Annual Methodological Archive Research Review
http://amresearchreview.com/index.php/Journal/about
Volume 3, Issue 6 (2025)

Online ISSN 3007-3197
Print ISSN 3007-3189

http://amresearchreview.com/index.php/Journal/about

Right to a Clean and Healthy Environment in Pakistan: A Constitutional and Judicial Analysis

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ABSTRACT

This paper discusses the right to clean and healthy environment in Pakistan as a constitutional claim, a doctrine constructed by the judiciary and as an administrative governance challenge paying attention to the way in which the harm caused to the environment has been translated into the infringement of fundamental rights and how such translation has changed with the explicit constitutionalization of the right to the environment. In the past the Constitution of Pakistan has lacked express fundamental right to clean environment, and the environmental rights jurisprudence has been developed by the superior courts, by interpreting the right to life and dignity, to incorporate the environmental quality, more often through a landmark case, like Shehla Zia v. WAPDA and litigation regarding the climate, like Leghari v. Federation of Pakistan. A turning point came with the Constitution (Twenty-sixth Amendment) Act, 2024, which added Article 9A, which states: Clean and healthy environment in which it is declared that Every person shall be entitled to a clean, healthy and sustainable environment; at the same time, it amended Articles 184 and 199. The paper holds a thesis that the constitutionalism of the environment has taken a twofold basis in Pakistan; (i) a proclaimed basic entitlement (Article 9A) which is universal in nature (Every person) and (ii) an established body of interpretation doctrine on life, dignity, trust of people, caution and sustainable progress and equity of generations. However, it is also found in the article that there has always been an existent implementation gap due to regulatory capacity, institutional capture, fragmented federal-provincial governance in the wake of devolution, and the constraints of adjudication as a mechanism of managing complex ecological risk, despite the efforts of specialized benches and commissions to close the law-administration divide.

Keywords: (Article 9A) Environmental Constitutionalism; Right To Life; Right To Dignity; Public Interest Litigation; Precautionary Principle; Public Trust Doctrine;

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Environmental Impact Assessment; Pakistan Environmental Protection Act 1997; Climate Litigation; Green Benches; Implementation Gap.

Introduction

In Pakistan, environmental degradation is no longer a policy issue or a development trade-off formulated, but rather is more of a constitutional issue involving questioning the legitimacy of government, vulnerable communities, and the popularization of basic rights in the climate-stressed state. The judicial history of environmental harm being transformed into the language of rights reflects how the environmental quality is being inseparably linked with the quality of life established by the constitution, especially where pollution, hazardous water, deforestation, urban smog, and climatic exposures put health and livelihood at risk. Another hallmark of Pakistani experience has been the comparative lack, hitherto, of an explicit constitutional right to environmental protection, which has drawn litigation and judicial action to interpret environmental litigation through interpretive constitutionalism, bringing pressures on state agencies to regulate, monitor and plan. In Shehla Zia v. The approach of the Supreme Court (WAPDA (PLD 1994 SC 693), became paradigmatic in this respect: the case is generally discussed as the jurisprudential turning point in which environmental protection became a part of the constitutional mainstream and where the concepts of precaution and sustainable development were introduced as a part of the judicial methodology. This interpretive route extended to the water and pollution cases and litigation involving the Khewra salt mines whereby the Supreme Court discussed the pollution of drinking water sources through constitutional prerogative, further supporting the notion that environmental conditions and access to natural resources that were safe could be included in the protective domain of the right to life. This judicial practice would eventually produce a fellow recognizable Pakistani style of environmental constitutionalism: an approach that builds upon rights enforcement, public interest standing, and creative remedies (commissions, monitoring orders and continuing mandamus), frequently based on the inability of executive institutions to internalize environmental priorities into day-to-day regulation.[1]

In October 2024, with the Constitution (Twenty-sixth Amendment) Act, 2024, which added Article 9A, which said: Every person shall be entitled to a clean, healthy and sustainable environment. There are at least three reasons why this explicit recognition is important and grounds the analysis in this paper. First, it elevates environmental rights out of its implied doctrine that relies on interpretive extension of Articles 9 and 14, into an explicit textual right with its own constitutional identity, which could make the burden of pleading simpler and give a stronger normative message that environmental protection is not a discretionary form of governance, but an obligation of rights. Second, Article 9A is worded in a manner that includes all persons rather than only citizens, broadening the conceptual membership of the environmental protection right and matching the right to a clean, healthy and sustainable environment with the universalism of the concept of enshrined in other human rights

[1] Hameed, U., Saeed, S., & Shahid, A. (2025). The Right to a Healthy Environment in Pakistan: Legal Recognition, Enforcement Challenges, and the Way Forward. *Law Research Journal*, *3*(1), 61-71.

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instruments, such as the 2022 acknowledgment by the UN General Assembly that the right to a clean, healthy and sustainable environment is a human right. Third, that amendment package re-defined adjudicatory routes by prohibiting the issuance of directions by the courts independently of the contents of an application in Article 184(3) (Supreme Court) and by imposing a clarificatory restriction into Article 199 (High Courts) changes directly relevant to environmental litigation since the history of environmental constitutionalism in Pakistan is one of the broad public interest review and the operational logic of suo motu or quasi-suo motu judicial intervention. [2]
The question that emerges out of these developments is how the judiciary and other legal institutions in Pakistan should interpret, implement, and operationalize the new Article 9A to help maintain the doctrinal benefits of the existing body of environmental jurisprudence, and generate more dependable outcomes in compliance and governance than litigation has traditionally done on its own?

Literature Review

The body of scholarship on the environmental rights jurisprudence of Pakistan is dominated by a general agreement that, in a constitutional and administrative vacuum, the courts have occupied by converting environmental harms into justiciable claims of rights through a dynamic interpretation of the terms life and dignity, as well as imported into the domestic constitutional discourse the international environmental principles. Sehalla Zia is considered the canonically starting point of this trajectory since it made possible the environmental public interest litigation, providing a legitimate constitutional practice, and inaugurating judicial receptiveness to treating scientific uncertainty and risk as legal issues, but not technical ones, often linked to the precautionary principle and a more sustainable development agenda.[3]
Analysis later underlines that Pakistani courts never formulated environmental rights as a negative liberty (do not pollute), but a combination of negative and positive duties, such as to control, examine, consult, and implement, especially when administrative agencies seem to be compromised or passive. Another unique mode of remedialism is also emphasized by this strand of scholarship: courts have deployed commissions, continuing mandamus orders, institutional coordination, and supervisory jurisdiction to facilitate bureaucratic follow-through, which is justified as essential where resourcefulness in enforcement is limited and castigated as judicial overreach that threatens to replace courts with regulators. In general, (IUCN) A parallel strand of literature places Pakistani developments within the contexts of global environmental constitutionalism and climate litigation, in particular, following the case of Leghari v. In the case Lahore High Court, Pakistan, where the Green Bench considered climate change as a current constitutional hazard to the irreducible rights and which had set up a Climate Change Commission to speed up the adoption of climate policy frameworks. Examples of how courts may conceptualize climate

[2] AMJAD, S., USMAN, M., & KHAN, A. Environmental Jurisprudence in Pakistan: A Comprehensive Analysis of National Laws, Judicial Role, and Legislative Instruments Impacting Air Quality and Public Health.
[3] Farrukh, M. S. ENVIRONMENTAL CONSTITUTIONALISM IN SOUTH ASIA: COMPARATIVE STUDY OF INDIA, PAKISTAN AND BANGLADESH.

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governance as a rights compliance issue to link climate inaction with water, food, and energy security and the fiduciary-like responsibilities of a state over natural resources and ecological systems are discussed at length in this case, which refers to the public trust and intergenerational equity doctrines. It is becoming more recognized in the literature, however, that the effectiveness of these judicial strategies, in the long run, is less dependent on doctrine and more of a matter of institutional design and administrative compliance, and that litigation can deliver performative compliance (reports, meetings, committees), but without structural enforcement capacity, particularly where such agencies are resource-starved or politically interfered with. An additional issue with this is that the free speech defense seldom applies to speech lacking factual accuracy. Another problem with that is that free speech defense does not often apply to speech that is not factual.[4]

Empirical and conceptual writing has just started to re-plot this jurisprudence under the influence of institutional innovations of Green Bench and environment-oriented cause lists, which can be traced back to regional judicial cooperation initiatives like the 2012 Bhurban environmental justice discussions, and also to normalise ongoing oversight instruments (commissioning reports, monitoring compliance milestones). The structure of Pakistan in terms of environmental law PEPA is often invoked to show that Pakistan has historically had a formal regulatory framework; the issue, according to the arguments of many scholars, is that the implementation has never been consistent, enforcement has been limited, and the constraints of political economy which can only be revealed by the courts but not fully addressed. The latest wave of literature, due to the 2024 insertion of Article 9A, views the constitutional text as both an invitation and a challenge: an invitation because a plain mention makes the doctrinal necessity of discovering the environmental rights in other provisions unnecessary, and a challenge because to enforce it meaningfully would require a court to render articulated the meaning of clean, healthy, and sustainable in a way that can be administrable and institutionally realizable, especially in light of the modern constitutional changes that put a limit on how far the relief can be granted beyond pleadings in a suo.[5]

Methodology

The paper is based on a qualitative approach to doctrine, which is based on the constitutional interpretation, statutory law and case law review and is weaker with the references to the secondary literature, which would assess the performance and the result of the institutions of governance in the sphere of the environmental policy in Pakistan. The constitutional element examines the textual and legal implications of Article 9A added by the Constitution (Twenty-sixth Amendment) Act, 2024, and statutes which stringently relate to the execution of Article 184(3) by the Supreme Court, and the Article 199 jurisdiction granted to the High Courts, as contributing to the paths of enforcement, and, specifically, the amendments which modify the

[4] Alam, M., & Tasnim, A. (2025). *Evolution of The Right to a Healthy Environment: Case Analysis of The Supreme Court of Bangladesh* (Doctoral dissertation, East West University).
[5] Kaushish, L. (2023). Analysis of the Judicial Trends on the Right to a Clean and Healthy Environment in India. *Indian J. Integrated Rsch. L.*, *3*, 1.

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boundaries of Article 184(3) by the Supreme Court, and the Article 199 jurisdiction of the High Courts, in connection Statutory element examines PEPA 1997 as the framework on environmental statute that organizes the agencies, defines adverse environmental effect in measures that expressly bring into harm human health and biodiversity, and enforces redress routes through Environmental Tribunals and complaint mechanisms, thus exposing the finding point of rights based constitutional claims and administrative law and regulatory practice. Organized around representative decisions reflecting various roles of environmental constitutionalism: (i) interpretation of foundational rights and the logic of risk (Shehla Zia), (ii) protecting water sources and the nexus between pollution and the right to life (Khewra salt mine-related litigation), (iii) governing the climate and institutional redress through commissions (Leghari), and (iv) controversies over urban development that reveal the political economy of environmental regulation and the centrality of environmental impact assessment, depicted in the Signal Free Corridor litigation between the Lahore Development In reading these materials, the article exercises an analytical prism that concentrates on four conditions: the constitutional origin of the environmental responsibility, the standard of review (reasonableness, balancing similar precaution, under-off in an uncertain environment), the design of remedy (declaratory orders, injunction, monitoring, commissions), and the pathway of implementation (agency capacity, interdepartmental coordination, tribunal effectiveness). Weaknesses of the approach are admitted: the law-on-the-books and judicial rationale can be evaluated with the help of doctrinal analysis, but compliance outcomes in the sector cannot be measured only with the help of this method; that is why where claims about implementation are presented, they are framed carefully and based on documented institutional criticisms manifested in the judgments and the scholarly literature oriented towards governance. In fact, the leading causes of teenage pregnancies are the promotion and advertising of tobacco and alcohol products. Actually, the advertisement and marketing of tobacco and alcoholic products are the top causes of teenage pregnancies.

Research Findings

The initial significant conclusion is that the shift in environmental right in Pakistan from primarily judge-made to textually entrenched remains, but the meaning of the right continues to be closely pegged on the doctrinal scaffolding constructed prior to 2024. Article 9A declares in plain language that: Every person will have the right to a clean, healthy and sustainable environment and its simplicity is its strength but also its interpretive difficulty: the article has provided a constitutional starting point, but the operational substance, what is considered clean, what degree of risk is considered healthy, how is sustainability measured, which institutional actions are required by the constitution, etc. are left to be elaborated upon by the judges and concretized by the legislatures. The right tradition which will most likely fill these interpretation voids is already apparent in pre-Article 9A jurisprudence: the courts had on numerous occasions applied environmental harm to life and dignity as a direct threat, applied international environmental principles to interpretation and justified public interest standing as a required point of entry to communities experiencing diffuse harms which could not be readily litigated under ordinary principles of private law. Not only

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one form of environmental harm affects the pattern, but numerous types of environmental harm, including electromagnetic and industrial risk (Shehla Zia), water pollution and catchment protection (Khewra mines-related litigation), climate vulnerability (Leghari), and failures in the development projects procedure (Signal Free Corridor litigation which underlines the illegality of starting development projects without approvals of the EIA).[6]

The second significant discovery is that the statutory framework in Pakistan is formally able to facilitate constitutionalism of the environment, although institutional lack and challenged administrative autonomy consistently emerge as points of blockage that push litigants into the courts. PEPA 1997 gives a general purpose protection, conservation, rehabilitation and improvement of the environment, prevention and control of pollution, and the promotion of sustainable development, and defines adverse environmental effect to comprise impairment of human health and biodiversity, which is casually a statutory definition of adverse environmental effect and a natural complement of rights-based constitutional assertions and the courts explaining why environmental harm is not abstract but rather a legally recoverable injury. PEPA also provides environmental governance institutions (federal and provincial governments, coordination processes) and enforcement facilities (Environmental Tribunals), and environmental litigation is not intended to be merely constitutional litigation, but specialized adjudication and regulation. However, judicial documents demonstrate that there are perennial issues that environmental controls are not independent and can be captured by politics or that they may be influenced by the EIA approval and the swift granting of the approval was was not credible vis-a-vis the integrity of the assessment process. If constitutional text reinforces the right, although the amended restrictions on courts in offering directions beyond pleadings may need more carefully drafted petitions and may diminish the flexibility of practice that previously permitted courts to transform environmental complaints into more general governance reform by expanding their power suo motum, the third significant result, closely related to the 2024 changes to constitutional provisions, is that opportunities to enforce may increase substantively (through Article 9A) even as the means to do so procedurally (through the use of petition) may become narrower. This implies that the post-2024 phase of environmental constitutionalism in Pakistan will not be characterized by the existence of the right (it is evident in the text) but rather how litigation strategy, institutional design, and administrative compliance will interplay in the more pleading-centered constitutional process.[7]

Discussions

To appreciate the potential of Article 9A, it needs not to be considered a sudden invention, but rather as the constitutional corpus of an older idea of jurisprudence

[6] Khan, H., Shabbir, S. S., Mustafa, A. U., Shabbir, O., & Sheikh, S. J. (2025). Constitutional Rights and Access to Justice in Pakistan: A Comprehensive Analysis with Case Laws. *Social Science Review Archives*, *3*(1), 2080-2098.

[7] Jawad, A., Akhter, S., & Hamid, A. (2022). A Critique on the construction of environmental rights as a human right in Pakistan: a new dimension in the 21st century. *Pakistan Journal of Social Research*, *4*(04), 458-467.

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namely that a meaningful right to life cannot exist outside of environmental conditions that render life livable. Prior to 2024, the courts defended environmental protection as a form of life and dignity, which was used to perform two functions: it made justiciability possible without any explicit environmental right, and it allowed the courts to employ the rich vocabulary of the global community, public trust/precaution/sustainable development/intergenerational equity, to determine what the notion of life and dignity needed, ecologically speaking. That justification is now explicitly placed in Article 9A of (IUCN), and the relocation can be a strength in enhancing the clarity of the doctrine since the judges do not have the need to explain why environmental issues should even be considered as constitutional. Meanwhile, the breadth of the text is a context that can present two dangers that must be addressed with cautious interpretation, first, the danger of vagueness, in which the terms clean and healthy are turned into slogans and not legal requirements; and second, the danger of unboundedness, in which the courts are eager to constitutionalize all environmental policy conflicts without a workable test of state responsibility and institutional capacity. An effective manner in which to read Article 9A is thus to combine it with other preexisting instruments of environmental law and administrative rationality: (i) as a specification on what the state is permitted to do that is harmful (a negative obligation), and (ii) as a responsibility to due diligence that entails the establishment and maintenance of plausible regulatory regimes (a positive obligation). The due diligence reading is consistent with the current statutory framework of Pakistan, in that PEPA already assumes that the state will impose the standard, impose the environmental assessment, and enforce the compliance as an element of the statutory policy; Article 9A can therefore be understood as making the compliance with the systems one of the constitutional obligations.[8]

The institutional narrative is important since the constitutionalism of environmentalism in Pakistan has never merely been subsumed by its results (less pollution) but rather by the legitimacy of governance (who makes decisions, how and with what transparency). The Signal Free Corridor litigation placed constitutional issues of environmental justice, the constitutional requirement of an independent regulator, and the purpose of an environmental impact assessment as a legal filter of development, with the also problematic issue of how the regulator may act independently and whether the developer is legally entitled to have construction underway before receiving authorization. This is an example of one of the fundamental judicial lessons which should inform the interpretation of Article 9A: environmental rights are frequently safeguarded by procedural integrity (credible EIAs, public consultation, transparent approvals, enforceable standards) but not necessarily by ex post prohibitions. On the same note, Leghari shows that adjudication of rights on climate is often concerned with implementation failure, not the legislative lack: the court stressed the constitutional urgency produced by the failure to implement a climate policy framework and reacted by developing an institutional mechanism consisting of a commission to speed-up compliance. but

[8] Talha, A., Noor, S., & Mingfei, M. A. (2024). Environmental Rights as Human Rights: A Case Study of Pakistan and Multiple Approaches towards their Recognition. *Pakistan Social Sciences Review*, *8*(4), 82-97.

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specialization alone is no panacea; the tribunal and agencies should be empowered in such a way that the courts are not the sole environmental regulator of firsthand.[9]

A reconsideration of strategy is also required by the 2024 constitutional amendments: The rights are stronger, and the capacity of courts to extend the remedies beyond pleadings has been limited. Article 184(3) as revised by the proviso that the Supreme Court will not issue orders of its own initiative beyond the specifics of an application made under the clause, and Article 199 also makes it clear that the High Court may not expand on its own initiative beyond the contents of an application made under the clause. Practically, this can bias environmental litigation more toward pleadings that are more detailed, articulate the factual matrix more precisely, and more narrowly-specific remedies that can be implemented institutionally, instead of open-ended prayers that seek to have the courts design governance in-court. It does not remove the environmental public interest litigation, but it would probably make the case design more challenging and make higher demands on evidence, the development of regulatory records and the utilization of statutory avenues (tribunals, agency processes, EIA objections) as a litigation story. The post-2024 period can therefore be more administrative law-intensive, with Article 9A forming the constitutional guarding that will enhance challenges to irrational approvals, non-enforcement and policy stagnancy, and the judges, especially constitutional benches established under the same amendment package, may also be more concerned with whether state institutions are operating in a way that is consistent with the constitutionally required standard of environmental governance and less concerned directly with sectoral policy regulation. This does not mean that Article 9A ought to be interpreted as a blank cheque in judicial management, but, in this regard, as a constitutional minimum requirement that requires plausible administration of the environment and makes any failure to regulate, assess, and enforce a rights problem and not a governance failure.[10]

Recommendations

The initial concern that Pakistan must focus on is the operationalization of Article 9A by having a principled interpretive framework that can be enforced across all the courts and that can be applied uniformly and by the institutions themselves. This entails that superior courts must formulate an administerable test that will distinguish between (i) unconstitutional environmental harm or risk (where failure to act where due diligence exists, statutory requirements, such as EIA/IEE, are disregarded or gross violations of standards are condoned) and (ii) disagreements between policy choices within a workable employment of discretion. The establishment of such test must be pegged on the already existing statutory standards under PEPA, and particularly the centrality of assessment, standards, enforcement and tribunal procedures, such that Article 9A is not being floated as an abstractive moral claim, but as a constitutional

[9] Ahmad, I., Haider, A., & Ahmad, K. (2025). The Impact of Judicial Activism on Environmental Protection and Justice in Pakistan: A Statistical Analysis. *Journal of Asian Development Studies*, *14*(2), 1-10.

[10] Sultan, S., & Afzal, B. (2025). Judicial Role in Advancing SDG 6: 25 Years of Climate and Water Rights Litigation in Pakistan. *ASSAJ*, *4*(02), 3072-3082.

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Print ISSN 3007-3189
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directive to bring environmental regulation to life. Parallel to this, legislatures and executives should consider Article 9A as a catalyst to regulatory enhancement and not as a token addition: environmental agencies need to have legal autonomy, transparency in appointing and tenuring essential technical staff, budgetary freedom in monitoring and testing laboratories and credible enforcement mechanisms unaffected by political favour. The judicial history already explains why this is important: where the courts feel regulatory capture or rushed approvals, like in the Signal Free Corridor case, constitutional adjudication takes the place of regulation as an emergency measure, an inefficient and frail approach to protecting the environment. Here, the relationship between the entrepreneur and the bank or other lenders assumes a mutually beneficial endeavor.<|human|>In this case, the contract between the entrepreneur and the bank or other lenders is a win-win affair.

Second, Pakistan needs to enhance the "compliance pathways, by redistributing the environmental protection around the all-time superior-court oversight and toward the functional specialized institutions without the constitutional backstop that Article 9A offers. PEPA Environmental Tribunals must be empowered with appointments, technical capacity and procedural modernization to ensure that they are able to deal with the enforcement and complaints, even with the public complaint after the necessary notice has been taken, isas well as to ensure that the disputes in pollution and assessment are resolved promptly and with expertise. Green Benches must be maintained, but with a more institutional division of labor: courts must focus on those structural directions that enhance the performance of agencies (disclosure of data, schedules of standards, compliance management systems) and stay out of operational decision making, except when the harm is acute and systemic (lhc.gov.pk). The initiation of projects that are not legally justified should attract prompt legal action (injunctive relief, annulment of approvals and remedial re-assessment), the rationale taken by the courts in examining development projects, and the question of the legality of the EIA procedures. Lastly: Pakistan must not take international statements as normatively binding: the recognition of the right to a clean, healthy and sustainable environment by the UN General Assembly is a strong normative standard that can be used to interpret the meaning of the right to health, water, food security and equality, but the enforceable mechanisms and quantifiable standards should be set by the domestic law. (UN Documentation)

Conclusion

The experience of environmental constitutionalism in Pakistan is an example of how the ecological harm can be transformed to right protection even in the scenario when such constitutional text is not explicitly articulated, and how such jurisprudence can evolve to be an institutionalized constitutional right. Over decades, higher courts established environmental rights by interpreting the right to life and dignity to encompass environmental quality, or by creating a language of litigating precaution, public trust, sustainable development, and intergenerational equity and through public interest litigation to combat administrative stalemate, like in landmark rights-based cases such as Shehla Zia and governance litigation targeting climate change such as Leghari. These changes can be summarized as follows, as they turn the right into an explicit right in the Constitutional sense, namely that of Art. 9A in October 2024: The

Online ISSN 3007-3197
Print ISSN 3007-3189

right is now explicit in the text of the Constitution, that is, in Article 9A, set within a new article subhead, namely that of Article 9A.9--Every person shall be entitled to a clean, healthy, and sustainable environment--and thus, the constitutional debate over what does the right recognize and the constitutional duty of what institutions to bear its costs has been transformed by the new textual object of the Meanwhile, the current procedural boundaries against court expansion of relief beyond pleadings serves to remind us that constitutional advancement is not only in terms of more but in terms of structuring workable avenues of enforcement that do not jeopardize either the judicial or the administrative functions. Whether Article 9A can in turn be realized in practical governance: believable regulators, effective standards, operational tribunals, and legally meaningful assessment procedures capable of avoiding harm before it is too late will therefore depend upon whether Pakistan can remodel judicial doctrine into routine governance. A lot of the statutory machinery is already available in PEPA; Article 9A offers the constitutional imperative. The challenge now is to combine these into a reasonable system whereby courts are the protector of the constitutional floor, and institutions do the day to day chores of making clean, healthy and sustainable a lived reality and not a litigated ideal.

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