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## Effectiveness of environmental rights through environmental public interest Litigation in Pakistan

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### Abstract

Environmental Ecological corruption is a significant worldwide concern. In Pakistan, too, we are battling to track down ways of managing it. The Parliament has passed regulation for insurance of the climate. The point of the Environmental Public Interest Litigation (EPIL) is to help the overall population in voicing out their objection on ecological issues. This new methodology on ecological is utilized to empower general society, volunteers, private areas and different partners partake and settle on choices in regards to the insurance of their current circumstance, normal assets from contamination and environment annihilation. This paper will inspect what is going on concerning ecological case, and in the process talk about the pretended by the noteworthy courts in making an empowering procedural system for the security of climate. The paper takes a gander at the holes and bottlenecks that existed for the solicitor to move toward the prevalent courts and how the predominant courts through different cases, beginning from the original Shehla Zia case (PLD 1994 SC 693) down to the current day have through hearing many petitions affected this region. The effect has been two crease; help in the specific case and widening of the potential for legal intercession for natural case.

**Keywords:** environmental litigation, Pakistan, human rights, contaminations, environment protection

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### Introduction

The point of the Environmental Public Interest Litigation (EPIL) is to help the overall population in voicing out their objection on ecological issues. This new methodology on ecological is utilized to empower general society, volunteers, private areas and different partners partake and settle on choices in regards to the insurance of their current circumstance, normal assets from contamination and environment annihilation.

Under the Constitution of the Islamic Republic of Pakistan, 1973, the two the government and commonplace assemblies had the ability to make regulations on the climate until 2010 (1). The service proposed and drafted the main solidified ecological regulation, the Pakistan Environmental Protection Ordinance, 1983 (PEPO). In Pakistan, PIL emerged in the late 1980s, In order to understand the present position of the PIEL, it is important to be aware of the history and development of PIL in Pakistan. The Supreme Court and the High Courts of the Country took a leading role in applying human rights and in developing human rights approaches in judgments (1).

This report examines the state of environmental law, adjudication, and implementation in Pakistan, focusing on the provincial environmental protection acts of Pakistan and the institutional design, principles, and procedures provided under the law. It further examines the actual implementation of the law and the case law developed in this area with focus on the court's interpretation and enforcement of the laws. The Government of Pakistan has embraced regulations to battle unfavorable natural effects of unreasonable turn of events, yet there are a few issues that make powerful execution of these regulations and mediation of ecological debates troublesome.

Pakistan is one of the countries of the world where there is a constitutional mandate to protect and improve the environment. To satisfy the sacred order different regulations have been instituted with an endeavor to take care of the issue of natural debasement. While interpreting these provisions in specific contexts and cases the higher courts in a series of significant public interest environment litigation have profoundly contributed to the shaping of environment law and jurisprudence of Pakistan. There have been arrays of public interest litigations raising environmental issues including on water and air pollution, river pollution and management, noise pollution, management and the board and guideline of risky squanders, guideline of mining and preservation of timberland and natural life assets. Not only have the courts reconciled the often competing claims of environment and development in these areas, but in doing so have also helped evolve certain environmental principles of abiding value. This chapter discusses both these principles and the relevant public interest case laws in all the areas mentioned above.

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In a catena of decision, the apex court has ruled that the right to healthy environment and enjoyment of quality life are part of right to life and liberty. Pollution of water or air, which may be detrimental to the quality of life, the *Pakistan Environmental Protection Act was enacted on 6th December 1997*, repealing the Pakistan Environmental Protection Ordinance, 1983. The PEPA' 1997 provides the framework for establishment of Provincial Sustainable development Funds, Protection and conservation of species, conservation of renewable resources, establishment of Environmental Tribunals and appointment of Environmental Magistrates.

In Pakistan, the first reported PIEL was initiated in a case concerning development project and environment (2). Other PIEL involved water contamination, metropolitan turn of events and climate, natural life insurance, air contamination, water contamination, human wellbeing and climate, commotion contamination, preservation of timberland assets, and general ecological contamination.

It has been observed thus the community health would become a reality only when the state endeavours to protect and improve the environment, which includes flora, fauna, forests, and the natural wealth. The nature of the obligations of the state has also been emphasized. It has been held that the state is assigned a positive role to help people realize their rights and needs. The Roman law principle *salus populi est suprema lex, ie*, welfare of the people is paramount law is the abiding all pervasive faith in the Preamble of the Constitution of Pakistan.

The right to life comprehends, inter alia, right to environment, right to health care and the right to adequate health delivery system.

While balancing the competing claims in public interest litigations on environment, the courts have also felt that in regard to many technical matters it may not be fully equipped. In such cases, perforce it has to rely on outside agencies for reports and recommendations whereupon the courts have passed orders from time to time. It has additionally been seen that so as to guarantee that there is neither risk to the climate, nor to the nature and, simultaneously, guaranteeing sustainable development, courts can refer scientific and technical aspects for an investigation and opinion to expert bodies.

### Summery

An alliance of inhabitants sent a letter of appeal to the Supreme Court to challenge the Water and Power Development Authority's (WAPDA) development of a power lattice station in their area, on assigned "green belt" property. The Court heard the matter as a common freedoms case, as Article 184 (3) of the Pakistan Constitution gives unique locale to the Supreme Court to take up and decide any matter concerning the authorization of principal privileges of public significance. The Court believed the case to be viable under Article 184 (3) since the risk and infringement affirmed were, for example, to abuse the protected right to life when deciphered expansively. The inhabitants contended that the high-voltage framework station would represent a wellbeing hazard and expected peril to nearby occupants. At last, the court decided the logical proof uncertain, while noticing the overall pattern upholds that electromagnetic fields effects affect human wellbeing. The Court acknowledged the solicitor's contention that it ought to embrace the preparatory rule set out in the 1992 Rio Declaration on the Environment and Development, the primary worldwide instrument that connected climate insurance with basic freedoms, by which the absence of full logical conviction ought not to be utilized as motivation to forestall ecological corruption. Subsequently, it was held that the right to a solid climate was essential for the central right to life and right to poise, under Article 9 and 14 of the Pakistan Constitution, separately. The Court decided that "life" covers all features of human life, every single such convenience and offices that an individual is qualified for appreciate with nobility, lawfully and unavoidably.

Nonetheless, with an end goal to find some kind of harmony between the freedoms of residents and the plans that are executed by the experts for the government assistance, monetary advancement and flourishing of the country, the Court didn't make a conclusive decision on the forthcoming development of the lattice station, in any case, with the assent of the two players, requested a survey and report of network project by the National Engineering Services of Pakistan (NESPAK) to recommend changes and area choices. The choice further guided the public authority of Pakistan to lay out a commission of globally known and perceived researchers to audit and run on future lattice station projects. Also, the Court requested WAPDA to promptly present public meeting and protest techniques for all undertakings concerning framework stations and electrical cables.

### *Shehla Zia Vs WAPDA (PLD 1994 SC 693).*

This public interest suit preceded the Supreme Court of Pakistan when applicants tested the development of a close by power framework station because of potential wellbeing dangers and risks. The case tends to a scope of issues including, ecological insurance, and a far reaching understanding of the right to life.

### Summary

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### **Significance of the Case**

This milestone case extended the principal freedoms to life and poise by deciphering these privileges to incorporate the right to a sound climate. This choice is especially critical as there are no particular arrangements in the Pakistani Constitution with respect to ecological assurance. Corresponding to natural regulation in Pakistan, it is critical that the case laid out the utilization of the preparatory guideline where there is a danger to ecological freedoms, and stressed the positive commitments of the State in safeguarding the right to a spotless and sound climate. (Meet by email, with Ahmad Rafay Alam, a main natural legal counselor and leading environmental lawyer and activist in Pakistan, August 28th, 2015). Moreover, the decision put a notification and remark limitation on government organizations with respect to projects that might actually represent a public danger. This case is likewise imperative, "since it set out the underpinnings of all future public interest case brought under the watchful eye of courts for natural insurance." To refer to only one model, following this case, the Supreme Court, referring to the Zia choice, found in the Salt Miners Case (settled on twelfth July, 1994) that the option to have water liberated from contamination and pollution is a right to life itself.

At long last, an essential commitment of this case which was acknowledged for thought by the Court under Article 184 (3), has been starting a trend which takes into account a lot more straightforward admittance to people in general to move toward the predominant courts and the subordinate courts on climate related issues.

#### **1. General Sect, West Pak Salt Miner Jhelum Vs Director Mineral Punjab 1994 SCMR 2061.**

Constitution of Pakistan 1973 ---Arts. 184(3), 9 & 14---human right s case ---Constitutional petition--- Maintainability---Petitioners seeking enforcement of the right of the residents to have clear and unpolluted water, their apprehension being that in case the miners were allowed to continue their activities, which were extended in the water catchment area, the watercourse, reservoir and the pipelines would got contaminated---Held, water which was necessary for presence of life, whenever dirtied, or debased, would make genuine danger human life and in such a circumstance, people presented to such peril were qualified for guarantee that their' fundamental right s of life guaranteed to them by the Constitution had been violated---case for enforcement of fundamental right s by giving directions or passing any orders by Supreme Court restraining the gatherings and Authorities from submitting such infringement or to perform legal obligations was made out and appeal to under Art. 184 (3) of Constitution of Pakistan was maintained.

#### **2. 2008 SCMR 468**

Preamble---multi -storied building ---Impact on environment---Scope---Provisions of Pakistan Environmental Protection Act, 1997, demand environmental impact assessment of each of such projects before any plan for construction of same could be sanctioned.

**3. Principle I -** *Man has the key right to opportunity, equity and satisfactory states of life, in a climate of value that allows an existence of pride and prosperity, and he bears a grave liability to safeguard and work on the climate for the present and people in the future.*

**Principle 2 -** *The normal assets of the earth, including the air, water, grounds, greenery and particularly delegate tests of regular environments, should be protected to support the present and people in the future through cautious preparation or the executives, as fitting.*

#### 4. 2018 PLD 1 Lahore-High-Court-Lahore

Arts.9 and 199 Public Interest Litigation- - climate. Basic Right to Life Hazardous exhaust cloud. Prudent rule. Scope- - - Petitioners documented public interest appeal decrying inaction of Provincial Government in resolving the issue of contamination and dangerous brown haze in the city- - - Validity- - - Dense exhaust cloud was truly noticeable in the city and air checking showed that equivalent had gone over the most elevated level and Doctors had affirmed that such degrees of brown haze were perilous to wellbeing of occupants - - High Court saw that despite such circumstances, no preventive measures had been taken to safeguard life and soundness of individuals and that High Court will undoubtedly safeguard crucial privileges of individuals and could authorize Art.9 of the Constitution read with globally perceived "prudent rule" and in like manner till such time Government proposed a definite activity plan and keeping in view emanant nature of current emergencies - - High Court coordinated that its spread out arrangement be set up and a changed brown haze strategy and affirmation of general wellbeing crisis be submitted under the watchful eye of High Court inside 90 days - - Constitutional request was discarded, likewise.

#### Conclusion

The above discussion shows that the role of the courts in Pakistan has been important in the EPIL. Although, according to a few the courts might have ventured external their customary job of just proclaiming what the law is, by embracing a 'sweeping and evolutory' interpretative methodology. Regardless, it ought to be recollected that the best of the guidelines will not be able to give induction to 'value', in light of different 'obstructions'. One of them being the procedural bottlenecks. We have found in the cases examined in this paper that the courts have through different cases given a course to the impacted party to move toward the courts, by permitting NGOs, and other vested parties and so forth, to move toward the courts, for the disappointed and impaired poor and weak impacted gatherings. Moreover, another 'barrier' so to say, has been the ouster provision in the pertinent regulation; again the courts, with regards to worldwide legal pattern, have kept on regarding authoritative power, yet at the same time figured out how to give a legal oversight to chief activities, using their innate and established powers of legal survey. In this manner within the sight of selective starting purview of ecological councils, better legal executive go on than engage writ petitions and take suo motu takes note. This approach has brought about certain hesitations on piece of the people who feel that the conventional definitive job of the legal executive is to apply the stated aim of the law just, and as they would like to think this has been reached out because of this legal job.

#### References

1. In Quetta Declaration. The SC and Four Provisional High Courts committed themselves to increase the access to justice through PIL. One of the objective was 'to ensure that all citizens, particularly the deprived and unaided sections society, becomes conscious and assertive of their rights and obligation as guaranteed and provided by Islam, the Constitution and the Law, 1991.
2. Shehla Zia Vs WAPDA (PLD 1994 SC 693).
3. General Sect, West Pak Salt Miner Jhelum Vs Director Mineral Punjab 1994 SCMR 2061.
4. 2008 SCMR 468
5. Principle I – Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations.
6. Principle 2 – The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.