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The Legal Limbo of Climate Driven Migrants: A Case for Recognizing ‘E-IDPS’ Under the Pakistani Constitutional Framework

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Abstract

Pakistan is among the most climate change vulnerable nations of the world, yet it is unprepared for all these challenges legally and institutionally. With the growing number of internal climate migrants each year, we still do not have any policy or law through which those displaced communities could be resettled or legally recognized. They are displaced due to floods, rising sea, level, droughts and other climate related disasters. Although, Pakistan contributes very less to Global Greenhouse Gas (GHG) emissions that is to say less than one percent, yet the World Risk Index (WRI) continuously ranks Pakistan among the top ten climate vulnerable countries. Through this research, I ask a single straightforward question – whether the government after decades of environmental constitutionalism and even after 26th amendment (article 9A), have any obligation to protect climate migrants as a matter of constitutional law not a charitable relief? I am establishing the fact and making an argument that, yes, they have a positive obligation to recognize and protect E-IDPs.

Introduction

Pakistan is at the forefront of nations which are affected by climate induced catastrophes. Although, Pakistan contributes very less to Global Greenhouse Gas (GHG) emissions that is to say less than one percent, yet the World Risk Index (WRI)

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continuously ranks Pakistan among the top ten climate vulnerable countries². In 2022, the monsoon rains caused devastating floods which submerged one-third landmass of the country.³ The floods displaced almost 8 million people and incurred economic losses estimated at thirty billion United States dollars.⁴ What happened later was that the flash floods of 2025 further compounded the crisis. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), 6.9 million people were affected and 3.5 million were displaced, predominantly from the provinces of Sindh, Khyber Pakhtunkhwa, and South Punjab.⁵ And these figures indicate how vulnerable our geography is to climate change.

Yet the people who were displaced from their homes found no protection and they are legally invisible. We do have legal protections for people who are displaced due to wars but environmentally displaced persons are not considered “refugees” under the 1951 Convention Relating to the Status of Refugees, and nor do they enjoy any status of “Internally Displaced Persons” IDPs. The status of refugees requires a proper fear of persecution within any nation state by humans or the government. But again, climatic events displaced persons do not satisfy any of the above, mentioned standards and this is what scholars called as a ‘normative gap’, a loophole where no legal enforcements are available.⁶ And the result is that millions of people particularly in Pakistan are stripped of their agricultural lands, livelihoods and what they get from the state is temporary relief operations.

In this research, I contend that the condition of legal limbo is not merely a policy failure but a constitutional failure too. For the first time in Pakistan, a standalone and explicit fundamental right (Article 9A) to “a clean, healthy and sustainable environment” was inserted into the Constitution of Pakistan 1973 via 26th Constitutional Amendment.⁷ This development transformed environmental constitutionalism in Pakistan. At first, the right to a clean environment was

² Germanwatch, Global Climate Risk Index 2022 (Germanwatch 2022) 6.

³ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Pakistan: 2022 Floods Situation Report No 12 (OCHA 2022) 1

⁴ World Bank, Pakistan Floods 2022: Post-Disaster Needs Assessment (World Bank 2022) 3

⁵ OCHA, Pakistan: Flash Floods Situation Report (OCHA 2025) 2

⁶ Jane McAdam, Climate Change, Forced Migration, and International Law (OUP 2012) 7,10

⁷ Constitution (Twenty-Sixth Amendment) Act 2024, inserting art 9A into the Constitution of the Islamic Republic of Pakistan 1973

interpreted under right to life mainly through judicial activism, but now it is now textually entrenched.

I argue that the constitutional guarantee of environmental sustainability functionally extinguishes when people's land has been consumed by sea-level, and whose homes have been destroyed by recurrent floods. The state should respond with durable solutions and not with charitable relief and fill the legal vacuum. Then we can have a legal recognition and formal status for Environmentally Displaced Persons (EDPs).

Statement of the Problem

Climate-driven migrants or Environmentally Displaced Persons (EDPs) have no legal recognition under Pakistani law and this research strives to address the legal limbo. Historically speaking, displacements in Pakistan have always been addressed through the lens of disaster management. That redressal is always reactive and logistical aimed at providing food, shelter and emergency medicines to people displaced by episodic events. The National Disaster Management Act 2010 provides the procedure and architecture for emergency response with no mention of migration or rehabilitation and resettlement.⁸ While the Climate Change Act 2017 establishes administrative bodies for climate governance.⁹ The problem arises when we get to see that both of these legal instruments miss the word 'migration' and confers no legal status on the people displaced. Another thing that compounds the gap is absence of durable solutions, there is no permanent resettlement, rehab, or local integration of people who cannot return to their places of origin.

Now this gap has grave consequences for the displaced persons. Displaced communities in northern areas in KPK will move to cities like Peshawar, people from South Punjab to Lahore or other nearby cities considerably capable of sustaining them and from Sindh rural areas to the peripheries of Karachi. These people live without formal legal recognition and are unable to access land records, formal housing markets and special protection schemes that are tied to domicile registration.¹⁰ Their offspring face barriers in access to education and the issue is made worse by access to precarious healthcare. Now under international law, we say

⁸ National Disaster Management Act 2010 (Pakistan), s 6

⁹ Pakistan Climate Change Act 2017, ss 3,5

¹⁰ International Organization for Migration (IOM), Displacement Tracking Matrix: Pakistan Post-Monsoon Review 2025 (IOM 2025) 14

that these displaced people are experiencing compound deprivation, the primary being deprivation of their livelihood and home and the secondary being no legal recognition and protection by the state. It is this secondary, legally constructed deprivation that this research seeks to address.

Research Questions

This research will be addressing following primary and subsidiary research questions:

Primary Research Question: Do we have a constitutional and statutory framework necessary to address the plight of climate-displaced persons, and if not, what reforms are actually necessary to remedy this deficit?

Subsidiary questions: First, what is the nature and extent of the "normative gap" in international law regarding climate-driven displacement, and how does this gap manifest in Pakistan's domestic legal order? Second, does the insertion of Article 9A via the 26th Constitutional Amendment create a positive state obligation to provide legal status and durable solutions to those permanently displaced by environmental degradation? The third question is regarding bringing learning from comparative jurisdictions like Bangladesh and Vanuatu, and creating a right based legal framework for Environmental Internally Displaced Persons (E-IDPS)? Fourth, what specific legislative reforms are required to operationalize the category of E-IDPS, and what institutional mechanisms are necessary to make such recognition practically effective?

Objectives of the Research

There are primarily four objectives of this research. First, it will seek to filter national and international legal frameworks governing displacements and then look for gaps where these climate displaced people fall. Followed by a constitutional argument grounded in Article 9A, it aims to construct an argument for the recognition of Environmental IDPs as a distinct legal category. Third, it does comparative legal analysis with nations like Bangladesh and others, deriving transferable lessons for Pakistan. The final objective would be proposing a legislative roadmap including a model statute, amendments to existing legislation and framework for institutional reform, that would give the category of E-IDP enforceable legal content.

Methodology

I have adopted a qualitative doctrinal and comparative research methodology for this research, the former method shall form the foundations by studying constitutional text of the 1973 Constitution as amended, relevant statutes, subordinate legislation, and the case law of the Supreme Court and High Courts of Pakistan. With this analysis I will identify with precision the legal rules, principles, and gaps that govern the situation of climate-displaced persons under existing Pakistani law.

This doctrinal analysis is followed by the comparative analysis for which I have selected two jurisdictions namely Bangladesh and Vanuatu. The reason behind the selection of Bangladesh is because of broadly analogous climatic vulnerabilities, a similar constitutional tradition, and an advanced policy instrument in the form of the Bangladesh Delta Plan 2100.¹¹

For Vanuatu, its most developed legal framework for climate, induced displacement, reflected in its Climate Change and Disaster-Induced Displacement Policy.¹²

Review of the Literature

The academic scholarship is found in three fields namely constitutional and environmental law, international refugee and humanitarian law and socio-legal studies which are development oriented. Before the 26th constitutional amendment in 2024, only judicial activism existed. While the accelerating frequency of climate-induced disasters have begun to compel a convergence, though significant lacunae remain. This section reviews the existing scholarship under three thematic clusters: first, the evolution of environmental rights jurisprudence in Pakistan, from judicial activism through Article 9 to the textual entrenchment of Article 9A; second, the international legal scholarship on the 'protection gap' affecting climate migrants, including the debate over soft-law frameworks; and third, the socio-legal literature on displacement patterns, durable solutions, and the specific experiences of communities in Pakistan's most climate-exposed regions. The review concludes by identifying the precise gap in the literature that this research seeks to fill.

¹¹ Government of Bangladesh, Bangladesh Delta Plan 2100 (General Economics Division, Bangladesh Planning Commission 2018) 45,48

¹² Government of Vanuatu, National Policy on Climate Change and Disaster-Induced Displacement (Department of Climate Change 2018) 3

❖ The Evolution of Environmental Rights Jurisprudence in Pakistan

• The Foundations: Judicial Activism and Article 9

For almost three decades, environmental protection was through judicial activism rather than an explicit constitutional text. We have some landmark judgements in the constitutional history of Pakistan that paved the way for what we have today i.e, Article 9A. The Supreme Court of Pakistan in *Shehla Zia v. WAPDA* (1994) held that the right to life does include access to a clean and unpolluted environment.¹³ This was the foundation moment in constitutional history since it paved the way for climate litigation. A healthy and sustainable environment was considered a *sine qua non* for 'life' by Justice Saleem Akhtar. This reading was drawn from Indian Supreme Court jurisprudence particularly Article 21 of the Indian Constitution.¹⁴ This reflected the Global South tendency to interpret provisions of fundamental rights for the sake of environmental governance where we don't have any explicit text for it.

Dr. Parvez Hassan who is considered a distinguished voice on environmental law has mentioned that *Shehla Zia's* case was significant step in environmental development in Pakistan when environmental considerations were elevated from a purely statutory matter — governed at the time by the Pakistan Environmental Protection Ordinance 1983 — to a matter of constitutional entitlement (Hassan, 2024).¹⁵ He also acknowledges that judicial activism alone was a fragile tool for environmental protection since Courts can only entertain petitions but cannot legislate on the said matter. Though the *Shehla Zia* doctrine gave aggrieved citizens a cause of action, it did not create a ministry, a monitoring body, or a compensation fund.

Pakistan enacted the Pakistan Environmental Protection Act in 1997 which established the Federal Environmental Protection Agency and a framework of environmental standards and assessments. Scholars have noted that although Pakistan enacted a law and an institute was established for assessments, they remained largely unenforced and nonfunctional due to resource constraints and

¹³ *Shehla Zia v WAPDA* PLD 1994 SC 693

¹⁴ *MC Mehta v Union of India* (1987) 1 SCC 395 (Supreme Court of India)

¹⁵ Parvez Hassan, 'The Evolution of Environmental Law in Pakistan' (2024) *Pakistan Law Review* 1, 4

other reasons (Ali & Rehman, 2001).¹⁶ The statute created the appearance of environmental governance without the substance.

- **Asghar Leghari and the Emergence of Climate Constitutionalism**

Another most significant case in the constitutional history was of Asghar Leghari, which further complimented the jurisprudence of right to clean environment. The Lahore High Court in *Asghar Leghari v. The Federation of Pakistan* (2015) case moved simply from environmental law to climate constitutionalism. The petitioner, a farmer from South Punjab, alleged that the government's failure to implement the National Climate Change Policy (2012) and its Framework for Implementation constituted a violation of his fundamental rights under Articles 9 and 14 of the Constitution.¹⁷ Justice Mansoor Ali Shah also supported the ruling which is considered a step towards climate constitutionalism.

This judgement created a mechanism for institutional enforcement like Climate Change Commission monitoring the governmental compliance with climate obligations and this was not a declaration, but a realistic approach to check on executive conduct.¹⁸ Additionally, Justice Mansoor Ali Shah linked climate change to human rights, stating that climate driven disasters does affect life and dignity of men, which means the right to life is being usurped. In multiple literatures, commentators have noted that this reasoning of Justice Mansoor resonates with the UN Human Rights Council's resolutions on climate change and human rights, which were then gaining traction in international discourse (Nasir, 2025).¹⁹

This ruling has been a positive one in many aspects but nevertheless it faced criticism as well. Farrukh and Sana, saying that since Pakistan is a federation, the ruling is territorially limited to Punjab only leaving behind climate vulnerable populations of Sindh, KPK and Baluchistan without judicial remedy (Iqbal & Saleem, 2023).²⁰ Though a commission was created by the ruling, it lacked statutory basis

¹⁶ Shaheen Sardar Ali and Javaid Rehman, *Indigenous Peoples and Ethnic Minorities of Pakistan* (Curzon Press 2001) 112

¹⁷ *Asghar Leghari v Federation of Pakistan* WP No 25501/2015 (Lahore High Court, 4 September 2015)

¹⁸ *ibid*, order dated 14 September 2015

¹⁹ Muhammad Nasir, 'The 26th Amendment and the New Era of Environmental Rights in Pakistan' (2025) *Journal of South Asian Legal Studies* 1, 9

²⁰ Farrukh Iqbal and Sana Saleem, 'Climate Constitutionalism in Pakistan's Federal Structure' (2023) 5 *South Asian Journal of Law* 78, 84

and depended entirely on continued judicial supervision for its authority — a fragility that subsequent changes in judicial personnel have made all too apparent.

And pragmatically, no judicial remedy or a case like Asghar Laghari has made any difference in the lives of climate driven migrants, it seeks to compel governments to mitigate climate risks.

- **Article 9A and the Post-Amendment Scholarship**

The amendment in the form of Article 9A, the right to a clean, healthy, and sustainable environment is now an explicit fundamental right unlike judicial activism in the start.²¹ It is now a standalone right and this textual shift has profound implications since an implicit right is always subjected to judicial interpretations but a full weight fundamental right can never be made hostage.

The legal commentary on Article 9A has emphasized two dimensions, the first one being the burden of justification and followed by the nature of the state's obligation. Previously a litigant would connect environmental rights violations to right to life or dignity but that hurdle no longer exists. The language of 'sustainability' in Article 9A imports a forward-looking, intergenerational dimension into constitutional environmental law, a point developed at length by Nasir (2025), who argues that sustainability cannot be interpreted as a static condition but must be understood as a continuous governmental duty to maintain environmental conditions in which human flourishing is possible.²²

What the emerging scholarship has not yet addressed — and what constitutes the specific gap this research fills — is the application of Article 9A to the already-displaced. For a citizen whose land has been permanently inundated by rising sea levels in the Indus Delta, or whose village in Baluchistan has been rendered uninhabitable by desertification, the environment is neither clean, nor healthy, nor sustainable. The constitutional guarantee has, for them, already been violated. The question this research pursues is whether Article 9A generates, from this already-accomplished violation, a positive state obligation to provide legal status, resettlement, and rehabilitation — or whether the right is purely prospective and

²¹ Constitution (Twenty-Sixth Amendment) Act 2024 (n 6)

²² Muhammad Nasir, 'The 26th Amendment and the New Era of Environmental Rights in Pakistan' (2025) *Journal of South Asian Legal Studies* 1, 9

preventive in character. No existing scholarship, to this researcher's knowledge, has systematically engaged with this question.

❖ **The International Protection Gap: Scholarship on Climate Migration and Soft Law**

• **The Inadequacy of the 1951 Refugee Framework**

Though there exists international legal scholarship on climate induced displacement as compared to Pakistan, the problem here is the same, the failure of existing legal categories to capture the situation of people displaced by environmental change. McAdams's *Climate Change, Forced Migration and International Law* remains the foundational text, which provides the most comprehensive analysis of why the 1951 Refugee Convention cannot be extended to climate migrants (Oxford University Press, 2012). The argument proceeds on multiple levels. At the textual level, she demonstrates that the Convention's definition of a refugee — a person fleeing a well-founded fear of persecution on grounds of race, religion, nationality, political opinion, or membership of a particular social group²³ — contains no mechanism for incorporating environmental causation, since persecution requires a persecutor, and climate change is an impersonal process with no identifiable human agent.

Her work has been further complimented by Walter Kälin, former Representative of the UN Secretary General on the Human Rights of IDPs, whose collaborative scholarship with Nina Schrepfer has mapped the typology of climate related displacement with particular precision (Kälin & Schrepfer, 2012). Kälin and Schrepfer distinguish disasters that cause immediate displacement (cyclones, floods, earthquakes) and others (desertification, glacier melt, sea level rise) which result in gradual and often permanent displacement. Both of these disasters demand separate legal responses like temporary relief may work in the former case but the later one would require durable solutions of the kind that existing international law does not mandate.²⁴

²³ McAdam (n 5) 41,55

²⁴ Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches* (UNHCR 2012) 14,18

Teitiota v. The New Zealand 2020 case caught international attention which proved the inadequacy of the 1951 Refugee Convention framework. The UN Human Rights Committee after finding no violation of ICCPR, the petitioner, a Kiribati national, had not demonstrated that he faced imminent risk to his life upon return, nevertheless held that states may not return individuals to countries where climate change related conditions create a real risk of arbitrary deprivation of life.²⁵ Commentators have widely recognized this as a significant, if cautious, acknowledgement that climate change can engage the non-refoulement principle (Sarhad Journal of Legal Studies, 2025).

However, *Teitiota* concerns cross-border displacement, and its relevance to internal displacement — the category addressed by this research — is indirect. What it demonstrates, more broadly, is the willingness of international human rights bodies to treat climate risk as a legally cognizable harm, a principle that has implications for domestic constitutional litigation.

- **The UN Guiding Principles and the Limits of Soft Law**

In the absence of a binding treaty framework for IDPs, the principal international instrument is the UN Guiding Principles on Internal Displacement (1998), drafted under the leadership of Francis Deng as Special Representative of the Secretary General. The Guiding Principles define Internally Displaced Persons (IDPs) as persons who have been forced to flee their homes as a result of human-made or natural disasters, and this definition is notably broader than the 1951 Refugee Convention, also covering environmental displacement.²⁶ It further articulates a range of rights applicable to the displaced — the right to seek safety, to receive humanitarian assistance, to be protected against discrimination, and crucially, to enjoy durable solutions.

Yet the persistent scholarly critique of the Guiding Principles is their non-binding character. Roberta Cohen, one of the architects of the Principles alongside Deng, has acknowledged with some candor that the shift from soft to hard law in IDP protection has been painfully slow (Cohen, 2006).

²⁵ *Teitiota v. New Zealand*, Communication No 2728/2016, UN Human Rights Committee (24 October 2019) CCPR/C/127/D/2728/2016, para 9.11

²⁶ UN Guiding Principles on Internal Displacement (UN Doc E/CN.4/1998/53/Add.2, 1998) Principle 2

Most states in the Global South including Pakistan have not domesticated the guiding principles into enforceable domestic legislation as noted by Refugee Solidarity Network (2025).²⁷ They remain aspirational benchmarks rather than justiciable rights. Scholars have debated whether the Principles have acquired the status of customary international law through widespread state practice; the prevailing view, represented by Kälin among others, is that they have not, at least not in their entirety. This means that the displaced communities of Sindh or South Punjab cannot invoke the Guiding Principles before a Pakistani court and expect enforcement.

The Nansen Initiative (2015) and its successor, the Platform on Disaster Displacement, represent a more recent attempt to build international consensus on cross-border climate displacement, producing a Protection Agenda endorsed by 109 states including Pakistan.²⁸ The internal displacement being a far larger phenomenon and also being inadequately addressed, the Internal Displacement Monitoring Centre has observed, the Nansen framework focuses on cross-border scenarios (IDMC, GRID 2026). In short, International Soft Law can only provide guidance while it cannot operate as a substitute for domestic legislation designed to meet needs of that state.

❖ **Socio,Legal Literature: Displacement Patterns, Urban Precarity, and Durable Solutions**

• **The Lived Reality of Climate Displacement in Pakistan**

Together with doctrinal scholarship, a growing body of socio-legal and development research, has increasingly documented the lived realities of climate-induced displacement in Pakistan. The IOM's Displacement Tracking Matrix for Pakistan (Post-Monsoon Review, 2025) offers one of the most recent and comprehensive quantitative baselines, detailing patterns of movement, demographic characteristics, and the needs of displaced communities across Sindh, Khyber Pakhtunkhwa, and South Punjab.²⁹ The data reveals deeply gendered and class-

²⁷ Refugee Solidarity Network, Climate Displacement and Legal Protection in Pakistan (Refugee Solidarity Network 2025) 22

²⁸ The Nansen Initiative, Agenda for the Protection of Cross,Border Displaced Persons in the Context of Disasters and Climate Change (Nansen Initiative 2015) vol 1, 7

²⁹ IOM (n 9) 8,12

stratified climate displacement and women, landless agricultural workers, and lower-caste communities are disproportionately represented among the displaced, and they are also the least likely to be reached by governmental relief programs.

There is an important academic scholarship by Pakistan Horizon (2025) on migration; one which is economic in nature and other which is forced climate displacement. This distinction is necessary for many legal reasons, since climate displacement categorized as economic would attract no legal protection and would be governed by domestic law if any. However, if it is considered as a forced climate displacement, it would attract more protective legal frameworks. The research shows, through case studies, that people leaving flood-affected districts of KPK are forced to do so, for their crops are destroyed and lands become uninhabitable. This is to make an argument that climate displacement is a violation of rights and is not a private economic decision.³⁰

- **Urban Peripheries and the 'Rights-Less' Condition**

Scholars who are working at the intersection of urban planning, sociology, and law, have focused a lot on the urbanization factor of climate displacement. UNHCR and IOM joint reports (2026) document the pattern whereby climate-displaced communities from Sindh and South Punjab relocate to the peri-urban areas of Karachi, Hyderabad, and Multan, where they typically occupy informal settlements without access to formal housing, secure land tenure, or municipal services. And this urban informality has many legal consequences like residents of katchi abadis (informal settlement) are somehow excluded from state institutions including education, health and other social protection registries, which are available on formal address verification and domicile registration.³¹

Scholars have divided it into two categories; the initial being climate change displacement and the secondary is the failure of legal systems to recognize the displaced as a distinct category of citizens with specific entitlements (Refugee Solidarity Network, 2025).³² And this situation resonates with broader literature of rightlessness, Hannah Arendt's concept of the 'right to have rights,' — and many

³⁰ Pakistan Horizon, 'Climate Migration or Economic Migration? Reframing Forced Displacement in Pakistan' (2025) 78 Pakistan Horizon 45, 52

³¹ UNHCR and IOM, Joint Report on Climate-Induced Internal Displacement in Pakistan (UNHCR/IOM 2026) 17

³² Refugee Solidarity Network (n 26) 31

South Asian legal theorists have applied this to the situation of internal migrants who fall outside the protective categories of formal law. The relevance of this framework to the E-IDP category proposed in this research is direct: the argument for formal legal recognition of E-IDPS is, at its core, an argument for restoring the 'right to have rights' to those whom climate change has effectively expelled from the legal community.

- **The Durable Solutions Gap in Pakistani Literature**

Perhaps the most significant lacuna in the existing Pakistani academic literature — and the one this research most directly addresses — concerns the legal mechanics of durable solutions. International organizations such as the IOM and UNHCR advocate, in principle, for three forms of durable solutions for internally displaced persons: voluntary return to the place of origin, local integration in the area of displacement, and planned relocation to a third location. As per reports, for people who are displaced by slow-onset environmental change, they don't go to their places since it is not an option for them World Bank's Groundswell Report (2021).³³

The Pakistani academic literature is, as noted by multiple authors, remarkably thin on the legal mechanics of resettlement and local integration. There is virtually no scholarship on how the Land Revenue Act 1967 and its provincial equivalents could be amended to recognize loss of habitable land due to climate change as a basis for state-sponsored reallocation.³⁴ There is no analysis of how the National Database and Registration Authority (NADRA) could develop a specific registration category for E-IDPS that would enable them to access state services without a permanent fixed address. There is no examination of how the Loss and Damage Fund, established at COP27 and operationalized for developing countries including Pakistan, could be legally channeled toward individual beneficiaries rather than institutional climate adaptation projects. These are the specific gaps — legislative, institutional, and financial, that the subsequent sections of this research are designed to fill.

³³ World Bank (n 10) 34

³⁴ Internal Displacement Monitoring Centre (IDMC), Global Report on Internal Displacement 2026: Focus on Pakistan (IDMC 2026) 58

❖ Identifying the Research Gap

The review of existing literature reveals a coherent and well-developed body of scholarship on three adjacent problems: the evolution of environmental constitutionalism in Pakistan up to (but not including) the implications of Article 9A for the displaced; the inadequacy of international refugee and IDP frameworks for climate-driven displacement; and the socio-legal dimensions of displacement and urban informality in Pakistan. What is conspicuously absent is scholarship that integrates these three bodies of work into a single legal argument addressed to the specific situation of climate-displaced persons under Pakistani domestic law.

More precisely, no existing study has asked the question that lies at the heart of this research: what does Article 9A, read in conjunction with the UN Guiding Principles and informed by the comparative experience of Bangladesh and Vanuatu, require of the Pakistani state in respect of those whose right to a healthy and sustainable environment has already been permanently violated by climate change? This research fills that gap by constructing, from existing legal materials and comparative precedents, a constitutional and statutory framework for the recognition and protection of Environmental Internally Displaced Persons in Pakistan.

The International Legal Framework and Its Failures

In humanitarian crises, international law has always arrived late. The 1951 Refugee Convention was adopted after the Second World War and it was meant for people who feared persecution by the state for their beliefs or identity. It was for governments targeting its own citizens. This convention was not designed for a world where floods destroy homes of people, the sea swallows islands and where monsoons turn rivers into destroyers.

In this part, I will examine the architecture of international law, its instruments, jurisprudence and the soft-law frameworks, and ask a single question whether these frameworks of international law offer meaningful protections to people displaced by climate change. The answer, as the following analysis demonstrates, is that it largely does not. Understanding precisely why it fails, and where the gaps are widest, is essential groundwork before the domestic legal argument of this research can be constructed.

❖ The 1951 Refugee Convention: A Framework Built for Another Age

• The Definition and Its Structural Limitations

The 1951 Convention Relating to the Status of Refugees remains the cornerstone of international protection for the forcibly displaced. Article 1(A)(2) defines a refugee as any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of their nationality and is unable or unwilling to avail themselves of the protection of that country.³⁵ Every element of this definition poses a problem for the climate migrant.

Start with persecution. The Convention, as interpreted through decades of state practice and academic commentary, requires that persecution be carried out by, or be attributable to, a human actor — a government, a militia, a non-state group that the government cannot or will not control. Climate change is not a human actor in this direct sense. One cannot say that a Sindhi farmer displaced by the flooding of the Indus Delta is being persecuted by the monsoon. The monsoon has no intent, no ideology, and no responsibility in the legal sense. Too many factors like industrial emissions, atmospheric warming, intensified rainfall, displacement will finally and collectively satisfy the legal requirement of a persecutor.

Then another requirement for persecution is that the applicant must be outside the country of their nationality. Now this definition excludes people who are displaced internally, and apparently millions of Pakistanis who moved from one city to another within Pakistan, do not cross any international border and they remain Pakistani citizens on Pakistani soil.

The Refugee Convention was simply not designed for them. It operates at the frontier of states; these people have never left their state. This single jurisdictional limitation renders the Convention irrelevant to the vast majority of climate-displaced persons worldwide, who are overwhelmingly internal rather than cross-border migrants.

Some scholars have attempted creative arguments to bring climate migrants within the Convention's scope. One approach, associated with the work of Angela Williams

³⁵ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 1(A)(2)

and others, involves arguing that climate-displaced persons from particularly vulnerable communities — indigenous peoples, coastal fishing communities whose way of life is obliterated — could constitute a 'particular social group' suffering persecution in the form of state failure to protect them.³⁶ This argument has a certain theoretical elegance, but it has not gained traction in state practice, and it requires judicial creativity of the kind that most domestic asylum systems are not inclined to exercise. It also does not solve the cross-border limitation that excludes the internally displaced altogether.

• **Pakistan's Non-Accession and Its Consequences**

A further dimension of the Convention's irrelevance to Pakistan's situation is that Pakistan has not acceded to the 1951 Convention or its 1967 Protocol.³⁷ This is a fact of considerable practical significance. Even if a generous interpretation of the Convention could somehow be constructed to cover climate migrants, that interpretation would have no legal force in Pakistan, which has no treaty obligation to apply Convention standards. Pakistan has hosted refugees (particularly Afghans) but there was no legal mechanism to regulate them; rather they were governed by policy and executive discretion which left the displaced dependent on the government's goodwill.

This non-accession is not unusual among South Asian states; India, Bangladesh, and Sri Lanka are likewise non-parties to the Convention. But it does mean that any solution to the climate displacement crisis in Pakistan must be found domestically, through constitutional provisions, domestic legislation, and judicial development of the law. International law can provide normative inspiration and comparative benchmarks, but it cannot, in the Pakistani context, provide enforceable rights. This is precisely why the domestic constitutional argument constructed in section Five of this research is the more practically significant one.

³⁶ Angela Williams, 'Turning the Tide: Recognizing Climate Refugees in International Law' (2008) 30 *Law & Policy* 502, 510, 515

³⁷ UNHCR, States Parties to the 1951 Convention and the 1967 Protocol (UNHCR 2024) <www.unhcr.org/protect/PROTECTION/3b73bod63.pdf> accessed 1 March 2026.

❖ **The UN Guiding Principles on Internal Displacement: Promising but Toothless**

• **The Framework and Its Scope**

When the international community first grappled seriously with internal displacement in the 1990s, the result was not a treaty — the political obstacles to that were too formidable — but the UN Guiding Principles on Internal Displacement, presented to the UN Commission on Human Rights in 1998 by Francis Deng, then serving as the Secretary General's Special Representative on IDPs. The Guiding Principles are, in many ways, an impressively constructed document. Their definition of internally displaced persons is explicitly broad enough to include environmental displacement, covering persons who have been forced or obliged to flee or leave their homes as a result of, or in order to avoid, the effects of natural or human-made disasters. Unlike the Refugee Convention, they do not require a persecutor, a particular social group, or a cross-border crossing. They simply ask whether the movement was forced and whether the cause was a disaster.

The Principles go further than mere definition. These principles provide a framework of rights to the internally displaced people. They protect climate migrants from arbitrary displacement before it occurs, provide assistance during displacement and durable solutions when displacement ends. The durable solutions framework is particularly important for the purposes of this research. Principle 28 states that competent authorities have the primary responsibility to establish conditions, provide the means which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes, or to resettle voluntarily in another part of the country.³⁸

When return is not possible, as it is not for communities whose land has been permanently consumed by the sea, the Principles contemplate local integration or resettlement elsewhere as equally legitimate outcomes.

This framework is, on paper, exactly what Pakistan's climate-displaced communities need. It acknowledges the environmental cause of their displacement. It insists on their continuing rights as citizens. It demands that the state take active steps toward their durable recovery. The problem, and it is a fundamental one, is that the Guiding

³⁸ UN Guiding Principles (n 25) Principle 28

Principles are soft law. They are not a treaty. They have not been ratified by any state. They create no obligations enforceable in any domestic or international court. They are, as Walter Kälin himself has acknowledged, normative guidance for states rather than justiciable rights for individuals.³⁹

- **Domestication Failures and Pakistan's Position**

The test of any soft-law instrument is whether states translate it into binding domestic law, and by this test the Guiding Principles have largely failed. As of 2026, a small number of states — Uganda being the most cited example — have enacted national IDP legislation directly modelled on the Principles.⁴⁰ Uganda's Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2006) is frequently held up as a model of domestication. In the broader Global South, however, legislative incorporation remains the exception rather than the rule.

Pakistan has made no serious legislative move toward domesticating the Guiding Principles. The NDMA Act 2010 and the Climate Change Act 2017, as discussed in the following section, operate in an entirely different register — one of institutional management and emergency response rather than rights recognition. There is no national IDP policy, no dedicated IDP legislation, and no governmental body with a specific mandate to protect the rights of internally displaced persons as a matter of constitutional entitlement. The NDMA does valuable work in coordinating disaster relief, and the UNHCR and IOM maintain an active presence in the country and have collaborated with Pakistani authorities on post-flood response. But collaboration between international organizations and governmental relief machinery is not the same thing as a domestic legal framework — it is, at best, a partial and always revocable substitute for one.

- ❖ **Emerging International Frameworks: Nansen, the ILC, and Beyond**

- **The Nansen Initiative and the Platform on Disaster Displacement**

Recognizing the inadequacy of existing frameworks for cross-border climate displacement specifically, Norway and Switzerland jointly launched the Nansen

³⁹ Kälin and Schrepfer (n 23) 6

⁴⁰ Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2006 (Uganda)

Initiative in 2012, a state-led consultative process that culminated in a Protection Agenda endorsed by 109 states, including Pakistan, at a global summit in Geneva in October 2015.⁴¹ The Nansen Protection Agenda is a carefully negotiated document that acknowledges the reality of cross-border displacement in the context of disasters and climate change, identifies existing legal and protection gaps, and recommends a set of measures that states can take to address them.

The endorsement of the Nansen Protection Agenda by Pakistan is of great significance, which means Pakistan admits that disaster-induced displacement is a protection issue not a humanitarian challenge. This issue needs to be addressed with a legal response and not with tents and food. For the purpose of this research, the Nansen framework faces two barriers. Firstly, it is about cross-border and people crossing international borders because of displacements and not internal displacement. The climate displaced communities within Sindh migrating from one city to another is not recognized by the Nansen framework. Secondly, the Nansen framework is soft law and does not create any binding obligation for Pakistan. To exacerbate this situation more, there is no monitoring mechanism to check whether states have actually implemented its recommendations.

The Nansen Initiative was succeeded in 2016 by the Platform on Disaster Displacement (PDD), which continues to promote implementation of the Protection Agenda through capacity building, policy dialogue, and technical assistance.⁴² The PDD's work is valuable and its engagement with states like Pakistan is genuine. But it operates through persuasion and partnership rather than legal compulsion, and its focus on cross-border scenarios means that it does not directly address the far larger phenomenon of internal climate displacement.

- **The ILC Draft Articles on the Protection of Persons in the Event of Disasters**

A more legally ambitious contribution to this field came from the International Law Commission (ILC), which in 2016 adopted a set of Draft Articles on the Protection of Persons in the Event of Disasters.⁴³ Unlike the Guiding Principles, which were

⁴¹ Nansen Initiative (n 27) 4

⁴² Platform on Disaster Displacement, Annual Report 2016 (PDD 2016) 3

⁴³ International Law Commission, Draft Articles on the Protection of Persons in the Event of Disasters (2016) UN Doc A/71/10, art 2

drafted as a practical guidance document, the ILC's work was oriented toward potential codification as a binding treaty, though that step has not yet been taken. The Draft Articles affirm the dignity of persons affected by disasters, the duty of the affected state to seek international assistance when its capacity is exceeded, and the right of affected persons to receive humanitarian assistance without discrimination.

The ILC framework is noteworthy because it applies the language of international law, duty, right, obligation — to the disaster context in a way that brings it closer to enforceable legal norms. But the Draft Articles have not been adopted as a treaty, and they focus primarily on the immediate disaster response phase rather than the long-term durable solutions that slowly displaced communities require. They are a step in the right direction, but the destination, a binding international instrument that creates enforceable rights for climate-displaced persons, remains some distance away.

❖ **The Teitiota Decision: A Cautious Opening**

Perhaps the most significant recent development in international jurisprudence on climate displacement is the 2020 decision of the UN Human Rights Committee in *Teitiota v. New Zealand*. Ioane Teitiota was a citizen of Kiribati — a Pacific island nation facing existential threat from sea-level rise — who sought refugee status in New Zealand on the basis that climate change rendered his return to Kiribati a threat to his right to life under Article 6 of the International Covenant on Civil and Political Rights. New Zealand's courts, and ultimately the Human Rights Committee, rejected his individual claim on the facts: The Committee found that he had not demonstrated that he personally faced an imminent, individualized risk to life upon return to Kiribati at the time of his deportation.

Yet the Committee's reasoning contained a statement of principle that has attracted considerable international attention. It held that without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their right to life, and that states may not deport or extradite individuals to another state where there are substantial grounds for believing that such a risk exists. The Human Rights Committee acknowledged the non-refoulement obligation which means that a state cannot return a refugee to a

situation of serious harm under international refugee law and climate change can engage this principle.⁴⁴

The Teitiota decision does not have direct legal effect for the purpose of this research. The case concerns cross-border displacement and a treaty to which Pakistan is also signatory but it does not address internal displacement. The Committee's treatment of climate-related risk as fundamental rights obligations shows a shift in the orientation of international human rights bodies toward climate change as a legal, and not merely a scientific or political, problem. This shift has influenced domestic constitutional litigation like we see in the European Court of Human Rights and the Inter-American Court of Human Rights which have connected climate change to human rights in their advisory opinions.⁴⁵ The Pakistani superior courts are also deriving lessons from global judicial conversations like Article 9A, and Teitiota is one of its most cited contributions.

❖ **The Loss and Damage Framework: Finance Without Legal Conduit**

At COP27 (Conference of Parties by UNFCCC), we witnessed a new addition to international architecture relevant to climate displacement. A Loss and Damage (L&D) mechanism was established in Sharm el-Sheikh, which is a significant development achievement for most vulnerable nations, including Pakistan.⁴⁶ The L&D framework believes that climate impacts require compensations in most climate vulnerable states and only adaptation may not work. The categories which L&D covers include sea level rise affecting coastal land, permanent loss of glacial water sources and recurring flooding in the same area every year. The fund established at COP29 in Baku (2024) began operationalizing these principles with initial capitalization commitments from developed nations.⁴⁷

Pakistan has strong moral and legal claims on L&D resources since it contributes very little to greenhouse gas emissions but is significantly affected by climate change and is now a primary beneficiary of L&D framework. The 2022 floods alone dwarfed

⁴⁴ Teitiota v New Zealand (n 24) paras 9.3,9.14

⁴⁵ Sarhad Journal of Legal Studies, 'Climate Change and Non-Refoulement: Reading Teitiota in South Asia' (2025) 3 Sarhad JLS 1, 7

⁴⁶ UNFCCC, Decision 2/CP.27: Funding Arrangements for Responding to Loss and Damage (2022) UN Doc FCCC/CP/2022/10/Add.1

⁴⁷ UNFCCC, Decision on the Operationalization of the Fund for Responding to Loss and Damage (2024) UN Doc FCCC/CP/2024/L.1

the economy of Pakistan and the nations contributing more to gas emissions shall have compensatory responsibility, the argument is based on the 'polluter pays' principle and this research invokes the principle at domestic level as well. This principle has gained popularity and acceptance in international climate negotiations.

Furthermore, this mechanism does not create any mechanism to connect individual displaced persons and international climate finance. What happens is funds flow from donor states to the recipient government who then decide when the funds will go and one can doubt the transparency. In this case, there is no legal obligation on the state that these funds shall be allocated for resettlement of displaced communities. These funds may be used on factors like agricultural recovery or coastal defense but the people who deserve the fund remain helpless. This is where I have found a gap and through section six, I shall propose a Climate Displacement Registry whose main function will be allocation of these funds to the documented needs of registered E-IDPS. This will ensure transparency and the funds will reach the deserving ones.

❖ **Synthesis: What International Law Can and Cannot Do**

The frameworks and soft law discussed above can provide Pakistan normative inspiration. These already reviewed international legal frameworks create no binding obligation for Pakistan in terms of climate-displaced populations. Looking at the 1951 Refugee Convention, it is irrelevant to internal displacements in its entirety. The UN Guiding Principles can work a great deal if domesticated into binding law. Similarly, the Nansen framework and ILC Draft are important developments but they failed to receive the status of treaties or conventions. Another important step was the case of *The Teitiotia* but the issue raised regarding cross-border displacement and the imposition of an evidentiary threshold that individual internal migrants could rarely satisfy. The L&D mechanism provides financial resources but no legal conduit to the displaced.

This is not something to be worried about, but a positive step since we now know where the work needs to be done. The international legal frameworks recognize climate displacement as a human rights issue and do not consider climate migrants mere humanitarian caseloads, the appropriate measure for the displaced populations is durable solutions. These principles provide the normative foundation for the domestic constitutional argument that follows. Article 9A of the Constitution of Pakistan creates a legal duty to recognize and protect Environmental IDPs. It is

the responsibility of Pakistani courts and legislators to develop and enforce this protection for Pakistani citizens. The next sections focus on explaining and developing this argument. The coming section will be focused on developing this argument.

Pakistan's Domestic Legal Landscape

The preceding section established that the international law framework can in no way rescue Pakistan's climate-displaced communities, this section is going to unveil myths about current Pakistan's law and its inability to rescue the climate change affected. The laws in Pakistan which are designed to tackle internal displacement and environmental disasters are not only incomplete but have failed to maintain what the government owes to those who experience these natural disasters. The current section will shed light on relevant legislation and constitutional jurisprudence in order to see where we are lacking and what propositions should be given in order to rebuild it.

❖ The National Disaster Management Act 2010

• Institutional Architecture and Mandate

Pakistan enacted the National Disaster Management Act (NDMA Act) in 2010 and it was a well-designed piece of legislation. The most important aspect of it is the institutional architecture, creating the National Disaster Management Authority at the federal level, the Provincial Disaster Management Authority at the provincial and District Disaster Management Authority at local level.⁴⁸ This architecture is capable of handling and coordinating emergency responses across federal and provincial levels even in geographically diverse areas. It has developed, over the past years, a good operational capacity which is evident from their response to 2010 floods, the 2022 floods and the flash floods of 2025. Although their response to the 2025 floods was imperfect, one cannot say it was totally non-existent. Food, temporary shelter, and basic medical assistance reached affected populations in quantities and at speeds that would not have been possible without a centralized coordination mechanism.

⁴⁸ National Disaster Management Act 2010 (Pakistan), ss 6, 18, 28

The Act defines 'disaster' broadly to include natural disasters caused by floods, earthquakes, and other environmental events, and it empowers the NDMA to prepare national disaster management plans, coordinate response efforts, and recommend the allocation of funds from the National Disaster Management Fund.⁴⁹ On paper, this looks like a reasonably comprehensive emergency management framework. The problem is that it is precisely that — an emergency management framework. It is designed to respond to acute events within a defined timeframe, restore a degree of normalcy, and then wind down. It is not designed for the situation where normalcy cannot be restored because the land to which people would return no longer exists.

- **The Durable Solutions Deficit**

Search the NDMA Act 2010 from beginning to end and one will not find the words 'resettlement,' 'rehabilitation,' or 'durable solutions' used in a legally operative sense.⁵⁰ The Act empowers the NDMA to provide relief and to prepare for future disasters, but it does not impose any obligation on the state to permanently relocate communities whose homes have been made uninhabitable by slow-onset environmental change. Now missing displacement in the whole statute and treating it as a temporary condition is not a drafting error but a deliberate act of the State, in contrast to this, it should be treated as a permanent condition requiring a legal response and resettlement.

If we look at the Indus Delta, we can see the consequences of how the state has treated people who are displaced. People in Badin and Thatta were affected by 2010 floods and they returned to their places to rebuild them with NDMA assistance (which was not a durable solution). They were displaced again in 2022 and flash floods of 2025 but they received the same NDMA response. Each event was treated the same as a crisis to be responded to and resolved while the recurring floods reflected a permanent structural change in the habitability of that land. What I mean to say is that the NDMA is incapable of addressing these serious issues and the government of Pakistan needs to understand that a simple tent cannot solve this

⁴⁹ *ibid*, ss 11, 47

⁵⁰ National Disaster Management Act 2010 (Pakistan) (n 47), reviewed in full

long overdue issue of displacement but a legal recognition and permanent homes somewhere else can.⁵¹

Another thing to mention is the question of qualification for NDMA assistance. There is no mention of a 'displaced person' and what rights are associated with this category. It does mention 'affected persons' which are in relation to specific already declared disasters and only those affected persons will receive assistance from the NDMA. A person who has lost everything in 2022 floods and is still homeless is no longer an affected person as per the NDMA legal framework. They have, legally speaking, fallen off the relief rolls even though their displacement has not ended.

❖ The Pakistan Climate Change Act 2017

• The Architecture of the Act

Pakistan was among those earlier nations who gave statutory shape to their climate governance obligations and the Climate Change Act of 2017 is a genuinely positive piece of legislation. The Act established Pakistan Climate Change Authority and Climate Change Council and the win is that it was scattered across multiple ministries before.⁵² This legal framework mandated that the government shall be preparing climate change adaptation and mitigation plans. Alongside this, there will also be established mechanisms for international climate finance and make federal and provincial governments responsible by integrating climate considerations into their planning processes.

Researchers have recognized three wins of this legal framework while also acknowledging its limitations. Among other limitations, the notable one is the absence of the word "migration" in Climate Change Act 2017 and for the purpose of this research, the words "displacement", "resettlement" and "internally displaced persons" are also missing.⁵³ A country which is vulnerable to climate change treats millions of people displaced by disasters as a social externality. The need of the time is their legal recognition and regulation. Just like NDMA's framework, the Climate

⁵¹ *ibid*, s 2(e) (definition of 'disaster')

⁵² Pakistan Climate Change Act 2017, ss 3, 7

⁵³ Pakistan Climate Change Act 2017 (reviewed in full)

Change Act 2017 also assumes that displacement is someone else's problem which will be addressed via humanitarian response rather than legal entitlements.

- **The PCCA's Mandate and Its Limits**

This Authority established under Pakistan Climate Change Act 2017 has a mandate to oversee climate change policy and advise governments on adaptation strategies, finance flows and obviously provides a coordination platform for different ministries on climate related issues. The only mandate that the Climate Change Authority lacks is its legal protection for climate displaced people. It can recommend and suggest agricultural policies for changing rainfall patterns but it cannot dictate a government to provide for the permanent resettlement of families who have lost homes and livelihoods because of natural disasters. The Authority can check Pakistan's compliance with the Paris Agreement obligations, it however cannot register those millions of people who have been displaced internally by climate events and now living without any formal legal recognition.

And this gap not only questions an organizational design but it is a failure of legal imagination as well since Pakistani law has failed to conceive climate-displaced persons as a legal subject with enforceable rights. The irony is that they have always been treated as a humanitarian caseload managed by relief agencies until the next disaster displaces them again. The PCCA does have a potential for E-IDP recognition but it needs to expand its statutory mandate and that expansion in the form of recommendations is given in section six of this research.

- ❖ **The Pakistan Environmental Protection Act 1997: A Framework Left Behind**

Before the National Disaster Management Authority Act and The Climate Change Act, there existed the Pakistan Environmental Protection Act 1997 (PEPA), which was necessary for climate governance at that time. The primary concern of PEPA was pollution control and establishing environmental quality standards. The PEPA created Environmental Protection Agencies (EPAs) for its enforcement and the statute in its nature is fundamentally regulatory.⁵⁴ It was designed to regulate and

⁵⁴ Pakistan Environmental Protection Act 1997, ss 5, 6, 14.

govern behavior of industries, developers, and other actors whose activities affect environmental quality.

Like the NDMA Act and other legal frameworks, PEPA fails to provide any mechanism for displacement. This is not surprising — in 1997, climate-induced displacement was not on the domestic legislative agenda anywhere, and PEPA's drafters were understandably focused on the more immediately visible problem of industrial pollution. The Act does contain provisions that have been invoked in environmental litigation — its definition of 'environment' is broad, and its prohibition on the discharge of effluents and other pollutants has been used creatively by litigants — but it offers nothing to the person whose home has been taken by the sea or whose farmland has turned to desert. PEPA's relevance to the E,IDP question is therefore primarily contextual: it forms part of the statutory backdrop against which the constitutional jurisprudence reviewed below developed, and it illustrates the piecemeal character of Pakistan's pre,2024 approach to environmental law.

❖ **Constitutional Jurisprudence: From Article 9 to Article 9A**

• **Shehla Zia v. WAPDA (1994): Life Includes Environment**

Environmental protection got constitutional status through the Supreme Court's ruling in *Shehla Zia v. WAPDA* (1994) and we already have this landmark judgement in the literature review of the research. It is worth mentioning that the court did not give any specific and separate right at that time; rather article 9 (right to life) was extended further to include the right to clean environment as well. It expanded it to dignified and healthy life. The environment was considered as a pre-condition to the right to life.⁵⁵

Now all these explanations and distinctions matter. A right that has operated under the umbrella of another right will always be vulnerable to an argument that the derivation was mistaken or should be narrowed. Now one can counter-argue and it is already vulnerable that environmental degradation, however serious, cannot be considered a threat to life unless there is an imminent threat to life. And courts in other cases have multiple times interpreted how severe environmental harm needs

⁵⁵ *Shehla Zia v WAPDA* (n 13) 710 (Justice Saleem Akhtar)

to be before it could trigger Article 9 protection. The Shehla Zia doctrine was powerful, but its boundaries were perpetually contested.

- **Asghar Leghari v. Federation of Pakistan (2015): Climate as Constitutional Crisis**

The era of environmental constitutionalism was marked by Justice Mansoor Ali Shah's judgement in Asghar Leghari case, the earlier case of Shehla Zia extended right to life to clean environment while Asghar Leghari case went further stating that government's failure of implementing climate change policy is a constitutional violation and court were allowed to intervene in such case to enforce compliance.⁵⁶ What complimented Justice Mansoor's decision in Asghar Leghari case was the creation of the Judicial Climate Change Commission, whose primary function was monitoring governmental actions. This step put the judiciary of Pakistan among those countries where courts perform structural supervision over executive climate governance.

This judgement introduced the concept of intergenerational equity which means the current government's climate obligations not only extend to current citizens but also future generations who may bear the consequences of the government's decisions.⁵⁷ Now this principle was borrowed from International Environmental Law, articulated in Brundtland Commission 1987 (definition of sustainable development) and this research for the sake of argument, going to adopt this principle.⁵⁸ If this very principle demands governments to think of future generations and prevent harm, they at the same time need to provide legal protection to those who have already been harmed by climate change.

For all the positive developments after the Asghar Leghari case, it still left one critical question unanswered, the government's concern regarding people who have already been displaced by climate change. The petitioner, Asghar Leghari, was not forced to leave his home or migrate rather he had sued the government for agricultural disruption and water scarcity. What the court did was provide a prospective solution, compelling governments to comply with climate obligations and implement their policies in order to reduce climate change harm. The ruling

⁵⁶ Asghar Leghari v Federation of Pakistan (n 17) para 7

⁵⁷ *ibid*, para 9

⁵⁸ World Commission on Environment and Development, *Our Common Future* (OUP 1987) 43

was short of something really important; giving legal recognition to those for whom future climate harm had become present reality. Through this research, I aim to fill the gap through article 9A, the gap between a jurisprudence oriented toward prevention and the needs of those for whom prevention has already failed.

- **Article 9A and the 26th Constitutional Amendment (2024)**

The Parliament in 2024 inserted a new provision into the fundamental rights section of the constitution through 26th constitutional amendment. Article 9A states that 'Every person shall be entitled to a clean, healthy and sustainable environment.'⁵⁹ This development compressed decades of judicial and constitutional development into a single provision which is now explicit constitutional text. This changed the legal landscape in ways that are still being worked out.

It eliminated the preliminary argument of how a clean environment can be associated with the right to life. Before Article 9A, the litigants had to convince the courts how right to life could be extended to environmental matters and this threshold was previously established in the case of Shehla Zia. Now that Article 9A is a standalone right, it is enforceable under article 199 of the constitution through High Courts and Article 184(3) through Supreme Court's original jurisdiction.⁶⁰ The litigation pathway has been simplified considerably.

Another significance of this article was regarding the nature of State's obligation, the Shehla Zia case had created a 'negative' state's obligation which meant the state should not do anything that degrades our environment. While Article 9A, for the purpose of this research, creates a more 'positive' obligation – which means the state is under obligation to take steps that can ensure a clean, healthy and sustainable environment. The meaning of the word 'sustainability' is worth noticing. As established in international and domestic legal discourse, it means futurity, continuity and systematic responsibility. An environment is not sustainable if it is tolerable today but future generations are at risk. For this purpose, the person whose land has been consumed by sea, the condition of sustainability fails here and the

⁵⁹ Constitution of the Islamic Republic of Pakistan 1973, art 9A (inserted by Constitution (Twenty,Sixth Amendment) Act 2024)

⁶⁰ Constitution of the Islamic Republic of Pakistan 1973, arts 184(3), 199

state has failed to prevent the emissions that caused the warming thus rising sea level. Now the state is responsible for that failure in constitutional terms.

The argument which I try to make is that the state is under positive obligation with regards to climate displaced persons; the first duty is giving formal legal recognition to E-IDPS rather than leaving them in a legal limbo. Another duty is to provide a durable solution i.e., resettlement and local integration. The reality is that none of these duties exists in domestic law or any other policy. Article 9A, properly interpreted, requires that they should.

❖ The Eighteenth Amendment and Federal Complexity

The Eighteenth Amendment (2010) devolved significant powers from Federal Government to Provincial Governments and any realistic legislative proposal must grapple with this amendment.⁶¹ Under the 18th Amendment land management, housing, local government, and many aspects of social protection now fall within the ambit of provincial legislative competence under the Fourth Schedule's Federal and Concurrent Legislative Lists. This devolution has implications for E-IDP recognition that are both structural and practical.

On the structural side, a federal statute creating the E-IDP category can define the legal status, the eligibility criteria, and the framework of rights, but the implementation of land-based resettlement — including any 'land-for-land' compensation scheme — would require provincial legislation amending the relevant Land Revenue Acts. The Land Revenue Act 1967, as in force in Punjab, and its equivalents in Sindh and KPK, would need to be amended to recognize loss of habitable land due to climate change as a ground for state-sponsored reallocation.⁶² This requires not just federal political will but provincial legislative action across at least three major provinces, each with its own political dynamics and land tenure complexities.

On the practical side, the provinces most affected by climate displacement — Sindh and KPK in particular — are also among those with the most constrained administrative capacity and the most complex land tenure arrangements. Sindh's coastal districts involve a mixture of state land, private agricultural holdings, and

⁶¹ Constitution (Eighteenth Amendment) Act 2010, amending the Fourth Schedule to the Constitution of the Islamic Republic of Pakistan 1973

⁶² Land Revenue Act 1967 (West Pakistan)

customary communal land arrangements that any resettlement scheme would have to navigate carefully. This is not an argument against the legislative proposals advanced in this research; it is an argument for designing those proposals with federal-provincial coordination mechanisms built in from the outset, rather than leaving the institutional architecture to be improvised after the statute is enacted.

❖ **The Overall Picture: A State in Constitutional Non-Compliance**

Pakistan's domestic landscape presents a troubling paradox, with explicitly worded environmental fundamental rights in the constitution but a dark side of non-compliance as well. We also have a functional architecture for disaster management and climate governance but are under-resourced. Pakistan also has a superior court environmental activism tradition in the developing world, yet again we have millions of citizens displaced by climate change, unrecognized, without formal status and without enforceable resettlement rights. Also, there is no framework that can distinguish forced migration from economic migration.

The reason for all this is not a gradual reform being too slow rather a structural misalignment between the constitutional promise and the legislative reality, a misalignment that deepens with every monsoon season and every fresh wave of climate induced displacement. The following section i.e., 5 is the comparative analysis of Pakistan with Bangladesh and Vanuatu, with legislative proposals for Pakistan.

Comparative Lessons and Legislative Proposals for Pakistan

The most interesting thing about legal scholarship is that it rarely emerges from vacuum. Most of the time, solutions to complex problems like human rights issues and others, durable solutions have been found in comparative learning. One has to look deeply at what has worked, what has failed and why. That's how one can derive transferable principles from other jurisdictions. This section offers comparative analysis from Bangladesh and Vanuatu with practical legislative proposals for Pakistan legal landscape. The result of this analysis will be a rights based durable model which will be constitutionally grounded and will also replace the charity based relief model that has governed Pakistan's climate displaced since independence.

❖ The Constitutional Foundation: Article 9A as a Positive Obligation

In this research, before we go for comparative analysis and translating lessons into Pakistan, we need to make a constitutional basis for those proposals. The entire environmental framework is based on a single provision of article 9A which guarantees every person the right to a clean, healthy and sustainable environment. But we have to move one step forward and advance a critical interpretative argument that has not been made so far – Article 9A must be read as creating a positive obligation, not merely a negative one as already discussed in a previous section.⁶³

The negative obligation will just stop a government from doing things that could endanger the environment (which they will still do since we always fail at compliance) but a positive one (the main argument for this research) will hold the state accountable and will ensure that state must actively ensure that every person actually enjoys environmental sustainability. The word 'entitled' in Article 9A is instructive since it does not say no person shall be deprived of a healthy environment; it says every person shall be entitled to one – which is the language of active provision. For a community whose land has been submerged under water permanently, this constitutional guarantee has been denied. The state cannot negate its obligation under Article 9A by noting that the disaster was not its direct doing rather it should respond legally, institutionally and financially.

The Constitutional Court in South Africa has set a proper reasonableness standard in the *Republic of South Africa v. Grootboom*, which can function as a judicial template for Pakistan.⁶⁴ In this case, it was stated that one should not demand immediate and complete delivery of constitutional rights in an already resource-limited and constrained state. But people can demand and they have the right to ask for a reasonable, documented, progressively implemented plan for doing so. Now assessing Pakistan through this judicial template, we do not ask Pakistan if the state can immediately rehouse every displaced person, but whether it has a coherent legal framework, a functioning institutional architecture, and a credible financing plan in place. This is where we fail as a nation, we do not have any of the above stated things and the proposals I have designed are to remedy constitutional non-compliance.

⁶³ Constitution of the Islamic Republic of Pakistan 1973, art 9A (n 58)

⁶⁴ *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) para 41

❖ Lesson One — Treat Displacement as Governance, Not Emergency

• What Bangladesh Demonstrates

Bangladesh's most important contribution to this field is conceptual rather than technical. The Bangladesh Delta Plan 2100, developed with Dutch technical collaboration and approved in 2018⁶⁵, proceeds from a premise that Pakistani law has never adopted: that the movement of people away from climate-unviable land is not a social problem to be minimized but a governance variable to be managed. The best thing about BDP 2100 is its preparations for climate change in advance – like identifying high-risk zones that can generate migrants and also focus on areas where they will settle those migrants⁶⁶. So, infrastructure and housing are planned even before displacement happens⁶⁷.

This is where Bangladesh set itself apart from Pakistan – for their anticipatory approach. Pakistan's main legal instruments like the NDMA Act 2010 and the Climate Change Act 2017 are reactive in nature and respond to already declared disasters. They lack anticipatory planning for future's durable rights-based solutions. The result, in Pakistan's case, is the familiar cycle: displacement, temporary relief, return, displacement again — with no legal mechanism to break the pattern.

• The Pakistani Proposal: A National Climate Migration Act

The legislation of the National Climate Migration Act (NCMA) can prove to be durable given the lessons from Bangladesh BDP 2100 plan. This standalone statute will treat climate migrants as a distinct legal category – not a footnote to disaster management law or climate governance policy. The NCMA will provide for legal recognition, permanent resettlement and anticipatory planning for future events.

The NCMA must begin with what no Pakistani statute currently contains: a legal definition of the Environmental Internally Displaced Person. This research proposes the following: an E,IDP is any person forced to leave their place of habitual residence

⁶⁵ Government of Bangladesh (n 11) 3,5

⁶⁶ *ibid*, 112,118

⁶⁷ Government of Bangladesh, National Strategy on the Management of Disaster and Climate Induced Internal Displacement (Ministry of Disaster Management and Relief 2015)

within Pakistan due to sudden or gradual environmental change attributable to climate change — including flooding, sea-level rise, coastal erosion, desertification, or glacial retreat — where such change has rendered the place of habitual residence uninhabitable or has caused involuntary disruption to the person's livelihood, and where voluntary return is not possible or reasonable within a foreseeable period. This definition covers both sudden-onset events and slow-onset processes, captures both temporary and permanent displacement, and is grounded in environmental causation rather than persecution — sidestepping the 1951 Refugee Convention's definitional limitations entirely.⁶⁸

Beyond definition, the NCMA must establish a National E-IDP Commission — an independent statutory body with the mandate to register displaced persons, oversee their access to durable solutions, and report annually to Parliament.⁶⁹ The rights attached to E-IDP status should include: the right to formal documentation linked to NADRA records and portable across provincial boundaries; the right to access state services — schools, hospitals, social protection — without a permanent fixed address; and the right to be assessed and considered for one of three durable solutions: voluntary return where safe and viable, local integration in the place of displacement, or planned relocation to a climate-resilient settlement.

❖ Lesson Two — The Displacement Registry as Legal Anchor

• What Vanuatu Demonstrates

Vanuatu's Climate Change and Disaster-Induced Displacement Policy (CCDDP), adopted in 2018, is the most legally sophisticated national framework for climate displacement anywhere in the world.⁷⁰ Its most practically significant contribution is the recognition that effective protection begins with documentation. Vanuatu's policy calls for a national displacement register — a formal database linking displaced persons to their legal status, their needs assessment, and their durable solutions pathway.⁷¹ The logic is simple but powerful: you cannot deliver rights to

⁶⁸ Proposed definition — original to this research; cf Kälin and Schrepfer (n 23) 14 for typology of climate displacement.

⁶⁹ cf Uganda Prevention, Protection and Assistance to Internally Displaced Persons Act 2006 (n 39), s 4 (for comparable commission model)

⁷⁰ Government of Vanuatu (n 12) 1

⁷¹ *ibid*, 18,19

people the legal system cannot see. Without registration, displacement remains invisible to the state apparatus, and invisible people access nothing.

Vanuatu's Planned Relocation Guidelines complement the registry by establishing procedural requirements for any state-managed relocation: free, prior, and informed consent from the affected community; a comprehensive assessment of the receiving site's safety, agricultural potential, and access to services; and a post-relocation monitoring framework to verify that relocated communities are genuinely better off.⁷² These requirements reflect an understanding that forced relocation, however well-intentioned, can destroy community cohesion and worsen the wellbeing it was meant to protect — a lesson learned painfully from the history of development-induced displacement across the Global South.

- **The Pakistani Proposals: Registry, Land Bank, and L&D Conduit**

Vanuatu's registry model translates into a National Climate Displacement Registry for Pakistan, administered by the National E-IDP Commission and maintained within the NADRA database.⁷³ Registration should be accessible through district offices, mobile registration teams deployed to active displacement zones, and digital channels. The evidentiary standard must be generous: a rebuttable presumption of climate displacement should apply to residents of designated high-risk zones⁷⁴ — the coastal districts of Sindh, flood-prone areas of KPK and South Punjab, glacially-fed river valleys in Gilgit-Baltistan — so that the administrative burden does not fall on already-vulnerable people to prove what climate science has already established about their regions.

Vanuatu's planned relocation framework translates, in the Pakistani context, into the proposal for a National Climate Land Bank (NCLB) — a statutory body under the NCMA with the mandate to identify, hold, and allocate state-owned land in climate-resilient locations for the permanent resettlement of registered E-IDPS.⁷⁵ Land, in Pakistan's rural communities, is not merely an economic asset; it is the medium through which families anchor their livelihoods, their social position, and

⁷² Government of Vanuatu, Planned Relocation Guidelines (Department of Climate Change 2018) 7, 14

⁷³ cf Government of Bangladesh (n 66) 12 (for registry model in comparable jurisdiction)

⁷⁴ cf Nansen Initiative (n 27) 31, 32 (for presumptive protection approaches)

⁷⁵ cf Land Revenue Act 1967 (n 61), s 4 (existing state land categories in Punjab which NCLB would coordinate with)

their intergenerational security. Money compensation alone cannot restore what climate change takes when it takes the land. The NCLB would operate primarily through the identification of existing state-owned land reserves — of which Pakistan has substantial holdings, particularly in Baluchistan and reclaimed areas of Punjab — rather than through compulsory private acquisition, avoiding the well-documented failures of Pakistan's Land Acquisition Act 1894.⁷⁶

The Eighteenth Amendment's devolution of land management to the provinces means that the federal NCLB must work through legally established coordination mechanisms with provincial land revenue authorities. The NCMA should require each province to designate a Provincial Climate Land Reserve — a category of land ring-fenced specifically for E-IDP resettlement — and to establish a Provincial Climate Land Authority managing allocations in coordination with the federal body. This federal-provincial architecture is more complex than a purely centralized model, but it is constitutionally necessary and will produce more contextually appropriate outcomes than a uniform federal program applied across Pakistan's enormously diverse geographic and social landscape.

The third proposal in this cluster addresses financing. Pakistan's access to the Loss and Damage Fund — established at COP27 and operationalized at COP29, with Pakistan as a designated beneficiary — represents a significant international resource for E-IDP rehabilitation. But L&D receipts currently enter Pakistan's consolidated fund with no legal requirement that they reach displaced communities.⁷⁷ The NCMA should include a provision requiring the Pakistan Climate Change Authority to maintain a dedicated Climate Displacement Sub-Fund, into which a minimum of thirty percent of all L&D receipts are deposited, governed by the E-IDP Commission, linked to the Registry, and subject to independent audit and annual parliamentary reporting.⁷⁸ This mechanism simultaneously ensures domestic accountability and strengthens Pakistan's credibility with international donors who face growing pressure to demonstrate that L&D funds reach their intended beneficiaries.

⁷⁶ Land Acquisition Act 1894 (Pakistan); see also *D.G. Khan Cement Company v Government of Punjab* 2021 SCMR 834 (discussing compensation inadequacies)

⁷⁷ UNFCCC Decision 2/CP.27 (n 45); cf Government of Pakistan, Federal Consolidated Fund Rules (Finance Division 2021)

⁷⁸ cf UNFCCC Decision on L&D Fund Governance (n 46) para 14 (accountability requirements for recipient states)

The Polluter Pays Principle: Completing the Financing Framework

A genuine legal framework would require domestic finance since International climate finance is actually necessary but not sufficient. Through this research, I propose a Climate Displacement Levy. We would be having a defined emission threshold and the levy will be assessed on Pakistan's large industrial emitters i.e., cement plants, steel mills, coal-fired power stations, and petrochemical facilities.⁷⁹ The levy will be exclusively directed to Climate Displacement Sub-Fund and this principle has been derived from the international Loss and Damage Logic – which says that those whose activities contribute most to the conditions generating displacement should bear a proportionate share of the cost of addressing it.

All this will be done in consultation with relevant industries to ensure administrative feasibility and the levy should not undermine industrial investment—the whole plan is not a punitive proposal. Several jurisdictions have implemented comparable levies within emissions trading frameworks, demonstrating that the technical design challenges, while real, are manageable. The levy's purpose is to reduce the framework's dependence on variable international donor flows and to establish, in domestic law, the principle that the costs of climate displacement are not the exclusive burden of its victims.

❖ From Charity to Rights: The Paradigm Shift

Stepping back from the individual proposals, the framework advanced in this section represents a fundamental shift in how Pakistani law conceptualizes its relationship to the climate-displaced. The current model is charitable in nature – the state and international organizations are moved by the sufferings of displaced communities and they provide them with the assistance they need. They don't have any legal right to demand it and that assistance is temporary, discretionary, and event-specific. Since there are no enforceable obligations, the displaced are at the mercy of continuing goodwill of those providing assistance. When the cameras move on and the emergency declaration lapses, the legal framework offers the displaced person nothing.⁸⁰

The model which I am proposing is rights based and durable and built entirely on a different premise. The climate-displaced person should not be considered as a

⁷⁹ cf Environment Protection (Climate Levy) Act 2011 (Australia) for comparable domestic levy design

⁸⁰ IOM, IOM Outlook on Migration, Environment and Climate Change (IOM 2014) 42,44

humanitarian caseload rather he is a citizen with enforceable constitutional rights under article 9A. Their registration is a legal act that creates justiciable entitlements. Their resettlement is a constitutional obligation, not a favor. The institutions responsible for their protection — the E-IDP Commission, the Land Bank, the Registry — are creatures of statute, accountable to Parliament and subject to judicial review. The financing — the Sub-Fund, the L&D conduit, the Polluter Pays Levy — is legally ring-fenced, not subject to ordinary appropriations politics.

Weak economy and constrained resources are no excuse at all as we see Bangladesh adopting an anticipatory, governance-oriented approach to climate displacement if it commits to doing so. Same goes for Vanuatu which is also a resource-limited state but they have developed a legally sophisticated rights-based framework that treats displaced communities with dignity and procedural seriousness. And Pakistan has something which both Bangladesh and Vanuatu lack; an explicit and freestanding constitutional foundation (Article 9A). The constitutional promise has already been made. What remains is the legislative and institutional work of keeping it.

Conclusion

The significance of this research operates on more than one level, and it is worth being direct about each of them. At the academic level, this research is among the first to analyze the implications of Article 9A specifically for the situation of already-displaced persons, a gap that the rapidly growing literature on Pakistan's 26th Amendment has not yet addressed. By constructing the argument from constitutional text rather than policy aspiration, it gives the E-IDP category a legal foundation that is harder to dismiss than a humanitarian appeal.

At the policy level, the proposals are designed to be practically implementable. They work within Pakistan's existing constitutional structure, respect the federal-provincial division of authority under the Eighteenth Amendment, and do not assume fiscal resources that the state does not have. The financing framework, combining international L&D funds with a domestic Polluter Pays Levy, is realistic rather than wishful. The institutional architecture — Commission, Registry, Land Bank, builds on bodies and systems that already exist rather than conjuring entirely new bureaucracies from scratch.

At the human level, which is ultimately where law must justify itself, the argument matters because the people it concerns matter. The communities of the Indus Delta, the flood-displaced families of Badin and Thatta, the farmers of South Punjab

watching their land turn to salt, these are not abstractions in a policy paper. They are citizens of a constitutional state that has, in Article 9A, made them a promise. The purpose of this research has been to work out, in legal terms, what keeping that promise actually requires.

❖ A Final Reflection

There is a tendency, in legal scholarship on climate change, to reach for grand declaratory language, to speak of civilizational stakes and historical turning points. That tendency is understandable, because the stakes genuinely are significant. But it can also obscure the more modest, more tractable, more immediately important truth: that most of what needs to happen is not philosophically complex. It is politically difficult, institutionally demanding, and financially challenging, but it is not mysterious.

Pakistan knows who the displaced are. Climate science tells us where displacement will intensify. International experience tells us what kinds of legal frameworks have worked and what kinds have failed. Article 9A tells us that the state has a constitutional obligation to act. What has been missing, until now, is a legal argument that connects these pieces into a coherent, enforceable whole. That is what this research has attempted to provide.

Whether Pakistan becomes a country that treats its climate-displaced citizens as rights-bearing members of a constitutional community, or continues to manage them as a humanitarian caseload until the next disaster renders the question more urgent, that choice will be made by legislators, judges, and officials in the years ahead. The law, as this research has argued, already points firmly in one direction. The question is whether those with the authority to act will choose to follow it.

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