

## Climate Change – Jurisprudence

Climate change is a reality and its impact in the shape of extreme weather events, irregular precipitation, glacial melt, sea level rise, asymmetric temperature trends, higher oceanic temperatures, and damage to natural eco-systems and biodiversity is being observed around the globe. In the South Asian region, most developing countries like Pakistan may not be the primary contributors to climate change, however, acknowledging and confronting its fallout is indispensable, especially for combatting the high risks posed by climate change.<sup>1</sup>

According to the Global Climate Risk Index, Pakistan is currently the fifth most climate-vulnerable country in the world. At the same time, Pakistan also faces some of the highest disaster risk levels in the world, ranking 23th out of 194 countries as per the 2024 Inform Risk Index.<sup>2</sup> This risk is driven particularly by the nation's exposure to flooding, earthquakes, tropical cyclones and their associated hazards. It is these alarming statistics which underscore the need to address climate change and mitigate its effect on people and their livelihoods. Since the 1990's, when there were barely any environment-related claims, or more specifically, climate rights-based litigation, however, the recent trend in the jurisprudential development by courts has been an exponential increase in public interest litigation using the Constitution as a basis to raise environment related claims.

It was not until 1994, when the Supreme Court of Pakistan in a seminal case<sup>3</sup> concerning the construction of a grid station held that "the right to a clean environment was a fundamental right of all citizens of Pakistan covered by the right to life." 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. Since then, the courts have broadly interpreted the fundamental rights to include right to environment.

### **1. PLD 2018 Lahore 364**

*Asghar Leghari v. Federation of Pakistan*<sup>4</sup>

**[Syed Mansoor Ali Shah J]**

- An agriculturist filed a Writ Petition seeking directions to the Government of Pakistan to pursue climate mitigation or adaption efforts, assailing its failure to meet its climate change adaption targets and carry out the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030). This offended his fundamental right to life.

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<sup>1</sup> Juan D. Baron & Saher Asad, 'Turning Concern into Action: Understanding Climate Change Attitudes in Pakistan' World Bank.

<sup>2</sup> European Commission, Inform Risk Index, 2024.

<sup>3</sup> Shehla Zia v. WAPDA, PLD 1994 SC 693.

<sup>4</sup> Asghar Leghari v. Federation of Pakistan, PLD 2018 Lahore 364.

- The High Court treated this environmental public interest petition as a rolling review or continuing mandamus and proceeded in an inquisitorial manner by summoning various departments and ministries of the Federal and Provincial Government.
- It further held that the interpretation of these fundamental rights must be guided by (i) the constitutional values of democracy, equality, and social, economic, and political justice; and (ii) international environmental principles of sustainable development, precautionary principle, intergenerational and intragenerational equity, and the doctrine of public trust. The Court appointed a Commission to submit a report and then constituted a standing committee, creating an ongoing link between the Court and the executive.
- In its final order, the Court nominated climate justice as the successor to environmental justice. Environmental justice—said the Court—revolved around enforcing national laws, with decisions informed by international legal principles. It focused on shifting or stopping pollutive industries. Climate justice, as the Court envisioned it, adopted a human-centered approach. It linked human rights with development. It sought to safeguard the rights of vulnerable peoples and share “the burdens and benefits of climate change and its impacts equitably and fairly.”
- Climate justice was “informed by science, responds to science and acknowledges the need for equitable stewardship of the world’s resources”. However, realizing that climate justice was challenging, the Court acknowledged that polluters often fell beyond national borders and were difficult to identify. Finally, the Court outlined its vision for water justice as a human right to access clean water and a sub-concept of climate justice.

## 2. 2021 SCMR 834

*D. G. Khan Cement Company v. The Government of Punjab*<sup>5</sup>

[Syed Mansoor Ali Shah J]

- A cement company owner challenged a notification barring construction of new cement plants or expansion of existing cement plants in environmentally fragile zones called "Negative Areas".
- The Supreme Court upheld the notification by rejecting the challenges and upheld the Government's consideration, based on a consultant report, that new or expanded cement plans could cause further depletion of groundwater and other harmful environmental impacts. As part of its consideration, the Court emphasized the need to for the Government to uphold the precautionary principle in protecting the rights to life, sustainability, and dignity of communities surrounding the project areas. In addition, the Court recognized the need to protect the right of nature itself, writing, "man and his environment each need to compromise for the better of both and this peaceful co-existence requires that the law treats environmental objects as holders of legal rights."

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<sup>5</sup> D.G. Khan Cement v. Government of Punjab, 2021 SCMR 834.

- The Court went on to emphasize the need for consideration of climate change in Government decisions and the impact of climate change on water resources. The Court wrote, "only by devising and implementing appropriate adaptation measures will it be possible to ensure water, food and energy security for the country . . . The Notification, in the current facts of the case, is a climate resilient measure and in step with the National Climate Change Policy and the Constitution."
- The Court referred to precautionary principle, in dubio pro natura, environmental legal personhood, climate change and climate justice, and water justice. "Robust democracies need to be climate democracies in order to save the world and our further generations from being colonized at the hands of climate change. The preambular constitutional value of democracy under our Constitution is in effect climate democracy, if we wish to actualize our Constitution and the fundamental rights guaranteed under the Constitution for ourselves and our future generations. . . Sustainable development means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs and it is in step with our constitutional values of social and economic justice."
- Further, the Court emphasized the need to consider intergenerational justice in climate cases like this one: "This Court and the Courts around the globe have a role to play in reducing the effects of climate change for our generation and for the generations to come. Through our pen and jurisprudential fiat, we need to decolonize our future generations from the wrath of climate change, by upholding climate justice at all times."

### 3. 2022 SCMR 1411

*Raja Zahoor Ahmed v. Capital Development Authority*<sup>6</sup>

**[Syed Mansoor Ali Shah J]**

- The case concerned a challenge to the unsanctioned use of residential properties for commercial use by a local development authority and the conversion of the same.
- The Supreme Court of Pakistan observed that urban development authorities need to consider and support adaptation, climate resiliency and sustainability while making urban development plans. "Our urban development authorities need to ensure that their urban development plans consider and support adaptation, climate resiliency and sustainability.
- Before putting up a proposal for amendment or modification in the Master Plan or a scheme or before proposing a new development plan or scheme, the urban development authorities need to seriously consider the climate change angle. Any conversion of residential neighborhoods to commercial zones is likely to lead to adverse environmental consequences on account of increased human and vehicular traffic and activity, and

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<sup>6</sup> Raja Zahoor Ahmed v. Capital Development Authority, 2022 SCMR 1411.

should not be permitted without proper investigation, forethought and remedial measures to control the soaring thermal environment. It is high time that our urban planners prioritize the climate factor in their development approaches to address the triple planetary crises of Climate Change, Air Pollution and Loss of Biodiversity.

- The Court went on to note that climate change can impact a number of fundamental constitutional rights, including the fundamental rights to life, dignity and property guaranteed under Articles 9, 14, 18 and 23 of the Constitution of the Islamic Republic of Pakistan, 1973. The Court argued that including adaptation and sustainability considerations in urban planning is essential for the protection of these rights and ordered that Pakistan's urban planning authorities should take this into account in future, stating: "The CDA shall ensure to factor in adaptation, climate resiliency and sustainability into their plans, policies and decisions in order to protect [...] constitutional rights."

#### **4. 2023 SCMR 459**

*Province of Sindh v. Sartaj Haider*<sup>7</sup>

**[Ayesha A. Malik J & Syed Mansoor Ali Shah J]**

- Petitioners challenged the formation of the citizen's committee in certain flood affected division for the supervision of the relief work.
- The Court upheld that the participation by the public in the relief work and even at the Commission level ensures that the affectees are able to bring first hand their vulnerabilities and priorities, which results in a more measured response and proper allocation of resources where required. Community participation is not only necessary for planning disaster management but also for implementing and monitoring purposes as it gives people the right to participate in the decisions that affect their lives. This creates more awareness and a sense of ownership and responsibility which is required, particularly in disaster management so to enhance effectiveness and engage the people with their communities to provide rescue, relief and rehabilitation efforts.
- The Court also emphasized that women are at a greater risk from natural disasters than men. They are vulnerable and victims in natural disasters but also play a significant role throughout the disaster management cycle, without being adequately recognized and included in the decision making. The Policy Guidelines also emphasizes on ensuring equal access to relief opportunities for victims without any discrimination which requires the needs of vulnerable groups to be targeted to ensure that their needs are attended, safeguarded and protected. As per the Policy Guidelines, women, children, older persons, persons with disabilities are all defined as vulnerable groups in disaster. It is imperative that the citizens committees include women, older persons and persons with disabilities so that the required response is ensured and provided and that the Policy Guidelines formulated be implemented real time.

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<sup>7</sup> Province of Sindh v. Sartaj Haider, 2023 SCMR 459.

- By way of the separate note, *Justice Syed Mansoor Ali Shah* acknowledged the vulnerability of Pakistan to climate change and observed that the devastation caused by the recent floods in 2022 is distressing proof of the same.
- Climate change is undoubtedly the most serious existential threat faced by Pakistan and the major cause of the recent floods. Therefore, any post-floods strategy must first and foremost propose a national strategy to deal with climate change today and tomorrow.
- Pakistan was ranked in the top 10 most vulnerable countries on the 'Global Climate Risk Index 2021' and the devastation caused by the recent floods in 2022 is distressing proof of the same. Research has found that the 5-day maximum rainfall over Sindh and Balochistan (Provinces of Pakistan) had become 75% more intense than it would have been had the climate not warmed by 1.2°C, thereby directly connecting global warming to be a major cause of the recent floods of 2022 and the likelihood of its recurrence in the years to come
- He noted that the total damage from the floods evaluated to be at PKR 3.2 trillion (US\$14.9 billion), total loss at PKR 3.3 trillion (US\$15.2 billion), and total needs for recovery and reconstruction at PKR 3.5 trillion (US\$16.3 billion). The resulting food and health insecurity, the risk of food shortage and diseases pose challenges that need serious and urgent attention. In view of this unprecedented damage and the likelihood of its recurrence, it is imperative that serious and practical efforts are undertaken for prevention and adaptation against such disasters induced by climate change.
- Although the National Disaster Management Plan, 2012 does refer to the increase in climate-related natural disasters, however, it falls short of devising any meaningful steps/directions to suggest adaptation measures to address and guard against the changing climate.
- Similarly, one of the policy objectives of the National Disaster Risk Reduction Policy, 2013 includes promoting development planning that considers and addresses risks alongside environmental and climate change concerns but there appears to be no plan or strategy on the ground that has been formulated and put out in the public domain that deals with adaptation measures to be taken by the Government or the respective authorities in order to ensure that the floods of 2022 are not repeated next year. The rehabilitation work has to be climate resilient and it must be a part of a master adaptation plan.
- Justice Shah emphasized that it is also expected that existing policies or mechanisms catering to food insecurity etc. are mobilized as soon as possible and if no such policies or mechanisms exist, then the respective State functionaries should take urgent action to formulate such policies and create such mechanisms to prevent further exacerbation of the losses and damage already suffered due to the floods and for sustainable rehabilitation."
- He also observed that it is high time to develop a mechanism for the allocation of these funds and the identification of key adaptation infrastructural projects that will help build national climate resilience, especially against floods in the years to come. It is therefore essential that these global funds are invested in building national climate resilience so that climate induced disasters can be minimized.

- Climate Change is perhaps the most serious threat to the fundamental rights of the people in Pakistan. In order to protect their right to life and above all their right to dignity under Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973, a climate resilient adaptation plan including a detailed mechanism for utilization of financial support coming to Pakistan from the loss and damage fund, is the need of the hour.

## 5. 2023 SCMR 969

*Public Interest Law Association of Pakistan v. Province of Sindh*<sup>8</sup>

**[Ayesha A. Malik J]**

- Government of Sindh challenged the lack of environmental approvals for grant of small-scale mining licences or leases. The issue raised is the grant of small-scale license or lease for mining minor minerals like sand, gravel and sandstone which are issued without considering the impact on the environment.
- The Court emphasized that the exploration and mining of minor minerals has an adverse impact on the environment, which includes deforestation, pollution, production of toxic waste water, loss of habitats and disruption of the ecosystem. In particular, with reference to sand mining; deforestation, loss of biodiversity, soil erosion and acid drainage are some of the serious environmental impacts, which have to be given due consideration. Surface mining creates health hazards for miners and local communities as well as gives rise to air pollution and produces toxic waste water, and causes droughts all of which must be catered for. In this context, climate change is one of the biggest global threats and the combination of surface mining and climate change becomes a serious threat for the ecological system. Hence, the mining sector must adopt climate proof mining policy which must consider how climate change will impact mining areas so that the climate change risks are integrated into the environment assessment.
- The relevance of the Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA) cannot be ignored. Not only do the IEE and EIA consider the environmental impact of the project but can also include standards and initiatives to improve sustainability of the sector. This can be vital in projects of mining under the Mines and Minerals Department (MMD). They also prescribe mitigation measures and put in place a monitoring method through an Environment Management Plan (EMP). Reliance of this cannot be ignored because the EMP provides the basic framework for implementing and managing mitigation and monitoring measures. It identifies the environment issues, the risks and recommends the required action to manage the impact. This is vital because not only does the miner know what its obligations are, it also gives the MMD and the EPA a framework to follow and to ensure its compliance. Hence, all factors considered the IEE and EIA ensure that the project is sustainable and all possible environmental consequences have been identified and addressed adequately.
- The impact on the environment must be looked into before bidding commences by the MMD and at the time of bidding a bidder must know the terms set out in the IEE or EIA that they are bound by and are required to comply with especially the mitigation measures

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<sup>8</sup> Public Interest Law Association of Pakistan v. Province of Sindh, 2023 SCMR 969.

and the EMP. Hence, it is the MMD that is responsible for obtaining these reports before initiating the process for bidding of the said projects.

- The Court noted that economic growth is important but it must be achieved in a way that is sustainable and respectful of the natural systems that support it.

## 6. PLD 2023 SC 340

*Shah Zaman Khan v. Govt. of Khyber Pakhtunkhwa*<sup>9</sup>

**[Qazi Faez Isa CJ]**

- The dispute was that the private parties asserted ownership rights to the land situated in the former State of Swat, which was declared as 'protected forest' by the government by a notification.
- The Court dismissed the claim of private parties and upheld the notification declaring the land as 'protected forest' by emphasizing that the reduction in forest and tree cover harms ecosystems and consequently the animals, birds and insects dependent on them, and results in the loss of biodiversity.
- The importance of Pakistan's vulnerability was also recognized as it is amongst a score of countries which are disproportionately vulnerable to the consequences of climate change. To ignore the reality of climate change is to be unjust and it disregards future generations.
- The Court emphasized that climate change is not just a future threat but a present reality. The planet is in crisis and disasters are accelerating disasters. Climatic events of unprecedented severity are being witnessed. The unilateral and unsustainable pillage of the earth's resources has left humanity, and all other species, vulnerable. Excessive burning of fossil fuels has heated up the earth's temperature and when forests, which sequester carbon emissions are stripped away, its effect is compounded. Carbon fuel extraction needs to correlate with the available trees, plants and phytoplankton which store emissions. The causes of climate change and the catastrophic events that it unleashes are (by now) empirically established, yet the problem is not being addressed with the requisite urgency and seriousness. Simple mitigation measures are also not implemented.
- The Court ruled that the carbon emissions, and not trees, have to be cut down.

## 7. 2023 SCMR 503

*Collector of Customs v. Waseef Ullah*<sup>10</sup>

**[Muhammad Ali Mazhar J]**

- While dealing with the Federal Government exemption on custom duty with regards to Hybrid Electric Vehicles (HEVs), the Court upheld the uniform application of such exemption and dismissed the collector custom's petition for the reason of concession on the said duty.

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<sup>9</sup> Shah Zaman Khan v. Govt. of Khyber Pakhtunkhwa, PLD 2023 SC 340.

<sup>10</sup> Collector of Customs v. Waseef Ullah, 2023 SCMR 503.

- It highlighted the obligations of Pakistan with various international conventions on climate change and its own legal infrastructure in the Pakistan Climate Change Act, 2017 and Pakistan Environmental Protection Act, 1997, and held that mere legislation without effective implementation is useless and ineffective. It stressed on the use of HEVs to cater to climate change and addressed the SRO in this light.
- It held that “the technology of HEVs is well accepted and internationally acclaimed technology in the modern world. Besides being fuel efficient, it is also an alternative solution to cautiously concentrate on the issue of global warming. The proper and futuristic use of this technology will progress our country, and will not only improve and recuperate the atmosphere and ecosystem, but also alleviate destructive facets of climate change by lessening smoke emissions in order to effectively implement the Climate Change Act of 2017 and the Pakistan Environmental Protection Act (PEPA), 1997.
- In a nutshell the niceties of both the laws [Pakistan Climate Change Act, 2017 & Pakistan Environmental Protection Act (PEPA), 1997] are intermingled and focused on the commitments and responsibility of the concerned Council and Authority constituted under the Acts to make sincere efforts to ensure the prevention and control of pollution, promotion of sustainable development, conservation, rehabilitation, improvement of the environment and address the effects of climate change in our country with a further obligation to implement different conventions and treatise. The mere legislation of laws without effective implementation and execution is useless and ineffectual. Instead, sincere efforts are required by the concerned authorities to safeguard the climate and reduce the adverse environmental impact of human activity. According to the U.S Department of Transportation Report, updated on 24.8.2015, motor vehicles are a leading source of air pollutants that affect human health. Vehicle emissions contribute to the formation of ground level ozone (smog), which can trigger health problems and increased susceptibility to respiratory illnesses. The aforesaid report further articulates that the levels of traffic related air pollution are higher near major roadways that have high traffic volume but the air quality may be improved through HEVs. Different research documents also suggest that toxic pollutants in the air or deposited on soils or surface waters can impact wildlife in a number of ways. Like humans, animals can experience health problems if they are exposed to sufficient concentrations of airborne toxins over time. It can also damage crops and trees in a variety of ways. Ground-level ozone can lead to reductions in agricultural crop and commercial forest yields, reduced growth and survivability of tree seedlings, and increased plant susceptibility to disease, pests and other environmental stresses.
- The technology of HEVs is well accepted and internationally acclaimed technology in the modern world. Besides being fuel efficient, it is also an alternative solution to cautiously concentrate on the issue of global warming. The proper and futuristic use of this technology will progress our country, and will not only improve and recuperate the atmosphere and ecosystem, but also alleviate destructive facets of climate change by lessening smoke emissions in order to effectively implement the Climate Change Act of 2016 and the Pakistan Environmental Protection Act (PEPA), 1997. Though the S.R.O. granting exemption on HEVs does not specifically encapsulate this particular



purpose but, on the face of it, the exemption on the import of HEVs was logically issued for protection against climate change, and to minimize its adverse impact in the future which is a step forward towards the implementation and compliance of Pakistan Environmental Protection Act (PEPA), 1997. It is also the need of the time and a pressing priority to promote and encourage HEVs more and more, rather than applying irrational interpretations resulting in unwarranted restrictions on the exemption already in field.

#### **8. PLD 2019 Lahore 664**

*Sheikh Asim Farooq v. Federation of Pakistan*<sup>11</sup>

**[Jawad Hassan J]**

- Members of civil society filed a Writ Petition against the Federation of Pakistan for failure to plant, protect, manage, preserve, and conserve the trees and forests in Punjab in violation of statutory obligations and petitioners' constitutional rights.
- Petitioners requested a writ of mandamus under Article 199 of Pakistan's Constitution and alleged the Government's conduct violated their fundamental rights guaranteed under Article 9 (right of life liberty), Article 14 (right of dignity), Article 26 (right of access to public places of entertainment) and Article 38(b) (provision of available leisure places) of the Constitution. Petitioners asked the Court, inter alia, to appraise the Government's implementation of relevant policies to increase forest cover; to implement the Forest Act, 1927 (the "Forest Act") and the Punjab Plantation and Maintenance of Trees Act, 1974 (the "Trees Act") by planting trees; to present a timeline for implementation, and to initiate appropriate proceedings against officers who failed to discharge their duties.
- The High Court of Lahore allowed the writ of mandamus, ordering the Government to fulfill their obligations under the law "to safely manage, conserve, sustain, maintain, protect and grow forests and plant trees in urban cities." The Court summarized a variety of requirements under natural resource, development, local Government, and international law to establish the Government's obligations to protect the forest including the "Forest Act" and "Trees Act."
- It directed the Government to take its legal obligations seriously in implementing related policies, including the National Climate Change Policy, 2012, the National Forest Policy, 2015, the Forest Policy Statement, 1999 and Punjab Environment Policy, 2015. It noted that if the Government had properly fulfilled its legal obligations "in letter and spirit" "the forests of Pakistan could have been saved [from] further depletion and deforestation." In its discussion of relevant law, the Court touched on the right to a healthy environment, the precautionary principle, and the public trust doctrine. Specifically, in regard to climate change, the Court summarized the negative impacts of climate change on forests and obligations under the National Climate Change Policy, 2012 to protect biodiversity and prevent wetland degradation by reducing deforestation.
- In addition to instructions to implement the laws, the Court order included instructions to the Government bodies to consider revising requirements and penalties under the Trees Act, publish annual reports on expansion of the forest area, impose penalties against

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<sup>11</sup> Sheikh Asim Farooq v. Federation of Pakistan, PLD 2019 Lahore 664.

delinquent officers, and to issue directions to the housing societies and authorities to support the planting of trees in the green belt and issue penalties for cutting those trees down.

## 9. PLD 2022 Islamabad 38

*Mrs. Zeenat Salim v. Pakistan Naval Farms*<sup>12</sup>

[Athar Minallah CJ]

- The Petitioner challenged two projects undertaken by one of the components of the Armed Forces i.e. the Pakistan Navy. She challenged the acts of the Pakistan Navy regarding developing and managing a private real estate venture, Pakistan Naval Farms ("PN Farms"). She also challenged the alleged illegal occupation of land and the construction of a Club House in the notified protected area of the National Park. Both the projects were undertaken and executed by the Pakistan Navy.
- The Court declared a real estate venture on the embankment of Rawal Lake to be without jurisdiction and unlawful. Amongst other reasons in relation to the legality of the Pakistan Navy to undertake such a venture, the Court found that the venture had serious effects on the environment. It noted that the reservoir and surroundings of the Rawal Lake were ecologically a sensitive area and required extraordinary care.
- It observed that illegal construction, urbanization and violation of the Master Plan have serious consequences which inevitably leads to irreversible environmental degradation and climatic changes. Pakistan is ranked amongst the top ten countries of the world which has been declared as most vulnerable to the life threatening outcome of climate change. It seemingly applied the precautionary principle in order to check the irreversible damage that would be caused to the environment.
- The area of the reservoir and its surroundings was an environmentally sensitive area and thus required extraordinary care", it held that "floods, long spells of drought, heat waves etc. experienced in various parts of Pakistan raise a red flag for the policy makers and every citizen to declare an environmental emergency before the damage becomes irreversible. Availability of clean water and keeping the environment free from pollution has a direct nexus with the fundamental right guaranteed to every person under Article 9 of the Constitution. Life is inextricably dependent on safeguarding the atmospheric green house. Environmental degradation and the adverse impacts of climatic change inevitably causes loss of lives, disease and increase in poverty.
- The principle of precautionary principle was given recognition by incorporating Principle 15 in the United Nations Rio Declaration on Environment and Development (1992) which reads as: "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation"".

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<sup>12</sup> Mrs. Zeenat Salim v. Pakistan Naval Farms, PLD 2022 Islamabad 38.

## 10. 2022 LHC 129

*Public Interest Law Association v. Environmental Protection Agency*<sup>13</sup>

[Shahid Karim J]

- Writ petitions were filed to challenge the Ravi River Front Urban Development Project undertaken by the Ravi Urban Development Authority (RUDA) established under the Ravi Urban Development Authority Act. The petitions challenged the Project on numerous grounds, including its impact on socio-economic factors and the environment.
- The High Court upheld the challenges to the Ravi River Front Urban Development Project on numerous ground, including that the acquisition process and master plan of the project were erroneous and therefore, had to be struck down. Importantly, it gave immense importance to socio-economic factors and environmental impact while undertaking such projects.
- It held that public purpose within the meaning of Article 24 cannot be seen in isolation and a balancing act must be done in order to weigh the broader issues relating to ecology and environment which will be impacted by acquisition. It noted that since there is a larger public purpose encompassing these issues, public purpose of a stated class of persons has to be weighed against that higher public purpose.
- It also held that human dignity and environmental rights have to be enmeshed with one another and the scope of their application has to be determined by their relationship with Article 23 and 24 in accordance with the structure of rights protection in the Constitution.

## 11. 2023 CLC 1

*Haroon Farooq v. Government of Punjab*<sup>14</sup>

[Shahid Karim J]

- A writ petition was filed where the Petitioner prayed that directions be issued to compel the government to invest in climate mitigation strategies, especially preservation of water resources.
- The Court observed that the preservation of water resources and the groundwater levels which have seen a stunning depletion over the years. The Constitution mandates that the interest of a Province or any of the inhabitants should not be affected prejudicially by the failure of any authority to exercise any of its powers with respect to the use and the distribution or control of water from any natural source of supply.
- It was emphasized that our Constitution is a social compact between the State and the people. It contains rights which the State is under obligation to enforce and a failure to do so spawns rights-based environmental litigation. We may refer to various provisions in the Constitution which give rise to such rights to inhere in the people of Pakistan and for which the State is obligated to take real and immediate measures so that climate crisis can be averted in all its manifestations. Article 3 of the Constitution requires the State to ensure elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, that is, from each according to his ability to each according to his work. This

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<sup>13</sup> Public Interest Law Association v. Environmental Protection Agency, 2022 LHC 129.

<sup>14</sup> Haroon Farooq v. Government of Punjab, 2023 CLC 1.

concept of elimination of exploitation can only be fulfilled if the State takes meaningful measures for the control of environmental degradation and for climate justice to be enforced so that the basic principle enshrined in Article 3 can be achieved.

- The Court recognized that a key goal of climate justice is to put across the effects of mitigation and adaptation in order to promote greater climate equity. A large number of judicial directions in this case relate to mitigation and adaptation measures particularly those aimed at water conservation. Climate change engenders adaptation needs which, in turn, feeds adaptation policies and options which can reduce risks to natural ecosystems by its restoration, to health, livelihoods, food and water with efficient irrigation, green infrastructure, sustainable land use and water management. Thus the twin themes of mitigation and adaptation have to be at the heart of any climate litigation.

## 12. PLD 2021 Lahore 720

*Mubashir Ahmad Almas v. Province of Punjab*<sup>15</sup>

**[Muhammad Qasim Khan CJ]**

- The Petitioner filed a writ petition as pro bono publico seeking enforcement of the fundamental right to safe and secure life of citizens as guaranteed under Article 9 of the Constitution referring to his utter dismay for the maceration of environmental system being an outcome of sheer disregard to the forest and climate change policies by the respondents which have jeopardized the quality of life for the citizens.
- The Court held that “it is manifestly clear that the petitioner has put forth a pervasive concern which is rampant in its impact, raised an issue, which has a direct bearing on citizens. fundamental right of enjoyment of life well enshrined and protected under Article 9 of the Constitution and also directly affects the conditions and quality of living for the people residing within the province and therefore his petition being well within the scope of pro bono publico is maintainable in its present form”.
- The Court noted that in view of the global surge in the density of the urban population, more attention has now been given to promote sustainable development so as to improve the quality of life in the urban environment. To meet with such standards in Punjab Private Housing Schemes and Land Sub-division Rules, 2010, it has been made compulsory that 7% space must be allocated for green belts while 2% space necessarily be allocated for the graveyard.
- Amongst other directions, the Court held that “right of life includes oxygen and pollution free society. Right of life co-exists with forest and green areas. Therefore, concerned authorities/legislative bodies should examine and make laws/ rules/regulations to bound the developers that while establishing private housing colonies and societies, co-operative societies and even colonies developed by the DHA, along with the roadside there must be green belts separate to foot-paths and on these green belts trees of indigenous species must be planted to protect the environment and also to attract the birds”. It directed that 1% of total land in such housing colonies be also fixed for mini-forests and also passed other directions in related to green areas/green belts.

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<sup>15</sup> Mubashir Ahmad Almas v. Province of Punjab, PLD 2021 Lahore 720.

### 13. PLD 2020 Lahore 137

*Mian Muhammad Asif v. Superintendent of Police*<sup>16</sup>

[Tariq Saleem Sheikh J]

- The Petitioner, who had set up a brick kiln, was stopped from transporting earth/soil to his brick kiln on the instruction of the Deputy Director, Mines and Minerals, Lahore Region.
- The Court noted that “brick kiln owners excavate soil with impunity. More often than not the entire layer of topsoil is dug out which has serious repercussions. The fertility of that particular piece of land is reduced and irrigation of the neighbouring plots is adversely affected. This leads to desertification and low agricultural yields which eventually impact our country's food security. Besides, it contributes to environmental degradation and climate change”. It extended the Public Trust Doctrine to soil. Noting that there was no check on reckless soil digging in Pakistan, a direction was issued to initiate appropriate administrative and legislative measures within a period of six months from the date of announcement of the judgment to regulate brick manufacturing in general and use and conservation of soil in particular.
- It used the Public Trust Doctrine<sup>17</sup> and directed the authorities to initiate administrative and legislative measures to regulate brick manufacturing and conservation of soil.

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<sup>16</sup> Mian Muhammad Asif v. Superintendent of Police, PLD 2020 Lahore 137.

<sup>17</sup> The ‘Public Trust Doctrine’ implied that certain properties such as air, running water, the sea and the sea shores were common property shared by all the citizens. The title to these essential resources vested in the State in trust for the benefit of the general public. The State was thus bound to protect them for their uninterrupted use.