

# **The Role of Constitutional Courts in Administering the Environmental Justice System in Pakistan**

**Dr. Mahboob Usman<sup>1</sup>**

## **Abstract**

Since the beginning of civilization, individuals have played crucial roles in protecting the environment surrounding them. Every citizen is under an obligation to protect the environment, without any exemption. Protection of environment is not only a global phenomenon which must be followed by all; our religion also dwells upon us the protection of environment as a sacred part of Islamic teaching and make certain actions harmful to the environment such as the cutting of trees during wartime are explicitly prohibited. At the same time this global phenomenon compels every individual to follow the rules and regulations of the State. In this context, it is vital to observe how the judiciary serves as an essential institution within society, significantly contributing to its development and sustainability. This paper is discussing and interpreting the Judicial decisions, particularly those of superior courts, which have dealt with violation and far-reaching consequences of environmental law. This paper also unveils that how even minor deviations from established legal norms and principles may lead to substantial harm. Through the discussion itaper aims to examine the principal role of superior courts of Pakistan in environmental protection and to examine how their decisions have played a vital role in promoting environmental sustainability.

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<sup>1</sup> Dr. Mahboob Usman is PhD in Law and working at Ministry of Religious Affairs & Interfaith Harmony, Islamabad. The views expressed in this article are purely of the author. He can be reached through email: [mehboob\\_usman@yahoo.com](mailto:mehboob_usman@yahoo.com)

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## **I. Introduction**

Constitutional courts are the ultimate authority to decide fate of any dispute either by petition filled by aggrieved person or by exercising *suo moto* powers.<sup>2</sup> Similar, is the case with environment issues, where in number of cases the courts decided to take up the matter by its own, in other cases the case was brought before the courts to adjudicate upon the issue. Keeping in view the importance of matter, the courts while taking cognizance, responded in quick manner for decision of the cases at the earliest.

Merely drafting and enacting laws is insufficient; their effective implementation is paramount. Recognizing this, Pakistan's judiciary has taken proactive steps to ensure environmental protection through the establishment of 'green benches'. These specialized benches are dedicated to hearing cases related to environmental issues, thereby streamlining the legal process and emphasizing the importance of environmental justice. The initiative to create green benches was a direct response to the recommendations of the 2012 Bhurban Declaration, titled 'A Common Vision on Environment for the South Asian Judiciaries', which emerged from the South Asian Conference on Environmental Justice. This conference was convened with the support of Supreme Court of Pakistan (SCP). In line with this vision, all high courts across the country including the Supreme Court of Azad Jammu and Kashmir (SC AJK), constituted green benches to address environmental matters.

For instance, the Lahore High Court (LHC) established both a green single bench and a green division bench, with designated

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\* Dr. Mahboob Usman is PhD in Law and working at Ministry of Religious Affairs & Interfaith Harmony, Islamabad. The views expressed in this article are purely of the author. He can be reached through email: [mehboob\\_usman@yahoo.com](mailto:mehboob_usman@yahoo.com)

<sup>2</sup> Article 184-188 of the Constitution of the Islamic Republic of Pakistan, 1973.

judges assigned to these benches. Similarly, the Sindh High Court (SHC), Peshawar High Court (PHC), and Balochistan High Court (BHC) took comparable measures, ensuring that environmental cases were handled by specialized courts. These green benches have not only facilitated the adjudication of environmental disputes but have also played a pivotal role in enforcing environmental laws and regulations.

Moreover, the BHC introduced the ‘Green Courts Project’, which began with the symbolic act of each judge planting a tree. This initiative aimed to raise awareness about climate change and promote environmental consciousness among the public. In *Maple Leaf Cement Factory Ltd. v. Environmental Protection Agency*, the LHC held as under: -

...all matters before courts.... shall be resolved... to favour the protection and conservation of the environment, with preference to be given to alternatives that are least harmful to the environment...<sup>3</sup>

In Pakistani history, *Shehla Zia*<sup>4</sup> case was the landmark decision on environment where the Supreme Court of Pakistan interpreted Article 9 of the Constitution to covers all facts of human existence. While dilating on it the court held that “in the quest of economic development one has to adopt such measures which may not create hazard to life, destroy the environment and pollute the atmosphere.”<sup>5</sup> Further, the court extended the concept of life to ‘such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally’. Therefore, every person is entitled to the

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<sup>3</sup> *Maple Leaf Cement Factory Ltd. v. EPA*, PLD 2018 Lahore 255.

<sup>4</sup> *Shehla Zia v. WAPDA*, PLD 1994 SC 693. WAPDA proposed construction of grid station in section F.6/1, Islamabad, therefore, the petitioner filled the human right case before SUPREME COURT OF PAKISTAN challenging the construction of grid station near residential area due to hazards attached to the electromagnetic fields which was decided on 12<sup>th</sup> February, 1994.

<sup>5</sup> *Shehla Zia v. WAPDA*, PLD 1994 SC 693.

‘protection of law from being exposed to hazards of electromagnetic fields.’<sup>6</sup>

In *Imrana Tiwana v. Province of Punjab*<sup>7</sup> case, a Full Bench of LHC held that ‘EIA is nature’s first man-made check post.... It is through the tool of EIA that EPA gets to regulate and protect the environment and as a result the life, health, dignity and well-being of the people who inhabit the environment...’

In Islamabad, the Capital Development Authority (CDA) leased a plot of land in violation of law. Subsequently, this action was challenged in the IHC, which upheld the cancellation of the lease, affirming its violation of legal provisions. The court’s decision underscores the imperative for public authorities to adhere strictly to legal frameworks in land allotments, ensuring transparency and accountability in urban development.<sup>8</sup> In another case, LHC directed the government to remove encroachment on graveyard land.<sup>9</sup>

In the province of Punjab, a petition was filled in the LHC where the court passed certain directions for controlling air pollution.<sup>10</sup> Similarly, the LHC in respect of construction of poultry farm held that “...poultry farms are a source of odor and smell as well as flies, rodent and other pests. These can give rise to diseases such as cholera, typhoid, malaria and dengue. Furthermore, improper disposal of wastewater can pollute the water and soil...”<sup>11</sup>

Land meant for amenities, parks and playground cannot be allotted to any person<sup>12</sup> besides amenity plot cannot be allotted for commercial activities.<sup>13</sup> The SC always protected the environment

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<sup>6</sup> Ibid.

<sup>7</sup> *Imrana Tiwana v. Province of Punjab*, 2015 CLD 983.

<sup>8</sup> *BNP Pvt Ltd. v. Capital Development Authority*, PLD 2017 ISB 81.

<sup>9</sup> *Miani Sahib Graveyard v. Encroachers*, PLD 2019 Lahore 216.

<sup>10</sup> *Syed Mansoor Ali Shah v. Government of Punjab*, 2007 CLD 533.

<sup>11</sup> *Muhammad Shahid v. Punjab Environmental Tribunal*, PLD 2018 Lahore 356.

<sup>12</sup> *Niamatullah Khan v. Federation of Pakistan*, 2022 SCMR 171.

<sup>13</sup> *Province of Sindh v. Kabir Bokhari*, 2016 SCMR 101.

for deciding the cases at the earliest, therefore, the court declared the construction of restaurant in F.9 Park of Islamabad in violation of constitution of Pakistan.<sup>14</sup> In *Islamuddin v. Ghulam Muhammad* case,<sup>15</sup> for creating the nuisance in the vicinity, the SC stopped the workshop from working despite the fact that the owner had the permission and license from relevant authorities to operate and manage the workshop.

In respect of Brick Kilns, for not following the law, the LHC held that an “act or omission, damaging environment is a recurring damage, effecting general public globally” therefore, the concerned agency may take action as per law.<sup>16</sup> The IHC in a case held as under: -<sup>17</sup>

Saving parks and urban green spaces means safeguarding the environment and indeed saving the environment from further destruction and degradation should be a top priority and must take precedence over the interests of a few. It is the larger public interest that must prevail and protecting the environment is definitely the most important public interest.....

This article examines landmark judgments by Pakistan’s superior courts concerning environmental issues such as water, wildlife, parks, nuclear and hospital waste, forests, and trees. These rulings have been instrumental in safeguarding the nation’s natural heritage and upholding citizens’ environmental rights.

## **II. Water**

Water is essential for human survival, and its scarcity poses a significant threat to humanity. Therefore, it is imperative to preserve natural and man-made water reservoirs, as well as underground water sources, to ensure a sustainable water supply

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<sup>14</sup> *Action taken on news clippings regarding, Fast Food outlet in F-9 Park Islamabad*, PLD 2010 SC 759.

<sup>15</sup> *Islamuddin v. Ghulam Muhammad*, PLD 2004 SC 633.

<sup>16</sup> *Nemat Ullah Khan v. Province of the Punjab*, 2023 CLD 261; PLJ 2023 Lahore 334.

<sup>17</sup> *Yasmin Haider v. Capital Development Authority*, PLD 2019 Islamabad 558.

for current and future generations. In Khewara Mine case<sup>18</sup> the petitioner challenged the pollution of water supply source and the Supreme Court of Pakistan after hearing concerned parties decided that the petitioner basically seeks to enforcement of the right of the residents to have clean and unpolluted water. Wherein the court held that “Water has been considered source of life... due to famine and sacristry of water, civilization have vanished, green lands have turned into deserts and arid zones completely destroying the life.... Therefore, if (water is) polluted, or contaminated, (it) will cause serious threat to human existence.”

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Thus, the court directed that the location of mine be shifted at a safe distance from the stream that the stream is not polluted.<sup>20</sup> Similarly, in Islamabad, Rawal Dam was being contaminated, therefore, SC took *suo moto* and declared that clean drinking water is a right and directed the government to take immediate steps for installation of water treatment plant to avoid discharge of solid waste and liquid into the Rawal Lake.<sup>21</sup> Likewise, in a similar matter, Shahab Usto, Advocate filed a constitutional petition in SC for provision of clean water and disposal of sewerage and solid waste protecting the environment of Province of Sindh, the SC after analyzing the bad governance directed the provincial government to make arrangement for clean drinking water and for improvement of environment.<sup>22</sup>

Similarly, the IHC in *Shahzada Sikandarul Mulk v. The Capital Development Authority*<sup>23</sup> emphasized on the importance of protection of environment from damage, particularly Rawal Lake

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<sup>18</sup> *General Secretary, West Pakistan Salt Miners Labour Union (CBA), Khewra v. the Director, Industries and Mineral Development Punjab*, 1994 SCMR, 2061.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *In the matter of contaminated water to Rawalpindi from Rawal Dam*, 2013 SCMR 591.

<sup>22</sup> *Shahab Usto v. Government of Sindh*, 2017 SCMR 732.

<sup>23</sup> *Shahzada Sikandarul Mulk v. The Capital Development Authority*, PLD 2019 Islamabad 365.

and its surrounding area and declared clean water as fundamental right. The same view was reiterated after three years in another case of *Zeenat Salim v. Pakistan Naval Farms*.<sup>24</sup> The IHC further held that ‘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.’<sup>25</sup>

With the fear of non-availability of any proper plan by the Government to conserve water, Mr. Asghar Leghari filed a writ petition<sup>26</sup> in the LHC for preparation of water strategy by the Government which was decided after detailed hearings and the court directed as under: -

... Water is life. Water is a human right and all people should have access to clean and affordable water. ....Water justice refers to the access of individuals to clean water.... Water justice demands that all communities be able to access and manage water for beneficial uses, including drinking, waste removal, cultural and spiritual practices, reliance on the wildlife it sustains, and enjoyment for recreational purposes.....<sup>27</sup>

The SC considered the importance of water reservoirs and held that ‘right to life is a fundamental right and without water there can be no existence of life. The establishment of water reservoirs is, therefore, not a question of just quality of life rather the very existence thereof.’<sup>28</sup> Further, the SC directed the government to establish dams and also encouraged the public to use rational use of water to avoid drought.<sup>29</sup>

At Rawalpindi city, many illegal hydrants were installed for extraction of water from the earth, therefore, to seek direction from the High Court, for the relevant departments, a Writ Petition

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<sup>24</sup> *Zeenat Salim v. Pakistan Naval Farms*, PLD 2022 Islamabad 138.

<sup>25</sup> Ibid.

<sup>26</sup> W.P. No. 25501/2015 which was decided on 25<sup>th</sup> January, 2018.

<sup>27</sup> *Asghar Leghari v. FoP*, PLD 2018 Lahore 364.

<sup>28</sup> *Zafarullah Khan v. Federation of Pakistan*, 2018 SCMR 1621.

<sup>29</sup> *Zafarullah Khan v. FoP*, 2018 SCMR 2001.

was filed<sup>30</sup> in which the High Court directed the authorities, *inter alia*, to educate the citizen about water sanctity. The superior courts of Pakistan had considered clean water as a fundamental right and also passed certain direction for its preservation. Had this not been done, then the Pakistan must have faced serious issues.

### **III. Protection and Preservation of Wildlife**

On 18<sup>th</sup> September, 2009, the Ormara Fisheries authorities found Abdul Hameed fishing within four nautical miles from the Ormara coast while using the prohibited fishing nets (locally known as *gujja*), therefore, he was arrested and an F.I.R was registered against him.<sup>31</sup> Before the trial court,<sup>32</sup> the accused plead guilty and the trial court sentenced the accused to pay fifteen thousand rupees and confiscated the prohibited nets in favor of state. Being dissatisfied, he challenged the order before Additional Sessions Judge, Gwadar, who also maintained the trial court decision, which was assailed before the BHC<sup>33</sup> and the court after examining the entire case held that: -

... illegal fishing and resorting to unnecessary killing and catching of juvenile fish ruptures the ecological web, results in the decline of marine resources and damages the sea and the coast, bringing with it untold suffering to the communities living along the coastal areas who are dependent upon fishing both to feed themselves as well as to provide them with much needed livelihood. The greed of a few imperils all.<sup>34</sup>

Further, the BHC in this case held that ‘it is our duty to ensure .....large scale capture and killing of juvenile fish [be] avoided.’<sup>35</sup>

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<sup>30</sup> *Usman Ghani v. Rawalpindi Metropolitan*, Writ Petition No. 2046/2022.

<sup>31</sup> First Information Report (F.I.R) No. 3/2009.

<sup>32</sup> Judicial Magistrate Pasni, Gwadar.

<sup>33</sup> Criminal Miscellaneous Quashment No. 36 of 2010.

<sup>34</sup> *Abdul Hameed v. Judicial Magistrate*, PLD 2011 Quetta 11.

<sup>35</sup> *Ibid*.

A writ petition<sup>36</sup> was filed in the LHC for protection of endangered species of black bucks and deer which were getting extinct. Therefore, the High Court appointed the commission<sup>37</sup> who submitted a detailed report regarding preservation of endangered species. High court, after examining the Black Bucks Commission endorsed<sup>38</sup> the same and directed the Provincial Government of Punjab to protect and preserve the black buck deer in compliance with the provision of the Act, 1974.<sup>39</sup> Thereafter, the HC after relying upon the *Province of Punjab*<sup>40</sup> case held that:-

...It has now been scientifically established that if the earth becomes bereft of birds, animals, insects, trees plants, clean rivers, unpolluted air and soil, it will be the precursor of our destruction/extinction. The black buck deer is one of the endangered species and protection of such species is not only fundamental duty of government but of every citizen to ensure right to life guaranteed under Constitution.<sup>41</sup>

On 6<sup>th</sup> September 2009 under various sections<sup>42</sup> of Balochistan Wildlife Act,<sup>43</sup> different FIR were registered for illegal possession and transportation of cranes which enjoyed a protected status under this Act. All the accused plead guilty before the trial court,<sup>44</sup> and the trial court fined rupees one thousand each and allowed to retain 190 cranes in their possession. However, the BHC imposed fine of rupees five hundred against each crane and emphasized the protection of animal in the light of Holy Qur'an and Sunnah.<sup>45</sup>

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<sup>36</sup> W.P. No. 35700/2016 which was heard on 31<sup>st</sup> October, 2019.

<sup>37</sup> Black Bucks Commission.

<sup>38</sup> This case has been reported as *Ali Imran v. Forest Wildlife and Fishery Department*, PLD 2020 Lahore 24.

<sup>39</sup> Punjab Wildlife (Protection, Preservation, Conservation and Management) Act, 1974 (Act No. II of 1974).

<sup>40</sup> *Province of Punjab v. Lal Khan*, 2016 SCMR 48.

<sup>41</sup> *Ali Imran v. Forest Wildlife and Fishery Department*, PLD 2020 Lahore 24.

<sup>42</sup> Sections 10, 27 and 30.

<sup>43</sup> Balochistan Wildlife Protection Act, 1974 (Act No. XIX of 1974).

<sup>44</sup> Judicial Magistrate Zhob.

<sup>45</sup> *Ikramullah v. the State*, PLD 2012 Balochistan 16.

Likewise, on 29<sup>th</sup> September, 2008, a complaint was filed under various sections of the Balochistan Wildlife Protection Act, 1974 for hunting and killing two female Markhors. After the trial, 1<sup>st</sup> class Magistrate of Dashat convicted and awarded six-month imprisonment to each accused and imposed a fine of three thousand rupees on each person. On appeal,<sup>46</sup> however, Sessions Judge, without recoding reasons, reduced the sentence awarded to the petitioner. Thus, criminal revision was filed in the BHC,<sup>47</sup> and the High Court restored Magistrate's original order of imprisonment of six months. Nevertheless, honorable High Court, instead of sending accused to jail, directed the release of accused on probation and plantation of trees. The relevant part is reproduced as under: -

Probation shall be for the minimum period of one year. A condition of probation and of the bond would be for the petitioners to render community service by planting twenty five trees each and to take care of them for the period of their probation. In case any tree does not survive it shall be replaced by another. It is estimated that the time spent on planting and nurturing one tree for a year would be four hours, therefore, the duration of community service to be rendered by each offender in respect of 25 trees comes to 100 hours of community service.

The government of Sindh issued a notification under section 40 (1) of the Sindh Wildlife Act, 1993, dated 21<sup>st</sup> October 2014 granting permission to foreigners to hunt Houbara Bustard. The said notification was challenged in the SHC and Court after setting aside the notification allowed the petition.<sup>48</sup> Thereafter, the Sindh Government challenged the decision of High Court in the Supreme Court<sup>49</sup> and the SC rejected the petition upholding the decision of SHC as the houbara bustard was protected species

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<sup>46</sup> Criminal Appeal No. 7 of 2009.

<sup>47</sup> *Ghulam Dastagir v. State*, PLD 2014 Balochistan 100.

<sup>48</sup> *Lal Khan Chandio v. Federation of Pakistan*, Constitutional Petition no. D-5806/2014 decided on 02.01.2015.

<sup>49</sup> *Province of Sindh v. Lal Khan Chandio*, 2016 SCMR 48.

which cannot be permitted for hunting because under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and Convention on Migratory Species of Wild Animals (CMS) is protected and the Pakistan is signatory to these conventions. But, against this decision a review petition and Supreme Court of Pakistan after setting aside its earlier' order,<sup>50</sup> held that the 'Government can only exercise its powers ...(under the) Ordinance to advance the objective of the law, which was enacted for the preservation, conservation and management of wildlife; its decision must be based on sound ecological principles and taken after a proper assessment of the population of the species...' <sup>51</sup>

#### **IV. Smog, Hospital and Nuclear waste etc**

In the province of Khyber Pakhtunkhwa, hospital waste was not properly disposed of which was causing serious health problems, therefore, Saifullah Muhib Kakakhel<sup>52</sup> advocate filed a writ petition<sup>53</sup> in the PHC to seek direction for implementation of laws for disposal of hospital waste and save the environment from infections and other allied diseases. After the hearing, the PHC directed the D.G. EPA to carry out the inspection of public and private hospital. Subsequently, D.G. EPA, after visiting the hospital submitted the report which was not satisfactory, therefore, the court directed that Director General Health shall devise "Health Care Standards" for all hospitals; to organize training workshops for waste management; all the hospital to have waste management plan; all hospital to put in place waste treatment through double chamber incinerator; all liquid waste to be treated within the hospital premises before disposal into sewerage; all hospitals/clinics should make proper arrangements

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<sup>50</sup> *Government of Punjab v. Aamir Zahoore-ul-Haq*, PLD 2016 SC 421. This is the majority decision in which the earlier decision of supreme court was set aside, however, dissenting note was also added by the Qazi Faez Isa, which is worth reading and have strong reasoning.

<sup>51</sup> *Province of Sindh v. Lal Khan Chandio*, 2016 SCMR 48.

<sup>52</sup> *Saifullah Muhib Kakakhel*, PLD 2018 Peshawar 94.

<sup>53</sup> W.P. No. 387-P/2017 which was decided on 26<sup>th</sup> October, 2017.

for disposal of their waste; government to earmark landfill site for disposal of toxic waste; and D.G. EPA to regularly monitor the arrangements of hospital for disposal of waste.

Every year, the province of Punjab faces acute issue of smog, thus, the LHC established a commission, which *inter alia*, took steps for the proper conservation and utilization of water and protection of environment. The LHC also passed certain direction of control of smog and mandatory “implementation of M-Tag on Motorways to prevent vehicular congestion and excessive emissions.”<sup>54</sup> In another case, the Supreme Court of Pakistan held that “To dump waste materials... would not only be a hazard to the health of the people but also to the environment and the marine life in the region... if nuclear waste is dumped on the coastal land of Balochistan, it is bound to create environmental hazard and pollution.”<sup>55</sup>

Air pollution is the greatest environmental threat to human health; therefore, the Supreme Court of Pakistan directed the government ‘to shut down and seal the operations of stone crushing plants.’<sup>56</sup>

## **V. Forests and trees**

Parks, open spaces and trees provide health benefits. Whereas parks facilitate physical activity. If the parks are permitted to be enclosed it will make it difficult for trees to grow properly due to obstruction of sunlight. Similar view was taken by the BHC when two Constitutional Petition<sup>57</sup> were filled challenging the decision of Quetta Development Authority (QDA) for allotment of land for construction of shops around the park. However, the High Court

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<sup>54</sup> *Haroon Farooq v. Government of the Punjab*, W.P No.227807/2018, order dated 29.12.2023

<sup>55</sup> *In re: Human Rights Case (Environmental Pollution in Balochistan)*, PLD 1994 Supreme Court 102.

<sup>56</sup> *Amer Ishaq v. The Province of Khyber Pakhtunkhwa*, C.P No.4 and 14 of 2021, Order dated 11.07.2024.

<sup>57</sup> Constitutional Petition No. 790/2010 was filled by the Chamber of Commerce and Industry Quetta and Constitutional Petition No. 164/2011 was filled by 29 shopkeepers.

did not allow construction of shops around the park and held as under: -

....the poor who do not have access to private gardens or clubs; thus, when impediments are placed to fully enjoy the Park it is these weaker and vulnerable members of society who would suffer the most. Moreover, availability of parks for enjoyment, recreation, walking, jogging and exercise constitute a basic necessity.<sup>58</sup>

Sheikh Asim Farooq Advocate also filed a Writ Petition<sup>59</sup> in the LHC for seeking a writ of *mandamus* for the implementation of laws,<sup>60</sup> policies<sup>61</sup> and constitutional provisions for the protection of forest and other natural resources and sought direction and a roadmap for implementation of laws and policies. After many hearing, this case was decided,<sup>62</sup> and various directions were issued for the implementation of all the applicable laws and policies including the directions of higher judiciary shall be implemented in letter and spirit. In brief the directions are for the protection and preservation of forest; all the stakeholders to enlarge the forest cover; all the competent authorities to impose penalty for cutting of trees; cooperative authorities shall issue directions to cooperative societies for planting of trees in front of houses and imposition of penalty for cutting of trees. In addition to that the concerned authorities to keep the record of trees; public awareness through print and electric media for plantation of trees; all concerned authorities to define a mechanism for urban forestation; appointment of an officer for the purpose and designation of an area for forestation. The educational institutions

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<sup>58</sup> *Chamber of Commerce and Industry v. Director-General, QDA*, PLD 2012 Balochistan 31.

<sup>59</sup> W.P. No. 192069/2018 which was decided on 30<sup>th</sup> August, 2019.

<sup>60</sup> Forest Act, 1927 (Act no. XVI of 1927) and the Punjab Plantation and Maintenance of Trees Act, 1974.

<sup>61</sup> National Climate Change Policy, 2012; National Forest Policy, 2015; Forest Policy Statement, 1999; Punjab Forestry Sector (Forests, Watershed, Rangelands and Wildlife), Policy 1999.

<sup>62</sup> *Asim Farooq v. Federation of Pakistan*, PLD 2019 Lahore 664.

are directed to make policies for plantation of trees in open spaces and all the departments to make laws for imposing penalty for cutting, removing and damaging any tree without permission of competent authority.

In the province of Sindh, Gulzar Ahmed Advocate filed a Writ Petition<sup>63</sup> in the SHC for seeking directions, *inter alia*, to issue writ against the respondents<sup>64</sup> for cutting<sup>65</sup> of valuable trees near Begum Nusurat Bhutto Sukkur to be null and void *ab initio*; and respondents may be restrained not to cut more trees from the said area; and direction may be issued to preserve forest land and trees planted in the city and outside the city. After hearing the parties, the Sindh High Court directed the respondents to ‘refrain from cutting or removing any grown-up trees either on the subject road or on any of the main roads in the entire Sukkur city.’<sup>66</sup>

The provincial government of Punjab passed an Act<sup>67</sup> for the development of ‘New Murree’ where more than 4000 cutting of trees were involved, which had serious implications for environment including the water for Simly and Rawal Dams. When the matter was brought before the Supreme Court, *suo moto* was taken,<sup>68</sup> meanwhile the project was disbanded and the SC disposed of the case.<sup>69</sup> However, later on, a new project under the name of New Murree Project was started but the same was stopped on the intervention of Supreme Court.<sup>70</sup>

The Provincial Government of Punjab decided to widen the canal road, Lahore. An application was submitted by the Lahore Bachao Tehrik (LBT) to Chief Justice of Pakistan (CJP) asserting that the

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<sup>63</sup> W.P. No. D-1913/2017 which was decided on 30<sup>th</sup> March, 2019.

<sup>64</sup> There were 19 respondents, among them are the Pakistan Air Force (PAF), and Civil Aviation Authority, (CAA).

<sup>65</sup> As per the para-wise comments of CAA, it transpires that 57 old trees were cut down by the PAF.

<sup>66</sup> *Gulzar Ahmed v. Province of Sindh*, PLD 2019 Sindh 697.

<sup>67</sup> New Murree Development Authority Act, 2004 (Act No. I of 2004).

<sup>68</sup> *Suo moto* case no. 10/2005, decided on 31<sup>st</sup> July, 2009.

<sup>69</sup> *Suo Moto Case No. 10 of 2005*, 2010 SCMR 361.

<sup>70</sup> *Muhammad Asjad Abbasi v. Iqbal Muhammad Chauhan*, 2018 SCMR 2051.

widening the canal road would entail the cutting of trees on both side of the canal and the greenbelt area would be encroached which would result in environmental hazards. This application was converted into *suo moto* case<sup>71</sup> and *inter alia*, various directions were passed by the Supreme Court such as the green belt on both sides of the canal is public trust and same shall be treated as Heritage Urban Park; and government will ensure ‘minimum damage is caused to the green belt and every tree cut would be replaced by four trees.’<sup>72</sup> After some time, the government filed an application for further widening of the said project and the LBT filed contempt case against the government. After hearing the parties, the Supreme Court decided that the government has not violated the earlier judgment and hence not committed any contempt and allowed further extension of canal road being within the limits prescribed by the Supreme Court.<sup>73</sup> Similarly, the trees were being cut for construction purposes, the Supreme Court stayed “expansion or construction work.....in the Margalla Hills.”<sup>74</sup>

Wall-chalking is common phenomena in Pakistan, many people used to express their ideas, religious and political, through painting of walls, trees, and building. Therefore, in the province of Balochistan an Ordinance<sup>75</sup> was promulgated to punish this offence. However, this Ordinance was not being implemented by the concerned authorities, thus, the petitioner filed petition<sup>76</sup> in the BHC for enforcement of said Ordinance and the High Court, *inter alia*, passed the order that the Municipal Corporation ‘should also plant sufficient trees and protect both new and old plantation, and

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<sup>71</sup> SMC No. 25/2009.

<sup>72</sup> Cutting of trees for canal widening project, Lahore, 2011 SCMR 1743.

<sup>73</sup> *Lahore Bachao Tehrik v. Iqbal Muhammad Chauhan*, 2015 SCMR 1520.

<sup>74</sup> Human Right Case No. 318 of 1993 vide order dated 19 May 2020.

<sup>75</sup> Balochistan Prohibition of Expressing Matters on Walls Ordinance, 2001 (No. LI of 2001).

<sup>76</sup> Constitutional Petition No. 250 of 2010 decided on 18<sup>th</sup> August, 2014.

in this regard it may avail of the assistance of the concerned government department, including the Forest department.’<sup>77</sup>

## **VI. Parks and amenity plots**

The Supreme Court of Pakistan<sup>78</sup> in respect of park held that the ‘use of the Park involves enjoyment of life which is covered by the word life employed in Article 9 of the Constitution...’ In another case, the Supreme Court has observed and held that “...the public parks, playing fields and graveyards are to be developed and maintained by the CDA.... if a piece of land has been earmarked for purpose of Public Park, same cannot be leased out and CDA itself is bound to develop the same.”<sup>79</sup>

In Gulberg society of Lahore, a plot was vacant, and the people were using it for recreational purposes, however, the management changed the nature of the said plot and converted it to shopping mall and cinema. The matter was brought before the Supreme Court and the Court declared that the conversion of public park, without observing the legal requirements, into shopping mall and setting up of cinema illegal.<sup>80</sup>

In *Zahida Sultana v. Defence Housing Authority*,<sup>81</sup> the Lahore High Court restrained the DHA to construct parking plaza on amenity plot.<sup>82</sup> The Islamabad High Court in *Muhammad Raza v. Jammu and Kashmir Cooperative Housing Society*,<sup>83</sup> also declared the conversational of parks and amenity plots into commercial and residential plots illegal and directed the society to restore the original layout plan. In another case, Mst. Roshan Bano and others challenged the allocation of open plot for petrol pump

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<sup>77</sup> *Imdad Shah v. Secretary Forest and Wildlife Department*, 2015 YLR 318.

<sup>78</sup> *Ardeshir Cowasjee v. Karachi Building Control Authority*, 1999 SCMR 2883.

<sup>79</sup> *Moulvi Iqbal Haider v. CDA*, PLD 2006 SC 394.

<sup>80</sup> *Shehri-CBE v. Lahore Development Authority*, PLD 2012 Lahore 362.

<sup>81</sup> *Zahida Sultana v. DHA*, PLD 2013 Lahore 663.

<sup>82</sup> Amenity plots include parks, gardens, schools, hospitals, mosques, library, sewerage treatment plant, or such other places of public use.

<sup>83</sup> *Muhammad Raza v. Jammu and Kashmir Cooperative Housing Society*, PLD 2013 Islamabad 49.

and requested the Sindh High Court to grant the stay, but the same was declined due to permission of conversion of open plots into commercial plots.<sup>84</sup> In the instant case, there was no park, therefore, there was no issue for rejection of application for stay. In *Young Doctors Association v. Government of Pakistan*,<sup>85</sup> the petitioners challenged the widening of road due to environment impacts, however, the Lahore High Court, just allowed the reallocation of certain facilities of hospital for widening of road. Whereas, in *Imrana Tiwana v. Province of Punjab*,<sup>86</sup> the petitioners approached the Lahore High Court for stoppage of signal free corridor for violation of environmental law, thus, the Lahore High Court directed the authorities to stop the project. Thereafter, this decision was assailed before the Supreme Court of Pakistan, and the said court allowed the construction of signal free corridor.<sup>87</sup>

The Supreme Court, in the case of *Karachi Circular Railway's*<sup>88</sup> case directed the Karachi Development Authority (KDA) to restore the Kindly Hill Park as per original master plan of Karachi and dismissed the application of housing society. When the Supreme Court was informed about the allotment/lease of Kindy Hill Park, the Supreme Court directed the Commissioner KMC to 'examine each and every case of allotment and lease of the land of Kidney Hill Park and on such perusal, he shall issue notices to all illegal allottees/lessees for removal of their respective houses and all constructions whatsoever and restore the Kidney Hill Park of 62 acres as park...'<sup>89</sup>

This order was complied with and the Kidney Hill Park was restored,<sup>90</sup> however, there was an old masjid and school, therefore,

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<sup>84</sup> *Mst. Roshan Bano v. Pakistan Defence Officers Housing Authority*, PLD 2016 Sindh 445.

<sup>85</sup> *Young Doctors Association v. Government of Pakistan*, PLD 2015 Lahore, 112.

<sup>86</sup> *Ms. Imrana Tiwana v. Province of Punjab*, PLD 2015 Lahore, 522.

<sup>87</sup> *Lahore Development Authority v. Ms. Imrana Tiwana*, 2015 SCMR 1739.

<sup>88</sup> *Karachi Circular Railway and Local Train in Karachi's*, 2020 SCMR, 82.

<sup>89</sup> *Niamatullah Khan v. FoP*, 2020 SCMR 153.

<sup>90</sup> *Ibid.*

directions<sup>91</sup> were issued to remove the school from the park premises.<sup>92</sup> Later on, the Supreme Court directed the authorities to remove the mosque from the park and further held that the house adjacent to the park do not have easementary right in the park land to use for opening of their gates inside the park.<sup>93</sup>

Similar, instructions were issued in the same order<sup>94</sup> regarding, Hill Park, Bagh Ibn-e-Qassim, Civil Aviation Authority land, Benzair Park, Shahrah-e-Quaideen, P&T Colony, Kachi Abadies, PIA marriage Hall, Karachi Port Trust and DHA were directed to remove all illegal constructions and restore the land for which the same is allotted.<sup>95</sup> In respect of encroachments of Karachi Infrastructure Development Company Limited (KIDCL), the Supreme Court directed that the ‘Company is doing construction work, it shall not be allowed to occupy or to make construction or to interfere with any of the existing parks, playgrounds or amenity spaces...’<sup>96</sup>

In *Niamatullah Khan v. Federation of Pakistan*,<sup>97</sup> case when the Secretary Railway informed about the development and relocation of the encroachers of the Railway land, the Supreme Court particularly directed that ‘proper consultation with city planners and developers should be obtained in advance so also all engineering concerns as well as the environmental authorities be taken on board.’ Further, the Supreme Court while considering the historical aspects of this city observed that “It is no more a city of lights which is being portrayed by the city administration nor is this city of gardens. There are no trees, greener, no parks, no playgrounds, no roads, no hospitals, no universities, no schools, no colleges....”<sup>98</sup> When it was informed about the encroachments of paths and open spaces the Supreme Court directed the KMC to

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<sup>91</sup> Order dated 10<sup>th</sup> August, 2020.

<sup>92</sup> *Niamatullah Khan v. FoP*, 2020 SCMR 1474, 1482.

<sup>93</sup> *Niamatullah Khan v. FoP*, 2022 SCMR 238.

<sup>94</sup> Order dated 6<sup>th</sup> and 7<sup>th</sup> February, 2020.

<sup>95</sup> *Niamatullah Khan v. Federation of Pakistan*, 2020 SCMR 513.

<sup>96</sup> *Ibid.*, 522.

<sup>97</sup> *Ibid.*, 160.

<sup>98</sup> *Ibid.*, 162.

remove such encroachments, ‘The open spaces and service streets and roads occupied by the commercial organization, shops, hotels shall be removed and restored their use.’<sup>99</sup>

In Karachi, on public parks marriage halls, marquees, officers clubs, markets, shopping malls, apartments, petrol pumps, CNG stations were constructed and parks land was encroached and converted for residential and commercial purpose, thus, the SC on 22.01.2019, in *Abdul Karim v. Nasir Salim Baig*,<sup>100</sup> directed the SBICA to restore all plots to original position and remove all illegal and unlawful construction on such plots. Further, the SC in the instant case also prohibited (complete ban) the SBICA to convert or allow the conversions of amenities to commercial and residential purposes. Even, in this case the SC also banned the pending case for approval of conversion. An officer club was also built by the KW & SB on park land, therefore, in particular, the SC directed the KW & SB to demolish the club building or any other construction. Therefore, on 24.01.2019, the Managing Director KW & SB submitted a report in SC in compliance of the order dated 22.01.2019, that the Officers Club constructed on KW & SB has been demolished.<sup>101</sup>

YMCA ground was being used for commercial purposes such as marriage hall; thus, the SC directed the Commissioner to remove the construction and restore it for in its original purpose,<sup>102</sup> in compliance of the directions of SC, the operation was carried out and the ground was restored by playing of hockey. Similarly, roads of the Karachi were occupied by the encroachers and the SC directed<sup>103</sup> as follow: -

The land on to both sides of Mai Kolachi Road was full of mangroves at one time with passage of sea water, now there is barren land and passage of sea water has been blocked. The Chairman [Karachi Port Trust] shall

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<sup>99</sup> Ibid., 163.

<sup>100</sup> *Abdul Karim v. Nasir Salim Baig*, 2020 SCMR, 111.

<sup>101</sup> Ibid., 121.

<sup>102</sup> *Niamatullah Khan v. Federation of Pakistan*, 2020 SCMR 153, 166.

<sup>103</sup> Order dated 9<sup>th</sup> May, 2019.

ensure that plantation of mangroves is made on both sides of Mai Kolachi Road and flow of sea water is restored touching the Bath Island area.<sup>104</sup>

During the war of 1971, the Argentine government stood for the support of Pakistan in the United Nations General Assembly (UNGA) and United Nations Security Council (UNSC). In recognition and acknowledgment of support of Government of Argentina, a park with the name of “Argentine Park” was established at G.6, Islamabad. This park was converted for extension of hospital which was challenged before the IHC in writ petition,<sup>105</sup> and the High Court declared the conversion of park for the extension of hospital illegal.<sup>106</sup>

Islamabad High Court in *Yasmin Haider v. Capital Development Authority*,<sup>107</sup> held as under: -

In view of the critical situation regarding climate changes and environmental degradation, there is an urgent and greater need to protect and safeguard open spaces, play grounds and parks rather than converting them to buildings made from brick and mortar. Parks and urban green spaces have multiple benefits besides providing areas for recreational facilities. The existence of parks in urban areas inevitably impacts positively on human health and well-being. It helps in social cohesion and promoting tourism. It promotes biodiversity, reduces urban heat and protects ecosystems. The elimination or extinction of a park thus violates the fundamental right guaranteed under Article 9 of the Constitution.....

In Margalla Hills National Park Islamabad restaurants were being run which were damaging the environment of park, therefore, the Supreme Court held that park area must be protected and all restaurants operating within it to be vacated within three

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<sup>104</sup> *Niamatullah Khan v. Federation of Pakistan*, 2020 SCMR 153, 167.

<sup>105</sup> W.P. No. 1003/2015 which was decided on 5<sup>th</sup> July, 2019.

<sup>106</sup> *Yasmin Haider v. Capital Development Authority*, PLD 2019 Islamabad 558.

<sup>107</sup> *Ibid.*

months. However, Kiosks in the National Park were directed to obtain licence and remove all garbage they generate for disposal outside the National Park, and those with stoves must have fire extinguishers.<sup>108</sup> As per SC decision, even parks and green areas cannot be converted to residential use or allotted to anyone.<sup>109</sup> The SC directed that “it must be ensured that the National Park remains a protected area and all concerned are directed to ensure its preservation.”<sup>110</sup>

Amenity plots, designated for public welfare, cannot be converted for commercial use, nor can their land use be altered in ways that infringe upon the rights of other residents to enjoy public parks or amenities. Engaging in such transactions is unlawful because the general public is a key stakeholder in these spaces.<sup>111</sup> In a latest decision of SC the court held that parks and green areas cannot be converted into residential use, nor it can be allotted to anyone.<sup>112</sup>

## VII. Conclusion

From ensuring water resources to preservation of Wild life, and from directions to demolish the encroachments on green belts, parks to protect the society from environmental nuisances in all aspects, Pakistan’s higher judiciary has consistently worked as a driving force in directing the concerned authorities to act in accordance with the law. Wherever violations were identified, the courts have played a vital role and issued specific directions, compelling the executive to cease environmentally harmful activities. Pakistan’s Judiciary has actively taken actions for safeguarding the environment and have not remained passive on

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<sup>108</sup> The Monal Group of Companies, Islamabad v. Capital Development Authority, C.P.L.A.304/2022 decided on 11-06-2024

<sup>109</sup> *Mohammad Aslam Khaki v. Khawja Khalid Farooq Khan*, 2023 SCMR 1208.

<sup>110</sup> *Bilal Haque v. Kamran Ali Afzal*, CrI.O.P. No. 19/2024 order dated 25.10.2024.

<sup>111</sup> *Mall Developers (Pvt) Ltd v. Barrister Waleed Khanzada*, 2022 SCMR 2080.

<sup>112</sup> *Mohammad Aslam Khaki v. Khawja Khalid Farooq Khan*, 2023 SCMR 1208.

matters related to environmental issues. Through the judicial decisions of superior courts are playing a massive role for environmental protection yet a lot of work is required to be done which includes stricter laws, proper planning permission mechanisms before any utilization of land, and strict public policies to avoid the deterioration of environment. Despite facing numerous challenges, the judiciary has acted promptly to protect the environment. It is now the responsibility of all citizens and institutions to adhere to the directions of the superior courts and implement their decisions in letter and spirit, ensuring a cleaner and healthier environment for present and future generations.