

## From Environmental Rights to Criminal Accountability: Making Ecocide a Crime in Pakistan

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### Abstract

In the context of environmental constitutionalism, the most significant development is arguably that a clean, healthy and sustainable environment is recognized as a fundamental right in Article 9A of our Constitution. However, constitutional recognition does not itself guarantee that the gravest ecological destruction is prevented, investigated or punished. The question of this article, if Pakistan should enact a separate domestic fleeing crime and, if yes, how that crime can be reconciled with current environmental legislation, constitutional guarantees including the right to a healthy environment, federalism and criminal-law principles. It utilizes doctrinal legal analysis through the lens of environmental constitutionalism and green criminology, to analyze relevant sections in the penal code (Pakistan Penal Code, 1860), the Pakistan Environmental Protection Act, 1997; Constitution Twenty-sixth Amendment; and *Shehla Zia Vs. Pakistan* has not been devoid of environmental crimes or corporate accountability, but the provisions are defined very narrowly (in terms of prohibited conduct), as well as fragmented in regulatory schemes, limited in their penal escalation and high on enforcement challenges. The article critically builds on the 2021 definition of ecocide by the Independent Expert Panel, and on comparative reforms to propose a circumscribed form of an offence for intentional or probably aware conduct that creates significant and durable harm to a wide or long-term natural environment. Individual and organisational liability, proportionate penalties, restoration orders, the need for independent investigation, guarantees on scientific evidence protections and federal-provincial coordination are recommended. It finishes with the conclusion that ecocide criminalisation could, but only in tandem with other elements of a more definitively institutionally credible environmental justice strategy, activate Article 9A.

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### 1. Introduction

Pakistan's environmental protection has entered into a fresh constitutional phase. Parliament enacted Article 9A through the Constitution (Twenty-sixth Amendment) Act, 2024 by stating that every person has a right to clean, healthy and sustainable environment. Such swift acknowledgment now brings together a jurisprudential evolution that had previously

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relied squarely on interpretation of the rights to life and dignity. It also poses an urgent legal question: given that heavy pollution, deforestation and the degradation of ecosystems can be hard to prevent or prosecute in practice, what is the necessary enforcement action a state must take now that it has incorporated environmental quality into its Constitution? Constitutional symbolism cannot provide the answer. Nor can a thorough account of environmental accountability be boiled down to an assertion that Pakistan lacks any judicial framework in place. The pertinent question is whether the available machinery is coherent, proportionate and enforceable enough to deal with extraordinary environmental damage (Constitution of Islamic Republic of Pakistan, 1973, art. 9A. Constitution (Twenty-sixth Amendment) Act, 2024[edit])

This calls into urgency in case of Pakistan whose environment is highly vulnerable. According to a joint post-disaster assessment (World Bank, 2022), it affected around 33 million people with damages and losses incurred amounting to over US\$30 billion. They are statistics about a disaster created by the intersection of climate and social factors; they do not demonstrate that specific individuals have committed the crime of ecocide. Drawing the line between climate vulnerability and causal crime. Simultaneously, long-standing air pollution, dangerous pollutants from industrial processes, toxic water bodies, unlawful extractive methods and degradation of ecological systems lay bare the deficiencies in mundane environmental governance. Intentional malfeasance, structural regulatory collapse, legal but poorly-controlled development or combinations of these causes can lead to severe damage. A good criminal law should separate blameworthy conduct without indiscriminately punishing disaster or development.

Standards, environmental impact assessment (EIA), licensing and inspection, administrative directions and civil or criminal sanctions are the common bases of conventional environmental regulation. Pakistan has a great many of these. For instance, Section 278 of the Pakistan Penal Code, 1860 criminalises causing atmosphere to become noxious to human health voluntarily with a maximum fine of Rs 1,500 which shows that some of these inherited sanctions are utterly inadequate. The Pakistan Environmental Protection Act, 1997 (PEPA), is longer: it regulates emissions and environmental impact assessments; empowers orders for environmental protection; establishes penalties; explicitly legislates against corporations and the public sector. Its design is thus more complex than the narrow air pollution offence in the Criminal Code. However, while it may be legal, has it been appropriately designed and even regularly exercised against the most egregious kinds of environmental destruction (Pakistan Environmental Protection Act, 1997 s. 11-21; Pakistan Penal Code, 1860, s.278).

Ecocide is a term that has appeared in both international and domestic legal discussions as a potential response to destruction far beyond the bounds of standard environmental non-compliance. The Independent Expert Panel for the Legal Definition of Ecocide (2021) has proposed to make it an international crime where unlawful or wanton acts are committed with knowledge that their conduct will cause serious and either widespread or long-term damage to the environment. This recommendation has significant weight, but it is not an actual provision of the Rome Statute. Additionally, its conditions for application are still debated, particularly the connection between knowledge and recklessness; and the weighing of

ecological damages against expected social benefits (Robinson 2022; Minkova 2024). The challenge for Pakistan, then, should not be reproducing an international advocacy text: It should be to figure out what a domestic offence would even look like if it were to be suitably defensible constitutionally and how any such provision might improve upon the existing law.

In this article we make three connected claims. The first observation is that Article 9A reinforces preventative and remedial obligations but does not on its own impose criminal liability. Prospective, clear and sufficiently safeguarded definitions of crimes must be laid down by Parliament and competent provincial legislatures. Second, a separate ecocide statute is appropriate only in the case of gross environmental transgressions—not as a substitute for the normal duties of investigation, licensing and enforcement of regulatory authorities. Thirdly, the seriousness of an offence itself depends at least as much on capacity to collect forensic evidence, prosecutorial independence, and participatory arrangements for restoration in some form than it does upon harshness of prison sentence or fine. The gap between legal aspiration and lived environmental protection would be reproduced in criminalisation without the enhancement of institutional reform.

## **2. Literature Review: Ecocide, Constitutional Rights, and Environmental Harm**

### **2.1 Ecocide as a developing legal concept**

Ecocide emerged from discussions around large scale environmental destruction, particularly related to conflict. Its modern relevance, however, is increasingly in proposals for a regime to regulate catastrophic peacetime injury. Higgins et al. (2013) examine the historical emergence of ecocide as a separate wrong and make a case for legal protection against harm to non-human life and ecosystems, arguing that environmental law must be able to deal with such harms, in comparable ways to human harms. It runs counter to the concentration found in traditional criminal law on immediate and individualised injury. It raises the question of whether an ecosystem's annihilation must be a legal wrong when its effects are geographically remote, scientifically complex or inter-generational.

A distinguished draft definition intended for potential inclusion in the Rome Statute was provided by the 2021 Independent Expert Panel. It considers ecocide an illegal or deliberately destructive act taken with awareness of a high likelihood of significant and either widespread or long-lasting ecological harm. The Panel defines widespread harm as harm that does not occur only in a limited geographic area, and crosses borders, or that affects an entire ecosystem or species, or very many people. The long-term harms refer to irreversible damage or damage that cannot be repaired through natural recovery within a short time frame. They are open-textured concepts that aim to encompass various ecologies, not rigid scientific measurements (Independent Expert Panel for the Legal Definition of Ecocide, 2021).

Word has taken on the ground effect for me & though none of this academic realities has been otherwise felt, some effort during my college years to avoid altogether with anything so driven have shown up. According to Robinson (2022), it falls on the definition of ecocide to balance criminal law with the multiple and conflicting normative compromises already resident in environmental law. In theory, this will help make needed reforms to a system that

holds people accountable for the most devastating yet formally permitted conduct only through fault. However, if the offence is based on willful disregard of domestic authorisations it may be unclear to what extent criminal courts are being asked to conduct *ex post* balancing that could overturn policy decisions. Minkova (2024) takes this further by asking whether the expert proposal that weighs up environmental damage against economic and social benefits is merely replicating the practical reasoning that answers ecological insult with economic growth. The literature does not contain a definition waiting to be transplanted, therefore. Competing models of the unusual nature of harm, required fault, legal unreasonableness and the importance for development benefits.

## **2.2 Environmental constitutionalism and the implementation problem**

Environmental constitutionalism encompasses the normative framework of constitutional governance whereby environmental principles, rights, duties, and institutional constraints are embedded. The existence of such provisions in a constitution has been shown to have impacts on legislation (May and Daly 2015), administrative decision-making processes (Rodríguez-Garavito 2017) and judicial remedies (Daly et al. Kotzé (2016) situates environmental constitutionalism within the Anthropocene, suggesting that law must expand to promote human development only insofar as it is responsive to ecological limits. These accounts together explain the significance of constitutional recognition — it transforms environmental protection from discretionary programme action into a public duty and legally enforceable claim.

However, recognition is just one step towards translation of rights into results. A constitutional right can sustain litigation, nullify unlawful choices, command reasons and affect statutory interpretation, while saying nothing about critical questions of enforcement. Who investigates a toxic release? Which agency preserves samples? Who decides if the conduct was willful? Something a corporation can be punished that changes its incentives. How will a community that has been injured be restored or compensated? For the most part, these issues are outside the will of the constitutional text. Given this, measure first and institutionalism as opposed to fostering the idea that courts can solve the same wrongs time after, it would follow from environmental constitutionalism.

Resolution 76/300 from the General Assembly of the United Nations acknowledges a human right to a clean, healthy and sustainable environment and also exemplifies the link between international approval and national implementation. The invitation for action by states, businesses and international organisations itself is not a universal criminal offence prescribed in the resolution (United Nations General Assembly 2022). This is why the Pakistani Article 9A has a more direct in-house constitutional basis. However, its utility will hinge on conjunctive execution and available solutions.

## **2.3 Green criminology and unequal environmental burdens**

Unlike traditional criminology, green criminology: expands the investigation from so-called offences to environmentally durative behaviour and the social power shaping its regulation. Recent examples include the article written by Goyes (2019), in which he highlights how colonial relations, inequality and the unequal distribution of ecological harm

present a pertinent issue in the Global South. This is especially relevant in a country like Pakistan, where rural communities, informal workers, residents near industrial sites, and the homes without means of relocation may similarly suffer harms they have limited political power or evidentiary resources to contest. Exposure alone is not sufficient to establish corporate or governmental criminal liability, but it will centralize the distribution of environmental risk in much law/legislation analysis.

It pushes back against conceiving the state and private industry as completely separate spheres also with a green-criminological analysis. Regulators assess pollution controls; public bodies approve projects, govern resources and uphold standards; businesses sometimes hold the specialized knowledge unavailable to surrounding communities. That is why there must be accountability for all serious misconduct, whether of individual decision makers or other organisations and officials with relevant legal standing. It also should not be selectively prosecuting ubiquitous operators while permitting large-scale interests to escape equivalent scrutiny. For this reason, transparent ecocide selection criteria and independent scientific investigation have no place in a serious ecocide law.

#### **2.4 A research gap specific to Pakistan**

In particular, the debates on ecocides tend to explore issues of international criminal jurisdiction, while writing around environmental governance in Pakistan is either about rights litigation or impact assessment or agency performance. Khan et al. This study recognizes limitations in institutional execution of environmental impact assessment in Punjab due to capacity issues and interference with effective procedure (Bashir et al. However, a discrete analytical step would still be needed to assess the extent to which such an aggravated environmental offence would fill identified criminal law gaps and how it would link with existing federal and provincial regimes. That narrower question is dealt with in this article. It makes the case for an offence that is constitutional in nature, operationally enforceable, and scheduled to work alongside rather than replace environmental regulation.

### **3. Theoretical Framework**

#### **3.1 Environmental constitutionalism as a normative framework**

The importance of environmental constitutionalism is in justifying that ecological protection be recognized as a public-law obligation permeating legislative, executive and judicial competencies. The mention of sustainable environment in Article 9A is particularly important, as it acknowledges the fact that environmental quality has a temporal aspect. Environmental damage can impact unborn generations, species lacking political lobbying clout, and natural systems whose dysfunction does not show up for decades. Kotzé (2016) and May & Daly (2015) argue that a constitutional environmental right can also give rise to positive obligations concerning risk assessment, supervision of hazardous activities, resource conservation, and access to remedial action.

The ecocide offence proposed in the draft amendment is one way of giving effect to those obligations in legislation. That should not be conflated with the proposition that all evil is unconstitutional/evil. Article II rights typically lend themselves to different modes of

implementation, and when they take the form of criminal sanctions require a greater degree of definitional specificity than vague assertions of rights. So the theory underpins the legislative project yet simultaneously limits its scope: a bona fide criminal prohibition can only prospectively apply, it must be clear in its aim, it cannot distinguish between arbiters arbitrarily, but... also with due process.

### **3.2 Green criminology as an analytical corrective**

The second lens is provided by green criminology, which points to the actors that make environmental decisions and those impacted by their consequences. While criminal law may proclaim formal equality, it does not provide equal access to evidence or influence or representation. Monitoring data are kept by a plant operator, technical consultants and compliance personnel employed through the firm, whereas exposed communities may only have access to local observations or infrequent testing. If prosecution relies exclusively on information in the possession of the entity under investigation, even well drafted offences may be toothless. On the other hand, too much discretion for a prosecutor may still be used against politically marginal actors and likely will not change structurally important practices (Goyes, 2019).

Environmental rights thus dovetail with fair and effective accountability. Ecocide law should acknowledge the independent harm of ecological loss, authorise the investigation of credible complaints by affected communities, enable unrestricted access to scientific evidence while exposing institutional resistance. But it also needs to insulate defendants from conviction by mob rule or, worse, the presumption that larger businesses are acting unlawfully. Credibility to both affected communities and accused persons hold the key for a robust resources based ecological criminal law.

## **4. Methodology and Scope**

This research uses qualitative doctrinal methods. It draws on the Constitution of the Islamic Republic of Pakistan, the Constitution (Twenty-sixth Amendment) Act, the Pakistan Penal Code, PEPA and some relevant provincial environmental legislation and case law. The leading judgments in this regard are *Shehla Zia v. WAPDA* (1994); *Mehar Badshah v. Government of Khyber Pakhtunkhwa* (2024, as reported at PLD 2025 SC 36) and the ongoing litigation post-2019 judgment in *Haroon Farooq v Government of the Punjab*; to date an unreported Judgment of 2026, also dealt with similar issues [16]. Secondary materials consist of scholarly writings, impact assessments, international legal instruments, and comparative law.

There are three phases to the analysis. First, it reads constitutional and statutory text as a matter of original meaning interpreted against the institutional structure. Second, it examines the elements and remedies of relevant Pakistani law in light of core characteristics of proposed and enacted ecocide models. Thirdly, it makes recommendations for amending the law in relation to: culpability; thresholds of severity; responsibility of organizations; procedures and federal–provincial competence. As a result, you will obtain a normative model: one that not what lawmakers ought to enact (if human behavior or other statistical

considerations are to be this way), but rather treating the proposed offence as already operative in law.

Several limits must be acknowledged. The design is not an empirical investigation of any aspect of prosecution rates, judicial compliance, corporate behaviour or pollution mortality. Case reports and published studies are available to analyze legally designed and recorded institutional impacts but do not indicate national conviction numbers, motivations of all regulators nor causal associations between individual polluters and health outcomes nationally. Post-devolution legislation must be looked at to assume that one provincial enactment applies across the board to every Pakistani jurisdiction. The results should therefore be interpreted as a doctrinal outline that needs further dollar, science and bureaucratic validation.

## **5. Article 9A and the Development of Environmental Rights in Pakistan**

### **5.1 From implied protection to express constitutional entitlement**

Pakistani superior courts had already laid the groundwork for the exploitation of environmental violations, before 2024, through pre-existing fundamental rights. The most cited case is the landmark judgement in *Shehla Zia v. WAPDA* (1994), in which the soundness of an electricity grid station sitting on a residential community was challenged before Supreme Court. Reading the constitutional right to life generously, the Court found that substantial living is more than mere biological survival and that environmental threats may involve constitutionally protected well-being. It was also based on a precautionary principle that particularly applied where there is a serious threat of harm although scientific evidence about the extent and nature of the harm has led to uncertainty regarding the scientific evidentiary basis. Without establishing a contemporary environmental harm crime, the ruling approved that constitutional rights decisions could involve considerations of safety for the environment.

Unlike the previous constitutional interpretation, QoL Article 9A shifts the legal threshold to an explicit fundamental right to environmental quality. Rather than be limited to the term citizen, therefore, the Twenty-sixth Amendment uses language broader than this: every person — and adds a clean, healthy and sustainable environment. These choices matter. They highlight because of citizenship status; and they acknowledge that sustainability is not only about controlling pollution in the short run but also in raising attention to people who are affected. They also lessen dependence on complicated grand arguments that draw ecological justification indirectly from some higher principle of life or dignity. But the constitutional guarantee does not outline constituent elements of the offences, the applicable criminalisation and penalties for each offence, evidentiary presumptions standards or a prosecuting agency. This is a normative standard which needs to be enforced, not an auto-executing penal code (Twenty-sixth Amendment [Act] 2024).

### **5.2 Mehar Badshah: forests, institutional duties, and constitutional visibility**

The case of *Mehar Badshah v. Government of Khyber Pakhtunkhwa* stemmed from a dispute about the illegal cutting of 218 Shisham trees. When the Supreme Court examined case of deforestation in broader sense, it needed information about forest management, staff availability, legally authorized timber extraction and illegal felling and reforestation. The Court considered Article 9A shortly after the coming in force of the amendment in its order dated 24th October, 2024 reported as PLD 2025 SC 36. The verdict noted the ecological significance of forests in relation to rainfall, flooding, biodiversity and climate resilience and raised questions over a 'mining mode' of forestry administration (Mehar Badshah, 2024).

This decision is significant for three reasons. Second, it shows that the new constitutional provision has the potential to introduce systemic environmental management into the judicial blindspot, not confined to a single tree or permit. Second, it even connects protection of ecological systems with government data duties: a department can't realistically get away with claiming effective stewardship without good records on land cover, removals and restoration. Third, it reveals the bounds of public-law adjudication. While a court could order disclosure and instruct authorities to fulfill a duty where one exists, the criminal prosecution of individual persons still depends on an express statutory charge, proof beyond doubt of each element, and shielding from liability in a criminal proceeding. Therefore, the lack of a conviction for ecocide in this case is itself not evidence that the Court failed to enforce Article 9A; it demonstrates a deeply fundamental difference between constitutional remedies and criminal jurisdiction.

Mehar Badshah similarly shows why a future ecocide crime should not be ground to a number-based metric like the volume of trees destroyed. The destruction of a small but irreplaceable habitat may be ecologically more serious than the removal of a larger number of trees in an area recoverable over time. Important metrics consist of habitat cross-connection, conservation state, regenerative skill, ecological products and services, and total sphere impacts from multiple repeat activities. A legal standard, however, grounded in an expert-led evidentiary assessment can make this constitutional worry into a judicially manageable civil standard.

### **5.3 Haroon Farooq: the promise and burden of continuing judicial supervision**

One such vehicle for judicial supervision of the environment was the litigation started in *Haroon Farooq v. Government of the Punjab*, W.P. No. 227807/2018 by Lahore High Court. Orders and reported decisions with respect to the conservation of water and more generally, pollution management and environmental risk. A 2023 bench recounts both the practice of utilizing continuing mandamus and the labors of a Water and Environment Commission. After years of litigation, developments culminating in the order reported as 2026 LHC 4972 included actions pertaining to industrial controls, illegally operated pyrolysis facilities, tree protection and governance-oriented measures (Haroon Farooq, 2026; Lahore High Court Research Centre, 2024).

It shows how continuing oversight from the bench can move agencies to act, create reporting obligations, and resolve coordination breakdowns that traditional litigation might otherwise miss. The importance of this is not only rhetorical: environmental constitutionalism

can lead to tangible institutional outcomes in contexts where courts take note of ongoing shortcomings with respect to public responsibilities. However, this type of governance also places significant burdens on the courts. Vigilance over scores of agencies and technical programmes cannot replace plain administrative competence, credible budgets, lawful inquiry and vigorous prosecution. For statutory standards to carry real weight, courts should not have to act as permanent offices of environmental management.

But it would be incorrect to conclude based on the length of Haroon Farooq that criminal law was the only missing remedy or that all direction of courts were unavailing. Evidence of policy progress and ongoing weaknesses are present in the litigation. Its lesson is institutional complementarity. Courts can set constitutional obligations, review official conduct, curb structural inaction; environmental agencies must regulate on a day-to-day basis; and criminal prosecutors should pursue only cases where it can establish culpability and the offence defined by statute. Ecocide did not provide a panacea to all works of environmental governance, but simply an exception mechanism against gross misbehaviour.

#### **5.4 The constitutional case for legislative action**

As a whole, the three decisions show continuity — and not some political epiphany about environmental rights. Shehla Zia broadened the definition of life, Mehar Badshah linked express Article 9A protection with ecosystem guardianship and Haroon Farooq painted the possibilities of ongoing judicial vigilance. They underscore the constitutional basis for stronger laws. But they do not permit the retrospective penalisation of otherwise lawful conduct, abrogate the presumption of innocence, or shift criminal definitions from lawmakers to judges. This distinction should, in turn, be reflected in an ecocide statute with bright line legal standards and procedural protections along with constitutional review rights.

### **6. Existing Criminal and Regulatory Law: Assets and Gaps**

#### **6.1 Section 278 of the Pakistan Penal Code**

Section 278 of Pakistan Penal Code prescribes that a person who voluntarily vitiates the atmosphere so as to make it noxious to health shall be punished. This is a historic provision as it recognizes pollution as part of criminal law. Its limitations are equally apparent. Their up-to-Rs 1,500 fine is already trivial for big industrial companies and the offence is framed on human proximity to the environment rather than on whole ecosystems. In particular, a statutory term like voluntarily should not be interpreted to mean a fully elaborate modern regime of deliberate or reckless environmental destruction. The offence was not aimed at addressing either irreversible deforestation, systemic toxic contamination or habitat degradation (Pakistan Penal Code, 1860: s. 278).

#### **6.2 PEPA's preventive and sanctioning structure**

The framework is much more sophisticated in PEPA 1997. Section 11 provides that no emissions/discharges are permitted which exceed applicable standards. Based on your experience, Section 12 of the Act mandates environmental scrutiny or impact assessment and compliance approval for designated projects. Sections 13 and 14 are the reasons for hazardous

waste and substances, while Section 16 is about environmental protection orders by way of stopping harm to the environment or restoring it. These provisions are fundamental as sound ecological governance begins earlier than the commission of an offence. Preventive assessment, enforceable conditions and prompt administrative intervention are expected to do more for averting check damage than punishment after destruction of an ecosystem (Pakistan Environmental Protection Act, 1997).

Section 16 is the special punishment provision and not a general penalty section. Some breaches carry penalties of up to Rs 1 million, plus an additional daily penalty for successive violations; lower fines apply for different offenses under the text of the initial federal law. In some cases with repeat offenders, it can lead to additional fines, imprisonment for up to two years and/or orders for closure or restoration. It also allows for extra penalties related to monetary gain and compensation for injury or loss at defined times. It makes a difference whether something is being presented as a first-offense or recidivist penalty: an absolute statement that any PEPA violation always results in two years of imprisonment misrepresents the statute. Provincial changes will also impact the sanction levels and procedures, meaning a jurisdiction-specific analysis.

PEPA has two primary strengths when viewed as an ecocide. It addresses damage before the point of no return has been reached, and even already provides for restoration and compensation. Its insufficiency is that it has no aggravated crime specifically recognising the unique harm of knowingly causing massive environmental injury. Where there is overlapping enforcement structures without sufficient separation in the nature of criminal culpability, a serious pollution event and a technical failure to meet a regulatory requirement might both come within the same enforcement framework. Well-crafted alternative offence could fill that gap while furthering the value of preventive regulation.

### **6.3 Corporate and governmental liability already exists, but may be narrow**

It is incorrect to say that corporations are completely outside the purview of Pakistani environmental law. Federal PEPA text Section 18 expressly provides for body corporate offences, and for liability of certain officers in cases where contravention is proved to have been with the consent, or connivance of the officer, or attributable to any neglect on his part. Its carve-out limits liability in the case of a company as defined at that time according to the suitability of company-legal structure, identifying only the chief executive. Section 19 deals with violations by government agencies and local authorities and section liability for relevant officers. While they are strong legal pillars, their wording raises issues of attribution, organisational complexity and the potential reach to the inner workings decision making structures of modern enterprises (Pakistan Environmental Protection Act 1997)s. 18–19).

New ecocide offence should reflect what we already know about corporate responsibility, not pretend that knowledge does not exist. Large organisations distribute their practices around budgeting, procurement, maintenance and compliance sowing the potential for harmful decisions. It might be hard to point to one officer who autographed its every step, despite senior management deliberately embracing a deep environmental threat The new Act should provide when the acts and states of mind of high-level persons in control are

attributable to an organisation, as well as the circumstances in which a corporation's established operating protocol amounts to a crime. The need to show that the individual was also at fault, or legally actionable for nonfeasance, should apply too; getting appointed to a corporate title should not lead to automatic liability.

#### **6.4 Enforcement, prosecutorial access, and federalism**

Through PEPA, environmental tribunals and magistrates are established with the jurisdiction as well as access to complaints regulated under it. Hence, the very design acknowledges that specialised adjudication is necessary. But the technical law will not be carried out without pressing upon it. Validated sampling, lab quality, secure records, trained prosecutors and routine audits dictate whether violations can be proven in court. An analysis of Punjab's environmental impact assessment system has identified several limiting factors to the design and procedural context (Khan et al., 2020) that indicates any expansion in legislation should be accompanied investment in implementation.

Federalism adds a further complication. Substantial environmental governance functions are now exercised via provincial legal pyre situations, including provincial variations or adjustments of responsibilities for the safety of the environment statutes. You are wrong to attempt to justify any new federal offence though a defensible constitutional attribution of legislative absolute from first principles, nor is it right to presume one PEPA operates identically across the nation of Canada. A framework model could set out agreed definitions and standards of proof for adoption by provincial legislatures, but federal law would deal with matters in the realm of federal jurisdiction. On the other hand, coordinated provincial statutes might establish comparable offences while respecting local institutional arrangements. What that preferred model requires is the drafting of a comprehensive constitution, not simply declaring that one central office can control all prosecutions in any province.

#### **6.5 The distinct gap that ecocide could fill**

The existing architecture includes a few critical tools: banned emissions, environmental impact reviews, enforcement commands, liability of each corporations and public agencies, specialized courts or forums; fines; and restoration. This implies, therefore, that the case for ecocide must be firmly specified. It is a high-threshold, fault-based criminal offence for ~exceedingly severe environmental damage, together with a commensurate scheme of investigative and remedial powers. That does not mean that there is no environmental criminal law. Nor should it replace the need to revise the normal levels of penalty, improve inspections, or make current restoration powers more effective. The rationale for the new offence is expressive, enterprising and pragmatic: it frames ecological destruction as a crime of extreme seriousness, denounces culpability degrees at varying intensities, and opens up the possibility for appropriate criminal investigation of major organisational decisions.

### **7. Comparative Lessons and the International Dimension**

The 2021 Independent Expert Panel's report has prompted discussion on the criminalization of ecocide. While there is merit in pursuing amendments to the Rome Statute in this regard, we cannot conflate the two processes. The Rome Statute has not suddenly acquired a fifth crime of a universal nature, following the Panel's report. In the absence of international jurisdiction, states are at liberty to criminalize environmental offences (Independent Expert Panel for the Legal Definition of Ecocide, 2021; Robinson, 2022).

Developments in Europe illustrate other options. The recently adopted Directive (EU) 2024/1203 establishes minimum rules for environmental crimes and establishes particular seriousness in ecological crimes, which includes the destruction or the widespread and large-scale damage, especially if the harm is irreversible and long-lasting. The directive makes use of organizational penalties, criminal law cooperation, and graduated liability, and does not take an exclusive focus on ecocide. The revised Belgian Criminal Code, which came into force in September 2026, provides for ecocide, if certain conditions of seriousness, knowledge, illegality and jurisdiction are met (European Parliament & Council of the European Union, 2024; Federal Public Service Justice, 2026).

Another lesson concerns the appropriate integration of ecological preservation and development. The Panel describes wanton conduct as evaluating harm in relation to anticipated social and economic benefits.

According to Robinson (2022), the Panel identifies unavoidable and difficult choices in reconciling the protection of the environment with development and economic activities, and in balancing the latter with the need to protect Ecosystems, while Minkova (2024) argues that the balancing approach may emphasize the former at the expense of the latter. Pakistan should refrain from an open-ended defense that justifies wanton conduct by claiming economic or infrastructural development benefits. Rather, the use of narrow, statutory criteria and independent verifiable data should be used to evaluate all claims to legal authorization and/or necessity. Relevant legal permits should be considered, but should not legalize wanton conduct and deception.

## **8. Drafting a Pakistan-Specific Ecocide Offence**

### **8.1 Protected interests and the threshold of seriousness**

The offence should safeguard the integrity and regenerative capacity of all ecosystems, including but not limited to forests, wetlands, rivers, groundwater, coastal habitats, agricultural soils and the atmosphere. Human injury and economic loss can be provided as evidence of seriousness. However, they should not be elements of the offence. A river can sustain serious ecological damage before certain individuals who could be compensated suffer injury. Article 9A seeks to promote ecological sustainability. Hence, recognition of ecological damage should be considered in the context of green criminology (Goyes, 2019; Kotzé, 2016).

The standards for proving this offence should be high. The proposed offence should require serious ecological damage and at least one additional requirement (i.e. widespread or long term damage). Serious damage could include extremely severe disruption of the structure or diversity of an ecosystem, significant diminution of the quality of the environment or the

capacity of the environment to regenerate, or significant disruption of the ecological balance. Widespread damage could include a significant geographical area or a large, affected, ecological population. Long term damage could refer to ecological impacts which endure over a significant period of time.

Long-term damage should mean that full recovery is unlikely to occur within a scientifically sensible time frame. The definition of long-term should not be prescriptive. Different ecosystems have different recovery potential. For example, wetlands can recover relatively quickly, in comparison to some forests or industrial soils (Independent Expert Panel for the Legal Definition of Ecocide, 2021).

The legislation should identify relevant pieces of evidence without making any single piece of evidence automatically decisive. Some of those pieces of evidence may include toxicity, duration of exposure, abundance of impacted species, habitat loss, pathways of exposure, cumulative contamination, the likelihood of recovery, connectivity of ecosystems, and the integrity of the environmental baseline.

Expert witnesses should explain the uncertainties in competing scientific models and how they impact the assessment of ecological loss. It should be the responsibility of the court to interpret the law to determine if the threshold has been crossed, not to delegate that responsibility to a science agency. This approach should address the gaps in both a qualitative and a quantitative standard.

## **8.2 Conduct, causation, and mental elements**

Eccocide should include affirmative acts, as well as omissions, where the accused was obligated by law to act. Negligence should not be sufficient. Possible affirmative acts may include large-scale deliberate releases of hazardous substances, large scale unlawful destruction of protected habitats, concealment of results of environmental monitoring and continuation of unlawful activities, or knowing failure to prevent large scale releases where the accused was obligated to act and had the capability to do so. Causal connection to climate change should not render a person criminally liable.

A person should not be criminally liable merely for residing in an area impacted by climate change. The standard of fault for this offense should be intention or conscious recklessness. Proving the fault element should require proof that the person knowingly caused the damage or knew that it was practically certain to occur in the ordinary course of the person's actions. Proof that the accused consciously reckless failed to take reasonable precautions to avoid the risk of the resulting harm would satisfy the fault element for this offense.

Appropriately framed existing offenses, remedies, and sanctions, should continue to encompass ordinary negligence including unaware technical error. This division targets the greatest criminal stigma to the greatest culpability, and continues to allow for regulatory intervention to prevent irreparable harm.

It is extremely difficult to prove causation in cases where damage occurs over many years and facilities. It may be appropriate for the legislation to require prosecutors to prove a causal connection between the defendant's actions and the offense, with the aid of a scientific expert. In the absence of such a requirement, the act would deem every emitter of pollutants as causing the regional environmental crisis.

For cases where threat of damage is greater than the completed damage, it may be appropriate to create an additional offense of aggravated endangerment which contains a low threshold of a high probability of harm. Separating completion and endangerment may improve legal clarity and proportionality.

### **8.3 An illustrative legislative provision**

The following provision is recommended for consideration by the legislature and does not express any current law of Pakistan:

A person is liable for ecocide if, by an act or omission, that person intentionally causes, or is aware of a substantial and unjustifiable likelihood that severe environmental damage will occur, and that damage will be widespread or long-term, and the act or omission will make a substantial contribution to that damage. In this section, 'severe environmental damage' means very serious adverse disruption to the integrity, functions, biodiversity or the regenerative capacity of an ecosystem or component of the environment; 'widespread' means damage extending beyond a limited area or damage which significantly affects an ecosystem, a protected habitat, a species or a large population; and 'long-term' means damage that is irreversible or damage that will not be remediable through natural recovery within an ecologically appropriate period.

A lawful authorization does not excuse material misrepresentation, knowing breach of authorization conditions, or other prohibited acts under this section. Liability and punishment, however, will be determined by proof beyond a reasonable doubt and the safeguards of the rules of criminal procedure.

This draft requires a high standard for proving pollution. It requires demonstrating extremely dangerous and unwanted harm, and fault and causation. It avoids creating guilt by simply disagreeing retrospectively with the environmental permit. Legislators would need to determine the legal duties that arise from omissions, and expressly state the scope of lawful acts causing unforeseeable harm.

Prior to enactment, consultation would be necessary with environmental scientists, prosecutors, industry, affected communities, and constitutional lawyers.

### **8.4 Individual, corporate, and public-official responsibility**

The new law should make a distinction between the liability of natural persons and liability of organizations. Directors, executives, supervisors and public officers should be liable if it is proven that they acted intentionally, recklessly, participated or were culpably negligent in the omission of a clearly defined duty. Merely being a member of a board of directors should not create vicarious liability. The doctrine of superior responsibility should

be extended to cover specified control relationships. However, to qualify for this doctrine, the individual should have the effective power to prevent or control the risky conduct and should have failed to take the reasonable preventive measures that were available to him.

An organization should also be liable for the wrongful acts of its directors and employees if the directors and/or employees committed the wrongful acts in the scope of their employment, and in furtherance of the organization's business. Other evidence that may need to be proven to show organization liability includes a pattern of repeated warnings, board minutes, or budgets. The scheme should incorporate a range of defenses for good faith compliance measures, without creating a paper-compliance safe harbor. Both corporate and individual liability should be available when the evidence supports each. Public authorities and officials should be liable for their failures to comply with the laws of comparable countries when those failures are intentional.

### **8.5 Penalties, restoration, and victim participation**

Penalties for ecocide should be serious. However, ecocide laws should set maximum penalties for ecocide. Reversible ecocide should result in a sentence up to 20 years. Irreversible ecocide should result in a longer maximum sentence. Other factors should be taken into account when deciding what sentence to give. These factors include how culpable the defendant was, how large the harm was, whether the defendant tried to stop the harm from occurring, and if the defendant has been found guilty of ecocide in the past. Fines should be determined in the same way as sentences. Fines should not be so large that they put a company out of business. Instead, the fine should be large enough to discourage the company from continuing to cause ecocide. The fine should be large enough to encourage the company to take actions to restore the ecosystems that it damaged.

Ecological restoration should be part of punishment for ecocide. Other types of restoration, including release from prison to allow ecological restoration and publication of the decision, should be allowed. The state should not allow harm caused by ecocide to remain unrecoverable. A civil or criminal suit should not allow for recovery of the same ecological damage if the ecological damage has not been recovered from the perpetrator of the ecocide. If ecocide creates a loss and/or injury for which an individual cannot be compensated, an ecological restoration fund should be created to facilitate restoration of the ecosystem to the greatest extent possible.

### **8.6 Location within Pakistan's legal system**

A stand-alone Environmental Crimes Act would distinguish exceptional crimes and technical regulatory offenses. However, the Act runs the risk of duplicating agencies and procedures. Alternatively, an aggravated chapter within existing environmental protection legislation could utilize the existing tribunal and agency architecture. This may prove to be more administratively efficient. Whichever the case, new legislation is required to clarify the relationship with PEPA and other provincial acts, disclose expert evidence, specify the rules governing appeals, set limitation periods, and govern cross border/inter-provincial evidence

cases. The model of legislation that proves to be more appropriate in respect to the distribution of powers between the federation and the provinces of Pakistan must be employed. Harmonized provincial acts, guided by agreed national protocols, may be more pragmatic than a nominally national legislation which lacks a clear constitutional basis.

### **9. Making the Law Enforceable: Institutions and Evidence**

A substantive offense will fail if violations cannot be reliably detected or proven. There are gaps in the capability of conventional policing that require specialized training in environmental crime: forensic science, toxicology, remote-sensing, ecology, hydrology, financial and digital forensics. Currently, there is a reliance on international laboratories, special procedures, and memoranda of understanding to analyze samples and prosecute environmental cases. Pakistan should work towards creating dedicated environmental investigation teams supported by laboratories and special procedures to establish trust and mutual collaboration with environmental protection agencies. The evidentiary chain of custody should capture the time, location, method, and limitations of the sample, and be preserved to show sample integrity and validation. Similar procedures should be adopted in cases where the state and defendants seek to hold officials to account.

Prosecutors need to be adequately trained to address cause in the context of environment deterioration and to evaluate the credibility of expert opinions to reach individual criminal responsibility and decisional options. Existing environmental tribunals could be strengthened to address the most serious crimes and anti-ecocide cases. Officers from other jurisdictions with relevant environmental law should assist in cases involving ecocide to provide expertise and help increase public confidence in a fair conviction. Because ecocide has severe penalties, the safeguards and protections of the criminal justice process should be enhanced and not relaxed.

The same process should be in place for both regulators and prosecutors. Agencies should be committed to transparency in enforcement and should proactively publish their plans, notices, data, and outcomes. A compliance-focused risk approach could prioritize sensitive habitats, high-pollution, and high-violation industries, as well as areas that have a history of non-compliance. Complaint processes should be accessible to civil society to report suspicious activity and to not presume that all complaints reflect a crime.

Mechanisms for independent review are necessary in cases where the allegations involve personnel from regulatory agencies or politically connected enterprises.

The recommendation calls for implementation to occur in phases. The first would involve the commissioning of a legal and institutional audit of existing federal and provincial laws, offenses, sanctions, laboratories, and environmental tribunals. The second would include draft model legislation and definitions, consultations, and Judicial training and establishment of procedures and methodology for assessment and review of independent ecological damage and restoration. The third would involve the enforcement of the legislation in designated jurisdictions, while disclosing data on investigation and charges and publishing data on restoration orders and actual environmental recovery.

The recommendation states that the greatest indicator of success would not be the number of incarcerations; however, a more positive outcome would include a decline in the number of egregious infractions, a trend toward higher and more reliable compliance, more improvements to ecological systems and processes, and greater public confidence in the fairness and impartiality of enforcement.

#### **10. Objections, Risks, and Safeguards**

The strongest objection to including a new crime of ecocide is that Pakistan should first enforce the existing environmental laws. This criticism is valid. Overall, adequate pollution permits and impact assessments, along with effective remedies, can prevent serious harm, and authorities can take enforcement action, whereas serious crime may result in comparatively fewer convictions. For these reasons, the focus should not be on describing ecocide as a response to regulatory weakness. Ecocide should be introduced along with enhanced routine penalties, and improved inspection and enforcement. Without these changes, the addition of a new crime of ecocide will do little to improve environmental protection.

Legal uncertainty and the criminalization of legitimate development choices are a second objection. The risk of these depends on the definition of “severe” and “long-term.” However, environmental harm can also be diffuse and delayed. In these cases, it is appropriate for the law to provide elaborate definitions and prosecutorial guidelines. Ecocide should only be authorized where the legal threshold of proof is satisfied, and a deliberate decision to cause severe and long-term environmental harm is made. It is legitimate for the drafters to focus on addressing these uncertainties, instead of reassuring the skeptics.

A further concern is selective enforcement. In the face of overwhelming evidence about the failure to address the most severe and long-lasting forms of ecological degradation, it is green criminology’s primary concern.

As outlined by Goyes (2019), independent investigators, disclosed case selection criteria, judicial review, a whistle-blower process, and community access to information, are key to the legitimacy of ecocide prosecutions. Vexatious allegations must be balanced with protection for environmental complaints.

The climate crisis itself increases the risks of over-attribution. The vulnerability and exposure of Pakistan to transboundary greenhouse gas emissions and floods, for example, do not allow a court to make an inference of individual ecocide liability. The principles of criminal responsibility require the court to make a determination beyond a reasonable doubt as to the mental state of the individual defendant in relation to the specific conduct. Other policies such as adaptation to and preparation for climate change, including planning for air quality and ecological restoration, will remain essential, even with the enactment of an Ecocide law. The criminal law should define the outer limit of the intolerable, not displace the broader environmental policies.

#### **11. Conclusion**

Article 9A provides Pakistan's first dedicated constitutional provision for environmental protection and builds on more than six decades of progressive case law. According to Mehar Badshah and Haroon Farooq, Pakistan's courts are able to demand environmental stewardship and protection; however, reliance on courts for environmental management has its limitations. Already in Pakistani law, there are environmental standards, protection orders, and offenses and penalties for environmental offenses. There are also provisions for both public and private liability for environmental harm and special forums. The main shortcoming is a mismatch between the scale of environmental harm, the attribution of responsibility, and the legal remedies available.

A well-bounded ecocide offense might help address this shortcoming. Legislation to implement such an offense might help achieve the objectives of Article 9A of the Constitution. However, such legislation could serve to undermine the rule of law and draw scarce law enforcement resources away from more important matters. On the other hand, such law might have a positive impact by strengthening accountability and creating meaningful opportunities for the enforcement of Article 9A of the Constitution.

Pakistan is not obligated to await the acceptance of ecocide as an international crime to begin domestic reforms. Legislation to bring environmental rights to bear, particularly to provide the legal means to enforce ecological accountability, is called for.

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