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# Climate Justice and Corporate Accountability: An analysis of Role of the Judiciary in Advancing Corporate Climate Accountability in Pakistan

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## ABSTRACT

*Pakistan's superior courts have built one of the Global South's most cited bodies of climate jurisprudence, from the precautionary-principle reasoning of Shehla Zia v WAPDA through the celebrated Leghari litigation to the Supreme Court's 2021 judgment in DG Khan Cement Company Ltd v Government of Punjab. However, these cases has been directed almost entirely against the State policies and inaction rather than corporate conduct. This paper discusses as how the same constitutional and public-trust reasoning that Pakistani courts have used to hold the State accountable for climate inaction could be extended to private corporate actors whose industrial activity is a principal source of Pakistan's greenhouse gas emissions and environmental harm. Grounded in legal stabilization theory and the Legal Opportunity Structure framework, the article maps the existing statutory framework for corporate environmental liability in Pakistan. It explores the comparative developments in corporate climate litigation at international level, and identifies the doctrinal, evidentiary and institutional barriers that presently constrain judicial extension of climate accountability to corporations. It concludes that Pakistani courts possess the constitutional tools to develop a corporate climate duty of care, but that judicial innovation alone cannot substitute for the legislative and regulatory reform needed to make such a duty enforceable in a developing-country with limited resources.*

***Keywords:*** *Climate justice, Corporate accountability, Judicial trends, Climate litigation*

## INTRODUCTION

Corporate sector plays key role in globalization and economic growth of countries but it is also a major source of environmental degradation and climate change. These business entities are important decision making units in the economy of States and they can be an important force in promoting climate justice by adopting responsible corporate practices. Over the last two decades, corporate sector has become an important stockholder that can impact the environment in both positive and negative way. Businesses play significant role in economic development of states but it is important to balance the pursuit of profits and protection of environment at the same time. Corporations can invest in climate resilient infrastructure and adopt sustainable practices but they more often prioritize profits over climate actions. Corporate malpractices can lead to the environmental degradation through emission of dangerous gases, deforestation and fuel burning that is creating serious concerns for the communities especially in developing nations like Pakistan. Currently Pakistan has been ranked as the 5th most vulnerable country to climate change and facing the consequences of this in the form of urban floods, smog, heatwaves and change in sea levels leaving the vulnerable population to bear the brunt of climate impacts. The irresponsible conduct of business enterprises leads to climate injustice by impacting indigenous and marginalized communities as they are more vulnerable to climate risks and have limited resources to adapt. It is imperative for the States now to develop an effective regulatory framework for corporate accountability to promote sustainable business practices and climate justice. This paper analyses the role of judiciary in advancing corporate climate accountability in Pakistan. It addresses three questions. First, what is the existing legal framework and jurisprudence available to Pakistani courts, and to litigants who might wish to invoke them for corporation accountability for their climate conduct? Second, what has comparative experience, particularly in the global north and the wider common-law world, shown about the role of judiciary in advancing corporate climate accountability? Third, what are the legal and institutional barriers stand between Pakistan's existing rights-based climate approach and a genuine corporate climate accountability doctrine, and what reforms are needed to address them?

Corporate accountability can play crucial role in achieving climate justice by ensuring that businesses take responsibility for their climate impact and contribute fairly for solving environmental crises. In Pakistan, judiciary is playing an active role in addressing climate related claims. Beginning with the Supreme Court's early recognition of a constitutional right to a healthy environment in Shehla Zia v WAPDA[1], and culminating in the widely studied decision in Asghar Leghari v Federation of Pakistan[2], Pakistani courts have repeatedly stepped into the space left by weak legislative implementation to compel the executive to take climate adaptation and mitigation seriously. The Lahore High Court's description of the shift from environmental justice to "Climate Justice" in Leghari has been described by commentators as giving the case unusual symbolic and doctrinal significance for climate litigation across the Global South. The challenge in advancing corporate climate accountability is that most of the cases address state inaction and gaps in government policies rather than addressing claims against corporate sector. Moreover, the weak regulatory framework and ineffective institutional setup allowed irresponsible corporate practices to persist in Pakistan. Pakistan faces challenges in effective implementation of laws due to lack of resources, technical expertise and ineffective accountability mechanism. These challenges result in continued environmental degradation and human rights violations.

This study proposes that an effective legal and institutional framework should be established to hold corporations accountable for their environmental conduct. An effective regulatory framework, fair policies, effective enforcement mechanism can help to promote sustainable business practices and equitable future for all sections of society. This article investigates the space between these two positions: an increasingly assertive judicial posture towards the State inaction and a comparatively less developed judicial approach towards corporations, at a moment when corporate industrial activity, particularly in cement, textiles, sugar refining and thermal power generation, has been identified as a principal driver of Pakistan's domestic emissions profile.

## CLIMATE JUSTICE, CORPORATE ACCOUNTABILITY AND GLOBAL DEVELOPMENT

The notion of climate justice and corporate environmental responsibilities present a profound paradox that necessitates to explore the relationship between business, society and natural environment. Climate justice

[1] Shehla Zia (n 1) 693, applying the precautionary principle to expand art 9 of the Constitution to include the right to a clean and healthy environment.
[2] Asghar Leghari v Federation of Pakistan, Order Sheet, 14 September 2015 (order constituting the Climate Change Commission).

refers to the disproportionate impact of Climate change on different communities and nations[3]. It states that climate change is not only an issue of environmental crises but it is also a matter of human rights violations. Climate change is directly impacting the human rights by creating air, water and food security issues. Climate change is targeting the marginalized communities and indigenous population the most. Governments and big businesses can play a crucial role in protecting and reversing the environmental hazards by controlling emissions and adopting sustainable business practices.

Climate justice seeks a fair and equal distribution of burdens of climate change for all nations through global cooperation. Corporate accountability in terms of environmental practices can help to promote climate justice by protecting human rights. At international level serious efforts have been made to make businesses act responsibly and adopt acceptable corporate environmental conduct. United Nations have drafted guidelines for businesses to protect the human rights and natural environment. Paris agreement of 2015 also impose liabilities on States in this regard. International courts are also playing important role to promote the idea of climate justice by making corporate sector accountable for their conduct.[4] The State of Vanuatu has requested the International Court of Justice to issue an advisory opinion on the obligation of States regarding climate change[5]. The advisory opinion of ICJ held the states responsible for their climate conduct and to protect their citizens against climate harms. The Inter American Court of Human Rights (IACHR) is also set to issue an advisory opinion on obligations of States regarding climate change and human rights. Moreover, The European Court of Human Rights (ECHR) has ruled in a recent judgment that States must take real actions on industrial emissions to safeguard human rights. Many of the World's largest corporations have committed to future net zero emissions targets in the light of United Nations guidelines and sustainable development goals (Banerjee, 2012; Pulver, 2005). Prominent business leaders have become active advocated to develop specific strategies to fight the global climate crises (Gates, 2021; Polman &Winston, 2021). In Pakistan industrial sector has been major contributor to the environmental pollution. In past two decades the number of manufacturing industries have grown to 42578 and emission of SO2 has increased by 52 times. efforts are being made to address climate change and environmental degradation. The country has developed a National Climate Change policy and established the Pakistan Environmental Protection agency. Pakistan Environmental Protection Act 1997 also provides for environmental impact assessment to make businesses operate in a responsible and sustainable manner. However, the current regulatory framework does not contain any effective mechanism to make corporations accountable for environmental degradation. Multinational enterprises (MNEs), in particular are most challenging to regulate in this regard. MNEs play key role in economic growth of countries by providing investment and job opportunities to the local communities but they also pose threats to the natural environment and local population. They can exploit the cheap labor and utilize natural resources but rarely invest in local climate resilience projects. Hence it is crucial to not only regulate the local businesses but also the multinational companies in this regard.

## AN ANALYSIS OF DEVELOPMENT OF CLIMATE JURISPRUDENCE IN PAKISTAN

### *Shehla Zia and the constitutional foundation*

The most significant and doctrinal starting point for all subsequent Pakistani climate and environmental litigation is Shehla Zia v WAPDA, in which the Supreme Court applied the precautionary principle to

[3]United Nations Development Programe (n.d) Climate justice. UNDP Climate Justice Overview
[4]Joana Setzer and Catherine Higham, Global Trends in Climate Change Litigation: 2024 Snapshot (Grantham Research Institute on Climate Change and the Environment, London School of Economics, 2024) 24-27.

[5]International Court of justice, Request for an advisory opinion on te obligation of states in respect of climate change (General list no 187)

hold that the right to life under Article 9 of the Constitution[6] encompasses the right to a clean and healthy environment as well. Although Shehla Zia concerned a state utility's proposed electricity grid station, its reasoning was not, in principle, confined to state respondents, the Court's method was to read environmental protection into the constitutional guarantee of a dignified life, whether the source of environmental harm is public or private.

***Leghari judgment and the move towards climate justice***

Leghari extended this constitutional reasoning specifically to climate change. This case differentiates between environmental and climate harm. The Lahore High Court held that the federal and provincial governments' "delay and lethargy" in implementing the National Climate Change Policy 2012 and its accompanying Framework offended the fundamental rights of Pakistani citizens guaranteed under Articles 9 and 14 of the Constitution. The Court's remedy, a court-supervised Climate Change Commission tasked with monitoring the government's adaptation priorities, illustrates both the strength and the limitation of Pakistan's climate jurisprudence: it is highly effective at compelling institutional attention and structured monitoring, but it operates through supervisory orders addressed to the machinery of government rather than through the imposition of specific, judicially defined obligations on the private entities whose conduct the government is meant to be regulating.

In its 2018 supplementary judgment, the Lahore High Court went further, describing the transition "from Environmental Justice ... to Climate Justice" and invoking inter-generational equity and the public trust doctrine. Commentators have observed that Leghari's significance lies as much in its symbolic re-framing of climate change as a rights issue for the Global South. Ohdedar's comparative analysis of Indian and Pakistani climate litigation similarly noted that Leghari's institutional remedy, a standing monitoring commission, has proven more durable than the more familiar Global North model of a one-off declaratory or injunctive order, but observes that this institutional model has not yet been tested against private corporate respondents in Pakistan in the way as Indian courts have tested it against corporate polluters in some pollution cases.

***DG Khan Cement: the closest approach to a corporate climate case***

DG Khan Cement Company Ltd v Government of Punjab[7] is regularly described as Pakistan's leading corporate climate case, and it is worth examining carefully for what it does, and does not, establish. The case arose when a cement manufacturer challenged a Government of Punjab notification prohibiting the establishment or expansion of cement plants in an environmentally fragile "Negative Area" in the Chakwal and Khushab districts, on the ground that the notification violated its constitutional right to freedom of trade and business.

The Supreme Court, in a judgment authored by Justice Syed Mansoor Ali Shah, dismissed the company's petition and upheld the government's restriction, holding that the notification was a legitimate "climate resilient measure" consistent with the National Climate Change Policy and the Constitution. It invoked the precautionary principle, the principle of in dubio pro natura, and a striking claim about "climate democracy" embedded in the Constitution's preamble and fundamental rights. The Court's observation that courts "around the globe have a role to play in reducing the effects of climate change for our generation and for generations to come" has been widely quoted as evidence of a maturing Pakistani climate jurisprudence.[8]

[6]Constitution of pakistan 1973, art 9
[7]DG Khan Cement Company Ltd v Government of Punjab 2021 SCMR 834.
[8]Parvez Hassan, 'The D.G. Khan Cement Case: Pakistan Judiciary Again Leads the Way' (IUCN World Commission on Environmental Law, April 2021).

For present purposes, however, DG Khan Cement is best understood as a case about the judiciary's deference to state regulatory power over industry, not as a case imposing an independent corporate climate duty. The company was the petitioner, not the respondent; the relief sought and refused was commercial expansion, not an order compelling emissions reduction; and the Court's reasoning. However, the case demonstrates that Pakistani courts are willing to accept government regulation of corporate conduct on climate grounds.

## THE EXISTING LEGAL FRAMEWORK FOR CORPORATE CLIMATE ACCOUNTABILITY

### *The Pakistan Environmental Protection Act 1997 and its provincial successors*

The Pakistan Environmental Protection Act 1997 remains the foundational statute for environmental regulation of industry in Pakistan[9], establishing the Pakistan Environmental Protection Agency and prohibiting discharges or emissions in excess of National Environmental Quality Standards. Following the Eighteenth Constitutional Amendment's[10] devolution of "environmental pollution and ecology" to the provinces, each province has re-enacted broadly equivalent legislation, of which the Punjab Environmental Protection Act 1997, as amended, is illustrative.[11]

Critically for corporate accountability, section 17 of the federal environmental protection Act, replicated in the provincial statutes, creates a specific mechanism for corporate liability: where an offence under the Act is committed by a corporate body, local authority or government agency, and is shown to have been committed with the consent, connivance or negligence of a person in charge of that body, both the body and that individual are liable.[12] This is, in principle, a workable statutory hook for corporate climate accountability, but it has three structural limitations. First, it is designed around discrete, provable acts of pollution (discharges, emissions exceeding a specified standard) rather than around a diffuse, cumulative contribution to global greenhouse gas concentrations, which is the essence of the climate change problem. Second, enforcement depends on the environmental protection agencies bringing proceedings before environmental tribunals and magistrates, an enforcement chain that has historically suffered from under-resourcing and capacity constraints. Third, the underlying National Environmental Quality Standards were not designed with climate mitigation in mind and do not include economy-wide greenhouse gas emissions ceilings for individual corporate emitters.

### *The Pakistan Climate Change Act 2017*

The Pakistan Climate Change Act 2017 [13]was enacted to institutionalize Pakistan's response to its international climate obligations. It established the Pakistan Climate Change Council, chaired by the Prime Minister, and the Pakistan Climate Change Authority, tasked with formulating the adaptation and mitigation policy[14]. The Council's functions include coordinating enforcement of the Act and mainstreaming climate concerns into government decision-making, while the Authority is responsible for

[9]Pakistan Environmental Protection Act 1997, s 3 (establishment of the Pakistan Environmental Protection Agency) and s 11 (prohibition of certain discharges or emissions).
[10]Constitution (Eighteenth Amendment) Act 2010, devolving the subject of 'environmental pollution and ecology' to the provinces.
[11]Punjab Environmental Protection Act 1997 (as amended by the Punjab Environmental Protection (Amendment) Act 2012), following devolution of the environment subject to the provinces under the Constitution (Eighteenth Amendment) Act 2010
[12]Pakistan Environmental Protection Act 1997, s 17 (offences by corporate bodies, local authorities and Government agencies).

[13]Pakistan Climate Change Act 2017, s 8 (functions of the Authority).
[14]Pakistan Climate Change Act 2017 (Act No X of 2017), ss 3-5 (Council and Authority) and s 12 (Fund).

developing mitigation policy, maintaining greenhouse gas emissions data, and advising on legislative measures.[15]

The 2017 Act is, however, an institutional rather than a regulatory framework. It creates bodies with planning, coordinating and advisory functions; it does not itself impose emissions reduction obligations, reporting duties or liability on individual corporate emitters. A detailed academic evaluation of the Act has described it as "a skeletal outline for the bureaucratic machinery" needed to address climate change, as its practical value depends entirely on the vigour with which the Authority develops and enforces subsidiary regulation, something that has occurred unevenly since 2017. For a court seeking to found a corporate climate duty of care on statutory foundations, in the manner that Dutch courts drew on the unwritten standard of care in the Civil Code informed by human rights instruments, the 2017 Act supplies institutional infrastructure and policy content but not, on its own terms, an enforceable corporate obligation.

***Corporate law: directors' duties and ESG disclosure***

A further, underused avenue lies in general company law. Section 205 of the Companies Act 2017 requires directors to act in good faith in a manner they consider would be most likely to promote the objects of the company for the benefit of its members as a whole, having regard, among other things, to the interests of the company's employees and the community.[16] The Securities and Exchange Commission of Pakistan's 2021 guidelines on ESG disclosure for listed companies represent Pakistan's first regulatory articulation of climate-related corporate reporting expectations, though on a disclosure rather than a substantive-duty basis.

This directors'-duties route mirrors, in embryonic form, the avenue explored in some jurisdictions where commentators have argued that climate risk is a foreseeable business risk that competent directors are obliged to manage, and that a persistent failure to do so may itself constitute a breach of directors' fiduciary and statutory duties. Pakistan's statutory language, requiring directors to have regard to "the interests of the community" and to act in the company's long-term interest, is at least as capacious as comparable provisions elsewhere that have been used to build this argument, though it has not yet been tested in Pakistani courts in a climate context.

***Environmental impact assessment as a preventive accountability tool***

A further, presently under-exploited mechanism is the environmental impact assessment regime established under the Pakistan Environmental Protection Agency (Review of IEE/EIA) Regulations 2000, which require an Initial Environmental Examination or, for larger projects, a full Environmental Impact Assessment before an industrial project may proceed. DG Khan Cement case arose from this kind of prior regulatory assessment, the consultant report on groundwater depletion that the Punjab government relied upon in restricting cement plant expansion. The EIA regime is, in principle, the natural point at which climate considerations, projected lifetime greenhouse gas emissions, climate resilience of project design, could be integrated into corporate accountability before a project is allowed, rather than relying exclusively on ex post litigation once emissions have already occurred. At present, however, neither the National Environmental Quality Standards nor the IEE/EIA Regulations require a dedicated climate

[15] Pakistan Climate Change Act 2017, s 4 (functions and powers of the Council).

[16] Companies Act 2017 (Pakistan), s 205 (directors' duty to act in good faith and in the interests of the company, its employees, and the community); Securities and Exchange Commission of Pakistan, Listed Companies (Code of Corporate Governance) Regulations 2019.

impact assessment as a discrete component of project approval so making this crucial legal requirement just a theoretical mechanism.

## BARRIERS FOR THE JUDICIARY IN ADVANCING CORPORATE CLIMATE ACCOUNTABILITY IN PAKISTAN

### *Doctrinal barriers: from state omission to corporate act*

Pakistan's climate jurisprudence to date has been built almost entirely around the doctrine of state omission, addressing the government's failure to implement its policies. This is a comparatively straightforward doctrinal posture: the standard against which the State's conduct is measured (its own National Climate Change Policy and Framework) is self-defined, and the remedy (compelling implementation) does not require the court to specify new substantive content. A corporate climate claim, by contrast, requires the court to define an external standard of conduct, what a reasonably prudent corporation in the defendant's position and sector ought to have done to mitigate its climate impact. The absence of any dedicated legal framework and company-specific policy document makes it challenging for the court to hold the defendant accountable. There is a need to bring legal and institutional reforms to address this doctrinal gap to establish clear corporate emission standards.

### *Evidentiary and scientific barriers*

Corporate climate claims depend on the ability to establish, with reasonable scientific confidence, a specific defendant's proportionate contribution to climate change and the causal link between that contribution and a specific harm, the attribution science problem illustrated by Lliuya v RWE. Pakistan's environmental monitoring and corporate emissions reporting infrastructure remains under-developed as there is no verified data on national greenhouse gas emissions. Without comparable data infrastructure, a Pakistani court asked to quantify a corporate defendant's climate contribution would face a significantly harder evidentiary barrier than its global counterpart.

### *Institutional and capacity barriers*

The enforcement chain contemplated by the Pakistan Environmental Protection Act, environmental protection agencies, environmental tribunals and environmental magistrates, has long been under-resourced relative to its statutory mandate. The Climate Change Authority itself has been criticised for slow institutional build-out since 2017. A court willing in principle to recognise a corporate climate duty of care would still depend on this same enforcement mechanism, or on its own supervisory commission model as in Leghari, to give that duty practical effect; institutional weakness at the implementation stage is therefore a constraint on corporate climate litigation even where the underlying doctrine is sound.

### *The economic development versus climate protection*

Pakistani courts, including in DG Khan Cement, have consistently framed environmental regulation as compatible with, rather than opposed to, "sustainable development" principles. This reflects an awareness that Pakistan's industrial base, cement, textiles, sugar, cannot simply be enjoined without significant employment and economic consequences. Pakistan's Nationally Determined Contributions themselves acknowledge the tension between development imperatives and mitigation ambition in a country that contributes under one per cent of global emissions but ranks among the states most vulnerable to climate impacts. Any judicially developed corporate climate duty in Pakistan will need to harmonize this tension, for example by recognizing the standard of care to a defendant's specific capacity and sectoral context, rather than adopting a uniform standard for the whole sector that poorly suited to Pakistan's development context.

### *Corporate veil and the Principle of attribution*

Pakistan's liberal public interest litigation standing rules, which have been central to the success of state-facing climate cases, extend without difficulty to corporate respondents; there is no standing barrier peculiar to suing a private company under Article 184(3) or through the writ jurisdiction of the High Courts. The more significant structural barrier is the corporate veil and group liability: much of Pakistan's heaviest industrial emissions activity is conducted through complex corporate group structures, and a court seeking to attribute climate responsibility to an ultimate parent or holding company, as Milieudefensie sought to do against Royal Dutch Shell plc as the entity setting group-wide policy, would need to develop a Pakistani equivalent of that group-attribution reasoning, an issue Pakistani corporate and constitutional law has not yet addressed in a climate context.

## CONCLUSION

Pakistan's superior judiciary has, over three decades, built a human rights based climate jurisprudence that is genuinely distinctive within the Global South, it includes a purposive reading of the right to life, and an institutional remedial model capable of translating declaratory relief into ongoing supervised compliance. That jurisprudence has targeted he State policies far more effectively than it has addressed the corporate conduct whose industrial activities are substantially contribution to climate crises in Pakistan. Comparative experience, particularly the doctrinal architecture of Milieudefensie v Shell[17] and the causation challenges illustrated by Lliuya v RWE[18], suggests that this gap is not because Pakistani courts lack the interpretive tools to recognise a corporate climate duty of care. Shehla Zia's precautionary principle, purposive method laid a foundation than the unwritten standard of care Dutch courts relied upon. The gap persists, rather, because the statutory, regulatory and data infrastructure needed to give such a duty concrete, administrative content, verified corporate emissions data, a climate-specific National Environmental Quality Standard, and mandatory ESG reporting, remains underdeveloped in Pakistan. Judicial innovation and legislative reform are, on this account, not alternatives but necessary complements: courts can and should extend their existing rights-based reasoning to corporate respondents, but that extension will remain symbolically significant and practically limited unless legislature and regulatory gaps are being filled to establish the clear standards against which corporate climate conduct can be measured.

[17] Freshfields, 'Milieudefensie v Shell: Appeal Verdict Key Takeaways' (13 November 2024).
[18] Lliuya v RWE AG, Higher Regional Court of Hamm, Case No 5 U 15/17 (proceedings concerning proportionate corporate liability for glacial-lake flood risk in Huaraz, Peru).