

# An Analysis of Environmental Crisis under Environmental Constitutionalism in Pakistan

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## Abstract

Planet Earth has entered new epoch Anthropocene where human activity has caused and continue to spur significant change in fundamental biosphere. Environmentalists have warned that earth systems and processes are approaching critical threshold causing abrupt and surprising changes. Rising temperature, rising sea level, melting glacier, clearing forest are main environmental issues thus experts adhere fallout planet earth in near future. Managing global consumption and conservation of natural resources emerged to mitigate consequences of unpredictable and sudden change. Pollution increasing day by day causing health issues, increasing number of heat islands, and scorching heat after felling trees are issues due to weak environmental governance despite having Ministry of Environment established in 1975 later changed into Ministry of Climate Change and also establishment of Pakistan Environmental Protection Council for policy making. Environmental protection connected with constitutional phenomena such as rights, democracy, separation of powers, and rule of law but the Constitution of Pakistan 1973 does not provide right to clean environment as Supreme Court of Pakistan interpreted right to life includes clean environment in *Shehla Zia v Wapda*. Right to clean environment is fundamental right of all citizens of Pakistan. Environmental Constitutionalism is understood as having formally descriptive and substantively constitutional characteristics that usually go hand in hand to create an effective system of environmental governance as former has to do with the state architecture establishment, its

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functions in environmental governance, later concerns higher order of apex norms such as rights provide guarantees related to environment. Therefore, this research is intended to explore proper legal means to provide a concept for incorporation of environmental laws and rights in the Constitution of Pakistan 1973 which can ultimately lead to an effective environmental governance by the government to control environmental issues that are been faced by citizens and ultimately having impact on the entire planet.

**Keywords:** Environmental Constitutionalism; Pakistan; Environment; Constitutionalism; Constitution of Pakistan 1973

## **1. Introduction**

The existence of life on planet earth vitally depends on our Environment. Home to approximately 8.7 million species of plants and animals, the earth is a source of all food, air, water and all other needs of these living organisms. The Environment comprises of all the living and non-living things that occur naturally and also covers all the interactions between living organisms, climate, weather and natural resources. Deriving its descent from the French preposition *environ* which translates to around, environment may be simply described as that which surrounds and with that definition it is evident that it has an essential role in the functioning of our daily lives.

Human beings receive countless benefits from the environment, also known as biosphere. The Environment is a host and conductor of several natural processes that are necessary for the existence of all life on this planet. A fraction of these processes includes filtration of the air and absorption of harmful gases by plants and trees, purification of water, reduction in the risk of floods and maintenance of natural balance. For thousands of years, the environment has been source of growth and mere existence of human species along with other living things.

Our world has been facing drastic environmental changes from melting glaciers to burning forests and weather extremes. Environmental degradation is a worrying problem for the universe. The root cause of the problem is industrial expansion along with rapid growth in population along with needs of population and their demand for only the best quality of resources in life. These factors are added with ignorance, lack of awareness and knowledge and most importantly the parasitic attitudes of people towards the environment degrade nature and its resources.

Environmental law are essential instruments for protecting humans, animals, resources, habitats and our natural ecosystem altogether and if such laws have no implementation, there would be no regulations on pollution, hunting or even disastrous incidents and the planet would be absolutely at the mercy of humans and within a span of few years, the Earth would be turned into an inhabitable planet with conditions not favorable for any kind of life. Environmental law works to preserve land, air, water, and soil and also imposes various penalties such as fines and, in some extreme cases, even imprisonment. These laws are tools used by the government to prevent people who pose harmful threats to the planet by punishing those who are damaging the environment for their personal gain. However, with the increasing threats to the environment, these laws are not sufficient to stop even a fraction of all this destruction. We need laws that have a larger impact and are deeply rooted in all our policies and laws, so environmental protection is ensured, and all human activities are conducted in such a manner that the environment is protected and preserved.

Environmental Constitutionalism is a relatively new concept that has been emerging around the world. Recently, the world has been looking at the environmental constitutionalism as a concept. There is a trend towards the addition of environmental care in the Constitution that would enable one to identify the emergence of a specialized focused form of constitutionalism

that is solely concerned with environmental matters. Applying this concept in Pakistan, it can be seen that the Constitution of Pakistan 1973 does not clearly mention any right to clean environment and the Courts have interpreted and amalgamated all environmental rights into the right to life as given under article 9 the Constitution of Pakistan 1973 to bring the right to clean environment into its meaning.

The research methodology used to conduct this research is qualitative which is used to seek answer of issues dealing with environmental protection Internationally and in Pakistan. This research is aimed to explore and analyze existing legal framework dealing with protection and preservation of natural environment in Pakistan and to review constitutional parameters in regard to environment. This research focuses on juristic writings, laws and precedents on environmental issues and propose how the Legislature and Government can play a role in Environmental Constitutionalism. This research is conducted through various primary sources such as books, laws and case laws and secondary sources comprised of various journals, e-books, and reports of various official authorities. This research only limits to discussion dealing with environmental governance, environmental crisis and environmental constitutionalism internationally and in Pakistan. This research is an original piece of writing and have never published anywhere else before.

## **2. An Overview of Environmental Crisis and Approaches of International Community**

Over the past few years, the quality of our environment has been greatly compromised. The quality of our environment has been reducing with every passing day. Although, there are many natural and artificial factors causing such deterioration, human activities are major contributor. In order to raise their standard of living and to make their lives easier human beings perform many activities which might be beneficial for them but on the other hand,

hazardous to the environment.<sup>1</sup> Known as anthropogenic activities, these include economic or social activities that may be industrial or agricultural, for example: mining, releasing untreated industrial waste into water bodies, deforestation, soil erosion, land degradation, release of harmful gases into the biosphere etc. Over the years, these anthropogenic activities may have eased our lives or proved to be exceptional advantageous for the world economy but have led to an environmental crisis.<sup>1</sup>

The end of the 20<sup>th</sup> century and the dawn of the 21<sup>st</sup> century witnessed international transformation of environment-related issues. World leaders are concerned about the deteriorating environment and increasing human-related activities that have caused the same. From rising temperatures to rising sea levels to melting glaciers and deforesting forests, environmental issues have become a global concern. Experts are arguing about the loss of anthropocentric and ecological centres.<sup>2</sup>

Various International declarations, conventions and conferences revolve around having global solution to this huge problem. Environmental degradation is such a pressing and drastic issue that cannot be handled by merely small group of people, not even a country can cope with this. However, the problem must be addressed as a whole with an inclusive approach. A specific solution for the entire planet is needed. It is the only way to save and preserve the planet and if we do not fight with this as one, we might be left with nothing to offer to the generations to come.<sup>3</sup>

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<sup>1</sup> Bob Giddings, Bill Hopwood, and Geoff O' Brien. "Environment, Economy and Society: Fitting them Together into Sustainable Development." *Sustainable Development* 10, no. 4 (2002): 187-196.

<sup>1</sup> Swati Tyagi, Neelam Garg, and Rajan Paudel. "Environmental Degradation: Causes and Consequences." *European Researcher* 81, no. 8-2 (2014): 1491.

<sup>2</sup> Klaus Bosselmann. "Losing the Forest for the Trees: Environmental Reductionism in the Law." *Sustainability* 2, no. 8 (2010): 2424-2448.

<sup>3</sup> Elinor Ostrom. "Polycentric Systems for Coping with Collective Action and Global Environmental Change." *Global Environmental Change* 20, no. 4 (2010): 550-557.

From famines to weather extremes, the world has faced a major shift in the quality of its biosphere. With each passing year the standard and quality of our environment depletes, leaving behind several natural disasters and fatal diseases for the population but the most unfortunate thing is that the humankind itself is causing all this. Over the past few years, the earth has seen drastic changes in terms of climate change and global warming. From 2012 to 2021, an average of 61.289 wildfires affecting almost 7.4 million acres of forests was recorded in the United States. As of May 2, 2022, more than 21.200 wildfires have affected more than 1.1 million acres this year.<sup>4</sup>

The extinction rate ranges from a thousand to then thousand times faster due to human activity, today. The main root of modern extinction is the loss of habitat and degradation, hunting by other invasive species and the most of all change in climate. Research has shown that extreme climate change could trigger an extinction domino effect because all species are connected in web of life, even the most tolerant species ultimately succumb to extinction when the less-tolerant species on which they depend disappear. Thus, if we save only one specie, it will ultimately save its habitat and include other species that live there too.<sup>5</sup>

The current heatwave in Pakistan and India is causing serious health crisis, with mercury temperature reaching as high as 51°C in Jacobabad, Sindh province. Numerous cases of acute kidney injury (AKI) caused by heat stroke, acute watery diarrhea and gastroenteritis have been reported across the country, especially in Sindh and Punjab, as extreme hot weather scorched these areas. Pakistan's highest recorded heat in April caused

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<sup>4</sup> Ashraf Farahat. "Air Pollution in the Arabian Peninsula (Saudi Arabia, United Arab Emirates, Kuwait, Qatar, Bahrain, and Oman): Causes, Effects, and Aerosol Categorization." *Arabian Journal of Geosciences* 9, no. 3 (2016): 1-17.

<sup>5</sup> Haley Molinaro. "Refortifying the Endangered Species Act: Its Degradation and How to Strengthen the Nation's Most Comprehensive Law for Protecting Endangered Species, 55 UIC L. Rev. 317 (2022)." *UIC Law Review* 55, no. 2 (2022): 4.

glaciers to melt faster than normal, sparking flash floods in the country's northern region, destroying some key bridges and damaging homes and buildings.<sup>6</sup>

In summer 2019-2020, devastating wildfires ravaged eucalyptus forests in southern and eastern Australia which in terms of intensity, were unparalleled to any other wildfires in history. Not only did these burned hectares of forests but they also either killed or relocated an estimated 3 billion animals starting in October 2019 and lasting until January 2020. Plastic trash production more than doubled from 2000 to 2019, reaching 353 million tons. Nearly two-thirds of all garbage produced in the world consists of plastics, with 40 percent coming from packaging, 12 percent from consumer products, and 11 percent from apparel and textiles.<sup>7</sup>

The balance of economic stability and preservation of nature is very difficult task. There has been a major transition in the world's economic policy since the fall of the Soviet Union. Capitalism has grown rapidly as compared to socialism. With this economic order, corporate giants have played a significant role in urbanization and industrialization with their urge to develop and grow their corporate settings. There is no doubt as to the benefits of industrial expansion, the most significant of which is the production of more job opportunities, but it comes with a price, which is the threat of negative environmental repercussions.<sup>8</sup>

Industrialization degrades the environment with untreated industrial wastes being discharged into the environment. Business and industries make pledges of a pollution-free environment, but this is nothing but fiction.

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<sup>6</sup> Waseem Ishaque, Rida Tanvir, and Mudassir Mukhtar. "Climate Change and Water Crises in Pakistan: Implications on Water Quality and Health Risks." *Journal of Environmental and Public Health* 1, no 2022 (2022):1-12.

<sup>7</sup> Juli G. Pausas, and Jon E. Keeley. "Wildfires and Global Change." *Frontiers in Ecology and the Environment* 19, no. 7 (2021): 387-395.

<sup>8</sup> Kiril Stanilov. *"Taking Stock of Post-Socialist Urban Development: A Recapitulation."* *The Post-Socialist City: Urban form and Space Transformations in Central and Eastern Europe after Socialism* (The Netherlands: Springer, 2007): 3-17.

Pollution free is just utopic phenomenon which is neither necessary nor required. Fumes and hazardous gas emissions from thermal power plants, coal mines, cement, petroleum, steel and chemicals are all highly polluting factors. Spreading over a vast area, these industries individually inflict permanent damage to our ecosystem and environment, frequently eliminating carrying capacity of the environment. We can only imagine how much clusters of these factories and industries damage the environment.<sup>9</sup>

Expansion of industries is the key to economic success; nonetheless, it also causes increased population, urbanization, and an excessive strain on basic life support systems, while pushing environmental boundaries to the extreme. To curb this issue, various studies have been conducted that have proved that converting current enterprises into ecological industrial networks through effective adoption of eco-friendly methods gives a more realistic answer for protecting our valuable natural resources while also boosting the regional economy and maintaining a balance between the two. It necessitates the need of proper planning and integrated frameworks that are in harmony with preservation of the environment along with a thorough evaluation of previous and current situations with regards to environment, economic growth and development.<sup>10</sup>

Under the UN, the Brundtland Commission, also known as the World Commission on Environment and Development (WCED) also known as UN Special Committee on the Environment was formed to help guide countries around the world in achieving sustainable Development Goals. The Brundtland Commission published its results in the Brundtland report in 1987 which gave the most widely used definition of sustainable

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<sup>9</sup> Vijay Kumar, and Binod Mishra. "Environmental Casteism and the Democratisation of Natural Resources: Reimagining Dalit Testimonies." *Journal of South Asian Studies* 45, no. 3 (2022): 577-595.

<sup>10</sup> Rasmi Patnaik, "Impact of Industrialization on Environment and Sustainable Solutions—Reflections from a South Indian Region." *Earth Environmental Sciences Series* 120, no. 1 (2018): 1-8.



development as development which meets needs of current generations without compromising ability of future generations to meet their own needs.<sup>11</sup>

After the Brundtland Report known as Our Common Future, sustainable development became an important concept in the vocabulary of politicians, practitioners, and planners. However, this sustainable development approach did not formulate any strict formula or limits the economic development of any country to meet the control damage to the environment. Therefore, economic activity in the cloak of rapid growth continued to damage in the process of environmental protection. The balance is tilted conducive to economic development and has proved detrimental to environmental protection, overtime.<sup>12</sup>

One of the most prominent steps in the process of preservation of the environment is 2030 agenda for sustainable development. This agenda, presented in September 2015, comprised of seventeen goals known as Sustainable Development Goals (SDGs). These goals are approved by the UN as a call to all the nations of the world to take an action to eradicate poverty, preserve environment, promote peace and prosperity and many other goals which promise more sustainable and inclusive world society for everyone by 2030.<sup>13</sup>

These SDGs are connected to each other in such a manner that actions taken in one area influence results and outcomes in others. The development that comes with these SDGs must also balance social,

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<sup>11</sup> Abbas Poorhashemi. "Opportunities and Challenges Facing the Future Development of International Environmental Law." *Climate Change, Natural Resources and Sustainable Environmental Management*, no. 1 (2022): 41-47.

<sup>12</sup> Erling Holden, Kristin Linnerud, and David Banister. "Sustainable Development: Our Common Future Revisited." *Global Environmental Change* 26, no.1 (2014): 130-139.

<sup>13</sup> Jeffrey D. Sachs, Guido Schmidt-Traub, Mariana Mazzucato, Dirk Messner, Nebojsa Nakicenovic, and Johan Rockström. "Six Transformations to Achieve the Sustainable Development Goals." *Nature Sustainability* 2, no. 9 (2019): 805-814.

economic, and environmental sustainability. The most important feature of this agenda is its preamble, in which it was affirmed by world leaders that they are determined to protect planet from degradation through production and sustainable consumption, sustainably managing its natural resources and taking urgent action on climate change, so that it can support needs of present and future generations.<sup>14</sup>

Achieving agenda goals lead towards improvement in environmental health, social as well as economic benefits. Aiming to reduce environmental risks and increase in social and environmental resilience as well as actions under these agenda goals contribute towards environmental dimension of sustainable development and to socio-economic development.<sup>15</sup>

Apart from SDGs, the Stockholm Convention ratified by more than 152 countries and came into existence on May 17, 2004, aims to protect human health and the environment from Persistent Organic Pollutants (POPs). Persistent Organic Pollutants are substances that remain intact in the environment for extended periods of time and require time to decompose and are typically hazardous to people and wildlife. This convention binds governments of state parties to take actions to either eliminate or at least minimize the discharge of persistent organic pollutants into the environment. It also aims to eliminate or reduce emissions and uncontrolled waste of persistent organic pollutants and has developed a framework to

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<sup>14</sup> Sohaib Mukhtar, Zinatul Ashiqin Zainol, and Sufian Jusoh. "Islamic Law and Sustainable Development Goals." *Tazkia Islamic Finance and Business Review* 12, no. 1 (2018).

<sup>15</sup> Daniel M. Franks, Julia Keenan, and Degol Hailu. "Mineral Security Essential to Achieving the Sustainable Development Goals." *Nature Sustainability* 6, no. 1 (2022): 1-7.

deal with additional compounds that were found to be hazardous to the environment.<sup>16</sup>

The Rio Declaration on Environment and Development reaffirm the Stockholm Declaration and Agenda 21 action plan of the UN as with the passage of time, it became evident that industrialization imposes threat to our biosphere. Along with its aims to provide guidance to governments in their environmental protection activities, two principles of the Rio Declaration deserve special consideration with regards to preservation and protection of the environment (i) precautionary principle laid the foundation of the modern International Environmental Laws and thus it is better to be safe than sorry, and (ii) there is an emphasis on certain rights that related to the environment, these includes right to information, participation and justice.<sup>17</sup>

### **3. Necessary Steps to Control Environmental Degradation**

Rapid industrialization has had its fair share of life altering effects on the ecosystem. All activities contribute to some extent of change in the environment, thus making it is unpredictable to accredit what impact does a certain activity have on the quality of the environment or health of a human or animal, for example, whether a certain level of air pollution leads to an increase in respiratory diseases or whether oil development in an environmentally sensitive area affects local wild animals to what extent.<sup>18</sup>

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<sup>16</sup> Heidelore Fiedler, Roland Kallenborn, Jacob De Boer, and Leiv K. Sydnes. "The Stockholm Convention: A Tool for the Global Regulation of Persistent Organic Pollutants." *Chemistry International* 41, no. 2 (2019): 4-11.

<sup>17</sup> Katrin Kohl, Charles Hopkins, Matthias Barth, Gerd Michelsen, Jana Dlouhá, Dzulkipli Abdul Razak, Zainal Abidin Bin Sanusi, and Isabel Toman. "A Whole-Institution Approach Towards Sustainability: A Crucial Aspect of Higher Education's Individual and Collective Engagement with the SDGs and Beyond." *International Journal of Sustainability in Higher Education* 23, no. 2 (2022): 218-236.

<sup>18</sup> Alessandro Galli, Justin Kitzes, Valentina Niccolucci, Mathis Wackernagel, Yoshihiko Wada, and Nadia Marchettini. "Assessing the Global Environmental Consequences of Economic Growth Through the Ecological Footprint: A Focus on China and India." *Ecological Indicators* 17, no.1 (2012): 99-107.

Some existing principles to control environmental degradation includes precautionary principle relies on the concept of better safe than sorry. It requires that if there is existence of a strong suspicion that any activity may have harmful consequences for the environment, it is better to control the activity immediately rather than wait for irrefutable scientific evidence.<sup>19</sup>

Furthermore, the precautionary principle directs policymakers to integrate precautions against such hazardous activities in the policy frameworks of their countries when no scientific evidence exists about the nature and extent of the environmental or human health hazards and the risk is high. The precautionary principle, links closely to governance as it guides policy makers to adopt such policies that no activities lead harmful consequences.<sup>20</sup>

With the increasing environmental threats, many environmental laws were created as a response to disasters to curb and minimize their adverse effects, but environmental damage can easily be avoided with methods that are less expensive and easier to implement. Such measures remove the existing destructive elements rather than responding to damage that has already happened environmental protection to begin at an early stage. According to this principle, correcting damage after it has occurred is a way to deal with the problem, but it is better to prevent it from occurring in the first place. This principle deals with the creation, storage and disposal of hazardous wastes.<sup>21</sup>

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<sup>19</sup> Jonathan H. Adler. "More Sorry than Safe: Assessing the Precautionary Principle and the Proposed International Biosafety Protocol." *Texas International Law Journal* 35, no.1 (2000): 173-205.

<sup>20</sup> Toqeer Ahmed, and Muhammad Zaffar Hashmi, *Hazardous Environmental Micro-Pollutants, Health Impacts and Allied Treatment Technologies*, (Cham, Switzerland, Springer, 2022); 53-73.

<sup>21</sup> Michael A. Berry, and Dennis A. Rondinelli. "Proactive Corporate Environmental Management: A New Industrial Revolution." *Academy of Management Perspectives* 12, no. 2 (1998): 38-50.

Many economists claim that many environmental hazards are caused by producers externalizing costs of their activities as many factories emit unfiltered toxic gas into the atmosphere or release untreated chemicals into water bodies and pay very little to no cost for such disposal of their waste. Instead, the entire community in the surrounding area has to bear the burden whereas no advantage or profit is being given to the community. Industries and factories are set up in less developed areas where the cost of living is less, and thus marginalized communities mostly reside. It is obvious that business tycoons do not reside in these areas, so how is it possible for these giants to bear even a fraction of the price? <sup>22</sup>

The principle is widely accepted all over the world claiming that those who produce pollution should bear the cost of managing it to prevent damage to human health or the environment. The public participation principle states that the general public should be made stakeholders since they are the ones who are impacted directly by these policies have rights to participate in the decision-making process. The adoption of this principle implies that public input has an impact on decision-making and more public friendly policies come into existence.<sup>23</sup>

Environmental standards for certain forms of pollution, licenses for environmental damage activities, and resource protection decisions must only be made after a proper notification has been made and the public has had sufficient opportunity to propose and submit amendments to the policies and rules. In many jurisdictions all over the world, citizens have the right to appeal government environmental decisions to a court or administrative agency, so that they can be amended as per needs of society. Environmental protection requires due consideration of the potential consequences of

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<sup>22</sup> Joana Setzer, and Catharine Higham, *Global Trends in Climate Change Litigation: 2022 Snapshot*, (London, UK, Grantham Institute on Climate Change and the Environment, 2022); 1-47.

<sup>23</sup> Lars D. Hylander, and Michael E. Goodsite. "Environmental Costs of Mercury Pollution." *Science of the Total Environment* 368, no. 1 (2006): 352-370.

environmentally decisive decisions. The principle requires that it must be ensured that environmental issues should be considered top priority while making decisions regarding activities of other sectors.<sup>24</sup>

In 1970s, an increasing number of environmental accords were negotiated, many of which included measures aimed at encouraging poor nations to embrace them. Many international environmental treaties have been signed throughout the years to enhance environmental preservation yet, for a variety of reasons, reaching an effective agreement remains challenging. Necessary policies on environment frequently generate social and economic challenges for governments to adopt, particularly emerging countries, and as a result, they have been hesitant to sign environmental accords. Another reason is that environmental concerns transcend political boundaries, they can only be successfully addressed with the participation of many governments, some of which may have severe conflicts over environmental policy goals.<sup>25</sup>

#### **4. An Overview of Environmental Laws of Pakistan**

Many laws related to the preservation of forest, wildlife and natural resources existed in the pre-partition era which imposed certain checks upon the industrial pollution and preservation of resources, but it can be said that these laws have had almost none to very little impact in preventing environmental degradation, however, no such law was existed with a sole purpose to preserve and safeguard the natural biosphere. After partition of the United India and the advent of the Stockholm Declaration, Pakistan also showed a great inclination towards the environment and its protection and even added environmental pollution and ecology in the concurrent list of

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<sup>24</sup> Hens Runhaar, Peter Driessen, and Caroline Uittenbroek. "Towards a Systematic Framework for the Analysis of Environmental Policy Integration." *Environmental Policy and Governance* 24, no. 4 (2014): 233-246.

<sup>25</sup> Neil Gunningham, "The New Collaborative Environmental Governance: The Localization of Regulation." *Journal of Law and Society* 36, no. 1 (2009): 145-166.

the Constitution of Pakistan 1973<sup>26</sup> and conferred powers on both, the federation and the province, to legislate environmental laws.<sup>27</sup>

In 1983, the President of Pakistan exercised his legislative powers under article 89 of the Constitution of Pakistan 1973<sup>28</sup> issued an ordinance known as Pakistan Environmental Protection Ordinance 1983 (PEPO). The main aim of PEPO is to provide rules and principles for control of pollution and to preserve living environment. A policy-making body for environmental matters known as Pakistan Environment Protection Council was established to formulate National Environmental Quality Standards to be implemented by Pakistan Environmental Protection Agency. PEPO was the first legislation to be ever passed in respect to environmental protection, its scope and implementation were limited, and it was just a minor effort. Later, after Rio Declaration and Judgment of the Supreme Court of Pakistan in *Shela Zia versus Wapda*,<sup>29</sup> right to clean environment merged into right to life.<sup>30</sup>

The Parliament of Pakistan made another attempt in 1997 under Pakistan Environmental Protection Act, 1997 (PEPA). The main goal of PEPA is to protect, conserve, rehabilitate and improve environment in Pakistan through prevention and control of pollution and for promotion of sustainable development. PEPA also supplemented and expanded the scope of the already existing PEPO and its ambit of protection of the environment.

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<sup>26</sup> Constitution of Islamic Republic of Pakistan, (Islamic Republic of Pakistan, 1973).

<sup>27</sup> Muhammad Tayyab Sohail, Huang Delin, Muhammad Afnan Talib, Xie Xiaoqing, and Malik Muhammad Akhtar. "An Analysis of Environmental Law in Pakistan-Policy and Conditions of Implementation." *Research Journal of Applied Sciences, Engineering and Technology* 8, no. 5 (2014): 644-653.

<sup>28</sup> Sohaib Mukhtar, "Social Transformation of Pakistan under the Constitution of 1973." *Social Transformations in Contemporary Society. Lithuania. Mykolas Romeris University* 4, no.1 (2016): 47-59.

<sup>29</sup> *Shela Zia v Wapda*, (Supreme Court of Pakistan, Pakistan Legal Decisions (PLD), 1994); 693

<sup>30</sup> Naila Nazir, "A Critique on Environmental Protection Ordinance (EPO) 1983 and Environmental Protection Act. 1997." *Journal of Law & Society* 30, no.43 (2004): 35.

PEPA also incorporated various aspects from principles laid down by the Rio Declaration.<sup>31</sup>

Environment is defined as air, water, land including all layers of atmosphere, all organic and inorganic matter and living organisms, ecosystem and ecological relationships including buildings, structures, roads, facilities and works, and all social and economic conditions affecting community life.<sup>32</sup> The Environmental governance was in the concurrent list of the Constitution of Pakistan 1973. However, under 18<sup>th</sup> amendment in 2010, provinces were empowered by repealing the concurrent list and some of the subjects of the concurrent list were added in the Federal Legislative List while all remaining subjects were given to provinces including environmental pollution and ecology. Thenceforth, PEPA seized to be applied on provinces and thereafter all four provinces enacted their own environmental legislation.<sup>33</sup>

Subsequently, Punjab Environmental Protection Act 2012 passed by Punjab Assembly to provincialize PEPA, and to establish Punjab Environmental Protection Council to protect environment in Punjab. Sindh Assembly passed Sindh Environmental Preservation Act 2013 to protect, conserve, rehabilitate, and enhance the environment in Sindh as well as to prevent, control pollution, and to promote sustainable development. Khyber Pakhtunkhwa Assembly passed Khyber Pakhtunkhwa Environmental Protection Act 2014 to protect environment in Khyber Pakhtunkhwa. Baluchistan Assembly passed Baluchistan Environmental Protection Act

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<sup>31</sup> Gohar Ali, Ilyas Khan, Mian Mohammad Saleem, and Ashraf Ali. "Comparative Review of Khyber Pakhtunkhwa and Federal Environmental Protection Laws in Pakistan." *Pal Arch's Journal of Archaeology of Egypt/Egyptology* 18, no. 3 (2021): 597-607.

<sup>32</sup> Pakistan Environmental Protection Act, (Islamic Republic of Pakistan, 1997).

<sup>33</sup> Laraib Ehtasham, Sadia H. Sherani, Kiran Younas, Umama Izbel, Amna H. Khan, Anila Bahadur, and Ali Akbar, "A Review of the Status of Environmental Impact Assessment in Pakistan." *Integrated Environmental Assessment and Management* 18, no. 2 (2022): 314-318.



2012 to protect, conserve, rehabilitate, and improve environment in Baluchistan.<sup>34</sup>

Enforcement of environmental legislation in Pakistan is weak since beginning. Thenceforth, 18<sup>th</sup> amendment opened the door for various ambiguities as enforcement of Multilateral Environmental Agreements (MEA's) according to one point of view is responsibility of Federation under entry no. 3 of Federal Legislative List: treaty and agreement implementation. On the other hand, 18<sup>th</sup> Amendment's intent would be overturned if Federation continued to pass legislation on devolved areas under guise of executing treaties. 18<sup>th</sup> amendment clearly lacks in procedure for implementation of MEA's due to which all provinces have differing opinions prevent them from effective implementation of environmental laws. Furthermore, regulatory authorities are required to be independent as it has been observed that structuring of environmental agencies under influence of government and various other associations leads towards hegemony.<sup>35</sup>

The legislature, executive and judiciary of Pakistan have yet not adequately and effectively realized this hard fact. It is also aggravating that the courts are reluctant to take a stand on this hard-core issue of environmental protection and preservation in Pakistan. Industrialization and Pollution in urban cities of Pakistan are constantly increasing and are affecting quality of life significantly as increasing environmental issues forcing legislature, governing bodies, and judiciary to take pragmatic

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<sup>34</sup> M. Y. Zahid, and M. K. Qamar. "The Aspects of Legislation in Environmental Management: A Case Study of Punjab Province (Pakistan)." *Pakistan Journal of Science* 72, no. 2 (2020): 138-153.

<sup>35</sup> Ahmad Hussain, and Z. A. Gillani. "Fulfilling Environment Related International Commitments through Implementation of Multilateral Environmental Agreements (MEAs) in Pakistan." *A Scientific Journal of COMSATS–Science Vision* 18, no.1 (2014): 1-2.

actions in the form of expedient environmental laws and policies and their effective implementation throughout Pakistan.<sup>36</sup>

### **5. An Analysis of Environmental Constitutionalism in Pakistan**

After Stockholm Declaration where environmental rights were recognized and principles were engraved to ensure preservation of environment by States for better and sustainable future. Various countries made steps towards attaining its objects, some made governmental bodies for environmental protection including Pakistan while others added environmental rights into their constitution in addition of composing governmental bodies.<sup>37</sup>

Rising sea levels, melting ice caps, dramatic changes in weather patterns, and significant declines in several species due to deforestation, air, water, and land pollution are all signs of an imminent climate crisis and a huge threat not only to Pakistan but to the entire planet. Therefore, just like the rest of the world, Pakistan also has several serious environmental issues that need to be addressed and dealt with urgently.

Pakistan Environmental Protection Act 1997 superseded Pakistan Environmental Protection Ordinance 1983 adopted same provisions. Furthermore, under 18<sup>th</sup> amendment in the Constitution of Pakistan 1973, environmental law and governance was decentralized and powers regarding environmental legislation and governance were given to provinces. Despite all these developments in environmental law in Pakistan, issues of environment have been increasing to a concerning stage and the environmental laws have formed to be inadequate in providing good

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<sup>36</sup> Mehran Idris Khan, and Yen-Chiang Chang. "Love for the Climate in Sino–Pakistan Economic Romance: A Perspective of Environmental Laws." *Clean Technologies and Environmental Policy* 23, no.1 (2021): 387-399.

<sup>37</sup> Michael I. Jeffery, "Environmental Ethics and Sustainable Development: Ethical and Human Rights Issues in Implementing Indigenous Rights." *Macquarie Journal of International and Comparative Environmental Law* 2, no. 1 (2005): 105-120.

governance and effectiveness of laws to protect and preserve the environment.<sup>38</sup>

The Constitution of Pakistan 1973 does not talk about protection of environment and its preservation exhaustively. It does not recognize any environmental rights of a person neither place any obligation on the State for the preservation of the environment. The Supreme Court of Pakistan in various judgments interpreted right to clean and healthy environment under the right to life.<sup>39</sup> Constitutional recognition of environmental right imposing duty on the State to provide citizens fundamental rights to approach the Court directly for its enforceability towards the State to ensure the preservation of environment as countries who have adopted environmental constitutionalism have good environmental governance as it provides a roadmap towards it.

Therefore, it is need of the time that the legislature of Pakistan should amend the Constitution of Pakistan 1973 and include environmental right under chapter of Fundamental Rights in the Constitution of Pakistan 1973 as the inclusion of environmental right in the Constitution of Pakistan 1973 and giving it the status of fundamental right will ensure the citizen against its infringement and provide them a direct judicial enforcement under the Constitution of Pakistan 1973. Furthermore, the current environmental legislations should be amended to provide a proper procedure and penalties regarding protection of environment and its violations respectively. Government agencies and research institutions should conduct empirical research collection across the country to collect data related to environmental discrimination in Pakistan and understand its

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<sup>38</sup> Rashid Saeed, Ayesha Sattar, Zafar Iqbal, Muhammad Imran, and Raziya Nadeem. "Environmental Impact Assessment (EIA): An Overlooked Instrument for Sustainable Development in Pakistan." *Environmental Monitoring and Assessment* 184, no.1 (2012): 1909-1919.

<sup>39</sup> *Shela Zia v Wapda*, (Supreme Court of Pakistan, Pakistan Legal Decisions (PLD), 1994); 693.

actual impact. This question can only be assessed when there is empirical evidence to support the crisis.

The role of civil society is also very important as environmentalists to give awareness to citizens of Pakistan on importance of environment preservation. Awareness of citizens is one of the most important aspects to bring change in societal norms. A proper redressal mechanism should be created where citizens should make complaint about the unhealthy environment and ensure that their problems are solved as a result of such complaint. The government should also set the minimum criteria of healthy environmental surroundings, the residential area and industrial units to help the poor and downtrodden, so that the person standing at the lowest ladder of the society should also be able to enjoy clean and healthy environment.

## **6. Conclusion and Recommendations**

Environmental Constitutionalism is constitutional characteristic to create an effective system of environmental governance by establishing a proper environmental policy and policy implementation authority with full powers and functions in relation to environmental governance. Environmental Crisis and Concerns of International Community are increasing day by day not only in Pakistan but all over the World at large due to rising temperature, melting glacier, rising sea level, cutting forests which are main causes of environmental issues causing health issues which are hazardous to human life come under protection of life fundamental right protected under article 9 of the Constitution of Pakistan 1973 which must be fully protected by the Government of Pakistan. There is no separate article in the Constitution of Pakistan 1973 dealing with protection of environment and giving fundamental right to citizens of Pakistan thus there is a need to add a separate article in the chapter of fundamental rights under the Constitution of Pakistan 1973 for protection and preservation of environment.

Urbanization and Industrialization though boost economy, but it is disadvantageous to environment. Industrialization degrades environment with untreated industrial wastes being discharged into the environment. It is therefore suggested that the Government of Pakistan should take some steps for proper maintenance of industrial wastes and for that purpose laws and rules dealing with industry must be updated to protect the environment. Pakistan Environmental Protection Ordinance passed in 1983, later on Pakistan Environmental Protection Act passed in 1997 and under 18<sup>th</sup> Amendment powers on environmental legislation transferred from federal legislature to provincial legislature but ambiguity on enforcement of Multilateral Environmental Agreements (MEA's) still need to be resolved amicably for smooth implementation of environmental rules and regulations throughout Pakistan.

SDG No.13 deals with environmental protection. Pakistan is an Islamic Country and Islamic Law emphasizes on protection of forests and animals indirectly encourages environmental protection for better life of human beings in this world and in hereafter. Thus, environmental protection cannot be achieved without full positive participation of the people of Pakistan which is not only duty of citizens of Pakistan under Constitution of Pakistan 1973 but also an obligation as Muslim under verses of the Holy Quran and Traditions of Holy Prophet Muhammadﷺ.

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