

THE BHURBAN DECLARATION AND THE ENVIRONMENTAL LAWS OF PAKISTAN¹

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Introduction

Recently, the Supreme Court of Pakistan held the South Asian Conference on Environmental Justice, held in Bhurban, Pakistan on 24-25 March 2012, brought together Chief Justices and their designees from the highest courts of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, Malaysia, and Indonesia held which was supported by, the Asian Development Bank (ADB), United Nation's Environment Program (UNEP) and the International Union for Conservation of Nature (IUCN). At the end of the Conference, the South East Asian Judiciaries adopted the Vision Statement³ by declaring the Bhurban Declaration after developing an Action Plan for Environmental Justice, Governance, the Rule of Law and Sustainable Development in SAARC countries. The outcome of the Conference is to strengthen specialised environmental tribunals and establish green benches, where they exist and consider establishing them where they do not exist. Therefore, the Honourable Chief Justices established the green benches in the Supreme Court and the High Courts under the respective Supreme Court and High Court Rules to hear the environmental cases similar to the other South Asian countries.

This paper will give the summary of the Pakistani environmental laws along with the case law and will also examine how the Courts will have the green jurisdiction to decide the environmental cases besides the Environmental Tribunals and Environmental Magistrates. However, the High Courts have the green jurisdiction under Section 23 of the Pakistan Environmental Protection Act 1997⁴ (the "Act") being the appellate court of Environmental Tribunal and the original jurisdiction under the writ jurisdiction. The Session Court also has the jurisdiction under Section 25 of the Act being the appellate court of the Environmental Magistrate. Nevertheless, the jurisdiction of the Environmental Tribunal under Section 20 and Environmental Magistrate under Section 24 of the Act is really confusing for the general public. Also, the Act being a 'brown' law only covers air, water, noise, waste and land and does not cover the 'green' issues like forest, wildlife, wetlands, soil, species, waste land etc. Therefore, it was highly recommended in the Bhurban Conference that the newly establish Green Benches and the Green Tribunal should be empowered to handle the green issues like South Asian countries. For example, the environmental magistrates will only hear environmental cases under the Act and no other cases and will be also hearing the green cases under the Forest Act, 1927 and the provincial wildlife laws and the forest laws.

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³ For details, see. www.supremecourt.gov.pk/web/page

⁴ No. XXIV of 1997, F. No. 2(1)/97-Pub. *The Gazette of Pakistan* (6 December 1997) (Pakistan).

Existing Environmental Legislation in Pakistan

The cornerstone of environmental legislation is the Act which has superceded the Pakistan Environmental Protection Ordinance promulgated in 1983.⁵ Although this law is the main federal environmental legislation, other laws also deal with issues of environment. In Pakistan there are reams of laws protecting the environment which go no further than the statute book.⁶

Constitution of Pakistan

The Constitution of the Islamic Republic of Pakistan 1973 itself contains no statement of principles or policy in relation to the rights and obligations of the State and its citizens with respect to the environment. The relevant articles of the Constitution of Pakistan dealing with the protection of environment are Articles 9,⁷ 14,⁸ 184(3),⁹ and 199(1)(c).¹⁰ These provisions were used in the landmark Supreme Court of Pakistan environmental law case of *Shehla Zia v. WAPDA*¹¹ in which the Supreme Court held that right to life means right to a healthy environment, free from pollution.¹² Recently, the Honourable Chief Justice in SUO MOTU CASE NO.13 OF 2009¹³ held that right to life implies the right to food, water, decent environment, education, medical care and shelter, thus fundamental right cannot be snatched away or waived off pursuant to any agreement. In the Bhurban Declaration, the Honourable Chief Justice has recommended for insertion of “Clean Environment” as a fundamental right in the Constitution of Pakistan,¹⁴ like the right to environment in the Indian Constitution.

Existing Federal Environmental Law

1983 Ordinance

To overcome the environmental problems the Government drafted cornerstone legislation to protect the environment in Pakistan, namely the Pakistan Environmental Protection Ordinance 1983. It was the first clear-cut governmental commitment to environmental improvement. The 1983 Ordinance enabled both Federal and Provincial legislatures to enforce and control environmental pollution. The Ordinance established the Pakistan Environmental Protection Council (PEPC) as the supreme environmental policy-making body in the country and the Pakistan Environmental Protection Agencies both at the Federal and Provincial levels to administer and implement the provisions of the Ordinance. Although little or no action appeared

⁵ No. XXXVII of 1983, F. No. 17(1)/83-Pub. *The Gazette of Pakistan* (31 December 1983) (Pakistan).

⁶ Jawad Hassan “Judicial Intervention: Court Grants Relief for Violation of Environmental Rights” (1995) 2 *Middle East Commercial Law Review* 16.

⁷ See generally, Constitution of Islamic Republic of Pakistan 1973, art. 9 which provides “[t]hat no person shall be deprived of life or liberty save in accordance with law.”

⁸ See *ibid*, art. 14 which provides “[t]he dignity of man and subject to law the privacy of home shall be inviolable.”

⁹ See *ibid*, art. 184(3) which recognizes the concept of public interest litigation. This article may grant relief to the extent of stopping the functioning of such units, which create pollution and environmental degradation.

¹⁰ See *ibid*, art. 199(1)(c) which provides for Public Interest Litigation. This Article can also protect environmental degradation by issuing orders to the polluters.

¹¹ PLD (Pakistan Legal Decision) 1994 SC (Supreme Court of Pakistan) 693 (Pakistan).

¹² Jawad Hassan “Environmental Rights in a Human Right Context” (1998) LV *Punjab University Law Journal*, pages 69-90.

¹³ PLD 2011 SC 619

¹⁴ Closing Remark of the Honourable Chief Justice of Pakistan at the Conference

to have been taken under the Ordinance, as there was no provision for the establishment of any tribunals in the Ordinance. Therefore most of the provisions of the Ordinance remained in cold storage. More importantly it read the environment only in negative terms such as pollution control without any courts. However, there was a need for an overall comprehensive legislation for the environment to consolidate and update the existing laws with the specialised tribunals and agencies.

The 1997 Act

Because programs under the Ordinance have not prevented environmental pollution and degradation for 14 years, the Federal Government through the Pakistan Environmental Protection Council, drafted the Pakistan Environmental Protection Act 1997 (the “Act”). The Act delegates powers to concerned federal and provincial agencies to check environmental pollution throughout the country and provides a legal framework to cover air including pollution caused by motor vehicles, water, soil, marine and noise pollution, waste disposal and handling of hazardous substances and conservation of biodiversity. The Provincial Environmental Protection Agencies (EPAs) have been given enhanced statutory status as new Environmental Impact Assessment (EIA) procedures have been provided.

The Act provides for protection, conservation, rehabilitation and improvement of the environment, for prevention and control of pollution, and for the promotion of sustainable development. Its jurisdiction extends to the whole of Pakistan and its territorial waters, the Exclusive Economic Zone, and historic waters. The terms used in Act have been clearly defined. It has been clearly provided that the Pakistan Environmental Protection Council is to approve national environmental policies within the framework of a national conservation strategy as may be approved by the Federal Government from time to time. EPAs have been given statutory cover. Provincial Sustainable Development Funds have been established to provide financial assistance to suitable projects. Discharges or emissions in excess of the National Environmental Quality standards or other standards established by the Pakistan Environmental Protection Agency where ambient conditions so require, have been prohibited. The Federal Government has been empowered to levy a pollution charge on persons not complying with the NEQS. A two-stage environmental screening process has been introduced for proposed projects involving filing of either an Initial Environmental Examination or, for projects likely to cause an adverse environmental effect, a comprehensive EIA.

Import of hazardous waste has been prohibited. Handling of hazardous substances has been prohibited except under licence. To ensure compliance with the NEQS, EPAs have been empowered to direct that motor vehicles shall install such pollution control devices or use such fuels or undergo such maintenance or testing as may be prescribed. EPAs have been empowered to issue an Environmental Protection Order to deal with an actual or potential adverse environmental effect in violation of the provisions of the Act. Environmental Tribunals have been constituted with exclusive jurisdiction to try serious offences under the Act. Minor offences relating to pollution by motor vehicles, littering and waste disposal and violation of rules and regulations will be tried by Environmental Magistrates. An aggrieved person can file a complaint with the Environmental Tribunal after giving 30 days notice to the Federal Agency or the Provincial Agency concerned.¹⁵

¹⁵ Jawad Hassan “Pakistan Environmental Protection Act, 1997 – A New Hope for Environmental Protection” (March 1998) *Environmental News* (FPCCI’s Environmental Magazine), page 25-26

Problems with Act highlighted in the Bhurban Conference

After the 18th amendment of the Constitution, environment is the provincial subject, hence, all the provincial Governments are in a process of enacting provincial environmental laws. But until the provincial laws enacted, the Act will continue. However, the Act illustrated that a slow but perceptible growth of environmental consciousness had gradually developed in Pakistan. This public and government consciousness has emerged as a reaction to the neglect of Pakistan's development planning that had no regard to environmental factors. The result has been environmental degradation that affects practically every door step in Pakistan.¹⁶

The Act became operational in 1997 but has remained largely unenforced because of the lack of public awareness regarding its existence especially with regard to the complaint procedure an aggrieved person has to follow, the non-functioning of the Environmental Tribunals and Environmental Magistrates, irregular meetings of the Council, the non publishing of the National Environmental Report by the EPA, the lack of ambient air quality standards, stringent NEQS which are difficult for industry to achieve, and a lack of trained and motivated personnel in the EPAs. The Act is generally a 'brown' law covering air, water, land, noise and waste and does not cover the 'green' issues such as wildlife, forest, wetlands, endangered species and range lands. The judicial forums of tribunals and magistrates are confusing.

Key PEPA Elements

Tribunals

The Environmental Tribunals constituted under section 20 of the Act have exclusive jurisdiction to try serious offences and to hear appeals but it only hears the cases under Sections 11 (prohibition of discharges), Section 12 (EIA), Section 13 (Hazardous waste) and Section 16 (EPO). However, initially the Tribunals in some provinces were not functioning but now functioning, hence, all the important judgements are being reported in the law journal, Corporate Law Digest (CLD) developing the environmental jurisprudence. The leading cases of the Tribunal is Shaheen Welfare case¹⁷ in which the Tribunal has explained in detail its functioning, purpose of the Act and procedure of filing the complaints under the criminal procedure (CrPC) and the appeals in the civil procedure (CPC).

Magistrates

The Civil Judges and Magistrates have been empowered as Environmental Magistrates under Section 24(1) of the PEPA by the High Courts to deal with offences under Section 17(2) of the Act but it only hears cases of minor nature under Section 14 (hazardous substance) and Section 15 (motor vehicles). All the four High Courts of the provinces in Pakistan have empowered the Magistrates to deal with the given offences under the Act. In Allah Ditta vs. M. Ramzan¹⁸ the High Court held that as per the Notification No.152-JOB-1(5)/VI-E.28 dated 24-4-1997 issued by the Lahore High Court Lahore only the learned Senior Civil Judges in the Province can try the

¹⁶ Dr. Parvez Hassan "Growth of Environmental Consciousness on Pakistan", Viewpoint, Volume XV No. 19, 21 December, 1989, pages 11-14

¹⁷ 2005 CLD 1267

¹⁸ 2005 YLR 650

offences in question as Environmental Magistrates and not the learned Judicial Magistrates as has been done in the present case.

Pakistan Environment Protection Council

After the enactment of the Act , the primary duty to implement the provisions of the Act in the provinces is placed on the Provincial Environmental Protection Agencies/Departments and, at the federal level, on the Pakistan Environmental Protection Council (PEPC), which is the supreme environmental policy making body in the country. Under Section 3(4) of the Act, the PEPC should hold meetings as when necessary, but not less than two meetings shall be held in a year.

Rules and Regulations

The Act is quite comprehensive because nearly every section has to be read with the rules and regulations prescribed under it. There has been a delay in the notification of the Rules and Regulations for implementing the provisions of the Act. So far these Rules and Regulations have been notified:

- (a) Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations 2000;
- (b) National Environmental Quality Standards (Certification of Environmental Laboratories) Regulations 2000;
- (c) National Environmental Quality Standards (Self-Monitoring and Reporting by Industry) Rules, 2001;
- (d) Environmental Samples rules, 2001;
- (e) Hospital Waste Management Rules 2005;
- (f) Provincial Sustainable Development Fund Board (Procedure) Rules, 2001;
- (g) Provincial Sustainable Development Fund Board (Utilization) Rules 2003;
- (h) Pollution Charge for Industry (Calculation and Collection) Rules, 2001;
- (i) Environmental Tribunal Rules 1999; and
- (j) Pakistan Bio-safety Rules 2005.

The Rules which have been drafted but not yet notified by the Government are:

- (a) Hazardous Substances Rules, 2003;
- (b) Administrative Penalties Rules, 2001. .

Environmental Policies/Strategies and Plans

The other legal development which enabled Pakistan to have a comprehensive and explicit national environment policy was the approval of the Pakistan National Conservation Strategy (NCS) in March 1992. The NCS is designed as a broad-based policy program aimed at the sustainable use of renewable resources, preventive action against pollution and other adverse effects of industrial and urban growth, mandatory environmental impact assessment of new projects, and more stringent controls on toxic chemicals and hazardous substances. NCS has 14 areas for policy action.¹⁹ Moreover, Pakistan is formulating the provincial conservation

¹⁹ Maintaining soils in cropland; increasing irrigation efficiency; protecting watersheds; supporting forestry and plantations; restoring rangelands; protecting water bodies; conserving biodiversity; increasing energy efficiency;

strategies in collaboration with IUCN. The NCS sets out the basic guidelines for an integrated effort at protecting the environment and natural resources of the country. This broad framework provides a comprehensive point of reference for all agencies, departments, private sector companies, financial institutions, and donor agencies for undertaking systematic efforts at bringing about an effective change for sustainable development.²⁰ The Government prepared National Environmental Policy, 2006, National Drinking Water Policy, National Climate Change Strategy & Action Plan 2011-2015, National Resettlement Policy, 2002 and the CDM.

Environmental Jurisprudence –Green Precedents

Supreme Court Judgments on Environment

In 1994, the Supreme Court of Pakistan delivered its landmark judgment in *Shehla Zia and Others v. WAPDA*,²¹ (Shehla Zia case), where a petition was made against the construction of a high voltage grid station by WAPDA in a residential area of Islamabad. The residents of this neighbourhood, led by Ms Shehla Zia, contended that the electro magnetic radiation of the grid station would likely be harmful to the health of the residents. The residents were also concerned about the violations of the city's much prized green belt regulations.²² The absence of specific environmental provisions in the Constitution posed a serious problem in the conduct of the case. The Supreme Court accepted these arguments and held that the right to life guaranteed by Article 9 of the Constitution included the right to a healthy environment.

Shehla Zia has been cited with approval in many subsequent cases in the Supreme Court and in subordinate courts. In *General Secretary Salt Miners Labour Union (CBA) Khewra, Jhelum v. The Director, Industries and Mineral Development, Punjab, Lahore*,²³ (Khewra Mines case), 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, citing *Shehla Zia*, stated that '[T]he right to have unpolluted water is the right of every person wherever he lives'.²⁴

In 1994, in the *Human Rights Case (Environment Pollution in Balochistan)*,²⁵ the Supreme Court of Pakistan moved *suo motu* to prevent the dumping of imported industrial and nuclear waste into Pakistan. The Supreme Court noticed a news item in a daily newspaper with respect to the purchase of coastal areas of Balochistan for the dumping of industrial and nuclear waste.

In dealing with noise pollution, the Supreme Court in *Islamuddin v. Ghulam Muhammad*,²⁶ 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.

developing and deploying renewables; preventing and abating pollution; managing urban waste; integrating population and environment programmes; preserving the cultural heritage and supporting institution for common resources.

²⁰ Hassan, note 21 at 198.

²¹ 1994 PLD SC 693.

²² *Id.*

²³ 1994 SCMR 2061.

²⁴ *Id.*, 2070.

²⁵ 1994 PLD SC 102.

²⁶ 2004 PLD SC 633.

The Supreme Court took *suo motu* action in *Islamabad Chalets and Pir Sohawa Valley Villas*,²⁷ 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, and the overall environment of Islamabad, because of increased traffic, congestion, noise pollution, diminishing greenery, annihilation of wildlife, unhygienic conditions due to sewerage, and frequent landslides due to loosening of soil and removal of rocks.

The Supreme Court also took *suo motu* action in the *New Murree Project*.²⁸ It stated that the New Murree Project posed grave environmental hazards by destroying 5,000 acres of forest which would have adversely affected the annual rainfall in Islamabad, with the result that the supply of water to the nearby dams would be depleted. This, in turn, would result in a decrease of drinking water to the twin cities of Rawalpindi and Islamabad by 50%. The project would also have used 4,111 acres of reserve forest in the area north of Islamabad. The government undertook before the Supreme Court that it will not cut any trees, would demolish project buildings, and would not commence any construction until the requirements under the 1997 Act are complied with. It was also directed that the court be kept abreast of the progress in the matter. Finally in 2010, the Supreme Court decided the case with directions Environmental hazard of the proposed New Murree Project²⁹ that need was to sensitize general, public to fundamentals of sustainable development so as to achieve goal of healthy environment, not only for present population but also for future generations. As the project had been disbanded, therefore, there was no threat of environmental hazard in the area on account of the project, thus no further action was called for in the proceedings.

In *Sheri-CBE v. LDA*,³⁰ the Supreme Court held that in view of the provision of section 12 of the 1997 Act, the very commencement of construction without filing an IEE with the PEPA, was grossly illegal and was an offence under the 1997 Act. It was further held that the Provincial High Courts must strictly enforce the provisions of the 1997 Act and stay projects that have not filed EIAs and obtained the necessary 'no objection certificates' (NOCs). The Supreme Court accordingly stayed the construction of a multiplex cinema on the area used by the residents for recreation. Moreover, the Supreme Court in *Farooq Hameed vs. LDA*³¹ directed the demolish the high rise buildings in Lahore which were constructed with the requisite permission.

The Supreme Court, by taking *suo motu* action in *Moulvi Iqbal Haider v. Capital Development Authority*,³² restrained and cancelled the lease agreement for the development of a mini golf course in Islamabad on the site of Jubilee Park, on the ground that it would contravene fundamental rights of the general public, enshrined under Article 26 of the Constitution.

In *Farooq Hameed vs. LDA*³³ the Supreme Court held that provisions of Pakistan Environmental Protection Act, 1997, demand environmental impact assessment of each of such projects before

²⁷ *Suo Motu Case No. 13 of 2005*, Report 2005-2006, SC of Pakistan, Golden Jubilee Edition, 106.

²⁸ *Suo Motu case No. 10 of 2005*, 2010 SCMR 361 also see Report 2005-2006, SC of Pakistan, Golden Jubilee Edition, 104.

²⁹ 2010 SCMR 361

³⁰ 2006 SCMR 1202.

³¹ 2008 SCMR 468 and 2008 SCMR 483

³² 2006 PLD SC 394.

³³ 2008 SCMR 468

any plan for construction of same could be sanctioned. Also in *M. Shafiq vs. Arif Hameed*³⁴ the Supreme Court held that in exercise of powers under..Art.184(3) of the Constitution, could not make arrangement for removal of filth from public places but could certainly issue directions to the Municipal Committees, Corporations and other concerned agencies in the federal and provincial governments to take necessary steps and adopt measures to stop environmental pollution. Therefore, the concerned Secretaries in the Federal as well as Provincial Governments shall issue necessary directions to all concerned including public representatives in the local bodies in urban and rural areas to keep proper check and control on the environment problem by deputing special teams to inspect the local areas and take remedial steps and in case of any breach also initiate appropriate action in accordance with law.

Recently. in the *Cutting Of Trees For Canal Widening Project, Lahore*³⁵ the Supreme Court held that green belt around both sides of the canal is a public trust resource and cannot be converted into private or any other use other than public purpose. Thus widening of the road is a public purpose and a minimum area is being affected and the remaining green belt/public park is much larger because said public park has been recommended by the Mediation Committee to be declared as Heritage Park and recommendations of the Committee have been accepted by the Provincial Government in totality. Henceforth, the Doctrine of Public Trust, in circumstances, cannot be said to have been compromised.

High Court Judgements on Environment

Accordingly, the impetus provided by the Supreme Court in *Shehla Zia* and the judgments that followed, began to drive results in the country's high courts as well. The Lahore High Court in *Rana Ishaque v. DG, EPA and others*³⁶ restrained 121 industrial units of Punjab, excluding those that had already installed treatment plants, from discharging effluents into drains and canals on a petition stating that these were being drained without treatment. Consequently, most of the industries have been forced to install treatment plants to avoid any future litigation.

With respect to water pollution, in *Mst. Ameer Bano v. S.E.Highways*,³⁷ the petitioner alleged that the sewerage system in Bahawalpur had become totally unserviceable with the result that the dirty water had collected in the form of ponds. The highway department was constructing the roads at a very high level and if it was allowed to continue, the overflowing dirty water would enter the residential houses. The court was of the opinion that human life in the area might be endangered, thus, the right to life would stand denied to a large number of citizens.

The influence of *Shehla Zia* on Pakistani environmental jurisprudence continues to this day as reflected in *Anjum Irfan v. LDA*,³⁸ a case in the Lahore High Court concerning the setting of air and noise pollution standards under the 1997 Act. The court suggested various measures for combating pollution, which included, inter alia, efficient utilization of solar energy, more plantations of trees, measures to introduce electric rail cars, and increasing the role of the media in promoting public awareness.

³⁴ PLD 2008 SC 716

³⁵ 2011 SCMR 1743

³⁶ Writ Petition No. 671 of 1995.

³⁷ 1996 PLD Lahore 592.

³⁸ 2002 PLD Lahore 555.

The issue of air pollution was also considered in *Pakistan Chest Foundation v. Government of Pakistan*,³⁹ where the petitioners had filed a writ petition with the aim of stopping tobacco advertisements on Pakistani television. The Lahore High Court, while accepting the writ petition, brought the case within the 'right to life' principle set out in Shehla Zia

The model of using expert commissions in complex issues has proved to be an effective device. In *City District v. Muhammad Yusaf*,⁴⁰ the petitioners sought an environmentally appropriate solid waste disposal site in Mahmood Booti in Lahore. In *Sindh Institute of Urology and Transplantation and others v. Nestle Milkpak Limited and others*,⁴¹ the Sindh High Court held that a landowner has a right to collect and dispose of all water within his own limits but that this right is not unfettered. Natural resources of the earth, including air, water, land, flora and fauna (especially representative samples of natural eco-systems), must be safeguarded for the benefit of present and future generations. The court held that the 'public trust' doctrine in terms of the common law, means that natural resources including air, sea, water, and forests, are held in the public trust, and being a gift of nature, should be made freely available to everyone irrespective of their status. Even under Islamic law, certain water resources are to be protected from misuse and over-exploitation. Nestle filed an appeal before the Division Bench of the Sindh High Court, (*Nestle Milk Pack v. SIUT*)⁴² which was dismissed on the ground that extraction of the water from the aquifer in huge quantities would disturb the environment of the area.

The issue of air pollution in the city of Lahore was dealt with in *Syed Mansoor Ali Shah v. Government of Punjab*,⁴³ where Mr Justice Muhammad Sair Ali of the Lahore High Court appointed, in July 2003, the Lahore Clean Air Commission to recommend measures for the improvement of Lahore's air quality. The commission set up sub-committees with respect to clean fuel, rickshaws, public transport and coordination with local councils. The Rickshaws Sub-committee, for example, worked under the chairmanship of the Provincial Secretary, Environment, and the Clean Fuel Sub-committee worked under the chairmanship of the District Coordination Officer, Lahore. All the oil companies were invited by the Clean Fuel Sub-committee to support the work of the commission, and some of their representatives attended a national workshop in Lahore convened by the commission to formulate a joint strategy for air quality. The court disposed of the petition by giving directions to the Transport Department, City District Government Lahore and the EPA to introduce CNG Euro II buses for public transport, phase out existing buses within two years by December 2007, set up dedicated bus lanes, implement a cap age of ten years for buses, and ban four stroke rickshaws.

The Sindh High Court in *Islam Hussain v. City District Government Karachi*,⁴⁴ directed the DIG Traffic Police to ensure that no smoke-emitting vehicle or one causing noise pollution should ply the city of Karachi after three months from the day the judgment was passed in 2007, and further that strict action be taken against the offenders.

³⁹ 2003 PLD Lahore 439.

⁴⁰ 2003 CLC Lahore 576.

⁴¹ 2005 CLC Karachi 424.

⁴² 2007 PLD Karachi 11.

⁴³ 2007 PLD Lahore 411.

⁴⁴ 2007 CLC Karachi 530.

The aspect of the application and implementation of the provisions of the 1997 Act were raised in a number of judgments. In *Amer Azam Bakhat v. Corporative Societies*,⁴⁵ the Lahore High Court stayed the proposed construction of a supermarket and ordered that no construction can commence until an EIA has been obtained from the EPA in terms of section 12 of the 1997 Act.

The Division Bench of the Sindh High Court in *Shehri-CBE v. Government of Pakistan*,⁴⁶ rejected the EIA prepared by the Government and referred the case back to the Sindh EPA for considering all the objections of the aggrieved parties. This case concerned an opposition to construct a 94 MW natural gas-fire power plant and 3 million MGD desalination plant on the costal avenue of DHA Karachi. Residents protested the construction of the plant and filed an objection before the Sindh EPA.

The Peshawar High Court, in *Tandlianwala Sugar Mill v. NWFP*,⁴⁷ held that after considering the feasibility of the number of sugar mills in the area and considering hazards to the environment, the provincial government has powers to allow any number of sugar mills to operate.

Conclusion

Pakistan is relatively better off than South Asian countries in terms of its environmental laws. Provinces are also drafting their environmental laws with more strict provisions and enforcement and also considering the valuable recommendations of the Bhurban Conference of all the three (3) groups. With the recent establishment of the Green Benches in the Superior Courts due to the Bhurban Declaration and the insertion of a “Right to Environment” in the Constitution, Pakistan will become a green country because it has the required Act, Rules, Regulations, Policies, Strategies and remarkable judgements of the Superior Green Judiciary-which will also match with its national colour the green flag with the green country supported by the green judiciary (which dispenses the justice by balancing black vs. white, now green vs white-the colour of the flag) to keep it flying, always.

⁴⁵ 2007 CLC Lahore 374.

⁴⁶ 2007 PLD Karachi 293.

⁴⁷ 2007 PLD Peshawar 68.