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Law, Justice, and Development Program, Office of the General Counsel

# Development of Environmental Laws and Jurisprudence in Pakistan

Irum Ahsan and Saima Amin Khawaja

Asian Development Bank



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# Abbreviations

ADB	–	Asian Development Bank
CEEJ	–	Committee for Enhancing Environmental Justice
EIA	–	environmental impact assessment
EPA	–	Environmental Protection Agency (Pakistan)
EPO	–	Environmental Protection Order
IEE	–	initial environmental examination
IUCN	–	International Union for Conservation of Nature
KPK	–	Khyber Pakhtunkhwa
NCS	–	National Conservation Strategy
NEQS	–	National Environmental Quality Standards
PEPA	–	Pakistan Environmental Protection Act, 1997
PEPC	–	Pakistan Environmental Protection Council
PEPO	–	Pakistan Environmental Protection Ordinance, 1983
PIL	–	public interest litigation
SAARC	–	South Asian Association for Regional Cooperation

# Preface

In South Asia, challenges related to land degradation and desertification, biodiversity loss, water depletion and degradation, solid waste management, air quality degradation, environment-related health issues, degradation and depletion of coastal and marine resources, and the impacts of natural disasters are just some of the most important environmental consequences resulting from unsustainable development.

The adoption of environmental laws and regulatory frameworks since the 1970s has helped to slow these impacts, but by no means do they address the impacts adequately. Many environmental challenges are insufficiently reflected or absent in policies and frameworks. Where international principles and laws have been adopted by many countries, they often have not been translated into national, provincial, and local implementation rules and regulations. Furthermore, implementation, enforcement, and compliance are often weak, owing to a range of capacity and other challenges.

Access to environmental justice also remains a challenge. Although this is internationally recognized as a principle of good governance and of critical importance to the rule of law and sustainable development, justice remains inaccessible in a number of countries. The Office of the General Counsel at the Asian Development Bank (ADB), under one of its regional technical assistance projects, has worked with the judiciary of Pakistan and prepared this report to review the state of the country's environmental laws, adjudication, and implementation.

This report reviews the provincial environmental protection acts of Pakistan with special emphasis on 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. Additionally, the report reviews the current curriculum of law schools and judicial academies and suggests the inclusion of environmental laws in their respective programs in future.

The authors would like to thank those who spared their time for interviews and provided assistance and support in making this work possible. Appreciation must be given to environmental lawyer Nusrat Jahan Nabeela for her constant support in collection of data and writing of the report. We would also like to acknowledge the Punjab Environment Protection Agency for providing information and procedural details about the implementation and enforcement of environmental laws in Pakistan, and the Judicial Academy for information about the extent of judicial training in environmental laws. We extend special appreciation to retired justice Tanveer Ahmad Khan, Director General, Punjab Judicial Academy; and Naseem-ur-Rehman, Deputy Director, Environmental Impact Assessment, Punjab Environment Protection Agency.



# Background on the Development of Environmental Laws and Other Initiatives in Pakistan

The Ministry of Environment was established in Pakistan in 1975 as a follow-up to the Stockholm Declaration of 1972. Under the Constitution of the Islamic Republic of Pakistan, 1973, both the federal and provincial legislatures had the power to make laws on the environment until 2010.<sup>1</sup> The ministry proposed and drafted the first consolidated environmental law, the Pakistan Environmental Protection Ordinance, 1983 (PEPO). As federal legislation, the main objective of PEPO was to establish institutions, i.e., the Pakistan Environmental Protection Council (PEPC), headed by the President of Pakistan, as the supreme environmental policy-making body in the country; the Pakistan Environmental Protection Agency (EPA) at the federal level; and four environmental protection agencies at the provincial level to administer and implement the provisions of PEPO. PEPO only provided an institutional structure for enforcement and the protection of the environment, without comprehensive provisions for regulation of land use; air, water, or noise pollution; marine pollution; biodiversity; or hazardous substances or activities.

In 1992, Pakistan participated in the Earth Summit and became a party to various international conventions. This accelerated the process of environmental lawmaking in the country. In the same year, Pakistan prepared the National Conservation Strategy (NCS). The NCS provided a broad framework for addressing environmental concerns in the country. In 1993, the first National Environmental Quality Standards (NEQS) were notified under PEPO, providing standards for industrial and municipal effluent and air emissions, including 32 liquid and 16 gaseous parameters.

The Pakistan Environmental Protection Act, 1997 (PEPA) replaced the earlier legislation, PEPO, in an effort to bridge gaps in the law.

After the 18th Amendment, Punjab adopted the Punjab Environmental Protection (Amendment) Act, 2012 (Punjab Act)<sup>2</sup> with minor changes, while Balochistan passed the Balochistan Environmental Protection Act, 2012 (Balochistan Act).<sup>3</sup> The Balochistan Act has made some significant additions to PEPA, while Khyber Pakhtunkhwa (KPK) and Sindh are

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<sup>1</sup> Under the Constitution, the lawmaking powers are divided between the federal and provincial legislatures. The Constitution clearly identifies subjects on which only the federal legislature can legislate (the Federal Legislative List). Prior to the 18th amendment in the Constitution, there were subjects on which the federal and provincial legislatures could both make laws (the Concurrent Legislative List). All of the remaining subjects were within the ambit of provincial legislature. However, with the 18th amendment, the entire Concurrent Legislative List has been repealed and "Environment and Ecology," which was a subject of the Concurrent Legislative List, has now become a provincial subject as it has not been made part of the Federal Legislative List.

<sup>2</sup> The Punjab Act came into force on 18 April 2012.

<sup>3</sup> Assented to by the governor on 9 January 2013.



in the process of drafting new provincial laws for the environment. Until the promulgation of the provincial environmental laws in KPK and Sindh, the original structure provided under PEPA, detailed below, shall continue. As the 18th amendment does not provide any specific timelines and cutoff dates for the transition, the promulgation of provincial laws will be left to the initiative of each provincial assembly.

In 2011, the Asian Development Bank (ADB) launched a project in Pakistan called “Building Capacity for Environmental Prosecution, Adjudication, Dispute Resolution, Compliance, and Enforcement in Asia.” After meeting with stakeholders, ADB held an environment conference in March 2012 for the South Asian Association for Regional Cooperation (SAARC) with support from the Committee for Enhancing Environmental Justice (CEEJ)—a committee of High Court and Supreme Court judges—and the International Union for Conservation of Nature (IUCN). The conference was a major success, and the judiciary took many concrete decisions, which are described in detail in this publication.

# Comparative Review and Analysis of the Pakistan Environmental Protection Act, the Punjab Act, and the Balochistan Act

The preambles of these three acts provide for the “protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution, and promotion of sustainable development.”<sup>4</sup> The jurisdiction of PEPA until 2010 extends to the whole of Pakistan and its territorial waters, its exclusive economic zone and historic waters, the Provincially Administered Tribal Areas of the North-West Frontier Province,<sup>5</sup> and the Northern Areas.<sup>6</sup> However, once the environment became an exclusive subject of the provinces, the jurisdiction of environment acts extended only to the territorial boundaries of each province, i.e., the Punjab Act extends to the whole of the province of Punjab, while the Balochistan Act extends to the whole of the province of Balochistan, except the tribal areas.

All three acts—PEPA, the Punjab Act,<sup>7</sup> and the Balochistan Act<sup>8</sup>—give a very broad meaning to the term “environment,” to include

- air, water, and land;
- all layers of the atmosphere;
- all organic and inorganic matter and living organisms;
- the ecosystem and ecological relationships;
- building, structures, roads, facilities, and works;
- all social and economic conditions affecting community life; and
- the interrelationships between any of the factors specified above.

All three acts give a general definition of waste and bring the following categories of waste within their regulatory ambit: agricultural waste, hazardous waste, hospital waste, industrial waste, municipal waste, and nuclear waste. These categories are also specifically defined under the three acts. Under the Balochistan Act, clinical waste and electronic waste are also regulated. In addition to the above definitions, all three acts provide for a comprehensive set of other definitions.<sup>9</sup>

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<sup>4</sup> Preambles to PEPA, the Punjab Act, and the Balochistan Act.

<sup>5</sup> Gazette of North-West Frontier Province, No. 1/72-SOS-II(HD)/2000 dated 12 January 2001.

<sup>6</sup> Environmental Protection (Adaptation and Enforcement) Order (EPO) 2002 (KANA Order No. F.No. 10(S), 2002-NAII dated 21 August 2002).

<sup>7</sup> Section 2(x).

<sup>8</sup> Section 2(p).

<sup>9</sup> Section 2 of PEPA as well as the Punjab Act and the Balochistan Act deal with definitions.

The Balochistan Act has added some vital definitions missing in the other two acts:

- alien species,
- Balochistan coastline or coastal zones,
- best practicable environmental option,
- clinical waste,
- electronic waste,
- endemic and indigenous species,
- genetic resources,
- handling,
- integrated pollution control,
- living modified organism,
- protection of environment,
- ship breaking,
- strategic environmental assessment,
- sustainable management, and
- water resources.

PEPA incorporated specific regulations for monitoring hazardous activities, a concrete improvement brought in by PEPA and retained in the other two subsequent acts, which was lacking in PEPO. All three acts specifically prohibit discharge or emission of effluent, waste, air pollutants, or noise pollutants higher than specified in the NEQS,<sup>10</sup> or any other standards<sup>11</sup> that are to be established under PEPA or the provincial acts<sup>12</sup> (given in later paragraphs). The three acts further prohibit import of hazardous waste within their territories.<sup>13</sup> They regulate generation, collection, consignment, transportation, treatment, disposal, storage, handling, and import of hazardous substances through licenses,<sup>14</sup> and regulate motor vehicle emissions through the NEQS.<sup>15</sup> All the above violations are regulated through penalties, fines, imprisonment, closure of businesses, and restoration of the environment, etc.

In addition to the above, the Balochistan Act also regulates electronic waste,<sup>16</sup> provides for management of solid and hospital hazardous waste,<sup>17</sup> and provides guidelines for management of water resources<sup>18</sup> and coastal zones.<sup>19</sup>

PEPA primarily retained the administrative institutional framework of PEPO that also continues under the Punjab Act and the Balochistan Act. The PEPC continued to be the

<sup>10</sup> The NEQS were notified under PEPA and have been adopted by Punjab and Balochistan provinces (section 11 of PEPA and the Punjab Act, section 14 of the Balochistan Act).

<sup>11</sup> No standards except for the NEQS were notified under PEPA, and it is yet to be seen how the provinces notify other standards.

<sup>12</sup> Section 11 of PEPA and section 14 of the Balochistan Act.

<sup>13</sup> Section 13 of PEPA and the Punjab Act, and section 16 of the Balochistan Act.

<sup>14</sup> Section 14 of PEPA and the Punjab Act, and section 17 of the Balochistan Act.

<sup>15</sup> Section 15 of PEPA and the Punjab Act, and section 21 of the Balochistan Act.

<sup>16</sup> Section 18.

<sup>17</sup> Section 19.

<sup>18</sup> Section 20.

<sup>19</sup> Section 23.

supreme policy-making body.<sup>20</sup> PEPA provides for establishment of a federal environmental protection agency<sup>21</sup> and provincial environmental protection agencies<sup>22</sup> for all provinces and their powers under it—making them the main administrative and regulatory authorities. Under the Punjab Act, there shall only be one central provincial agency, and further policies, reports, and standards will be made for the province of Punjab.<sup>23</sup> Under the Balochistan Act, there shall be a provincial agency with power to establish district agencies.<sup>24</sup>

### Structure of the Pakistan Environmental Protection Agency

The primary responsibility to administer and implement the provisions of PEPA lies with the EPA,<sup>25</sup> and with the provincial environmental protection agencies under the Punjab Act<sup>26</sup> and the Balochistan Act.<sup>27</sup> In addition to the provincial environmental protection agencies in Balochistan, the powers may be delegated to district environmental protection agencies for each district in the province.<sup>28</sup> The Punjab Act does not have the authority to delegate powers to the district level. The EPA is headed by a Director General appointed by the federal government.<sup>29</sup> Under PEPA, all the powers and functions are to be exercised and performed by the Director General. However, the Director General is empowered to delegate any of these powers to the appointed staff of the EPA.<sup>30</sup> Identical powers are bestowed upon the provincial directors generals under the Punjab Act<sup>31</sup> and the Balochistan Act.<sup>32</sup> Under PEPA at the provincial level, each provincial government shall establish an environmental protection agency in the respective province.<sup>33</sup> While PEPA does not separately provide for any powers and functions for the provincial environmental protection agencies, any of the powers of the EPA provided under PEPA can be delegated to a provincial environmental protection agency by the federal government.<sup>34</sup> Most of the powers of the EPA have been delegated to the provinces, and the provincial agencies are practically administering and implementing PEPA. The structure of the provincial environmental protection agencies are similar to the EPA, with a director general having all the powers of the agency and with power to delegate to other staff as appointed by the provincial government. Similar powers of delegation at the district level have been introduced under the Balochistan Act, whereby powers of the provincial environmental protection agency may be delegated to the directors general of district environmental protection agencies with further authority to delegate their powers to such other staff appointed by the Government of Balochistan.<sup>35</sup> The structures of district agencies are the same as that of the provincial agency. There is no provision under the Punjab

<sup>20</sup> PEPA requires the PEPC to meet at least twice a year. However, the meetings are held far less often, showing a lack of commitment to the cause of the environment (sections 3 and 4 of PEPA).

<sup>21</sup> Sections 5 and 6.

<sup>22</sup> Section 8.

<sup>23</sup> Sections 3, 4, 5, and 6.

<sup>24</sup> Section 6.

<sup>25</sup> Section 6 of PEPA.

<sup>26</sup> Section 6.

<sup>27</sup> Section 6.

<sup>28</sup> Section 8 of Balochistan Act.

<sup>29</sup> Section 5(2) of PEPA.

<sup>30</sup> The federal agency shall have such administrative, technical, and legal staff as the federal government may specify, to be appointed in accordance with such procedures as may be prescribed. See section 5(3).

<sup>31</sup> Section 5(2).

<sup>32</sup> Section 5(4).

<sup>33</sup> Sections 5–8 of PEPA.

<sup>34</sup> Section 26 of PEPA.

<sup>35</sup> Section 34.

Act to set up district agencies; there is only one central environmental protection agency for the entire province of Punjab.

The administrative structure of the environmental protection agencies is flawed for many reasons, leading to inefficiency, ambiguity, and lack of transparency. First, all the powers under PEPA lie with the federal or provincial director general. Concentration of power in one person is detrimental as it gives too much discretion to that individual and it renders decision making subjective and devoid of collective wisdom. Furthermore, this leads to undue delays in the actions required, slowing down the process of enforcement and efficiency. Moreover, concentration of power in one person hampers the growth and development of the institution. The same flawed structure has been adopted by the Punjab Act without any amendment, except that under PEPA there were both federal and provincial environmental protection agencies, but under the Punjab Act there is only one central provincial agency looking after the entire province, with one director general having all of the powers, unless they are delegated. There is no framework or structure. The Balochistan Act is a slight improvement on the Punjab Act, as it has introduced district environmental protection agencies, with the provincial agency able to delegate powers to each district. Hence, one provincial environmental protection agency is empowered to establish 26 district agencies. However, both at the provincial and district levels, the powers are concentrated in one person, i.e., the respective directors general.<sup>36</sup>

Moreover, none of the three acts provide any qualification or appointment criteria for the director general, and the acts only state that the director general shall be “appointed by the Federal/Provincial Government on such terms and conditions as it may determine.” Furthermore, it is important to note that apart from the post of director general, none of the three acts provide for an institutional structure. They do not provide for any office or post, and they do not lay down any criteria for the appointment of other staff. This omission in law seriously hampers the institutional growth and quality of people appointed for various posts.

Since funding for the environmental protection agencies is entirely dependent on allocation of budget by the federal government under PEPA, and the provincial governments in the case of the Punjab Act and the Balochistan Act, the environmental protection agencies are constantly competing with other development agencies for their budget allocation. It is important for the efficient operation of the agencies to have an independent and predetermined budget allocation. Furthermore, the penalties and fees levied by these agencies must go to independent funds of the respective environmental protection agencies, rather than the government exchequer.

Even though all three acts provide for a framework for protection and conservation of the environment, their legislative schemes are such that most of their provisions can be operative only through the rules prescribed,<sup>37</sup> and the regulations to be made under them.<sup>38</sup> They provide for establishment of two types of standards: ambient air, water, and land standards;<sup>39</sup> and the NEQS,<sup>40</sup> or the environmental quality standards for the province. To date, many rules and regulations have not yet been notified, ambient standards have yet to be established, and the NEQS are limited in scope.

<sup>36</sup> Sections 8 and 34 of Balochistan Act.

<sup>37</sup> Section 2(xxxix) and (xxxiv), and section 31 of PEPA and the Punjab Act.

<sup>38</sup> Section 2(xxxviii) and section 33 of PEPA and the Punjab Act.

<sup>39</sup> Section 6(1)(g) of PEPA and the Punjab Act.

<sup>40</sup> Section 6(e)(1) read with Section 2(xxix) of PEPA and the Punjab Act.

## Powers and Enforcement Mechanisms of the Environmental Protection Agencies

The EPA has vast functions and powers,<sup>41</sup> including

- preparing and implementing environmental policies which have also been adopted by the provincial environmental protection agencies under the Punjab Act and the Balochistan Act;<sup>42</sup>
- establishing ambient standards for air, water, and land;
- preparing, revising, and enforcing the NEQS;
- establishing systems and procedures for inspection, monitoring, and audit to prevent and control pollution;
- promoting research and development of science and technology for the prevention of pollution, the protection of the environment, and sustainable development;
- certifying environment laboratories; and
- specifying safeguards for the prevention of accidents and disasters which may cause pollution.

Furthermore, the EPA or the provincial environmental protection agency may undertake investigations into environmental issues on the basis of complaints or on its own accord.<sup>43</sup> The EPA may summon any person to furnish information or data relevant to its functions; enter and inspect under a search warrant any land, building, premises, vehicle, or vessel where there are reasonable grounds to believe that an offense under PEPA, the Punjab Act, or the Balochistan Act has been committed; take samples of any material and arrange for tests and analysis of the same; and confiscate any article used in commission of any offense.

### Standards

PEP,<sup>44</sup> and now the Punjab Act,<sup>45</sup> and the Balochistan Act<sup>46</sup> provide for the NEQS and ambient standards. The NEQS for municipal and liquid industrial effluent, industrial gaseous emissions, and standards for motor vehicle exhaust and noise have been notified. However, as observed in para. 16, no ambient standards were ever notified under PEPA for air, water, and land. The provinces now have the power to make their own ambient standards. Enforcement of provisions of these three laws requires implementation of the NEQS and/or ambient standards, and violations of the standards are penalized under these laws. It is difficult to improve or sustain the quality of the environment only through the NEQS without the ambient standards. It is therefore important to promulgate the ambient standards.

<sup>41</sup> Sections 6 and 7 of PEPA.

<sup>42</sup> Sections 6 and 7.

<sup>43</sup> Section 6 of the Punjab Act.

<sup>44</sup> Sections 11 and 6(f), (g).

<sup>45</sup> Sections 11 and 6(f), (g).

<sup>46</sup> Sections 6(f) and 14, 6(e) for ambient standards.

### Initial Environmental Examination and Environmental Impact Assessment

PEPA provides for a screening mechanism to evaluate projects at their very inception for environmental impacts. It introduced the well-recognized international concepts of the initial environmental examination (IEE) and the environmental impact assessment (EIA).<sup>47</sup> An IEE is a preliminary environmental review to determine whether or not a project would have a negative impact on the environment.<sup>48</sup> An EIA is an environmental study comprising collection of data, prediction of impacts, comparison of alternatives, evaluation of preventative and mitigatory measures, and framing of recommendations.<sup>49</sup> The EPA has made regulations on IEEs and EIAs<sup>50</sup> in pursuance of implementation of Section 12 of PEPA. The EPA and provincial environmental protection agencies have the authority to review, approve, and refuse EIAs as appropriate.<sup>51</sup> The EPA may designate any area as an “environmentally sensitive area” requiring EIAs for all projects in that area,<sup>52</sup> but this provision has not been used effectively. The same mechanism of screening has been retained by the Punjab Act and the Balochistan Act.<sup>53</sup> However, Balochistan has added a few more categories which require an EIA under its act.

According to a draft EIA mapping report,<sup>54</sup> based on a 2010 analysis of the regional EIA mapping results for Pakistan by the Netherlands Commission for Environmental Assessment, in 2009 less than 25 EIAs were decided in federal areas, Sindh, and KPK, while no EIA was passed in the province of Balochistan, and only Punjab had more than 50 EIAs passed in the same year. The same report found that in Punjab, 20% of projects that should be covered by EIAs actually undergo an EIA. Sindh has a similar coverage of 20% in practice. At the federal level it is estimated that half the projects that should be covered by EIAs are actually covered. For the remaining provinces, the coverage in practice is 10% or lower.

The Balochistan Act has also introduced the concept of “strategic environmental assessment”<sup>55</sup> whereby the government at all levels of administration and in every sector shall incorporate environmental considerations into policies, plans, programs, and strategies.

### Environmental Protection Order

PEPA provides a quasi-judicial mechanism to curb the harmful effects of pollution caused by any activity, in the form of an Environmental Protection Order (EPO),<sup>56</sup> which can be issued by the EPA or a provincial environmental protection agency. The pollution-causing activities

<sup>47</sup> Section 12 of PEPA.

<sup>48</sup> Section 2(xxiv) of PEPA.

<sup>49</sup> Section 2(xi) of PEPA.

<sup>50</sup> Pakistan Environmental Protection Agency (Review of IEE/EIA) Regulations, 2000 (Regulations).

<sup>51</sup> Regulations 13 and 20.

<sup>52</sup> Regulation 22.

<sup>53</sup> Section 15.

<sup>54</sup> Reinoud Post and Bobbi Schijf. 2010. EIA mapping results across the regions of Pakistan. Netherlands. Unpublished. See <http://niap.pk/docs/EIA%20mapping%20Pakistan%20results%20report%20March%2024,%202011%20DRAFT.pdf>

<sup>55</sup> Section 13.

<sup>56</sup> Section 16 of PEPA and the Punjab Act, and section 24 of the Balochistan Act.

against which an EPO can be issued include discharge<sup>57</sup> or emission<sup>58</sup> of effluent,<sup>59</sup> waste,<sup>60</sup> air pollutants,<sup>61</sup> noise,<sup>62</sup> the disposal of waste, the handling of hazardous substances,<sup>63</sup> or any other act which is in contravention of the provisions of PEPA, and rules and regulations made under PEPA.

A broad range of measures may be taken under the ambit of an EPO, including

- immediate stoppage or control of the discharge, emission, or handling of effluent, etc., or minimizing or remedying adverse environmental effects;
- installation of a pollution control device or substitution of a device causing adverse environmental impacts;
- direct actions to deal with the pollutants by way of disposal, elimination, incineration, etc.; and/or
- action to restore the environment to its original condition prior to the activity which caused environmental degradation.

EPOs are issued on report and on an inspection of an authorized person. Where the authorized person is satisfied that an EPO needs to be issued, he or she will immediately inform the Director General in writing for intimation of necessary action in accordance with Section 16 of PEPA.<sup>64</sup>

The Environmental Tribunals (Procedure and Functions) Rules, 2008, require the Director General to submit to the environmental tribunal detailed monthly statements containing the total number of cases involving environmental violations that were registered, investigated controlled, stopped, eliminated, and disposed of, with steps taken and measures adopted under Section 16 of PEPA. This provision, if fully applied, can improve the performance of environmental protection agencies through monitoring by the environmental tribunal.

In case any person fails to follow an EPO, the EPA has the power to file a complaint before the environmental tribunal for its implementation, and the EPA may, in addition, take measures to implement the EPO and subsequently charge a reasonable cost for implementation from the violator. In actuality, more than 60% of EPOs are not complied with due to institutional shortcomings.<sup>65</sup> The Punjab Act and the Balochistan Act<sup>66</sup> have adopted the same provisions, and it remains to be seen how these provisions would be implemented under these acts.

### Pollution Charge

PEPA empowers the federal government to levy a pollution charge on any person who fails to keep the discharge of effluent, waste, air pollutants, or noise within the standards provided

<sup>57</sup> Section 2(vi) of PEPA and the Punjab Act, and section 2(j) of the Balochistan Act.

<sup>58</sup> Section 2(ix) of PEPA and the Punjab Act and section 2(n) of the Balochistan Act.

<sup>59</sup> Section 2(viii) of PEPA and the Punjab Act and section 2(l) of the Balochistan Act.

<sup>60</sup> Section 2(xiv) of PEPA and the Punjab Act and section 2(fff) of the Balochistan Act.

<sup>61</sup> Section 2(iii) of PEPA and the Punjab Act and section 2(c) of the Balochistan Act.

<sup>62</sup> Section 2(xxx) of PEPA and the Punjab Act and section 2(nn) of the Balochistan Act.

<sup>63</sup> Section 2(xviii) of PEPA and the Punjab Act and section 2(aa) of the Balochistan Act.

<sup>64</sup> Rule 6 of the Environmental Samples Rules, 2001.

<sup>65</sup> Information provided by the Punjab Environment Protection Agency.

<sup>66</sup> Section 24.



in the NEQS or any other standards established under PEPA.<sup>67</sup> The federal government has also notified rules for the determination of pollution and pollution charges, and the calculation, payment, and collection of pollution charges.<sup>68</sup> However, a pollution charge has never been levied and this tool almost did not materialize due to conflict between the EPA and provincial governments on the use and ownership of the money to be collected. As both the Punjab Act and the Balochistan Act have adopted pollution charges, it is hoped that there are now better chances for its implementation at the provincial level.

### Administrative Penalties

PEPA also empowers the director general, federal or provincial as the case may be, to impose administrative penalties on any person who contravenes any provision of PEPA.<sup>69</sup> However, there are no notified rules for providing a mechanism to calculate and impose the penalty. Hence, this provision is still not in use.<sup>70</sup>

### Licenses

Any person who generates, collects, consigns, transports, treats, disposes of, stores, handles, or imports any hazardous substance requires a license issued by the federal or provincial environmental protection agency. However, the process of issuing licenses is to be prescribed through rules which have been drafted since 2003 but are not yet notified.<sup>71</sup> Hence, there can be no implementation due to the lack of procedures.<sup>72</sup>

### Self-Monitoring and Reporting by Industries

Under the Self-Monitoring and Reporting System (SMART), industries in Pakistan are responsible for systematically monitoring their environmental performance and reporting the data to environmental protection agencies. Self-Monitoring and Reporting Rules<sup>73</sup> classify industries into three categories—A, B, and C—each corresponding to a specified reporting frequency.<sup>74</sup> Category A industries are required to report their liquid and gaseous emission levels as per the priority parameters set out in schedules to these rules, after every month.<sup>75</sup> Category B industries must report their liquid and gaseous emission levels quarterly,<sup>76</sup> and category C industries must report their liquid effluent biannually as per the schedule.<sup>77</sup>

In theory, this system appears to be comprehensive. However, in reality, it has been less effective than expected. None of the industries are regularly reporting, and the ones which

<sup>67</sup> Section 12(2).

<sup>68</sup> The Pollution Charge for Industry (Calculation and Collection) Rules, 2001.

<sup>69</sup> Section 17.

<sup>70</sup> The Punjab Act (Section 17) and the Balochistan Act (Section 25) have also adopted the administrative provisions. The provisions still require rules for implementation.

<sup>71</sup> Hazardous Substance Rules, 2003.

<sup>72</sup> The Punjab Act and the Balochistan Act have also adopted the licenses provision and rules are awaited.

<sup>73</sup> The National Environmental Quality Standards (Self-Monitoring and Reporting by The National Environmental Quality Standards (Self-Monitoring and Reporting by Industry) Rule, 2001.

<sup>74</sup> Rule 4 and Schedules I and II.

<sup>75</sup> Rule 5 and Schedule III.

<sup>76</sup> Rule 6 and Schedule IV.

<sup>77</sup> Rule 7 and Schedule V.

do end up reporting are not providing detailed and correct information. Monitoring through SMART was established through rules which do not provide a mechanism for proper enforcement and no checks are provided for violation of these rules. Violations of the SMART program could be checked under PEPA, if there was an efficient working regulatory body with adequate resources, human resources, and infrastructure facilities. Thus, the industry has no fear of authorities as there are no serious steps taken against them. This system is practically noneffective at present.<sup>78</sup>

### Procedure of Evidence Collection by the Pakistan Environmental Protection Agencies

The procedure for collection of evidence is provided in the Environmental Sample Rules, 2001. Only the concerned environmental protection agencies are empowered to collect evidence through persons duly authorized by the director general. Samples may be collected either by the EPA on its own concerns or on a complaint from an individual to the director general. An authorized person is empowered to enter and inspect any place for the determination of any violation under PEPA and take samples. This person can take into possession any article which, in his or her opinion, has been involved in a commission of an offense or could furnish evidence of the commission of that offense.

An authorized person is required to seal the samples in three jars, and seal them at the premises where the samples are taken. One sample will be taken to the chief analyst for analysis (to be checked in light of the NEQS), a second sample is to be given to the owner from where the sample was collected, and the third sample is to be retained by the authorized person. In case the results show a contravention of provisions of PEPA, the EPA may issue an EPO, or file a case before the environmental tribunal. The owner has the power to challenge the result by presenting an independent result. If the EPA's result is challenged, the third sample is sent to one of the certified laboratories to settle the contention. The environmental tribunal may require a second testing of the samples from another laboratory, in case the results from the first laboratory are contested by the owner.

### Environmental Tribunals

PEPA introduced a separate, comprehensive judicial institutional framework,<sup>79</sup> including environmental tribunals<sup>80</sup> and environmental magistrates<sup>81</sup> in Pakistan. The federal government may establish as many environmental tribunals as it considers necessary, specifying their territorial limits or the class of cases to be heard. Environmental tribunals are administratively managed by the Ministry of Law Affairs and Justice.

Each environmental tribunal consists of three members: a chair qualified to be a judge of

<sup>78</sup> Information from the Punjab Environment Protection Agency.

<sup>79</sup> Also adopted by the Punjab Act and the Balochistan Act.

<sup>80</sup> Sections 20–22 of PEPA and the Punjab Act, and sections 28–31 of the Balochistan Act.

<sup>81</sup> Section 24 of PEPA and the Punjab Act, and sections 32–33 of the Balochistan Act.

the High Court, and two members of which at least one is a technical member with suitable professional qualifications and experience in the environmental field to be prescribed through rules and regulations.<sup>82</sup> The third member of the environmental tribunal is a person who is or has been qualified to be a judge of the High Court.<sup>83</sup> The appointment of the bench is done by the federal government, but for the appointment of the chair consultation with the chief justice of the High Court is required.<sup>84</sup> It is important to note here that the qualification criteria for the members of the environmental tribunal, including the chair, do not include any specialized practice or training in environmental laws. However, recently the CEEJ has directed that the members and chair of the environmental tribunal must in the future be trained in environmental laws.<sup>85</sup>

The term of the members of an environmental tribunal is 3 years, which may be extended for another 2 years by the federal government.<sup>86</sup> For every assembly of the tribunal, the presence of the chair and one member is required.<sup>87</sup> The tribunal has exclusive jurisdiction to try offenses under it and to hear appeals against the orders of environmental protection agencies. Appeals from the tribunal shall be forwarded to the Division Bench of the High Court.<sup>88</sup>

In the exercise of their criminal jurisdiction, environmental tribunals are vested with the same power as courts of sessions under the Code of Criminal Procedure Act, 1898, including that of arrest, warrant, and bail. In the exercise of its appellate jurisdiction against the orders or directions of the EPA or provincial environmental protection agencies, the environmental tribunal has the same power and follows the same procedure as an appellate court in the Code of Civil Procedure, 1908.<sup>89</sup> In all matters where no procedure is provided in PEPA, environmental tribunals follow the procedure laid down in the Code of Civil Procedure, 1908.<sup>90</sup>

The environmental tribunals were not constituted immediately after promulgation of PEPA. Under directions from the Supreme Court of Pakistan, the government established two part-time working tribunals in 1999. One environmental tribunal was established in Lahore with the territorial jurisdiction of the Provinces of Punjab, North-West Frontier Province (now Khyber Pakhtunkhwa or KPK), and Islamabad Capital Territory; and the other in Karachi with the territorial jurisdiction of the provinces of Sindh and Balochistan. Subsequently, separate tribunals for KPK and Balochistan were established.

Continuous operation of the environmental tribunals remained an issue due to lack of timely appointments, finances, and priority given by the federal government to these issues. The KPK Environmental Tribunal has been without a chair since February 2011. The Punjab Environmental Tribunal was without a chair for nearly 1 year, from July 2011 until mid-2012.<sup>91</sup> The Sindh Environmental Tribunal was without a technical member in 2010 and without a

<sup>82</sup> Section 20(2) of PEPA.

<sup>83</sup> Rule 3 of the Environmental Tribunals (Procedure and Functions) Rules, 2008.

<sup>84</sup> Section 20 (2) of PEPA.

<sup>85</sup> CEEJ meeting, 8 February 2013.

<sup>86</sup> Rule 4 of the Environmental Tribunals (Procedure and Functions) Rules, 2008.

<sup>87</sup> Section 20(3) of PEPA.

<sup>88</sup> Section 23 of PEPA.

<sup>89</sup> Section 21(5).

<sup>90</sup> Section 21(6).

<sup>91</sup> A total of 1,230 pending cases in 2012.

chair in 2012. The Balochistan Environmental Tribunal has been without a chair since 2010, and as a result a legal member was appointed as a chair to meet the requirements of law.<sup>92</sup> Interruptions in the continuous working of these tribunals lead to a backlog of cases, an increased workload, the absence of a specialized environmental forum, and burdening of the superior courts. It is unfortunate that no change has been made by the Punjab Act or the Balochistan Act in the Constitution or appointment procedure to overcome these difficulties.

Environmental tribunals are exclusively empowered to try offenses under Sections 11,<sup>93</sup> 12,<sup>94</sup> and 13<sup>95</sup> of PEPA, which provide penalties and punishments for contraventions.<sup>96</sup> An environmental tribunal<sup>97</sup> can impose fines of up to PRs1 million for the above contraventions.<sup>98</sup> In the case of continuing contravention, an additional fine of PRs100,000 for each day the contravention continues may be imposed.<sup>99</sup> The Environmental Tribunals (Procedure and Function, Rules, 2008, provide that where the accused is convicted and sentenced to a fine payable within a time fixed by the tribunal and he or she fails to deposit the fine, the environmental tribunal may order the arrest of the accused and may sentence him or her to jail for a period not exceeding 6 months or until the realization of the fine, whichever comes first. This rule would make enforcement more effective if used properly. In cases of repeated offense, the environmental tribunal has the power to order the offender with imprisonment for a term which may extend to 2 years; closure of a factory; and confiscation of machinery, equipment, and vehicles, etc. Orders for restoration of the environment can also be given to second-time offenders. Punishments under PEPA are inadequate and ineffective for first-time offenders as they only provide for imposition of fines, which are at times disproportionate to the violations committed without evaluating the actual damage and without requiring the accused to rectify the environment accordingly.

The environmental tribunals can take cognizance of an offense only upon written complaint by the EPA or any provincial environmental protection agency or an aggrieved person. PEPA, however, does not define an “aggrieved person.” An aggrieved person can only file a case with the environment tribunal after giving 30 days’ notice of the contravention to the relevant environmental protection agency and his or her intention to make a complaint to the environmental tribunal.

Environmental tribunals have inherent power to receive and record evidence in detail. The procedure for evidence collection is given in the preceding subsection. If the complainant or the environmental protection agency fails to produce the evidence despite getting reasonable opportunity to do so, the environmental tribunal may dismiss the complaint for lack of evidence.<sup>100</sup> It should be noted that due to lack of expertise and limited resources, the quality of evidence collected and other inspection procedures are unsatisfactory. Therefore, at the environmental tribunal level, one of the primary issues is weak evidence collection, which prevents the tribunal from taking appropriate action.

<sup>92</sup> National Impact Assessment Program, Capacity Needs Assessment of the Environmental Protection Tribunals in Pakistan, draft report by IUCN.

<sup>93</sup> Prohibition of certain discharges and emissions.

<sup>94</sup> Requirement to submit IEEs and EIAs.

<sup>95</sup> Prohibition of import of hazardous waste.

<sup>96</sup> Section 17 of PEPA.

<sup>97</sup> Section 17(1) of PEPA.

<sup>98</sup> Increased to PRs5 million under the Punjab Act.

<sup>99</sup> Increased to PRs100,000 under the Punjab Act.

<sup>100</sup> Rule 20 of the Environmental Tribunals (Procedure and Functions) Rules, 2008.

The enforcement of the orders and/or directions of an environmental tribunal is primarily the responsibility of the environmental protection agency. For the assistance of the agency in this regard, the Environmental Tribunals (Procedure and Functions) Rules, 2008, provide that the police are required to render all possible assistance to the functionaries of the environmental tribunal or the environmental protection agencies.<sup>101</sup>

Since June 2011, the judgments of environmental tribunals have been reported in monthly law journals. Generally, the judgments of the environmental tribunals fail to address the environmental concerns in a comprehensive manner. These judgments rely solely on the provisions of PEPA and its rules, regulations, and guidelines, and there is no use and application of other relevant laws and international principles of environmental law. The judgments lack detailed reasoning for a decision, referring only to facts of the matter at hand yet still giving final orders and/or directions. Furthermore, they do not rely on and refer to previous decisions of the superior courts in Pakistan and abroad. Even PEPA is viewed narrowly, without expanding its boundaries and interpreting it in a holistic and vibrant manner for the cause of the environment. The main contributing factor is the lack of proper training of the environmental tribunal members, as discussed earlier.

PEPA provides that the High Court shall empower judicial magistrates of the first class to be environmental magistrates and they shall exclusively try certain offenses listed in PEPA.<sup>102</sup> Appeals from the order of the environmental magistrate shall be forwarded to the Court of Sessions and the decision of the court shall be final.<sup>103</sup>

The environmental magistrate has the exclusive power to enforce implementation of PEPA Sections 14<sup>104</sup> and 15,<sup>105</sup> or any rules or regulations made under them. The environmental magistrate has the power to fine the offender up to PRs100,000, and in cases of continuing offense, PRs1,000 for each day the offense continues. Even though the environmental magistrates have exclusive powers under PEPA to implement Sections 14 and 15, in practice they have not fully acted upon this responsibility due to a lack of training in and understanding of this law. Furthermore, they have a huge backlog of criminal cases along with administrative responsibilities of their districts, making it difficult for them to prioritize and concentrate on violations under PEPA.

### Green Benches

In March 2012, ADB, with the support of IUCN and CEEJ members, held a SAARC conference on the environment. The conference was attended by judges from Pakistan and other SAARC countries, and at the conference the Chief Justice of Pakistan established Green Benches at all the High Courts and the Supreme Court of Pakistan. Since then, Green Benches have been functional in all the provinces and at the Supreme Court. At a recent CEEJ meeting,<sup>106</sup> it was decided that priority would be given to environmental cases at the High Courts.

<sup>101</sup> Rule 22 of the Environmental Tribunals (Procedure and Functions) Rules, 2008.

<sup>102</sup> Section 24.

<sup>103</sup> Section 25.

<sup>104</sup> Requirement of obtaining license for handling of hazardous substances.

<sup>105</sup> Regulation of motor vehicles.

<sup>106</sup> Held on 8 February 2013.

# Review of Environmental Judicial Decisions of Superior Courts in Pakistan

In Pakistan, the superior judiciary,<sup>107</sup> in particular one judge<sup>108</sup> of the Supreme Court, took a lead role for the protection of the environment, focusing on issues such as water pollution, air pollution, nuclear waste, and parks and protected areas, even before the promulgation of PEPA and the establishment of environmental tribunals. In the 1990s in particular, the Supreme Court<sup>109</sup> and the High Courts<sup>110</sup> were actively involved in preserving and protecting the environment under the ambit of public interest litigation (PIL). This was primarily at the initiative of one judge at the Supreme Court level.

Although the Constitution does not provide for the right to a clean environment, the superior courts have liberally interpreted the “right to life” (Article 9) to bring the right to a clean environment into its meaning. *Shehla Zia* is the leading case in which the Supreme Court held that the right to a clean environment is a fundamental right of all citizens of Pakistan covered by the “right to life.”<sup>111</sup> It further held that although “life” is not defined in the Constitution, it could not be given a restrictive meaning of vegetative or animal life only; rather, it includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. *Shehla Zia* is significant because it laid down the foundations of all future PIL cases brought before courts for environmental protection.

In 1992, the Supreme Court was moved to look into the matter of contamination of water by disposal of sewerage into open storm water drains.<sup>112</sup> The court directed remedial measures including repair of the water and sewerage pipes. In 1994, the Supreme Court initiated an action to prevent the dumping of imported industrial and nuclear waste into the coastal area of Balochistan and ordered that no industrial or nuclear waste be dumped in the sea or on land.<sup>113</sup> In another case in 1994, the Supreme Court stopped coal mining activity polluting the water of a catchment area used by the residents of that area.<sup>114</sup> In this case, the court

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<sup>107</sup> The expression includes the Supreme Court of Pakistan, the High Courts of all provinces and the High Court for the Islamabad Capital Territory established under Article 175 of the Constitution.

<sup>108</sup> Justice Saleem Akhtar.

<sup>109</sup> Under the Constitution, the Supreme Court of Pakistan exercises original, appellate, and advisory jurisdiction. It exercises its original jurisdiction concurrently with the High Courts for the enforcement of fundamental rights where a question of public importance is involved (Article 184 (3)). The Supreme Court entertains the environmental cases under Article 184 (3).

<sup>110</sup> Provincial high courts have jurisdiction, under Article 199 of the Constitution, to entertain petitions of judicial review in writ jurisdiction.

<sup>111</sup> *Shehla Zia and Others vs. WAPDA* (1994 PLD SC 693).

<sup>112</sup> Human rights case no. 9. K/1992 (an unreported case before the Supreme Court of Pakistan discussed in IUCN Environmental Public Interest Cases in Pakistan, 1998 at 49-57).

<sup>113</sup> PLD 1994 SC 102.

<sup>114</sup> *General Secretary, West Pakistan Salt Mines Labour Union (CBA) Khewra, Jehlum vs. The Director, Industries and Mineral Development, Punjab, Lahore* (1994 Supreme Court Monthly Review [SCMR] 2061).



held that the right to life includes the right to clean water for everyone, no matter where they live. The court, relying on the earlier Shehla Zia case, issued a number of directions and ordered the location of the mouth of the mine to be shifted, within 4 months, to a safe distance away from the stream and reservoir, in such a way that they are not polluted by mine debris and water spilled out from the mine. In both the Shehla Zia case and the mining case, commissions were appointed to understand the issue at hand. Under the writ jurisdiction, the superior courts do not determine issues that require evidence; however, in Pakistan, the courts have used the assistance of amicus curiae and commissions to understand the situation at hand. The courts, in a number of cases, have established commissions of experts to formulate recommendations for directions in technical (environmental) cases.

The Lahore High Court restrained 121 industrial units of Punjab from discharging effluent into drains and canals without treatment.<sup>115</sup> In 1992, the Supreme Court passed an interim order to take measures to streamline the process of checking motor vehicles at designated places in Karachi as a first step in eliminating air and noise pollution.<sup>116</sup> In 1991, the Lahore High Court was petitioned for the removal of certain asphalt plants due to serious health hazards they pose for the residents.<sup>117</sup> In 1997, the Lahore High Court issued a direction banning cigarette advertisements after a period of 3 years on channels operated by Pakistan Television and Pakistan Broadcasting, when it was argued before the court that these companies are regularly advertising different brands of cigarettes in the country on behalf of tobacco companies to increase cigarette sales in the country.<sup>118</sup>

In 1999, a writ petition was filed before the Lahore High Court against the EPA due to its failure to take appropriate action against polluting industries in a residential area.<sup>119</sup>

After the 1990s, there seems to have been a lull in the development of environmental adjudication. The major decisions in the next decade dealt mainly with land use conversions and protection of public spaces.<sup>120</sup> However, there were a few landmark decisions in the area of water conservation and improvement of urban air quality. In 2005, the High Court of Sindh, in its interim order, restrained Nestlé Milkpak (owner of a water bottling plant) from initiating any commercial and industrial activity until the final decision of the court.<sup>121</sup> The court relied on the doctrine of public trust and observed that under Islamic law as well, certain water resources are to be protected from misuse and overexploitation. Describing groundwater as a “national wealth” and a “nectar sustaining life on earth,” it held that “no civilized society shall permit the unfettered exploitation of its natural resources.”

<sup>115</sup> Rana Ishaque vs. Director General, EPA (writ petition number 671 of 1995 before the Lahore High Court, Lahore).

<sup>116</sup> Pollution of Environment Caused by Smoke Emitting Vehicles, Traffic Muddle H.R No. 4-K of 1992 (1996 SCMR 543).

<sup>117</sup> Writ Petition No. 9297 of 1991.

<sup>118</sup> Pakistan Chest Foundation and Others vs. Government of Pakistan and Others (1997 Civil Law Cases [CLC] 1379), Lahore High Court, Lahore.

<sup>119</sup> Abdul Qayyum vs. Director General, EPA (1999 Peshawar Law Report [PLR] 640), Lahore High Court, Lahore..

<sup>120</sup> Roedad Khan vs. Federation of Pakistan and 41 others (Writ Petition No. 642 of 1999 before the Lahore High Court, Lahore); Asfand Yar Khan vs. Chief Commissioner, Islamabad Capital Territory, Islamabad and 3 others (1996 SCMR 1421; Islamabad Challet and Pir Sohawa Valley Villas (suo moto case No. 13 of 2005); New Murree Project Case (suo moto case No. 10 of 2005); and Shehri-Citizens for a Better Environment vs. Lahore Development Authority (2006 SCMR 1202); Maulvi Iqbal Haider vs. Capital Development Authority (2006 PLD SC 394).

<sup>121</sup> Sindh Institute of Urology and Transplantation vs. Nestlé Milkpak (2005 CLC 424).

In 2007, the Lahore High Court passed a judgment on improving air quality to combat the menace of air pollution and noise caused by vehicles in the city of Lahore.<sup>122</sup> Relying on a comprehensive report made by a commission appointed by the same court, the relevant authorities were asked to take many concrete steps such as phasing out two-stroke rickshaws from Lahore and converting public buses to compressed natural gas. In 2007, the High Court of Sindh directed the Deputy Inspector General of Traffic Police to ensure that no smoke-emitting vehicles or ones causing noise pollution would operate in the city of Karachi within 3 months of the judgment.<sup>123</sup>

In many recent judgments and cases, it has been noted that the principles, tools, and mechanisms for the protection of the environment are applied in a superficial manner and judgments lack understanding and innovation. There is lack of reliance even on some of the principles that are established as precedents in former decisions. For example, in a recent case, the construction of an overpass was challenged before the High Court on the basis that no EIA had been carried out before commencement of that project. The court did not stop the construction, but it ordered an EIA to be carried out concurrently, and if the project was found to have any environmental impact, construction was to be stopped. In this case, the court failed to understand the requirement of law that no such project can commence before a proper EIA is carried out. Another significant case in which the court failed to appreciate the fundamentals of an EIA concerned the widening of a road. In this case, the EIA was seriously flawed, as it did not provide alternatives to the project, and the impacts of the project on the environment were understated in order to make it appear feasible and viable. Both these issues with the EIA were vehemently challenged; however, the court did not understand the severity of these omissions and allowed the project to proceed. In both of these cases the EIAs were seen as merely a formality, and the dynamics which make them potent tools were ignored.

The reliance of courts on international environmental principles is negligible and has not developed with time. A case has been pending before the Supreme Court for the last 6 years challenging the setting up of cement factories in a valley with limited water resources. The court failed to see the harm which the cement factories could cause to the environment and the residents there, and due to the lethargy and inaction of the court these factories were constructed and have been fully functional for many years. The factories have already created water shortages and air pollution—the two main concerns raised by the petitioners—and had the court applied the precautionary principle and halted construction until the final order, these issues would not have arisen.

The judicial movement by the superior judiciary for the protection of the environment in Pakistan is a disjointed and fragmented effort, which has failed to bring about an institutional change in the country. The progress of environmental development in certain periods and areas is primarily due to personal involvement and interest of individual judges both in the Supreme Court and at the High Court level. For example, the first golden period for environmental preservation was the early 1990s, where we saw many landmark judgments by Justice Saleem Akhtar (including cases brought on his own initiative) who set out many principles, including expanding the meaning of the right to life, relying on international

<sup>122</sup> Syed Mansoor Ali Shah, etc. vs. Government of Punjab, etc. (2007 CLD 533).

<sup>123</sup> Islam Hussein vs. City District Government Karachi (2007 CLC Karachi 530).



principles, finding innovative solutions to environmental issues, and finding a balance between development and protection of the environment. Following this, we saw a long period of either inaction or ordinary judgments in the area of environmental adjudication. Again in the mid-2000s there was some interest in the cause of the environment, this time by another judge of the Supreme Court, Justice Iftikhar Chaudry. However, the main focus remained narrow, concentrating mainly on land use and protection of public places.

Until very recently, neither judges nor lawyers in Pakistan were exposed to the subject of the environment, and there were no environmental courses offered by law schools. Furthermore, the judicial training for the district judiciary had no component focused on environmental laws. In Pakistan, there is no obligatory requirement for training of the superior judiciary. However, they are exposed to certain subjects through conferences and workshops. Environmental law development is thus limited to personal interest and exposure. However, the setting of Green Benches is a step in the right direction.

Another reason for slow growth in environmental jurisprudence is the lack of awareness and interest by the lawyers, as there are limited financial incentives in the area. There are very few PIL lawyers as it is, and usually they deal more with human rights cases rather than environmental protection cases. As a developing country, Pakistan is exposed to multiple issues, many more pressing and urgent, leaving the environment on the back burner.

Another observation in this regard is that after the setting up of specialized environmental tribunals, the writ jurisdiction of the superior courts becomes problematic and these courts often refuse to entertain environmental issues, instead sending them to the environmental tribunals.

It has been seen that most of the decisions of the Supreme Court and the High Courts have been implemented, and in cases of no-compliance these courts have constitutional powers to invoke contempt of court. In cases where any order of either the Supreme Court or the High Courts is not complied with, the parties have the power to go back to the court for implementation. However, at times, the implementation of decisions and orders by superior courts becomes problematic where there is lack of political will and/or where the litigants themselves stop pursuing the cause. A clear example is a Lahore High Court judgment addressing vehicular air pollution in the city of Lahore, directing the transport department to take necessary actions within specific timelines. It was a detailed, clear, and practical decision and yet it was not enforced due to lack of motivation from the government. Furthermore, the petitioners also did not pursue the implementation, making the judgment pointless.

# Review of Law Schools and Curriculum

## Bachelor of Laws (LLB) Curriculum

Currently, three types of law programs are being offered in Pakistan. The two distinct local programs offered are a 3-year bachelor of laws (LLB) program after completion of a bachelor of arts (BA) degree, and a 5-year BA and LLB combined program. The local programs are obliged to fulfill the requirements of Provincial Bar Councils and teach the subjects prescribed by the Bar Councils. Some institutions offer additional subjects on their own initiative, in addition to the syllabus set by these Bar Councils. The third law program category offered in the country is the external LLB, which follows the University of London curriculum and examination system. None of these three systems has environmental law as a compulsory subject in its syllabus, while few offer environmental law as an optional subject. The Higher Education Commission is presently working on revamping the LLB curriculum, and environmental law still exists on the optional list. The CEEJ has suggested that the relevant authority make environmental law a compulsory subject in the LLB curriculum.

## Judicial Academies

For the training of civil judges and judicial magistrates, each province has a provincial judicial academy,<sup>124</sup> and in addition there is a federal judicial academy.<sup>125</sup> The Punjab, Sindh, and federal judicial academies are active in regular training programs. However, the other two are still in the process of being set up. Environmental law is still not a mandatory subject at any of these academies.

The Sindh Judicial Academy was set up in 1992 and gives training to judges and law officers. In Sindh, environmental law has been taught to newly appointed civil judges and judicial magistrates for the past few years. In 2007, on the initiative of the Director General of the Sindh Judicial Academy,<sup>126</sup> the academy held environmental law training for judges of the High Court of Sindh.

The Punjab Judicial Academy was established in 2007, and provides training to civil judges and judicial magistrates, additional district and session judges, prosecutors, and jail officers. In 2011, on the initiative of the Director General of the Punjab Judicial Academy,<sup>127</sup>

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<sup>124</sup> The Sindh Judicial Academy is the only one with a website: [www.sja.gos.pk/](http://www.sja.gos.pk/)

<sup>125</sup> See [www.fja.gov.pk/](http://www.fja.gov.pk/)

<sup>126</sup> Justice (R) Saleem Akhtar.

<sup>127</sup> Justice (R) Tanveer Ahmad Khan.

environmental law was taught to civil judges and judicial magistrates and prosecutors. This consisted of a short overview of environmental laws of Pakistan, and case laws developed under them.

The judicial academies of both Punjab and Sindh, due to their dynamic directors general, are interested in promoting environmental law. Again, the CEEJ has suggested that all judicial academies make environmental law a compulsory subject for law officers.

## Development of Environmental Laws and Jurisprudence in Pakistan

The Government of Pakistan has adopted laws to combat adverse environmental impacts of unsustainable development, but there are several issues that make effective implementation of these laws and adjudication of environmental disputes difficult. 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 report also reviews the curriculum of law schools and judicial academies and suggests the future inclusion of environmental laws in their respective programs.

## About the Asian Development Bank

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