty says in the Holy Qur’an that:

We created not the heavens and the earth and all that is between them in play (Al Dukhan, 44:38)”

He also says that;

We created not the heavens and the earth and all that is between them save with truth ... (Al-Hijr, 15:85)⁵³”

But before the 26th amendments under the Pakistan constitution no separate provision regarding right to healthy environment and responsibilities was existed. However, Article 9 which directly deals with the right to exist but the court interpreted with regard to clean surrounding. This interpretation has been play pivotal role in advancement of environmental rights in Pakistan. It is evident from fact that Pakistan is playing very limited role in the pollution as compare developed states.

2.3 Historical Evolution of Environmental Legal Frameworks of Pakistan

The Pakistan's environmental legislation has developed by the decision of the courts. The country's environmental governance structure began taking shape in the 1970s following the Stockholm Conference, with the establishment of the “Environmental Protection Ordinance in 1983, later replaced by the Pakistan Environmental Protection Act (PEPA) of 1997. This cornerstone legislation established the Pakistan Environmental Protection Agency (Pak-EPA) and introduced environmental impact assessments (EIAs)” as mandatory requirements for

⁵³ Al- Quran, 15:85.

development projects.⁵⁴

A significant development occurred after “18th Amendment in the year of 2010, in that amendment the subject of environment to provincial government. In that result each province of the country enacted own provincial environmental protection acts, in below following detailed is mentioned.

- Punjab Environmental Protection Act, 2012
- Sindh Environmental Protection Act, 2014
- Khyber Pakhtunkhwa Environmental Protection Act, 2014
- Baluchistan Environmental Protection Act, 2012”

2.3.1 Primary Environmental Protection Legislation of Pakistan

The (PEPA) is abbreviation of Pakistan Environmental Protection Act 1997, was the first primary legislation was enacted by the state, after the 18th Amendment under the Pakistan constitution under that amendment the current list was abolished and thereafter the subject of Environment was transferred to the provinces. Although it was superseded by provincial legislation following devolution, established fundamental principles for environmental management, including:

- Prohibition of pollution beyond prescribed standards
- Requirement for environmental impact assessments
- Provisions for handling hazardous substances
- Establishment of Environmental Tribunals
- Provisions for environmental quality standards

After devolution, in the history of the development the provincial environmental legislation largely upheld these core principles while adding province-specific provisions. For instance, the Punjab Environmental Protection Act of 2012 introduced much stronger provisions for public participation

⁵⁴Adeel Mukhtar Mirza, “Environmental Rights and Case of Climate Justice in Pakistan,” *Strategic Studies* 40 (2020): 45–62.

and enhanced penalties for non-compliance which warn the citizens of the Pakistan to obey those laws.

2.3.2 Additional Environmental Laws of Pakistan

Along the basic legislation there are multiply laws were enacted for the betterment of environment.

Few are discussed below,⁵⁵

- Forest Act 1927 (Amended for provincial implementation post-18th Amendment)
- Biodiversity Action Plan (2000)
- Pakistan Penal Code (Sections on environmental offenses)
- Pakistan Water Policy 2018
- Provincial water laws

2.3.3 Institutional Frameworks and Enforcement Mechanisms of Pakistan

In the federal level in Pakistan, there is a law called PEPA while in the provincial level EPs are responsible for the regulatory and enforcement duties with in their respective regions.

Pakistan's decentralized environmental governance system features:

- Federal EPA with primarily policy and coordination functions
- Provincial EPAs with primary regulatory and enforcement authority
- Environmental Protection Tribunals at provincial levels
- Environmental Magistrates addressing smaller violations
- Limited environmental courts; reliance on general judiciary

This federalized structure has created challenges for consistent enforcement across the country,

⁵⁵Ibid.

with significant variation in institutional capacity and political will among provinces⁵⁶.

2.4 Overview of the 26th Amendment

Apart from the amendment in appointment on judiciary of Pakistan is the inclusion of Environmental rights in constitution aligning Pakistan with countries like Ecuador Bolivia and South Africa who have also enshrined environmental rights in addition of “Article 9 added 9 A grants every citizen the right to a clean healthy sustainable environment this fresh clause complements the existing article which guarantee the right of life for every citizen by enshrining environmental rights in the constitution. The importance of provincial Environmental protection agencies is likely to be elevated leading to increase accountability and enforcement. This recent constitutional package marks another pivotal moment in Pakistan constitutional history of Pakistan.”⁵⁷

Recently the most controversial 26th Amendment has been incorporated to the Constitution of Pakistan in which new amendment has been introduced under Article 9A, which establishes the right to a clean, healthy, and sustainable environment as a basic need for all citizens. Article 9A states **“every person shall be entitled to a clean, healthy and sustainable environment.”**⁵⁸

Article 9A is a big and most beneficial step has been taken in context of environmental degradation. As Pakistan is most vulnerable country related to the global warming. The article is likely to support marginalized groups who frequently experience scarcity and neglect to extent environment right it is a sound legal framework and relevant case law to back climate-related petitions.

The basic purpose of 26th amendment is to promote a clean environment, economic reforms, and adjustment in judicial procedure. The significance of this amendment formally recognizes environmental rights as a fundamental to all citizens.

Insertion of article 9A is a big move for the development by the most climate vulnerable country like Pakistan. After this amendment only shall restrict the judicial activism in the development of

⁵⁶Ibid.

⁵⁷Danting Fan et al, 10 Landmark Climate Change Cases (Beijing: Client Earth, 2010).

⁵⁸ Constitution of the Islamic Republic Of Pakistan, 1973, Article 9A.

environmental laws but it doesn't hinder the prospect of Environmental litigation

2.4.1 Multiple Environmental Agreement (MEAs)

The Pakistan is a signatory to below mentioned 15 fifteen MEA /conventions, protocols as well as ratified. These MEA are divided in five categories

2.4.1.1 Convention on Biodiversity

This convention is a kind of multilateral treaty in which most of the developing countries are the parties. The subject matter of the treaty is the Biological diversity that's why it is also famous in the name of Biodiversity convention.

There are three basic aim of this convention

First goal is the conservation of Biological diversity, secondly, the sustainable use of these components it means the smart usage of these organic resources .lastly, the fairness and equitable sharing of benefits arising from organic resources

2.4.1.2 Convention on Biological diversity (CBD)

It deal to safe use of multiply biological resources such as herbs also include faun & flowera and animals.it was adopted 1992 during the Earth Summit and it came into enforced on January 1993 .and Pakistan signed CBD in 1992 at UNCED held at Rio de Janeiro.

2.4.1.3 Cartagena Protocol on Bio-safety

It deals with safe dealing storage and Tran's boundary movement of genetically modified organism, GMO. Pakistan signed this protocol in June 2001.

2.4.1.4 Convention on International Trade in Endangered Species,(CITS)

Convention on international trade in endangered species of wild Fauna and Flora refers to the cooperation between countries for protection of certain endangered species of wild animals and plants. Pakistan ratified in April 1976.

2.4.1.5 The Ramsar convention

It refers to protection on wetlands of international importance biodiversity especially as water

following habitat. It promotes the wise use of allied resources.

2.4.1.6 Convention on conservation of Migratory species

It is also known as Bonn convention. it refers the conservation and important of Migratory species of wild animals and birds to another country. The Pakistan has ratified this convention in 1981.

The objective of all the above ratified conventions is very significant, supportively, collectively.

The common aspect of all MEAs is to protection of human and environment, sustainable development, sustainable use of natural resources, the protection of environment in sustainable manner.

And the Pakistan is strengthening of capacity to meet countries obligation or responsibility under these agreement as well as to enhance coordination among implementing agencies, public education and awareness, the scientific basis for decision making. Last is the strengthening of international partnership.

2.5 From Judicial Activism to environmental constitutionalism in Pakistan

Apart from the amendment in appointment on judiciary of Pakistan is the inclusion of Environmental rights in constitution aligning Pakistan with countries like Ecuador Bolivia and South Africa who have also enshrined environmental rights in addition of Article 9 added 9 A grants every citizen the right to a clean healthy sustainable environment this new clause complements the existing article which guarantee the right of life for every citizen by enshrining environmental rights in the constitution. The importance of provincial Environmental protection agencies is likely to be elevated leading to increase accountability and enforcement. This recent constitutional package marks another pivotal moment in Pakistan constitutional history of Pakistan.

The basic purpose of 26th amendment is to promote a clean environment, economic reforms, and adjustment in judicial procedure. The significance of this amendment formally recognizes environmental rights as a fundamental to all citizens.

Insertion of article 9A is a big step in the right direction for the most climate vulnerable country

like Pakistan. After this amendment only shall restrict the judicial activism in the development of environmental laws but it doesn't hinder the prospect of Environmental litigation. Before 26th amendment in 1973 constitutions the right to healthy environment did not recognized as a separate fundamental human right because no specific provisions deal with it and before 1994 this right had not any legal status but after the Landmark Judgment of Supreme Court of Pakistan *Shehla Zia v. WAPDA* (1994 PLD 693)⁵⁹. It would not be wrong that in Pakistan the higher court appoint the commission which has been resolved the environmental issues in environmental litigation.

⁵⁹Muhammad Salman Farrukh, *Environmental Constitutionalism in South Asia: Comparative Study of India, Pakistan and Bangladesh* (Vienna: Central European University).

2.5.1 Shehla Zia

In *Shehla Zia v. WAPDA* (1994), residents challenged construction of a high-voltage grid station in Islamabad, claiming electromagnetic radiation threatened health and property rights under Article 9. They sought to stop the project pending safety proof. The Supreme Court held that the right to life includes the right to a healthy environment. Applying the precautionary principle, it required safety standards and expert review, allowing construction only if risks were minimized. Costs were not awarded; monitoring remained ongoing thereafter. The Supreme Court, accepted these arguments and held that the right to life guaranteed by Article 9 of the Constitution included the right to a healthy environment.⁶⁰

2.5.2 Asghar Laghari case

In *Asghar Laghari v. Federation of Pakistan*, the Lahore High Court addressed Pakistan's failure to implement its National Climate Change Policy (2012) and Framework for Implementation (2014–2030). Asghar Laghari, a farmer and law student, petitioned that government inaction endangered his livelihood and violated fundamental rights under Articles 9 and 14 of the Constitution, including life and dignity. Justice Syed Mansoor Ali Shah held that climate change posed an existential threat and required immediate state response. The Court declared governmental delay unconstitutional, ordered the creation of a Climate Change Commission, and mandated regular progress reports, thereby affirming citizens' environmental and health rights through judicial enforcement.⁶¹

2.5.3 D.G Khan cement Company Vs Government of Punjab

A notification was released by the government of Punjab in which held that the construction of new cement plants or expansion of existing cement plants in environmentally fragile zones called

⁶⁰ *Shehla Zia v WAPDA*, PLD 1994 SC 693.

⁶¹ *Asgher laghari v federation*, 2018 CLD 424.

Negative Areas therefore A cement Company challenged that notification and urged that it is the violation of their constitutional Rights to freedom of trade, business, and profession under Article 18 of the constitution but in that case the court rejected the petitions and upheld the government decision on ground that the more cement industries lead negative impacts on groundwater depletion and environmental damage. In addition, court emphasizes need regarding the time for the country authority to uphold the precautionary primary principle in protecting the right to life sustainability which we accepted under international environmental law.⁶²

2.5.4 *Maria Khan et al Versus Federation of Pakistan et al*

Maria Khan and others filed a petition in Lahore High Court against the Federation of Pakistan, alleging insufficient climate action violating constitutional rights to life, dignity, and a healthy environment. They argued Pakistan's failure to meet Paris Agreement commitments disproportionately harms women and future generations, demanding stronger mitigation, renewable energy adoption, and climate justice measures.⁶³

Additionally, petitioner urged that its show the failure of the current government which agreed under the Paris Agreement.

2.6 Impact of climate change on right to healthy in Pakistan:

The right to health has its own significance and has been recognized in almost 115 countries in the world as a fundamental human right within their constitution full stop at the same time different legislative frameworks like UDHR, ICESCR, ECHR etc. have also defined this right as a fundamental human right under the conventions making it obligatory for the member states do not only recognize but also implement this human right.

⁶² Fatima Mehmood, "The Right to Health and Pakistan's Predicament," *University College Lahore Human Rights Review* Vol. 4 (2017).

⁶³ *Muneer Bhatti v Federation of Pakistan*, PLD 2011 SC 407

2.6.1 Defining Right to health

The definition provided by WHO is one of the most comprehensive definitions of health and define that merely absence of any disease does not call a health only but mental, physical and social wellbeing is also a basic part of the good health. it recognizes not only the physical and mental aspect but also the societal aspect of health thus widening the scope of this right. The right to health then is further elaborated by convention CESCR which show that health as an all-inclusive right.⁶⁴

2.6.2 Inclusive nature of right to health:

This green right in its very nature an exclusive right as mentioned by the committee of economic social and cultural rights in their general comment and it encompasses not only establishment and availability of the hospitals, although it is a basic part of the green right to health but it also includes certain other sanctions under this basic need. These fundamental factors that influence health are as follows:

Ensuring access to clean drinking water and sufficient sanitation facilities

Guaranteeing the safety of food

Providing adequate nutrition and housing

Promoting organizational work atmosphere

Facilitate without discrimination education about good health

Striving for gender equality

All these rights if not available will cause hindrance and will not let the right to health to be applied in its true sense.⁶⁵

⁶⁴“Frank P. Grad “The Preamble of the Constitution of the World Health Organization”. *Bulletin of the World Health Organization*, 80 no.12 (2002) 981 - 984. World Health Organization.”
<https://apps.who.int/iris/handle/10665/268691>

⁶⁵UN Committee on Economic, Social and Cultural Rights (CESCR) “General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)” 11 August 2000, E/C.12/2000/4, available at <https://www.refworld.org/docid/4538838d0.html> [accessed 16 May 2023]

2.6.3 Non-discrimination in providing services

It is a basic rule of the human right that providing equal treatment without any discrimination to all individuals. It is the primary duty of states to prevent and eliminate discrimination based on any grounds and to ensure equal access to healthcare and the factors influencing health. “The International Convention on the Elimination of All Forms of Racial Discrimination (Article 5) emphasizes that states must prohibit and eliminate racial discrimination while guaranteeing everyone's right to public health and medical care. Non-discrimination and equality also entail that states must acknowledge and address the unique needs and challenges faced by specific groups, such as those with higher mortality rates or susceptibility to certain diseases. Fulfilling the obligation to ensure non-discrimination necessitates the application of specific health standards to particular population groups, such as women, children, or individuals with disabilities.⁶⁶”

2.6.4 The rule of Availability, accessibility and acceptability of Quality:

All healthcare facilities, products, and services is essential within a particular region. They should be physically accessible to all without any discrimination. Specifically, including children, adolescents, old age, persons with having disabilities, and other vulnerable groups. Accessibility should also consider financial aspects and must not involve any form of discrimination. Additionally, accessibility entails the right to access information about health related matter in an understandable format, including having any kind of disability. These facilities, products, and services should adhere to medical ethics, be sensitive to gender and cultural differences, and be deemed acceptable both medically and culturally. Furthermore, they need to be appropriate and of

⁶⁶Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, " Report by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health - Racism and the right to health" (2022), Available at: <https://www.refworld.org/reference/themreport/unhrc/2017/en/116935> (Last accessed August 17, 2025).

high quality. This entails the availability of trained healthcare professionals.⁶⁷

2.6.5 The Right to health in international framework:

The entitlement to enjoy the highest achievable standard of physical and mental well-being, formally known as the right to the highest attainable standard of physical and mental health, is not a recent concept. “It was initially expressed in the 1946 Constitution of the World Health Organization (WHO), where health is expressed in its preface as a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. Furthermore, Preamble further emphasizes that it is a fundamental right of every human being that have a minimum standard of health, without discrimination of race, religion, and language, economic or social condition.”⁶⁸ The 1948 Universal Declaration of Human Rights also acknowledges health as part of the right to an adequate standard of living (Article 25).⁶⁹ Subsequently, the 1966 International Covenant on Economic, Social, and Cultural Rights reaffirmed the recognition of the right to health as a human right. Since then, various international human rights treaties have acknowledged or made reference to the right to health, including elements such as the right to medical care. The right to health applies to all countries, as every state has ratified at least one international human rights treaty that recognizes this green right.”⁷⁰

2.6.6 National framework for the Right to health:

Initially, the Pakistan constitution does not deal right related to health but only as a principle of policy mentioned U/ A 38 recognizes this need.

In the history of the constitution of the Pakistan lacks this right that time read it as a part of the

⁶⁷Ibid.

⁶⁸ The Preamble of the Constitution of the World Health Organization.

⁶⁹Universal declaration of human rights, Article 25.

⁷⁰International Covenant on Economic, Social, and Cultural Rights, Article 12.

policy of the state later it was amended. “The State shall secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants”.⁷¹

2.6.7 Role of Judiciary in determination of health laws

The judiciary under the Pakistani legal system has always been very active and the judiciary has included it as a part of the article 09 of the constitution but did not explicitly recognized as a separate fundamental human rights like Bangladesh. This non recognition leads to no proper mechanism to endorse this right and harder for the citizens to achieve this right later the judiciary in the *Shehla Raza vs. Wapda* recognized this basic need for the people of the Pakistan in that way this primary right was recognized.⁷²

2.6.8 Vulnerable Groups in Pakistan:

The Pakistan is a third world country is suffering from a higher scarcity of resources to fulfill the fundamental needs of its citizens. The people in Pakistan do not have the enough resources to access the healthcare provided by the state. Under such circumstances, certain groups become more vulnerable flight it and being unable exercise healthcare. These groups mainly include:

2.6.8.1 Women

In the year of 2022 the Global Gender Gap Index Report 2022 mentioned that the Pakistan ranks 143/156 for health and survival for women. According to a UN report of 2018, 49.1% women in

⁷¹ Constitution of the Islamic Republic of Pakistan, Article 38.

⁷² *Shehla Raza v WAPDA*, PLD 1996 SC 693.

Pakistan do not have proper access to healthcare.⁷³ In most cases men is crucial in determining women's health needs. As decision makers and holders of resources, men have control over when and where women seek healthcare. Consequently, women who are ill seek healthcare less frequently compared to men. The marginalized position of women hinders their ability to identify and express their health concerns. They are typically not allowed to visit healthcare facilities or providers alone, nor can they make decisions regarding healthcare expenditures. Consequently, women often lack access to emergency healthcare services. This situation has significant implications for the health and self-esteem of women and their children. Despite being primary caregivers in the family, women have been denied essential health information and comprehensive healthcare services.⁷⁴

2.6.8.2 Children

Out of every 1,000 babies born, 42 sadly pass away as newborns, and an additional 62 die during infancy. “A significant 75% of new-born deaths are attributable, including complications from premature birth, difficulties during labor and delivery, and infections like sepsis, meningitis, and pneumonia. Each year, approximately 91,000 children in the country lose their lives to pneumonia, while diarrhoea claims the lives of 53,300 children”. The situation can be improved. Vaccinations have the potential to prevent 25% of child deaths, and by ensuring high-quality maternal and new-born health care, even more lives can be saved. Although routine immunization coverage in Pakistan has seen improvement, rising from 54% in 2012-13 to 66% in 2017-18, there is still a significant gap to be addressed. Thus for, children to survive and grow in Pakistan a good healthcare system is a necessity.

⁷³Faiza Ilyas, “48pc Pakistani Women Have No Say in Health Matters: UN,” Dawn, February 15, 2018, Available at: <https://www.dawn.com/news/1389532> (Last accessed August 10, 2025).

⁷⁴Shumaila Arshad, Javed Iqbal and Hira Waris, “Health care system in Pakistan : A review” *Research in pharmacy and health sciences*, 2.no.3 (Sep, 2016) : 211-216.

2.6.8.3 Refugees

These refugees face a plethora of problems including the access to healthcare. These people are also facing health care issues which is also against the rule of non-discrimination. Pakistan is currently hosting 3.3 million refugees which are difficult to be managed by the healthcare system of Pakistan.⁷⁵

2.6.8.4 Climate Affectees

2022 floods in Pakistan affected 33 million people and according to WHO, about 2000 health facilities had been destroyed which caused huge distress in an already crippled healthcare system. “According to the assessment conducted jointly by WHO and UN Office for the Coordination of Humanitarian Affairs (UN-OCHA) in mid-September 2022, less than 50% of all people needing health services were able to access health facilities in 2022.”⁷⁶

2.6.8.5 Disabled Persons

Pakistan, among a population of 207 million (according to the 2017 census), approximately 31 million individuals are believed to have some form of disability. However, due to the absence of a consistent nationwide definition of impairment, a comprehensive study encompassing the true impact of disability in Pakistan has not been undertaken. Individuals with disabilities face a higher likelihood, ranging from two to four times, of encountering health disparities such as denied medical care or receiving inadequate quality health services. Thus, they also are at stake as they

⁷⁵“Ashfaq Yousafzai, “Afghan refugees, medical visitors bemoan treatment in Pakistan,” IPS news (August 15, 2022), Available at: <https://reliefweb.int/report/pakistan/afghan-refugees-medical-visitors-bemoan-treatment-pakistan> (Last accessed August 18, 2025)”.

⁷⁶World Health Organization, “WHO Emergency Appeal: Health Crisis in Flood-Affected Pakistan (September 2022 - May 2023),” Available at: <https://reliefweb.int/report/pakistan/who-emergency-appeal-health-crisis-flood-affected-pakistan-september-2022-may-2023> (Last accessed August 18, 2025).

are in most need of healthcare yet they are unable to exercise it.⁷⁷

2.6.9 Solutions to reduce the drivers of climate change in Pakistan:

Majority of the waste in Pakistan consists of food waste due to that reason there is too much food waste on Pakistan hence, the most effective step that we can take individually is to reduce our food or organic waste which can be reduce which can be done via composting. And the government of Pakistan should construct bio-reactors which are not difficult to make and can convert it into gas. In education and health sector, as per the research, the more educated woman are the more the economy would improve. Similarly, agricultural production and food security will improve whereas the population would decrease because the educated women choose to have less children. Since we are an over populated country, there is huge burden on our resources

The most effective way is to improve our education until our people are not educated and they do not have the resources to understand what climate change is and how it is affecting us. We do not have scientist and researchers either.⁷⁸

2.7. A Disaster waiting to happen

The Himalaya is the third biggest covered area with the snow after Antarctica, and the Arctic Circle in the world and it is located in the North of Pakistan. Due to bad environment the snow of the Himalayas' are melting day by day which cause the rise in the global temperature due to that reason we are witness very high floods across the world and these floods are destroy the villages. It is also a that fact we cannot stop global warming alone it requires collective effort at global level.⁷⁹

⁷⁷Social protection Resource Centre report on "Health Equities for persons with Disabilities," (2020), Available at: <https://www.sprc.org.pk/health-equities-for-persons-with-disability-in-pakistan/> (Last accessed at August 23, 2025).

⁷⁸Adeel Mukhtar Mirza, "Environmental Rights and Case of Climate Justice in Pakistan," *Strategic Studies* 40 (2020): 45–62.

⁷⁹Hussain, Ammar, Tariq Khan and Shiraz Khan. "Effect of store environmental and individual factors on impulse buying behavior of Pakistani consumers," *SJESR* 4 (2021): 416-430.

2.7.1 Climatic change impact on Pakistan

Nowadays, the Climate change recognized as a major problem in entire world .and it is a one of the pressing issue of this century and it is also challenges for Pakistan, it has several impacts on our environment, economy, and human security, few challenges are discuss below,

2.7.1.1 Food Dearth

As we know Agriculture is consider backbone of the Pakistan economy. Nowadays in Pakistan the most effected sector from the climate change is an agriculture. Specially, the province of Sindh is most effected from its effects. Due to its negative we are facing shortage of the food in our country. Due to the Global warming our climate is changing and due to rise in temperature change in rainfall patterns, extreme weather events and water shortage may reduce agricultural production. The crop reduction in wheat, rice, and maize in the Aric semi-arid and rain fed areas of Pakistan.

Currently in Pakistan due to continuous spell of floods and drought we are facing the hunger and poverty. Specially, the most affected areas of the Pakistan are Sindh and Baluchistan. These environmental crisis not only hit to Pakistan but whole world are effected from it and it requires collective efforts.⁸⁰

2.7.1.2 Land sliding

Due to the climate change our northern regions of Pakistan are severely affected by frequent landslides due to heavy rainfall and cloud burst caused by climatic variation

Moreover, deforestation also exposes surface land for land erosion which further increases the magnitude of land sliding.

Land sliding damages local communities their land holding, infrastructure Russia transportation

⁸⁰Hussain, Mudassar, Abdul Rahman Butt, Faiza Uzma, Rafay Ahmed, Samina Irshad, Abdul Rehman, and Balal Yousaf, "A comprehensive review of climate change impacts, adaptation, and mitigation on environmental and natural calamities in Pakistan," *Environmental monitoring and assessment* 192 (2020): 1-20.

human loss, decline tourism and make hard evacuation processes.⁸¹

2.7.1.3 Loss of Biodiversity

The word biodiversity is a combination of two words first is bio it means life and other one is diversity which means kinds/variety. it means all living organisms present on earth is called biodiversity. There are many types of it in which one is ecological diversity means living organisms at the ecosystem.

It is fact that no human population can exit without biodiversity. Pakistan biodiversity and ecosystem are being severely affected by climate change. Due to long spell of hot weather are affecting our Thar and Cholistan desert causing deaths to livestock.

In Pakistan the wildlife is also suffering from food scarcity, outbreak of diseases and deficiency weather protected dwelling in the result of climate change.

Lack of rainfall in Thar and Cholistan has also dried many grazing lands.⁸²

2.7.1.4 Receding Glaciers

The Glaciers are the big sources of fresh water and in Pakistan is blessed because we have Himalayas Glaciers on 13,690 sq. km area which is 13% of mountain in our country.

“According to the Haeberli Hoelzle of the World Glacier Monitoring service:

This glacier melt in Himalayas will increase floods for the next two or three decades and after that severe shortage of water in rivers.⁸³”

⁸¹Shahid, Fakhara and Mubeen Adnan, "Climate change: impacts on Pakistan and proposed solutions," *Pak Soc Sci Rev* 5, no. 2 (2021): 223-235.”

⁸²Khan, Imran, Hongdou Lei, Ashfaq Ahmad Shah, Inayat Khan and Ihsan Muhammad, "Climate change impact assessment, flood management, and mitigation strategies in Pakistan for sustainable future," *Environmental Science and Pollution Research* 28 (2021): 720-731.

⁸³Ali, Sajjad, Ying Liu, Muhammad Ishaq, Tariq Shah, Abdullah, Aasir Ilyas and Izhar Ud Din, "Climate change and its impact on the yield of major food crops: Evidence from Pakistan," *Foods* 6, no. 6 (2017): 39.

2.7.1.5 Depletion of Mangroves Forests

The Mangroves forests in Pakistan coastal region extend over 132,000 hectares and share 3% of the country forest area. Mangroves forests play vital role in shielding ports from floods, land erosion, limit saltwater intrusion and provide breeding ground for fish.

Nowadays, the forests are decreasing rapidly due to imbalance Indus delta.⁸⁴

2.7.1.6 Deficiency of Drinking water

In present timing we are facing shortage of water which create water scarcity in our country. Under the climate change, and this year in Pakistan water shortage is reaching an alarming level.

The international Monetary fund,(IMF) in its most recent report mentioned that the due to current situation Pakistan is on 3rd rank facing huge water shortage⁸⁵

The clean drinking water is becoming rare in Pakistan and majority of population has little access of pure drinking water. Urban area are facing severe shortage of clean drinking water due to the dry bed areas of rivers and decline on rainfall which had rapidly low down underground water table.

According to the WASA -L, in Lahore drinking underground water level has reached 700 feet below which is another alerting situation for us all of this demands effective legislation on current issues.

2.8 Solutions to reduce the drivers of climate change in Pakistan

Majority of the waste in Pakistan consists of food waste due to that reason there is too much food waste on Pakistan hence, on individual level we can initiate this step that we can reduce our food

⁸⁴Ahmed, Toqeer, Miklas Scholz, Furat Al-Faraj and Wajeeha Niaz, "Water-related impacts of climate change on agriculture and subsequently on public health: A review for generalists with particular reference to Pakistan," *International journal of environmental research and public health* 13, no. 11 (2016): 1051.

⁸⁵ Muhammad, Nasir Ahmad and Martijn J. Booij, "The impact of climate change on the water resources of Hindukush–Karakorum–Himalaya region under different glacier coverage scenarios," *Journal of hydrology* 355, no. 1-4 (2008): 148-163.

or organic waste which can be reduce which can be done via composting. And the government of Pakistan should construct bio-reactors which are not difficult to make and can convert it into gas. In education and health sector, as per the research, the more educated woman are the more the economy would improve. Similarly, agricultural production and food security will improve whereas the population would decrease because the educated women choose to have less children. Since we are an over populated country, there is huge burden on our resources. As we know we are living in the era of technology nowadays, it is a most effective tool by using modern technology we can educate our people until and unless our nation aware about this crisis. We do not have scientist and researchers either so its need to allocate fund for the betterment of the environmental issues.⁸⁶

2.9 Conclusion

In conclusion, in this chapter we discussed the development of the right to healthy environment in Pakistan. Additionally, we analyzed those basic legislation on state and provincial deal with this issues along famous case studies. After study old and recent enactment we saw the current legislation on green rights also possess penalties for those wrongdoers which make it more efficient legislation. As we are also witnessed that the first constitution of the Pakistan lacks provision related green rights only that time clean environment was a part of the state policy and the court of that time interpreted this right as a part of the article 9 of the constitution 1973 hence, this right was developed in Pakistan by the decision of the court..⁸⁷ In the history of Pakistan the first court decision on this issues was shahla zia versus the state deal with it. It is very clear that climate change occurred due to the industries and our country is an agriculture state we are depending on the crops and we are not contributing in carbon emission. Instead, we are facing floods and

⁸⁶Ahmad, Shahzaib, Jaudat Zahra, Mohsan Ali, Sibgha Ali, Sana Iqbal, Sidra Kamal, Maliha Tahir, and Abdullahi Tunde Aborode. "Impact of water insecurity amidst endemic and pandemic in Pakistan: Two tales unsolved." *Annals of Medicine and Surgery* 81 (2022).

⁸⁷Mehboob, Muhammad Shafqat, and Yeonjoo Kim. "Effect of climate and socioeconomic changes on future surface water availability from mountainous water sources in Pakistan's Upper Indus Basin." *Science of the Total Environment* 769 (2021).

droughts in our country due to climate change.

In the past the climate change was consider a remote issue but currently we are seeing its repercussions in shape of floods, shortage of clean water, droughts and loss of biodiversity and Pakistan is more effected from its effects. Few years before it was thought that it is deal only the melting the glaciers and increasing temperature but we seeing how its effect on our daily life. The environment pollution also cause water pollution, air pollution in the entire world.

It is not an individual issue because the environment has no boundaries so it can be protect by the collective efforts so it is a mandatory for developing and under developing countries to protect the world from the global warming by enacting practical legislation and its execution.

Pakistan is a Islamic state our religion is a Islam it also emphasis on clean environment so being a responsible Muslim and citizens of Pakistan it is our duty to obey our state laws and act morally and keep clean our surroundings.

CHAPTER 3:

The Development Of The Right To A Healthy Environment In Bangladesh

3.1 Introduction

Bangladesh's environmental legal framework emerged from similar beginnings but followed a different trajectory. Following independence in 1971, Bangladesh adopted its first environmental protection framework with the Environment Pollution Control Ordinance of 1977. This was superseded by the “Bangladesh Environment Conservation Act (ECA) of 1995 and the Environment Conservation Rules (ECR) of 1997, which remain the primary environmental legislation in the country.

Unlike Pakistan, Bangladesh has maintained a more centralized approach to environmental governance. The Department of Environment (DoE), established under the Ministry of Environment, Forest and Climate Change, serves as the primary regulatory body responsible for implementing environmental laws throughout the country.⁸⁸

3.2 Right to Healthy Environment in Bangladesh:

Before 1971 the Bangladesh was a part of Pakistan and it was known as the East Pakistan after separation from Pakistan it enacted own laws. Like Pakistan Initially there was no direct provision regarding to healthy environmental rights existed Bangladesh constitution. But After 15th amendment in the year of 2011, the right to healthy environment inculcates into constitution of Bangladesh as fundamental right.

As per “article 18A of Constitution of People’s Republic of Bangladesh,” the environment of the country must be protected and preserved by the State onward.

⁸⁸Momtaz Salim, "Environmental impact assessment in Bangladesh: a critical review," *Environmental Impact Assessment Review* 22, no. 2 (2002): 163-179.

The “Article 18A of the Constitution of the People's Republic of Bangladesh (1972) provides that *the State shall endeavor to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.*”⁸⁹

3.2.1 Bangladesh Environment Conservation Act (ECA)

The Bangladesh Environment Conservation Act (ECA) of 1995, amended in 2000, 2002, and 2010, provides the primary legislative framework for environmental protection in Bangladesh. Key provisions include:

- Establishment of ecologically critical areas
- Mandatory environmental clearance certificates
- Prohibition of polluting activities
- Power to set environmental quality standards
- Provisions for compensation for environmental damage

The Environmental Conservation Rules (ECR) of 1997 provides detailed regulations for implementing the ECA, including standards for air and water quality, industrial effluents, and emissions.⁹⁰

3.2.2 The Environmental Impact System in Bangladesh

Bangladesh's EIA system is administered centrally by the “Department of Environment (DoE) under the ECR 1997.”⁹¹ The system categorizes projects into Green, Orange-A, Orange-B, and Red categories based on potential environmental impacts”, with increasing levels of assessment

⁸⁹Shammi, Mashura, Pronab Kumar Halder, Shafi M. Tareq, Md Mostafizur Rahman, and Zobaidul Kabir. "From environmental impact assessment to strategic environmental assessment in Bangladesh: Evolution, perspective, governance and challenges." *Environmental Impact Assessment Review* 97 (2022).

⁹⁰Haque and Imran Hossain. "Environmental Governance in Bangladesh: A Comprehensive Analysis of Environmental Laws and Policies." *Bangladesh: Environment, Society and Politics* (2024): 978-984.

⁹¹Momtaz Salim, "Environmental impact assessment in Bangladesh: a critical review," *Environmental Impact Assessment Review* 22, no. 2 (2002): 163-179.

required. Bangladesh's EIA system exhibits:

- More centralized and standardized application compared to Pakistan
- Significant issues with transparency and corruption
- Limited stakeholder engagement
- Challenges in post-approval monitoring
- Growing integration of climate change considerations

3.2.3 The legislation on climate change in Bangladesh

The Bangladesh has approached climate change predominantly through policy instruments rather than specific legislation. “Key climate governance instruments include:

- Bangladesh Climate Change Strategy and Action Plan (BCCSAP) of 2009
- Nationally Determined Contributions under the Paris Agreement
- Climate Change Trust Act, 2010, establishing the Bangladesh Climate Change Trust Fund
- Draft Climate Change Act (under consideration)”

Bangladesh's approach emphasizes adaptation given its extreme vulnerability to climate impacts, particularly increasing frequency of cyclones and floods.

3.2.4 The Additional Environmental Laws of Bangladesh

In addition to the primary environmental legislation in Bangladesh there are few additional laws are enacted which are mentioned below,⁹²

- Environment Court Act (2000, amended 2010)

⁹²Arif uz zaman, Mohammad Abdul Hannan, Md Redwanur Rahman and Md Atiqur Rahman, "Laws regulating water pollution in Bangladesh," *Journal of Sociology* 3, no. 1 (2019): 15-24.

- Bangladesh Wildlife (Preservation) Order 1973 (Revised as Wildlife Conservation and Security Act 2012)
- Water Act 2013 (Focus on integrated water resource management)
- Brick Manufacturing and Kiln Control Act 2013

3.3 Judicial activities in Bangladesh regarding Environmental Rights

The judiciary in Bangladesh is also play an important role in the development of right to healthy environment in Bangladesh. The judiciary in Bangladesh does not take suo moto action on environmental laws but after receiving application from aggrieved person it takes action in the interest of public at large .the most important case on environmental issue decided by the supreme court of Bangladesh in the form of public interest litigation the first time in the history of Bangladesh “*Dr.Mohiuddin Farooque v Bangladesh & others*,”⁹³ was the first case in this nature was filed initial this case was rejected on the ground that the petitioner had no standing therefore, the petitioner had preferred an appeal to the Appellate Decision of the supreme court of Bangladesh and that bench allowed that PIL below mentioned few case on environmental law of Bangladesh has been discussed.”

3.3.1 *Farooque v. Government of Bangladesh* (WP 891 of 1994)

This case challenged by the “Bangladesh Environmental Lawyers Association (BELA)” This case addressed the widespread pollution caused by industries and identified that the government and its policy are the major polluters and under this case BELA challenged the validity of the Food Action Plan (FAP-200) in the district of Tangail additionally discussed that that this project put the lives of over million people at risk. Despite a 1986 notification listing 903 polluting industries, no

⁹³Mahmud ul Hasan and Md Deedarul Islam Bhuiyan, "Public Interest Environmental Litigation and Enforcement of Right to Environment in Bangladesh: A Comparative Study From The Global Intersecting Approach," *Public Interest* 3, No. 4 (2019).

effective action had been taken to curb their pollution.⁹⁴ The petitioner, Dr. Mohiuddin Farooque, sought judicial intervention to enforce environmental laws and hold the government accountable for its failure to regulate industrial pollution. The case highlighted the judiciary's role in ensuring the implementation of environmental regulations and holding both the government and industries accountable for environmental degradation. It also emphasized the need for continuous monitoring and enforcement of environmental laws to prevent further ecological damage. It was also claimed that failure of public officials to perform their duties endangered the lives of citizens which is violating fundamental rights. Supreme Court ruled that constitutional right to life includes right to a safe and healthy environment.⁹⁵

3.3.2 Election Nuisance to be Mitigated (XLVIDLR 1994, p. 235)

This case marked the first environmental litigation in Bangladesh, filed in 1994 by the Bangladesh Environmental Lawyers Association (BELA)⁹⁶. It addressed the environmental pollution caused by election campaigns, particularly the disregard for civic laws by candidates contesting for Dhaka City's mayoral and commissioner positions. The High Court's intervention, through a writ petition, emphasized the need to mitigate environmental pollution, setting a precedent for judicial recognition of environmental issues. The case underscored the judiciary's role in ensuring compliance with environmental laws, even in non-traditional contexts like election campaigns. This judgment was groundbreaking and in Bangladesh discussed deal to mitigate environmental pollution, reflecting the judiciary's growing awareness of environmental concerns.⁹⁷

⁹⁴Muhammad Salman Farrukh, *Environmental Constitutionalism in South Asia: Comparative Study of India, Pakistan and Bangladesh* (Vienna: Central European University).

⁹⁵Hoque, "Taking justice seriously: judicial public interest and constitutional activism in Bangladesh." *Contemporary South Asia* 15, no. 4 (2006): 399-422.

⁹⁶Ahmed, Naim. *Litigating in the names of the people: Stresses and strains of the development of public interest litigation in Bangladesh*. University of London, School of Oriental and African Studies (United Kingdom), 1998.

⁹⁷ Ibid.

3.3.3 High Court's Strict Direction on Radioactive Milk (XLVIII DLR 1996, p. 438)

This case, filed by “Dr. Mohiuddin Farooque of BELA, addressed the issue of radioactively contaminated milk powder. The petitioner alleged that the government failed to ensure public health safety by allowing the import and distribution of contaminated milk. The High Court's judgment highlighted the government's responsibility to protect public health and the environment from hazardous substances. This case reinforced the judiciary's role in holding the government accountable for environmental and public health issues, particularly in cases involving imported goods that pose significant health risks.” It also demonstrated the court's willingness to intervene in matters of public interest, even when they involve complex scientific and technical issues.⁹⁸

3.3.4 *Farooque v. Government of Bangladesh* (Vehicle Pollution Case: Horn Specifications, 2002)

This case addressed sound pollution caused by motor vehicles, particularly the use of shrill and loud horns in Dhaka. The petitioner, Syeda Rizwan Hasan of BELA, sought enforcement of existing laws regulating vehicle horns to reduce noise pollution. The court's decision mandated the government to take effective measures to curb noise pollution, emphasizing the importance of adhering to environmental regulations. This case highlighted the judiciary's role in addressing urban environmental issues, particularly those affecting public health and quality of life. It also demonstrated the court's willingness to enforce specific environmental regulations, such as those governing vehicle emissions and noise levels.⁹⁹

⁹⁸ Ibid.

⁹⁹ Ibid.

3.4 Conclusion

The development of green rights in Pakistan and Bangladesh reflects a growing recognition of the importance of environmental protection in both countries. While their journeys have been shaped by unique historical, cultural, and legal contexts, there are notable parallels in how they have approached this fundamental right.

In Pakistan, this right was initially linked to broader constitutional rights, such as the right to life and dignity, through judicial activism. Landmark cases like “*Shehla Zia v. WAPDA* and *Asghar Laghari v. Federation* played a pivotal role in interpreting these rights to include environmental protection. The recent introduction of Article 9A through the 26th Amendment, which explicitly guarantees the right to a clean, healthy, and sustainable environment, marks a significant step forward. However, its implementation and acceptance remain contested, highlighting the challenges of translating constitutional promises into tangible outcomes.”

Bangladesh, on the other hand, has also made strides in recognizing environmental rights. The inclusion of “Article 18A in its constitution after the 15th Amendment explicitly obligates the state to protect and improve the environment. Judicial activism, particularly through public interest litigation, has further strengthened environmental governance. Cases like *Dr. Mohiuddin Farooque v. Government of Bangladesh* and others have demonstrated the judiciary's willingness to hold the government accountable for environmental degradation and public health risks.¹⁰⁰”

Both countries face significant environmental challenges, from industrial pollution and climate change to urban noise and deforestation. While their legal frameworks and judicial interventions have laid a foundation for environmental protection, the real test lies in effective implementation

¹⁰⁰*Dr. Mohiuddin Farooque v. Government of Bangladesh* and others, 1997 17 BLD (AD) 1.

and enforcement. Public awareness, government accountability, and continuous judicial oversight will be crucial in ensuring that the right becomes a lived reality for all citizens.¹⁰¹

In essence, the progress in Pakistan and Bangladesh underscores the importance of including environmental rights in constitutional frameworks and leveraging judicial activism to address pressing ecological issues. However, the journey is far from complete. Sustained efforts are required to fill the gap between legal recognition & its practical action, ensuring that future generations inherit a cleaner, healthier, and more sustainable world.¹⁰²

¹⁰¹Hasibul Alam and Zelina Sultana, "Right to Healthy Environment and Environmental Rule of Law in Bangladesh," *S. Asian J. Env't L. & Pol'y* 1 (2022): 33.

¹⁰²Atapattu, Sumudu, *The emergence of sustainable development jurisprudence in South Asia In Sustainable Development Principles in the Decisions of International Courts and Tribunals*(Routledge, 2017) 651.

CHAPTER 4

A Comparative Analysis Of Environment And Implementation In Pakistan And Bangladesh

4.1 Introduction

In south Asia environmental crisis has been increasing day by day due to the urbanization, industrialization, and how climate change effected by it. The Pakistan and Bangladesh are two neighboring countries with shared same historical and geographical bounds. Both states enacted environmental legislations but both states have different approach. In Pakistan after the 18 amendment in its constitution the subject of Environment transferred to the province due to this decentralized governance structure there's are inconsistencies in implementation weak enforcement mechanism, and jurisdictional conflicts between federal and provincial authority. as compare in Bangladesh adopted the centralized approach and enabled them to enact uniform national standard and strong climate adoption strategies¹⁰³. Despite their differing governance models both countries facing common environmental challenges which includes water pollution, air pollution, deforestation and vulnerability to climate change. Both states are the signatories to basic international environmental agreements, such as the paris agreement, Rio Declaration and more¹⁰⁴.

This comparative analysis explores the strength and weakness of their environmental legal framework, enforcement challenges and recent development offering insights into how these countries can learn from each other and strengthen their environmental governance systems to achieve sustainable development

¹⁰³Rudner Martin, "Economic Development in Bangladesh and Pakistan: A Comparative Analysis of Policies and Performance," *Journal of South Asian and Middle Eastern Studies* 17, no. 3 (1994).

¹⁰⁴ Muhammad Yasir, Anam Farooq and Sidra Saghir, "Comparative Analysis of Pakistan and Bangladesh's Economic Performance," *Journal of Innovations in Education and Social Sciences* 2, no. October (2024): 99-116.

4.1.1 Compliance and Enforcement Challenges

Both countries face significant challenges in enforcement of environmental law, those are below mentioned,¹⁰⁵

4.1.2 Pakistan

- Limited technical and human resource capacity within provincial EPAs
- Political interference in enforcement actions
- Inadequate monitoring and inspection regimes
- Limited public awareness and participation
- Jurisdictional conflicts between federal & provincial authorities
- Bureaucratic hurdles
- Provincial variations in implementation

4.1.3 Bangladesh

- Insufficient resources allocated to environmental agencies
- Corruption and regulatory capture
- Limited technical capacity for monitoring complex industries
- Weak penalty structures for violations
- Challenges in enforcing regulations in informal sectors
- Overlapping institutional mandates.
- High population density creating additional enforcement challenges.¹⁰⁶
- Vulnerability to climate change affecting implementation priorities.

4.2 International compliance

¹⁰⁵Zafarullah Habib and Halima Haque, "Policies, instrumentalities, compliance and control: combatting money laundering in Bangladesh," *Journal of Money Laundering Control* 26, no. 1 (2021): 189-204.

¹⁰⁶Naeem Malik and Richard Welford, "A comparative study of corporate social responsibility in Bangladesh and Pakistan," *Corporate social responsibility and environmental management* 16, no. 2 (2009): 108-122.

4.2.1 Pakistan and its International compliance

- Signatory to Paris Agreement, Convention on Biological Diversity, Kyoto Protocol
- National implementation varies across provinces
- Challenges in meeting international commitments due to decentralized governance

4.2.2 Bangladesh and its International Compliance

- Active participation in UN climate frameworks
- Strong focus on international cooperation for climate adaptation
- More consistent national approach to international commitments.

4.3 Environmental Quality Indicators

Both countries continue to struggle with significant environmental quality issues:

4.3.1 Pakistan and Environmental Quality Indicators

- Persistent urban air quality challenges, particularly in major cities like Lahore and Karachi
- Widespread water pollution from industrial effluents and municipal wastewater
- Deforestation and land degradation
- Trans boundary pollution issues with neighboring countries

4.3.2 Bangladesh and Environmental Quality Indicators

- Severe air pollution in Dhaka and other urban centers
- Extensive water pollution from textile and other industries
- Arsenic contamination of groundwater
- Wetland degradation

4.4 The comparative Analysis of the Pakistan and Bangladesh Environmental laws in chart form.

Criteria	Pakistan	Bangladesh
Governance Approach	Decentralized (post-18th Amendment)	Centralized
Primary Legislation	“Pakistan Environmental Protection Act (PEPA) 1997; Provincial Environmental Protection Acts	Bangladesh Environmental Conservation Act (ECA) 1995; Environmental Conservation Rules (ECR) 1997
Regulatory Authority	Federal EPA (policy and coordination); Provincial EPAs (implementation)	Department of Environment (DoE) under Ministry of Environment, Forest and Climate Change
Environmental Impact Assessment	Provincial systems with varying requirements	Centralized system with four categories (Green, Orange-A, Orange-B, Red)
Climate Change Framework	Climate Change Act 2017; National Climate Change Policy 2012 (revised 2021)	Bangladesh Climate Change Strategy and Action Plan (BCCSAP) 2009; Climate Change Trust Act 2010
Judicial Mechanisms	Limited environmental courts; reliance on general judiciary; Environmental Protection Tribunals at provincial levels	Dedicated Environment Courts under Environment Court Act 2010
Water Management	Provincial water laws; Pakistan Water Policy 2018	Bangladesh Water Act 2013 (integrated water resource management)
Industrial Regulation	Provincial EIAs, National Environmental Quality Standards (NEQS)	Strict pollution control via DoE; national clearance certificate system
International Compliance	Signatory to Paris Agreement, CBD, Kyoto Protocol; implementation varies by province	Active participation in UN climate frameworks; national approach to international commitments
Enforcement Approach	Provincial enforcement with varying capacity and standards	Centralized enforcement with national standards
Key Strengths	Provincial customization; potential for innovation; growing climate	Nationwide standards; dedicated environmental courts; strong climate”

	Focus	adaptation focus
Key Weaknesses	Inconsistent implementation; fragmentation; limited coordination	Bureaucratic delays; limited local adaptation; enforcement challenges
Recent Developments	Integration with SDGs; growing judicial activism; focus on clean energy	Urban environmental management; plastic waste regulations; renewable energy expansion
Major Challenges	Weak enforcement; bureaucratic hurdles; provincial variations	High population density; vulnerability to climate change; corruption

4.5 Strengths and Weaknesses

There are few weakness and strength of these environmental legislation in both countries which is discussed below:¹⁰⁷

4.5.1 Pakistan and its Environmental Strengths and Weaknesses

4.5.1.1 Strengths

- Provincial customization of environmental laws to address local challenges
- Growing integration of climate change considerations
- Emerging jurisprudence through public interest litigation
- Potential for innovation through provincial competition

4.5.1.2 Weaknesses

- Inconsistent implementation across provinces
- Fragmentation of environmental governance
- Limited coordination on trans boundary issues

¹⁰⁷Akhtar, "Comparative analysis of women protection and participation laws in Pakistan, India and Bangladesh: Lessons for Pakistan," *KJPP* 1, no. 1 (2022): 43.

- Political interference in enforcement
- Weak enforcement mechanisms.¹⁰⁸

4.5.2 Bangladesh

4.5.2.1 Strengths

- Centralized system enabling nationwide standards
- Strong climate change adaptation focus
- International cooperation and funding for environmental initiatives
- Growing environmental jurisprudence
- Dedicated Environment Courts
- Strict pollution control via DoE

4.5.2.2 Weaknesses

- Limited local adaptation of regulations
- Bureaucratic delays in centralized system
- Enforcement challenges outside major urban centers
- Insufficient integration of environmental concerns in sectorial policies.¹⁰⁹

4.6 Recent Developments and Emerging Trends

4.6.1 Pakistan

Recent developments in Pakistan's environmental legal landscape include:

- Integration of sustainable development goals into environmental planning
- Growing emphasis on clean energy through the Alternative Energy Development Board Act

¹⁰⁸ Ibid.

¹⁰⁹ Muhammad Shaheen, "Compliance With core international Labor standards in National Jurisdiction: evidence from bangladesh," *Labor Law Journal* 68, no. 1 (2017): 78.

- Emerging focus on circular economy principles
- Increased use of technology for monitoring and enforcement
- Growing judicial activism in environmental cases

4.6.2 Bangladesh

Bangladesh has seen similar trends in recent years:

- Increasing integration of climate adaptation into development planning
- Growth of “renewable energy through the Sustainable and Renewable Energy Development Authority (SREDA).¹¹⁰”
- Emerging plastic waste management regulations
- Emphasis on urban environmental management
- Growing role of public interest litigation.

4.7 Recommendations

Both countries sharing common environmental challenges on the bases of that struggles here a series of targeted recommendations have been suggested for the Pakistan by adopting these recommendations Pakistan can not only improve their environmental governance bit also contribute to sustainable development and climate resilience in the region.

4.7.1 For Pakistan

- Establish stronger coordination mechanisms between provincial EPAs
- Develop national minimum standards for environmental quality
- Strengthen technical capacity at provincial levels
- Enhance transparency and public participation in environmental decision-making

¹¹⁰ Deng and Manjurul Alam, "Legal Framework and Practical Challenges of Bangladesh Environmental Legislation: A Critical Examination of Climate Change Adaptation, Environmental Judiciary, and Enforcement," *Environmental Claims Journal* (2025): 1-23.

- Integrate environmental considerations into sectorial policies
- Establish dedicated environmental courts similar to Bangladesh's model
- Improve financial resources for environmental agencies
- Develop more localized implementation mechanisms while maintaining national standards
- Strengthening independence of environmental regulatory bodies
- Enhance technical capacity for monitoring and enforcement
- Increase penalties for environmental violations
- Formalize and strengthen climate change legislation
- Improve transparency in environmental decision-making

4.8 For Both Countries

- Invest in environmental awareness and education
- “Strengthening the role of civil society in environmental governance”
- Develop economic incentives for environmental compliance
- Enhance regional cooperation on trans boundary environmental issues through SAARC environmental forums
- Incorporate emerging environmental challenges into legal frameworks
- Strengthening community-based conservation initiatives
- Implement robust climate adaptation and mitigation strategies

4.9 The critical analysis green rights in Pakistan and Bangladesh constitutions

According to the “Article 18 A of the constitution of Bangladesh:

The State shall endeavor to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.¹¹¹

According to the Article of 9 constitution of Pakistan 1973,

Every person shall have a right to life

The bear language of the “article of 18 A of the Bangladesh constitution and Article 9 of the constitution of Pakistan” are different, the Bangladesh constitution not only cover the concept of Environment but also deal with the protection of specific natural resources like, Biodiversity, water land, forests, and wildlife. Which indicate the border environmental concern and commitment to sustainable development this article not only deal with environmental protection but also protecting natural resources for future generations also.

As compared in Pakistan constitution article 9 deal with right to life only, this article not dealing with the safeguard of right to healthy environmental and natural resources

Conclusion:

While Pakistan and Bangladesh have developed comprehensive environmental legal frameworks, their effectiveness depends on enforcement, institutional capacity, and political commitment. Bangladesh's centralized approach has enabled more consistent nationwide standards, whereas Pakistan's devolved governance has led to potential for localized solutions but with policy

¹¹¹ The constitution of Bangladesh, Article 18 A.

¹¹² Constitution of Pakistan 1973, Article 9 A.

fragmentation. Both countries face significant challenges in implementation and enforcement due to resource constraints, competing development priorities, and governance issues.

The different approaches offer valuable lessons: Pakistan could benefit from Bangladesh's more centralized judicial mechanisms and climate adaptation strategies, while Bangladesh could learn from Pakistan's provincial innovations and growing focus on specific environmental legislation like the Climate Change Act.

Despite their different approaches, both countries could benefit from mutual learning and regional cooperation on environmental governance, particularly given their shared vulnerabilities to climate change and similar developmental challenges. Strengthening enforcement mechanisms, enhancing judicial interventions, investing in institutional capacity, and fostering regional cooperation can significantly improve environmental governance in both countries.

Recommendation & Conclusion

Recommendation

The state of Pakistan needs to undertake special legislative action that include amend the constitution of the Pakistan and inculcate right to healthy environment as a separate fundamental right as well as enacting a special health care act that recognizes all the dimensions of health care including physical , mental and social health of an individual. The legislation needs to provide for equal access to healthcare for all its citizens without any form of discrimination.

Like adopting the national health policy, Pakistan needs to create and implement also a comprehensive policy that minimizes discrimination and covers all aspects of health, for such cases Pakistan has created mental health acts and a vision for health however, the targets established are not being covered properly which has created a new form of Health emergency in Pakistan.

The ministry of health has to create awareness among the citizens and at the same time take steps for administrative healthcare. It shall ensure that an adequate number of healthcare providers are always available and are trained in such a way as to ensure maximum output. At the same time the concept of administrative accountability is to be strictly ensured and applied. Judiciary in any country is the custodian of the rights of its citizens. It is therefore incumbent on the judiciary to play its due role and ensure that the right to health in its all dimensions is strictly interpreted and applied in Pakistan.

Conclusion:

The comparative study of Pakistan and Bangladesh demonstrates that the right to a healthy environment is not merely a legal construct but a fundamental human right essential for dignity, survival, and justice. Bangladesh's constitutional recognition through the Fifteenth Amendment of 2011 has provided a clear framework for accountability, empowering citizens and courts to safeguard environmental justice. In contrast, Pakistan's reliance on judicial interpretation, despite landmark cases

such as *Shehla Zia v. WAPDA* and *Asghar Laghari v. Federation*, has left environmental protection vulnerable to uncertainty and inconsistency. The recent 26th Amendment introducing Article 9A is a promising step, yet its effectiveness will depend on robust implementation, provincial coordination, and genuine political will.

The human cost of environmental neglect—seen in polluted water, unsafe air, and degraded lands—underscores that environmental rights are inseparable from the right to life, health, and equality. Without constitutional clarity and enforceable laws, communities remain exposed to exploitation and harm. Pakistan must learn from Bangladesh’s proactive approach and enshrine environmental rights explicitly in its constitution, thereby aligning with international standards and empowering citizens to demand accountability.

Ultimately, the struggle for a healthy environment is about values as much as laws. It is about ensuring that development does not sacrifice human well-being, and that future generations inherit a legacy of care, responsibility, and sustainability. As climate change intensifies, Pakistan has the opportunity—and the obligation—to take bold steps toward environmental justice. Recognizing the right to a healthy environment as a constitutional guarantee will not only protect its people and natural resources but also affirm the nation’s commitment to human dignity and global responsibility. The right to health is an important component of the international legal framework. It does not exist in isolation but is an entity that has gained recognition as a group of rights. It is inclusive in nature and carries some freedoms and Entitlements that come along with the right. It encourages the principle of non discrimination and availability and accessibility for all. Pakistan as a state has included it impliedly in its Constitution , but the right has been accepted by virtue of different international documents and thus is being enforced by the courts. Pakistan has made no explicit legislation that deals with the right but time and again has made attempts to initiate a policy but unfortunately could not realize it. The result is further marginalization of the vulnerable groups including women, children, refugees , climate affects and disabled persons. Pakistan as a signatory

of ICESCR has core minimum standards that it must ensure and move towards the progressive realization of the right in the country, specially because it is a major Sustainable Development goal that Pakistan must achieve by 2030. The state has the obligation to respect, protect, and fulfil this right which is also manifested in the new health vision 2016-2025, however the political , economic and social constraints pose a major impediment towards realization of this goal. Under such circumstances it becomes obligatory not only for the state but also the international community to participate and assist the state in making the right to health accessible for the citizens of Pakistan

EPILOGUE

This research was conducted bearing titled **Environmental Constitutionalism: A Comparative Study of Pakistan and Bangladesh,**

highlights a comparative and critical reality: a healthy environment has become a fundamental necessity for human life indeed. The escalating impacts of climate change and global warming continue to degrade ecosystems severely and pose grave risks to human health either. The study emphasizes that Pakistan's Parliament should follow Bangladesh's lead and enshrine the right to a healthy environment as a fundamental right in the Constitution. Notably, the Twenty-Sixth Constitutional Amendment has achieved this, inserting Article 9A into Pakistan's Constitution (1973) and formally recognizing the right to a healthy environment as a distinct fundamental right. This landmark development validates our research and confirms its recommendations were aligned with Pakistan's evolving constitutional framework.

Bibliography

Books

1. Aditi Kapoor. IFRC Country Assessment of Pakistan. (IFRC, April 1, 2021), 15.
2. Danting Fan et al, 10 Landmark Climate Change Cases (Beijing: Client Earth, 2010).
3. Environmental Protection Act, 1997.
4. Louis J Kotzé, *Environmental Constitutionalism in the Anthropocene* (Oxford: Hart Publishing, 2016).
5. Mian Ali Faizan. Environmental Laws in Pakistan, Compendium of Environmental Laws in Pakistan: Amendments and Case Laws Up-to-Date.
6. Muhammad Salman Farrukh, *Environmental Constitutionalism in South Asia: Comparative Study of India, Pakistan and Bangladesh* (Vienna: Central European University).
7. Pierre-Marie Dupuy and Jorge E Viñuales, *International Environmental Law* (UK: Cambridge, 2018).

Journals/Articles

1. Adeel Mukhtar Mirza, "Environmental Rights and Case of Climate Justice in Pakistan," *Strategic Studies* 40 (2020): 45–62.
2. Ahmad, Shahzaib, Jaudat Zahra, Mohsan Ali, Sibgha Ali, Sana Iqbal, Sidra Kamal, Maliha Tahir, and Abdullahi Tunde Aborode. "Impact of water insecurity amidst endemic and pandemic in Pakistan: Two tales unsolved." *Annals of Medicine and Surgery* 81 (2022).
3. Ahmed, Naim. *Litigating in the names of the people: Stresses and strains of the development of public interest litigation in Bangladesh*. University of London, School of Oriental and African Studies (United Kingdom), 1998.
4. Ahmed, Toqeer, Miklas Scholz, Furat Al-Faraj and Wajeeha Niaz. "Water-related impacts of climate change on agriculture and subsequently on public health: A review for generalists with particular reference to Pakistan," *International journal of environmental research and public health* 13, no. 11 (2016): 1051.
5. Akhtar, "Comparative analysis of women protection and participation laws in Pakistan, India and Bangladesh: Lessons for Pakistan," *KJPP* 1, no. 1 (2022): 43.
6. Ali, Sajjad, Ying Liu, Muhammad Ishaq, Tariq Shah, Abdullah, Aasir Ilyas and Izhar Ud Din, "Climate change and its impact on the yield of major food crops: Evidence from Pakistan," *Foods* 6, no. 6 (2017): 39.
7. Arif uz zaman, Mohammad Abdul Hannan, Md Redwanur Rahman and Md Atiqur Rahman, "Laws regulating water pollution in Bangladesh," *Journal of Sociology* 3, no. 1 (2019): 15-24.
8. Ashfaq Yousafzai, "Afghan refugees, medical visitors bemoan treatment in Pakistan," IPS news (August 15, 2022), Available at: <https://reliefweb.int/report/pakistan/afghan-refugees-medical-visitors-bemoan-treatment-pakistan> (Last accessed August 18, 2025).
9. Atapattu, Sumudu, *The emergence of sustainable development jurisprudence in South Asia In Sustainable Development Principles in the Decisions of International Courts and Tribunals* (Routledge, 2017) 651.
10. Babar Tasnem Sheikh and Nabeela Ali, "Universal health Coverage in Pakistan: is the health system geared up to take the challenge," *Globalization and health* 19 (2023).

11. Commission on Social Determinants of health (WHO) report on *Achieving Health Equity: from root causes to fair outcomes* (Geneva: WHO, 2017), Available at: https://iris.who.int/bitstream/handle/10665/69670/interim_statement_eng.pdf;jsessionid=52AD745714B044FF25D274599937E083?sequence=1 (Last accessed May 15, 2025).
12. Crescent Climate Centre (April, 2021), Available at: https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.climatecentre.org/wp-content/uploads/RCRC_IFRC-Country-assessments-PAKISTAN-V4.pdf&ved=2ahUKEwj_wZWGmvf-AhWDuaQKHAvD50QFnoECDEQAQ&usg=AOvVaw1Hz95qKigO5g4quyB13YEr (Last accessed August 11,
13. Deng and Manjurul Alam, "Legal Framework and Practical Challenges of Bangladesh Environmental Legislation: A Critical Examination of Climate Change Adaptation, Environmental Judiciary, and Enforcement," *Environmental Claims Journal* (2025): 1-23.
14. Edith Brown Weiss, "The Evolution of International Environmental Law," *Georgetown Law Faculty Publications and Other Works* (2011) Available at: <https://scholarship.law.georgetown.edu/facpub/1669> (Last accessed August 3, 2025).
15. Faiza Ilyas, "48pc Pakistani Women Have No Say in Health Matters: UN," *Dawn*, February 15, 2018, Available at: <https://www.dawn.com/news/1389532> (Last accessed August 10, 2025).
16. Fatima Mehmood, "The Right to Health and Pakistan's Predicament," *University College Lahore Human Rights Review* Vol. 4 (2017).
17. GBD 2019 Pakistan Collaborators, "The State of Health in Pakistan and Its Provinces and Territories, 1990-2019: A Systematic Analysis for the Global Burden of Disease Study 2019," *The Lancet. Global Health* 11, no. 2 (2023): 229–243.
18. GFDRR report on "A Partnership for Mainstreaming Disaster Mitigation in Poverty Reduction Strategies," World Bank (2006), Available on: <https://www.gfdr.org/sites/default/files/publication/GFDRR-A%20Partnership%20for%20Mainstreaming%20Disaster%20Mitigation%20in%20Poverty%20Reduction%20Strategies.pdf> (Last accessed August 7, 2025).
19. Haque and Imran Hossain. "Environmental Governance in Bangladesh: A Comprehensive Analysis of Environmental Laws and Policies." *Bangladesh: Environment, Society and Politics* (2024): 978-984.
20. Hasibul Alam and Zelina Sultana, "Right to Healthy Environment and Environmental Rule of Law in Bangladesh," *S. Asian J. Env't L. & Pol'y* 1 (2022): 33.
21. Hoque, "Taking justice seriously: judicial public interest and constitutional activism in Bangladesh." *Contemporary South Asia* 15, no. 4 (2006): 399-422.
22. Hussain, Ammar, Tariq Khan and Shiraz Khan. "Effect of store environmental and individual factors on impulse buying behavior of Pakistani consumers," *SJESR* 4 (2021): 416-430.
23. Hussain, Mudassar, Abdul Rahman Butt, Faiza Uzma, Rafay Ahmed, Samina Irshad, Abdul Rehman, and Balal Yousaf, "A comprehensive review of climate change impacts, adaptation, and mitigation on environmental and natural calamities in Pakistan," *Environmental monitoring and assessment* 192 (2020): 1-20.
24. IFRC, "Climate Change Impacts on health and livelihoods :Pakistan assessment," Red Cross Red
25. James R May and Erin Daly, "Global Judicial Handbook on Environmental Constitutionalism," Widener University Delaware Law School (2018), Available at: <https://www.ajne.org/sites/default/files/resource/publications/7227/global-judicial-handbook-on-environmental-constitutionalism-2nd-ed.pdf> (Last accessed August 3, 2025).
26. Khan, Imran, Hongdou Lei, Ashfaq Ahmad Shah, Inayat Khan and Ihsan Muhammad, "Climate change impact assessment, flood management, and mitigation strategies in Pakistan for sustainable future," *Environmental Science and Pollution Research* 28 (2021): 720-731.
27. Mahmud ul Hasan and Md Deedarul Islam Bhuiyan, "Public Interest Environmental Litigation and Enforcement of Right to Environment in Bangladesh: A Comparative Study From The Global Intersecting Approach," *Public Interest* 3, No. 4 (2019).
28. Mehboob, Muhammad Shafqat, and Yeonjoo Kim. "Effect of climate and socioeconomic changes on future surface water availability from mountainous water sources in Pakistan's Upper Indus Basin." *Science of the Total Environment* 769 (2021).

29. ¹Momtaz Salim, "Environmental impact assessment in Bangladesh: a critical review," *Environmental Impact Assessment Review* 22, no. 2 (2002): 163-179.
30. Momtaz, Salim, "Environmental impact assessment in Bangladesh: a critical review," *Environmental Impact Assessment Review* 22, no. 2 (2002): 163-179.
31. Muhammad Yasir, Anam Farooq and Sidra Saghir, "Comparative Analysis of Pakistan and Bangladesh's Economic Performance," *Journal of Innovations in Education and Social Sciences* 2, no. October (2024): 99-116.
32. Muhammad, Nasir Ahmad and Martijn J. Booij, "The impact of climate change on the water resources of Hindukush–Karakorum–Himalaya region under different glacier coverage scenarios," *Journal of hydrology* 355, no. 1-4 (2008): 148-163.
33. Muhammod Shaheen, "Compliance With core international Labor standards in National Jurisdiction: evidence from bangladesh," *Labor Law Journal* 68, no. 1 (2017): 78.
34. ¹Naeem Malik and Richard Welford, "A comparative study of corporate social responsibility in Bangladesh and Pakistan," *Corporate social responsibility and environmental management* 16, no. 2 (2009): 108-122.
35. Naushin Mahmood and Durr-e- Nayab, "An Analysis of Reproductive Health Issues in Pakistan," *The Pakistan Development Review* 39, no. 4II (2000): 675–693.
36. Nnyeneime Usenata, "Environmental Kuznets Curve (EKC): A Review of Theoretical and Empirical Literature," *International Review of Environmental and Resource Economics* 6(3) (2018):195-224.
37. Professor Dan Bodansky, "International Environmental Law," *Indiana Journal of Global Legal Studies* 3 (1995): 105-119.
38. Rabia Tassaduq, Saima Hamid, and Abdul Ghaffar, "Health Laws of Pakistan: Compilation and Commentary," *Eastern Mediterranean Health Journal* 27, no. 6 (2021): 538–41.
39. Roger R. Martella, Jr. and James W. Coleman, "International Environmental Law A Guide for Judges, for the Federal Judicial Center (2015), Available at: <https://www.fjc.gov/sites/default/files/2015/INTL%20ENVTL%20LAW%20GUIDE%20FINAL.pdf> (Last accessed June 7, 2025).
40. ¹Rudner Martin, "Economic Development in Bangladesh and Pakistan: A Comparative Analysis of Policies and Performance," *Journal of South Asian and Middle Eastern Studies* 17, no. 3 (1994).
41. Sagoff, Mark. "Economic theory and environmental law." *Mich. L. Rev.* 79 (1980): 1393-1419.
42. Sania Nishtar, Health and the 18th Amendment: Constructive tensions (2019), Available at: https://www.heartfile.org/wp-content/uploads/2015/01/Health_18Amendment_draft.pdf (Last accessed May 3, 2025).
43. Shahid, Fakhara and Mubeen Adnan, "Climate change: impacts on Pakistan and proposed solutions," *Pak Soc Sci Rev* 5, no. 2 (2021): 223-235.
44. Shahid, Fakhara and Mubeen Adnan. "Climate change: impacts on Pakistan and proposed solutions." *Pak Soc Sci Rev* 5, no. 2 (2021): 223-235.
45. Shumaila Arshad , Javed Iqbal and Hira Waris , " Health care system in Pakistan : A review" *Research in pharmacy and health sciences*, 2.no.3 (Sep, 2016) : 211-216.
46. Social protection Resource Centre report on "Health Equities for persons with Disabilities ," (2020) , Available at: <https://www.sprc.org.pk/health-equities-for-persons-with-disability-in-pakistan/> (Last accessed at August 23, 2025).
47. Tassaduq, Hamid and Ghaffar, "Health Laws of Pakistan," *Eastern Mediterranean Health Journal* 27 (2021): 538-541.
48. World Health Organization , "WHO Emergency Appeal: Health Crisis in Flood-Affected Pakistan (September 2022 - May 2023)," Available at: <https://reliefweb.int/report/pakistan/who-emergency-appeal-health-crisis-flood-affected-pakistan-september-2022-may-2023> (Last accessed August 18, 2025).
49. ¹Zafarullah Habib and Halima Haque, "Policies, instrumentalities, compliance and control: combatting money laundering in Bangladesh," *Journal of Money Laundering Control* 26, no. 1 (2021): 189-204.

List of Cases

- ShehlaZiavs.Wapda, PLD 1996 SC693
- Naimat ullah khan vs.Federation of Pakistan,2020 SCMR 622 Supreme Court
- HumanRightscaseno17599of2018(Regarding alarming high population growth rate in Pakistan), 2019 SCMR 247 Supreme Court
- SyedMansoorAliShahvs.GovernmentofPunjab,throughHousing,PhysicalEnvironmental Planning Department, 2017 PLD 403 Lahore High court Lahore
- Getz Pharma(pvt) Ltd vs.FederationofPakistan, through secretary, Ministry of National Regulation and Services, 2017 PLD 157 Karachi High Court Sindh
- Colony Sugar Mills vs.Government of Pakistan, 2014PLD320LahorehighcourtLahore Asghar Laghari vs Federation of Pakistan, 2018 CLD Lahore High Court Lahore