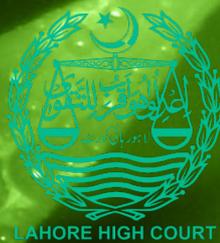


DEVELOPMENT OF ENVIRONMENTAL JUSTICE

BY

JUSTICE AYESHA A. MALIK
LAHORE HIGH COURT



LAHORE HIGH COURT

Judicial Perspectives: The Role of Specialized Courts in rendering Environmental Justice- South Asia Judicial Conference on Environment and Climate Change- 25-26 Nov 2016, Dhaka Bangladesh



JUDICIAL PERSPECTIVES: THE ROLE OF SPECIALIZED COURTS IN RENDERING ENVIRONMENTAL JUSTICE



LAHORE HIGH COURT

Greening of Judiciary

- ❖ The environmental hazards posed to the region due to rapid industrialization, urbanization, and agricultural development has led to common problems such as pollution of rivers; a rise in industrial waste and vehicle emissions; handling, storage, and transportation of dangerous goods; contamination of water, land, and coastal resources; air pollution; waterlogging; increase in the use of agrochemicals; and deforestation. All these threats to the environment call for an integrated approach.



- ❖ Post Burbhan Declaration 2012 (The Conference declared a “Common Vision on Environment for the South Asian Judiciaries), Lahore High Court established the Green Benches.
- ❖ A Green single bench and Green division bench at the principal seat.
- ❖ A senior most judge at the benches to grace the court as Green single bench and two senior most judges at the benches to grace the court as Green division bench.

Legal and Regulatory Framework

- ❖ The 18th Amendment to the Constitution of Pakistan, passed in 2010, made profound changes to the legal and regulatory regime of the country's environmental law.
- ❖ The Provinces were mandated to introduce their own environment-specific legislation. Punjab adopted the Punjab Environmental Protection (Amendment) Act, 2012 (Act).

- ❖ The preamble of the Act provides for the “protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution, and promotion of sustainable development.”
- ❖ The Act has introduced a separate, comprehensive judicial institutional framework, including environmental tribunals and environmental magistrates.



- ❖ The Environmental Tribunal has exclusive jurisdiction, under Section 21(2), to try offenses under certain indicated Sections of the Act (these include in respect of the prohibition of certain discharges and emissions (Section 11);
- ❖ initial environmental examination and environmental impact assessment (Section 12);
- ❖ prohibition of import of hazardous waste (Section 13) and environmental protection orders (Section 16)), and to hear appeals against the orders of the Environmental Protection Agency (Section 22).
- ❖ Appeals from the Tribunal lie before the Division Bench of the High Court (Section 23).



- ❖ In the exercise of its criminal jurisdiction, the Environmental Tribunal is vested with the same power as a Court of Sessions under the Code of Criminal Procedure, 1898, including that of arrest, warrant and bail (Section 21(4)).
- ❖ The Environmental Magistrates have the exclusive jurisdiction to try certain offences mostly in relation to handling of hazardous substances and regulation of motor vehicles as envisaged by Sections 14 and 15 of the Act.



Judicial Activism in Developing Environmental Jurisprudence

- ❖ The most significant feature in the environmental landscape of Pakistan is the judicial activism that has responded to public interest environmental litigation.
- ❖ The superior courts have been liberally responsive to environmental issues and complaints, including on the jurisdictional issue of locus standi, the main body of environmental jurisprudence in Pakistan has been laid down by the Supreme Court and the High Courts.



Landmark Green Precedents

- ❖ In the landmark decision in **Shehla Zia vs. WAPDA**¹, the Supreme Court of Pakistan held that the right to a clean and healthy environment was part of the Fundamental Right to life guaranteed by Article 9 of the Constitution and the Fundamental Right to dignity provided in Article 14. In this case, the Supreme Court also introduced the precautionary principle of environmental law, with specific reference to its inclusion in the Rio Declaration on Environment and Development, into Pakistani jurisprudence.
- ❖ In the **Khewra Mines case**² the petitioners sought enforcement of the right of the residents to have clean and unpolluted water against coal mining activities in an upstream area. The Supreme Court affirmed its expansive approach to Article 184(3) and stated that 'the right to have unpolluted water is the right of every person wherever he lives.

1. PLD 1994 Supreme Court 693

- 
- ❖ In dealing with noise pollution, the Supreme Court in **Islamuddin case**³, restrained the defendants from creating public nuisance in their workshops, stating that even noise made in carrying on a lawful trade, if injurious to the comfort of the community, is a public nuisance.
 - ❖ The Supreme Court took **suo motu action**⁴ in Islamabad Chalets and Pir Sohawa Valley Villas, restraining the construction of chalets and villas situated at a distance of two kilometres of the Margalla Hills, where the housing scheme was launched. The housing scheme in question would have had a direct bearing on the eco-system of the Margalla Hills.

3. PLD 2004 SC 633.

4. Suo Motu case No. 13 of 2005, Report 2005-2006, SC of Pakistan, Golden Jubilee Edition, 106.

- 
- ❖ The Supreme Court also took suo motu action in the **New Murree Project**⁵ which posed grave environmental hazard as its initiation would have destroyed 5,000 acres of forest. The project was ultimately disbanded and the court reiterated the global environmental law principles of intergenerational equity as well as sustainable development in order to achieve goal of healthy environment, not only for present population but also for future generations.
 - ❖ In the **IMAX Cinema case**⁶ the Supreme Court opined that conversion of a public park into a shopping mall and setting up of the IMAX cinema without observing the codal formalities of the legal framework in particular non filing of the initial environmental examination was grossly illegal and was an offence under the Act.

5. 2010 SCMR 361

6. 2006 SCMR 1202.



- 
- ❖ Recently in the **Canal Road Expansion case⁷**, the question before the Supreme Court was the environmental impact of widening the 14 km road along the banks of the canal that runs through Lahore. It was contended that not merely would the scheme devastate the green belt along both sides of the canal, but would even fail to achieve its stated objective of improving traffic flow in order to reduce traffic congestion in the city.
 - ❖ The Court while holding that green belt around both sides of the canal was a public trust resource and hence could not be converted into private or any other use also observed that widening of the road was infact a public purpose and as minimum area was being affected and project conformed with the Act thus the Doctrine of Public Trust, in circumstances, could not be said to have been compromised.

7. 2011 SCMR 1743 and 2015 S C M R 1520

- ❖ Courts have recognized that there can be multiple stresses on the environment and there is sometimes a dynamic tension involved, which may mean that it may not be possible to redress one without to a certain extent leaving others unaddressed.
- ❖ The aim is not necessarily a perfect environment but a balanced one and the above referred judgment show that in such cases, the judicial approach has been appropriately nuanced.
- ❖ Courts have taken a broad and expansive view of their jurisdiction in relation to environmental issues.



- 
- ❖ In the recent **Signal Free Corridor case**⁸, a project which would have converted a stretch of 7 Km of road into a signal free high speed expressway, a full bench of Lahore High Court declared the same as illegal and stopped the authority from starting any such new development project.
 - ❖ The court while examining the integrality of environmental justice to fundamental rights opined that the corpus of environmental laws have a singular purpose of protecting life and nature including the International Environmental Principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine.
 - ❖ Environment and its protection has come to take center stage in the scheme of constitutional rights.

8. P L D 2015 Lahore 522 . P.S Judgment was appealed against and was partly allowed by Supreme Court in the case reported as 2015 SCMR 1739.

- ❖ The court while explaining the scope and meaning of the Environmental Impact Assessment (EIA) observed that it is nature's first man-made check post, nothing adverse to the environment is allowed to pass through.
- ❖ It is through the tool of EIA that the authority gets to regulate and protect the environment and as a result the life, health, dignity and well-being of the people who inhabit the environment.
- ❖ The above referred precedents reinforce the fact that that the Courts have taken a broad and expansive view of their jurisdiction in relation to environmental issues.



- ❖ Courts have not held any environmental issue to be beyond their jurisdiction, and in displaying a ready willingness to take up all sorts of matters, have steadily pushed ahead along the path opened up in Shehla Zia case.
- ❖ Challenges to the environment do not end with drafting appropriate laws, policies and judgments. In fact, they begin with these. To transform these laws and policies into effective implementation requires a massive commitment to the capacity building of the courts rendering environmental justice especially the tribunals.
- ❖ Without this, any effort will have little chance of success. The support of the courts, media and civil society organizations should also be encouraged in the region.

Climate Change Litigation: A Fairly New Phenomenon

- ❖ The existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e. Climate Change.
- ❖ From Environmental Justice we need to move to Climate Change Justice.
- ❖ Need to ensure that issues of climate change are dealt with in a more proactive and robust manner.



- ❖ Climate Change is a defining challenge of our time and has led to dramatic alterations in our planet's climate system. For Pakistan, these climatic variations have primarily resulted in heavy floods and droughts, landslides and glacial lake outbursts severely affecting the most vulnerable and resource poor communities.
- ❖ On a legal and constitutional plane this is a clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society.
- ❖ Pakistan ranks 22nd in the Climate Change Vulnerability Index 2016 (CCVI).

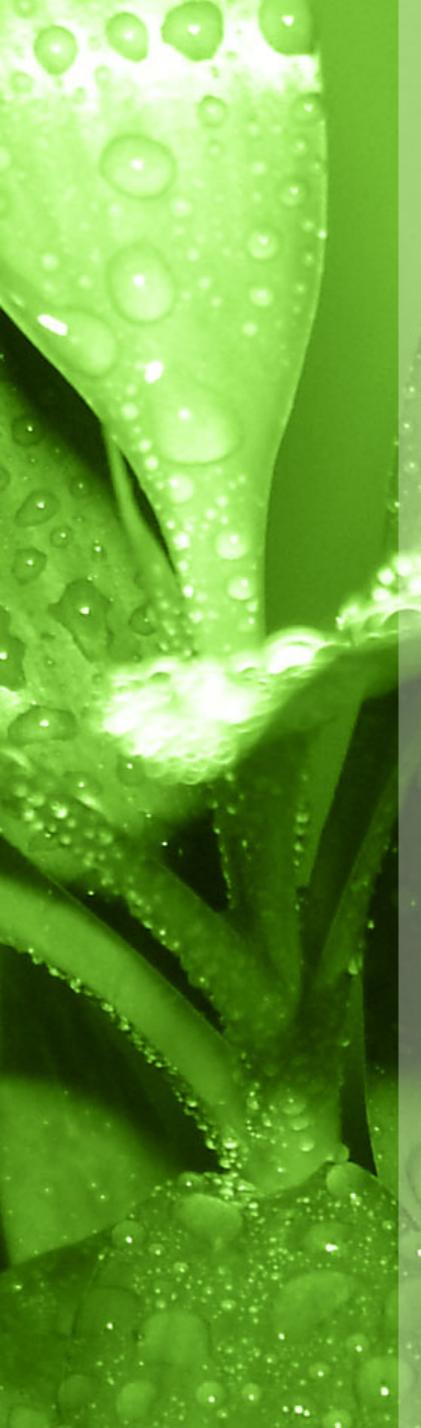


- 
- ❖ Pakistan's National **Climate Change Policy 2012** and development of a framework for its implementation (2014-2030) comprehensively addresses all possible challenges of Climate Change adaptation and mitigation in foreseeable future and provides foundational framework for ensuing Climate Change Action Plans, Programs and Projects.

The main objectives include:

- i. To pursue sustained economic growth by appropriately addressing the challenges of climate change;
- ii. To integrate climate change policy with other inter-related national policies;

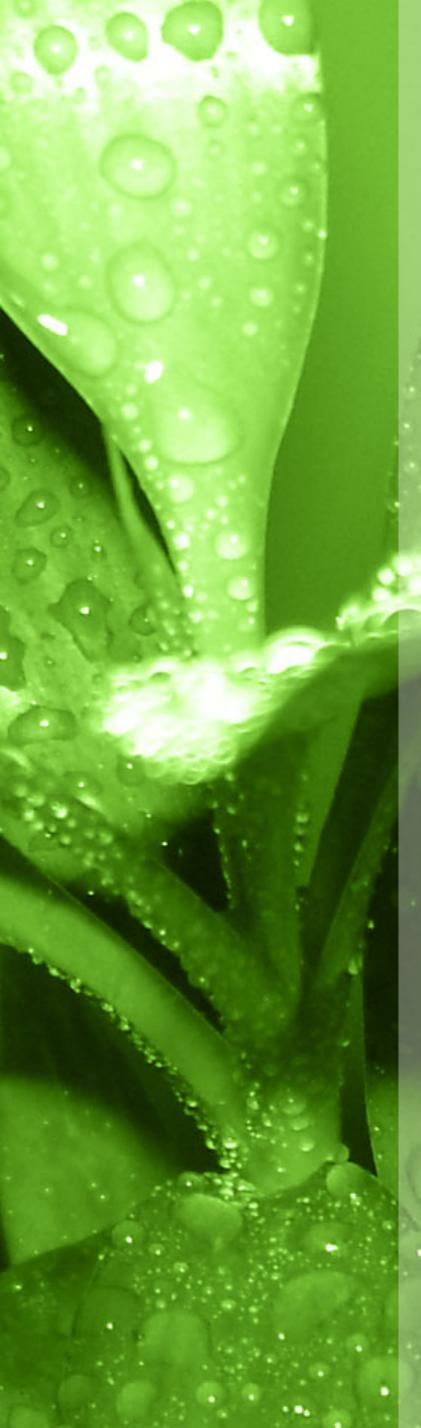


- 
- iii. To focus on pro-poor gender sensitive adaptation while also promoting mitigation to the extent possible in a cost-effective manner;
 - iv. To ensure water security, food security and energy security of the country in the face of the challenges posed by climate change;
 - v. To minimize the risks arising from the expected increase in frequency and intensity of extreme weather events such as floods, droughts and tropical storms;
 - vi. To strengthen inter-ministerial decision making and coordination mechanisms on climate change;



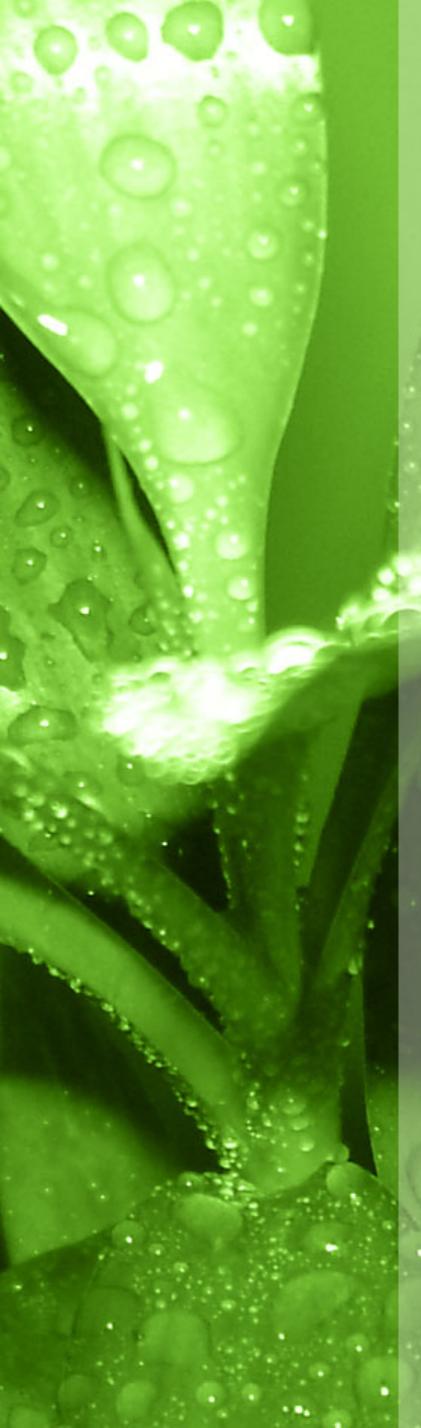
- 
- vii. To facilitate effective use of the opportunities, particularly financial, available both nationally and internationally;
 - viii. To foster the development of appropriate economic incentives to encourage public and private sector investment in adaptation measures;
 - ix. To enhance the awareness, skill and institutional capacity of relevant stakeholders;
 - x. To promote conservation of natural resources and long term sustainability.



- 
- ❖ The **Leghari v Pakistan case**, is in fact the first ever climate change related case filed in the Lahore High Court green bench wherein a farmer challenged the inaction, delay and lack of seriousness of the national and provincial governments to implement Pakistan's national climate change policy 2012 and its framework (2014-2030) as it offended the fundamental right to life under the Constitution of Pakistan due to the existential threat posed by climate change.
 - ❖ The Court found that the delay and lethargy of the State in implementing the Framework offends the fundamental rights of the citizens' and ordered the creation of a cross- sectoral Climate Change Commission to monitor climate policy.

The road ahead for environmental Justice

- (i) Judges and the judiciary at all levels need to be sensitized to environmental issues. Resolution of environmental issues is an integral aspect of delivering social justice which judiciary needs to keep in mind.
- (ii) For judges to work in the framework of environmental law, they should be sensitive to the need to take an innovative approach to resolving environmental issues. Their approach should be flexible and open-minded. It should be recognized that the traditional adversarial approach may not be the most effective means of solving environmental problems; it may be necessary to take the inquisitorial approach.



(iii) Judicial specialization may be necessary to adequately address environmental issues. Specialist tribunals or benches set up must be adequately resourced, i.e., supported by proper expert technical assistance etc.

(iv) Judges should be trained in environmental law to enable them to render decisions in accordance with the idea of sustainable development.

(v) All judicial academies need to develop curriculum for environmental law training.

(vi) To ensure the implementation of environmental laws, regular environmental audit on yearly basis should be made compulsory for all the stakeholders.



(vii) The concept of pre-trial negotiations may be introduced in the proceedings before the Tribunals to enable the polluter to come up with, if possible, a mechanism for resolving the acts complained against, thus eliminating the environmental violation.

(viii) Although the Government has adopted laws to combat adverse environmental impacts of unsustainable development but the challenges to the environment do not end with drafting appropriate laws and policies.

In fact, they begin with such laws and policies. To transform these laws and policies into effective implementation requires a massive commitment.

It can be done with resolve, determination and the political will of the Government.





Thank You

GREEN JUDGES OF THE WORLD UNITE!!!



LAHORE HIGH COURT