



RESEARCH PAPER

Environmental Rights as Human Rights: A Case Study of Pakistan and Multiple Approaches towards their Recognition

¹Ahmad Talha*, ²Sehla Noor and ³Prof. MA Mingfei

1. PhD Scholar, Law School, Dalian Maritime University, Liaoning, China
2. PhD Scholar, Law School, Dalian Maritime University, Liaoning, China
3. Professor, Law School, Dalian Maritime University, Liaoning, China

*Corresponding Author: ahmadtalha80@yahoo.com

ABSTRACT

This research is intended to identify and examine the intersecting legal, social, and ethical factors integrating environmental preservation to the fundamental human rights framework. This study aims to comprehend the direct effects of environmental degradation on human rights, encompassing the rights to life, health, and dignity, while assessing the increasing acknowledgment of environmental rights as a fundamental component of international human rights law. As a result of the overwhelming number of environmental cases currently being heard in human rights tribunals, the relevance of this subject matter, as well as the vital need to debate it, led to the birth of the idea of "Greening of Human Rights." We believe that environmental law should revolve around the intergenerational equity principle, which primarily protects individual rights while also addressing collective community rights to a clean environment. This belief was formed after discussing various approaches to the right, and we believe that environmental law should be based on this principle. In order to foster development while also protecting the environment for life on earth, policymakers and lawmakers are faced with a complex challenge that requires them to strike a balance between the two types of rights, depending on the context.

KEYWORDS Environmental Sustainability, Fundamental Rights, Human Rights, International Law, Pakistan Environmental Protection Policy

Introduction

Human rights and environmental rights are intertwined ideas. Interaction between the two fields has grown as our knowledge of each has expanded. Furthermore, the difficulties in incorporating one subject into the framework of the other have been highlighted by the differences in objectives and priorities. Individuals who belong to more vulnerable groups of society are confronting the repercussions of environment decay and natural corruption. Environment degradation in all forms such as unclean water, deficiency of water, polluted air, noise pollution, deforestation, use of fossil fuel, increased urban expansion, trucking, downstream petroleum operations of refining, acid rain, no protection of wild life and hazardous atmosphere are affecting indigenous groups who usually face the lopsided concern of such man handle. Conditions that are detrimental to a healthy ecosystem will be highlighted. Thus, infringement of basic rights of people arises in numerous ways which limit the exercise of right to clean environment. (Dube, 2007)

While the epoch of globalization has had negative effects on the environment worldwide, it has helped governments and citizens realize that environmental depletion is a problem that transcends borders. Progressively, numerous important human rights are being put in danger, like the privilege to wellbeing influenced by misuse of resources.

The burden of defending their rights against this environmental threat falls disproportionately on the poorest members of society. The impact on human life and recognition of basic human rights is undeniable, even if the causes of ecological debasement are contested. Therefore, strengthening globalization's human side is essential. Yet, the declaration of a link between natural insurance and human rights on a global and national level comes much later. The United Nations Conference on Environment in Stockholm in 1972 builds a statutory framework for environmental law. This conference considered the demand for a viewpoint and for normal standards to be developed which direct the people for the protection of resources additionally, amelioration of the human condition. (Kamble, 2016) Humans have the fundamental right to freedom, equality, and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being, and a solemn responsibility to protect and improve the environment for present and future generations," it proclaimed. In addition, three distinct perspectives on the interplay between the two fields are presented. The first of these focuses on the revitalized space for ecology. second approach is related to procedural rights of community and individuals like right of public to participate in environmental matters and decision making. Third consideration is connected to substantive environmental rights which are also present in constitution of fey states. (Kamble, 2016)

Prior to 1992, Pakistani citizens did not feel a sense of environmental or resource responsibility. Environmental Protection Ordinance of Pakistan is a flawed piece of legislation. 1983 did not operate and was replaced later by a new act. In Pakistan, this issue of improper behavior and lack of legislation has been consistently disregarded. Conference held in 1992 in Rio, by United Nations on Environment and Development ('UNCED'), patently referred as Earth Summit brought rise to Pakistan's sense of duty regarding the environmental issues, sustainability and required law making. (Kamble R. M., 2013)

The "catalytic case" decision that "the right to a clean environment is a necessity for all people and should be considered a fundamental right of every" was upheld by the courts. The case is often cited as the impetus for the discussion of environmental rights, and the Pakistan Environmental Protection Act 1997, which was drafted to meet the requirements of the Rio Declaration of 1992, was passed shortly after. (Hameed, 2008)

Literature Review

The question of what is meant by environmental rights and how they can be recognized and enforced has been brought up in light of the idea that individuals, communities, future generations, ecological diversity, and the environment all have rights. Instead, proponents of environmental rights use these clarifications, which highlight the interests of every entity involved. It does not follow, however, that these are not deserving of discussion and consideration. The strongest advocate of this idea involves Merrill.

However, A. D'Amato's article, "Do we owe a duty to the future generation to preserve the global environment?" (D'Amato, 1990) and his subsequent collaboration with S. Chopra, "Whales: Their Emerging Right to Life," which analyses the right to environment by giving example of whales, can be seen as the origins of this concept. Further, in his book "Constitutional Environmental Rights," T. Hayward makes the case for why citizens of modern democratic states should have the right to a clean and healthy environment as a fundamental human right guaranteed by their country's founding documents. By bringing attention to these ideas, advocates for environmental rights have

compelled governments and judicial institutions to consider them. As such, the absence of a constitutional guarantee for environmental protections cannot be used to diminish their importance. (Chopra., 2017) Dr. Rakesh Kumar's book *Environmental Laws* is another resource we've used in our investigation; it provided valuable insight into the state of the environment in India, the challenges it faces, and the role the country's courts play in shaping environmental policy. However, they only focus on the function of the judiciary in India. (Kumar, 2011)

Nonetheless, the critics of these approaches indicate the adoption of these rights since these rights have characteristic challenges to cope with concerns of conflicting perspectives. To grant environmental rights to future generations, communities, animals, and the environment itself, as C. Giagnovo and H. Goldstein argue in their article titled *Law Reform: The Problem of Environmental Rights*, does not ornate the privilege or value of this right or its examination with other central esteems or rights. (Goldstein, 1989) In a similar way, P. Emond, in his article *Cooperation in Nature: A New Foundation for Environmental Law*, contends that the current legal scenario is adequate to provide judicial remedies in environmental cases by citing examples of governance systems that promote environment protection and other judicial precedents. The key challenge rests with the expressing and implementing environmental rights along with creating a balance with other social and economic rights. (Emond, 1984) Also, R. Emond argues that the current legitimate situation is sufficient to provide legal cures in environmental cases by relying on examples of administration frameworks that advance condition security and other legal points of reference in his article *Legal Rights for Nature: The Wrong Answer to the Right Question*. (Elder, 1984) Highlighting national laws, relevant forums and cases regarding different forms of grave environmental pollution discussed in book titled *Environmental Laws of Pakistan* the approach of judiciary towards environmental activism is discussed. The *Shehla Zia Case* has been cited by authors as a turning point in the development of environmental law and human rights. (Hassan, 1996)

Material and Methods

The research was structured using a qualitative research approach that involved a thorough reading of key sections from many reference books and scholarly journals. Primary research using the qualitative approach was conducted to gather data and contextual information. For the most part, it was drawing on the writings of judges, scholars, and other legal experts who have appeared in print. Textbooks, legislations, university web resources, and a well-stocked library are supposed to provide in-depth explanations to research problems. After that, we used electronic resources like Lexis Nexis, Hein Online, Westlaw, and Cambridge Law Journals and many more to glean information that rounded out our understanding of the material covered in the aforementioned books.

Results and Discussion

Human rights law and, more recently in our modern period, environmental law, have both been included in international law curricula. The two branches of international law were separated in the 1960s. The emergence of environmental law has led to a general consensus that understanding the relationship between human rights and environmental factors is crucial. We care more about the environment than most other things since our own existence and standard of living depend on it. Realizing basic human rights, such as the right to live, automatically entails providing for a safe and healthy environment. The Stockholm Declaration acknowledged the importance of

including the right to the environment in the broader framework of human rights. (Venkat, 2011)

While we applaud the widespread recognition of these rights, we recognize that not everyone agrees on how environmental and human rights are connected. There are many who are skeptical of the connection between the two areas of study and who base their skepticism on the fact that the two domains are so fundamentally distinct from one another that their merging represents a threat. Experts say that the two ideas should not be combined, as doing so would reduce the importance of other environmental issues concerning the use of tools by humans. Experts have also argued that if the two fields are integrated, it will take attention away from pressing global issues that need to be addressed under international human rights legislation. (Shanthakumar, 2008)

Dinah Shelton proposes a middle ground method of examining the connections between disciplines. She reasons that human rights and natural security are two sides of the same coin, albeit ones that are often kept separate in society. While not all violations of human rights can be traced back to environmental degradation, there is a core of common interests and objectives between the two fields. Similarly, environmental concerns are rarely satisfactorily addressed within the human rights framework, and attempts to force any such concern into the human rights framework risk fundamentally distorting the concept of human rights. As a result, this method is aware of the inherent tensions that can arise when protecting both natural resources and human rights. (Anton, 2008)

Going forward, the scenario given below demonstrates how there have been varying perspectives on the merger of two fields. "*The preservation of the environment is a key aspect of contemporary human rights doctrine, for it is a sine qua non for multiple human rights, such as the right to health and the right to life itself,*" Judge Weeramantry wrote in the *Gabaikovo-Nagyymaros case*. (Bekker, 1998) Damage to the environment can compromise and weaken all the human rights enumerated in the Universal Declaration and other human rights agreements, thus further explanation is hardly unnecessary. Aforementioned consideration of court over the subject highlights the significance of environmental rights and how these shall be safeguarded within the generic term Human rights.

Strengthful Procedural Rights Required

As a result of current issues, the study of environmental human rights has evolved in academia in recent years. Academics have been discussing the importance of the new field to the legal system. Arguments have arisen about both procedural and substantive rights. Yet, not every human rights treaty or convention guarantees safeguards for every type of environmental right. The Aarhus Convention is a clear example because it addresses environmental preservation in a specific and procedural setting. Its preamble not only acknowledges the principles of the Stockholm Declaration, such as the fact that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself, but also proclaims, each individual has the privilege to live in a domain sufficient to his or her wellbeing and prosperity and the obligation, both exclusively and in relationship to others, to ensure and enhance The UNECE-supported values of transparency, public engagement, and access to justice in environmental concerns are at the center of this document. This agreement is being adopted by many European countries, and its core concepts are being adopted by the courts. The link between human rights and environmental rights has been established in several major papers. Initially, the United

Nations attempted to solve these problems in order to guarantee fundamental human rights. Focus has shifted to developing policy and legal mechanisms through modern MEAs to address environmental concerns as time has passed. Even if these declarations bring attention to the measures that need to be established, they fail to convey how much human rights depend on environmental rights. (Glazebrook, 2009)

General Remarks 14 and 15, which interpret Articles 11 and 12 of the ICESCR to include significantly access to adequate, safe, and reasonably priced water for residential utilizations and sanitation; the aversion and reduction of introduction to harmful substances, including radiation and chemicals; and other adverse environmental impacts, have been adopted by the United Nations Human Rights Committee. These translations are essential and beneficial, and they have had an effect on related areas of international law, such as Article 10 of the UN Watercourses Convention, which addresses "key human needs" in the distribution of precious water resources. According to the UN Watercourses Treaty, "special emphasis is to be devoted to providing adequate water to preserve human life, including drinking water and water required for the creation of nutrition in order to fight famine." In this view, existing social rights assist promise a fraction of the crucial elements of a clean environment. (InternationalLawCommission, 1994)

While UNHCR-appointed rapporteurs investigated, examined, and provided details on environmental legislation and their implementation in each state. These studies have often highlighted environmental abuse on a global and national scale. Concerning human rights, for instance, experts gave their reports. Affirmations concerning the state of human rights in the DPRK and the availability of clean water and sanitation in Costa Rica. (UNHumanRightsCouncil, 24 February 2009)

Human Rights Council Resolution 16/11 states, in consultation with and taking into account the views of States Members of the United Nations, relevant international organizations and intergovernmental bodies, including the United Nations Environment Programme and relevant multilateral environmental agreements, special procedures, treaty bodies, and other stakeholders, it is necessary to conduct, within existing resources, a detailed analytical study. (UNResolution, 12 April 2011)

Cases of Human Rights Abuses through Environmental Degradation

Recent progress has illuminated the interconnection between disciplines. Human rights discussion in relation to environmental change is one example. A resolution on human rights and global warming was proposed by the Human Rights Council. The Millennium Ecosystem Assessment 2005 is another breakthrough; it reaffirms the ecosystem's dedication to human life prosperity, which is broken down into a hierarchy of components of well-being known as human rights. Furthermore, the United Nations General Assembly has affirmed the human right to clean water and proper sanitation, and this is consistent with all basic human rights. Equally important to the Human Rights Council was the right to life and respect for one's dignity, as well as access to safe drinking water. The state governments were urged to comply with these resolutions and provide clean water to communities, especially indigenous groups, through a resolution passed by the Human Rights Council in 2010. (UNResolutions, 27 May 2016) The subject of development initiatives, and the need for them to respect human rights generally, is also addressed. Despite the environment's inadequate safeguard provisions, human rights cases are being brought before international and local oversight bodies. *Ordes and Temeharo v. France*, for example, claimed that predicted atomic testing would violate the candidates' right to life and family if it took place near their place of residence; however,

the Human Rights Committee ruled that the claim was inadmissible because domestic remedies were not available. The environmental impact of atomic reserves near lodging was cited as a violation of the right to life in *H.P. et al. v. Canada*. (H. P. et al. v. Canada, 1991) The ACHPR and a supplementary protocol to the American Convention on Human Rights both include explicit clauses protecting the right to a healthy environment, while the Convention on the Rights of the Child has a similar protection. To better understand environmental rights, scholars have removed them and broadened the scope of other types of rights. According to the court's expansive reading of Article 2 in *LCB v. UK* (LCB v. UK, 1998), Article 8 may be invoked against a violation in environmental cases, while Article 2 imposes a duty on states to protect citizens' lives by adopting effective and immediate safeguards. *The Hope v. British Nuclear Fuels* case (Hope v British Nuclear Fuels Ltd; (1993) QBD (HC) (UK)) examines the connection between environmental degradation and illness in children. Its environmental activity was found to be unrelated to the disease, illuminating the fact that human rights and environmental rights are not always intertwined. The problem occurs when the courts are presented with evidence suggesting that there is no causal link between environmental degradation and the resulting community harm. Such hypothetical situations have prompted academics and judges to come up with a strategy for addressing problems that cannot be solved by simply expanding the scope of current laws. Another new worldwide problem that needs to be solved is the transboundary impact of pollution. The transboundary issue was considered by the court in the case *United States v. Canada* (State vs Canada, 1941), when it was decided that a state is responsible for pollution that travels over its borders and harms residents of another. The state is, in theory, responsible for damages it causes by illegal actions; in practice, however, the burden of proof often falls on the victim state. This means that the old concept of state responsibility is being replaced, in an environmental context, by the concept of causing damage to the international cooperation framework. To further cement this idea and its implementation, new resolutions have been passed.

Analogies between States and the Right to the Environment in the Constitution

Throughout this time of development, once-backward countries like Bangladesh have become prosperous democracies in the EU region, with constitutional protections for a healthy ecosystem and population. Some countries regard environmental protections as fundamental, while others treat them more as convention-based, procedural protections rather than constitutionally guaranteed rights. Portugal was the first country to guarantee Aarhus cultural rights in their constitution. (BANG. Const. Art. 66, 1972) Moreover, provisions can be found in the constitutions of Kenya (KE. Const. Art. 42, 2010), India, Bangladesh, and the European Union. Environmental laws do not specifically safeguard procedural rights including access to justice, participation in decision making, and the right to obtain information, but they do follow the framework specified in the Aarhus Agreement. The French constitution guarantees the right to participate in environmental decision-making and to receive information from authorities, but these are procedural, not substantive, rights (Charte de l'environnement, Art. 7, 2004). Several constitutions combine substantive and procedural protections; for instance, Brazil's constitution guarantees the right to a sustainable environment alongside a procedural guarantee that the government would implement safeguards and perform evaluations. (BR. Const. Art. 225, 1988) The Slovenian Supreme Court upheld the constitutionality of environmental protections while also protecting the environment by imposing a fee on water pollution. (Pavel Ocepek, *Breg pri Komendi*, 1999) Green tribunals, special courts, and agency acts are only some of the robust judicial systems set up in many nations to address infractions and lawsuits launched against these abuses.

As David Richard Boyd sees it, the procedural rights support the substantive environmental rights rather than taking a distinct tack. All of these protections are aimed at the same thing. (Boyd, 2010)

The Indian Constitution is cited as an example of a document that includes environmental protections designed to ensure that the country's natural resources and wildlife are preserved for future generations. Furthermore, Indian residents are obligated by Article 51-A of the country's constitution to preserve natural resources even while they use them. Although each of these clauses is strong on its own, its implementation is limited by Article 37 of the Constitution, which specifies that none of the aforementioned safeguards may be enforced through the courts but must be obeyed by states when it comes to legislation and governance. (IND. Const. art. 48, 51 - A,37, 1949) Without the ability to be upheld in a court of law, these safeguards are meaningless, albeit they are nevertheless called "just orders."

Environmental Regulation in Pakistan

Seventy-seven countries were represented by Pakistan in the 1992 Earth Summit, an event to which Pakistan was devoted. At first glance, Pakistan appeared to be a significant participant at UNCED. Because of the state's widespread involvement in environmental events prior to the Rio Declaration, environmental protection was prioritized and substantial progress was made. The Pakistan Environmental Protection Ordinance, 1983 was superseded by PEPA, 1997. The legislation enacted by the PEPC Act has become a prominent and efficient platform for making policy decisions. PEPA established a federal agency in addition to provincial counterparts. In addition, the Act had measures for operating and managing industrial pollutants that predated EIA requirements. Prohibition orders for water, noise, and air pollution, the creation of environmental courts, and the establishment of province Sustainable Development Funds are all granted by this act. The Federal Ministry of Environment, which has been established as an independent authority with its own mandate, continues to gain steam in the lead-up to the Earth Summit. The current administration has formed a distinct ministry of environment at the highest level of government. The ministry oversees five agencies: four from the province and one from the federal government. At the 1992 Earth Summit, Pakistan attended and signed a number of international agreements. Pakistan also developed the National Conservative Strategy (NCS) at the same period to help with environmental protection. (Naureen, 2009)

Ten years later, however, when one examined Pakistan's progress in advance of the 2002 World Summit on Sustainable Development ("WSSD") held in Johannesburg, South Africa, it became clear that the Rio Declaration had not produced the desired outcomes. The assurance of these initiative activities has not been carried out, despite progress at the stage of strategy creation, legislation, and the stabilizing structure of mechanisms acting at the federal and provincial levels. The PEPC's 1993 declaration of NEQs has not yet been put into effect. For many countries, especially those still in the process of developing, a lack of political will, financial aid, specialized people and technical resources, and crucial amplitude has also hampered execution. ' Yet, the new environmental order has been unable to defeat Pakistan because of constraints. The court in Pakistan has a crucial role in reporting and protecting the right to a healthy and clean environment, which is guaranteed by the country's Constitution. Many national responsibilities in terms of policymaking and regulation were proposed at the 1972 Stockholm Conference on the Human Environment. The only thing it says about ecology is that it allows both the federal and provincial governments to pass laws in this area,

and that in the event of a conflict between federal and provincial initiatives, the federal initiative will take precedence. (Hassan , 2002).

This is why we have agenda-implementation processes. Administrative measures, sanctions, public engagement, an environment protection order, and judicial measures through the court system are all described in the Environmental Protection Agency's 1997 Environmental Protection Act. The government has set up an institutional structure to enforce the laws that have already been passed. The initial delegation of authority within the federal structure has been made to the Ministry of Environment. Administrative authority rests at the very top of the pyramid, with the Secretary of the Ministry of Environment in charge. It also includes departments that focus on environmental management in both urban and rural settings, as well as natural resource preservation. PEPC's job is to make laws and create rules and guidelines for the environment. On top of that, the Council is trying to incorporate the idea of sustainable development into laws and the overall strategy for the country. Yet, PEPA's mandate to carry out the Act is not lawful. After being disbanded in 1997, the Act of 1997 reinstated the Pakistan Environmental Protection Council (PEPC) as the highest statutory body in 1994. In addition, it includes ancillary federal and provincial agencies responsible for carrying out programmes like the EPA. It can enforce environmental protection laws, examine them, and come up with new ones, called National Environmental Quality Standards (or "NEQS"). Labs, surveys, and inspections of environmental impacts are also under the purview of these agencies. Agency workers put in long hours to spread the word about the need of maintaining a clean and healthy environment. Coordination between PEPC, PEPA, and the Ministry of Environment falls under the Ministry of Environment's purview. To enforce pollution regulations, carry out administrative tasks, and keep an eye on polluting businesses and individuals, all four provinces have formed Environment Protection Agency (hence referred to as EPAs). The Environmental Protection Act of 1997 establishes EPA agencies at both the federal and provincial levels. In addition, the provincial level has established a Sustainable Development Fund ('SDF') to channel funding from NGOs, the government, and foreign organizations. The allocated monies are utilized largely for long-term development, protecting the environment, and promoting a healthy and safe community. National environmental quality standards (NEQs) were designed at the grassroots level for the purposes of management and quality assurance of practices to address harmful industrial practices through the testing of the quality of activities conducted by organizations that do not contribute to pollution. (Saeed, 2012)

Legal and Regulatory Framework

The emergence of environmental law advocacy in Pakistan represents a watershed moment for the country's environmental future. Courts in Pakistan have been compelled to construct environmental jurisprudence in response to complaints and issues including locus standi, community interest, human rights abuses, and other disagreements. The 18th amendment significantly altered the institutional basis for environmental protection in Pakistan. It defined the environment to be a provincial matter, permitting provinces to develop the legislation framework and strive towards environmental conservation. As a result, provincial laws in Pakistan had an impact on the federal Environmental Protection Act. To comply with the order, the province of Punjab passed the Punjab Environmental Protection Act 2012 to safeguard, enhance, and restore the natural environment. Furthermore, for counteractive activities for control of pollution and sustainable development, it has given an independent and extensive judicial institutional architecture consisting of distinct courts and magistrates. Tribunals with authority can trial offences, conduct preliminary environmental examinations, and

hear appeals from environmental protection agencies. while magistrates are entitled to arrest, issue warrants, grant bail, and try specified charges relating to hazardous substances. (Sardar Aasif Sial, 2018) Tribunals are empowered to exercise criminal jurisdiction as a court of session under Criminal Procedure 1898. Appeals from decisions made by environmental tribunals are handled by the High Court's Division Bench. When discussing the jurisdiction and organization of courts, it is important to note that green courts, the primary forum for the resolution of environmental disputes, exist in every district. They have been established under EPA. where green benches are established and working under the Supreme Court. The Supreme Court has the final say on matters of environmental law and may take *Suo moto* action against those who violate them. The courts have recognized that environmental issues can take a variety of forms, and that there is a dynamic tension involved, which may mean that it is impossible to address one without changing others. (Qamar, 2020)

Comparison of Constitutional and Statutory Remedies

According to a review of previous judicial decisions, the fundamental protections for the right to a healthy environment are included in the right to life and the right to protect human dignity. This stance was defined by the Pakistani Supreme Court in the case *Shehla Zia v. WAPDA*, (Ms. Shehla Zia v. WAPDA, PLD 1994 SC 693 (PAK)) which has been addressed internationally. The standard was established that the right to life protects not merely the right to live but, by its very nature, also provides protection for all those necessities and human aspects necessary to living a life of dignity. The precautionary principle is also a topic of discussion among the justices of the Supreme Court. Many cases have been adjudicated in light of articles 9 and 14 of the Rio Declaration, regardless of the fact that these particular statutes were not established for environmental protection and infractions. Cases examined under Articles 14 and 9 with the same *stare decisis* include the *Polythene Case*, the *River Ravi Case*, and the dumping of nuclear waste into the Baluchistan coastline. (PAK Const. Art. 9 & 14, 1973)

Subash Kumar v. State of Pradesh ruled that any exploitation of the environment that damages the eco system violates the right to life. This decision established that people have a right to a clean and healthy environment in order to live. (Kumar v. Pradesh (1991) JT (SC) 538) Similarly, in *Dehradun v. State of Uttar Pradesh*, ((1985) AIR (SC) 653 (IND)) the court ruled that the complaint should be heard as a writ petition because of the grave threats to public health and safety posed by limestone mining. Based on our research on the environmental protections guaranteed by the constitutions of India and Pakistan, we can confidently assert that the right to life has been widened to encompass the guarantee of a safe and wholesome natural environment for all people. Although though courts can't do much to enforce environmental protection laws, they're not afraid to hear writ petitions alleging infringement of people's basic rights.

Environmental Tribunals Expertise

In 1999, both Lahore and Karachi formed environmental tribunals. All provinces now have environmental tribunals with territorial authority since the year 2000. In order to handle cases involving environmental infractions, the Special Law for Environment Tribunal Act of 1997 created environmental tribunals. It has appellate authority over tribunal cases as a civil court under Civil Procedure 1908, and it has criminal jurisdiction under Section 20 of the Act. As was previously established, the courts have the authority to preserve not only pollution but also natural resources, coastal seas, and animals. In addition, the Act sets up a regulatory agency to handle complaints and pursue criminal prosecution in the event of infractions. Since such violations are an assault on the

community and future generations, the courts in Pakistan make sure that their judgements are fully implemented. The court delivered a verdict in the cases of *Shehri CBE v. Sindh EPA* (CBE v. EPA (2012) C.P.D (HC) 3851. (PAK)) and *Naeem Mughal v. Jabir and others* (Mughal v. Jabir, (2006) (SC) Human Rights Case No. 3747, (PAK)), and also ordered the city district to submit an environmental effect assessment report to the court to ensure that authorities complied with the judgement. When it comes to enforcing their rulings, courts have gone to extraordinary lengths on numerous occasions in the past. Pakistani courts have taken a leading position in judicial strictness, drawing attention to this problem as a threat to citizens' human rights. By ordering government agencies to comply with environmental quality standards and impact studies, tribunals have tried to include more levels of government in protecting the environment. The court ordered the Environmental Protection Agency to revoke the licenses of laboratories that had previously been authorized to issue certificates for meeting environmental quality standards after complaints were filed against four sugar mills for violations of environmental protection standards that had gone unnoticed by officials.

Environmental Justice: An International Concept

It is important to realize that the community's health, environment, and the consumption of natural resources are all affected by the region's industrial, commercial, and other activities. When comparing developing nations to more developed nations like the United States, this idea presents a new issue. Environmental justice has diverged due to racial discrimination and the low-income class when comparing practice in England, South Africa, and Central Europe. Those at the bottom socioeconomic rungs of society are more at risk from environmental degradation issues that affect them, a survey found. Several studies have found that countries with a high rate of income equality, a high rate of literacy, and a high rate of civil rights protections also have a high rate of environmental protection and environmental quality, like those in the Scandinavian countries. (Brunnée, 2009) The ACE Alternatives for Community and Environment organization in Boston, which seeks to increase citizen participation in environmental policy and social issue decision-making, is an example of a positive American project. It also strongly upholds everyone's right to a clean environment and involvement in decision-making for the creation, implementation, and enforcement of environmental laws, as stated in the ACE strategic plan for 2002–2007. The organization's ultimate goal is to achieve environmental justice in the country by eliminating the disparities that exist between community classes.

Landmark Green Precedents

The Supreme Court of Pakistan interpreted Article 9 of the Constitution of 1973 in the landmark decision of *Shehla Zia v. WAPDA* (Ms. Shehla Zia v. WAPDA, PLD 1994 SC 693 (PAK)) as a fundamental safeguard protecting not just life in its literal sense but all the essential conditions necessary for survival. The right to a safe and sanitary environment was reaffirmed as fundamental to human rights. The precautionary concept articulated in Rio's proclamation was also submitted in court. In the *Khewra Mine Case* (Khewra v. Mineral (1994) SCMR (SC) 2061. (PAK)), the Supreme Court used its authority under Article 184(3) to decide that access to clean water is a human right and that widespread water pollution from coal mines constitutes a violation of this right. The above judgements show that in such circumstances, the judicial approach has been suitably nuanced because the situation is not yet perfect but has been changed. The courts have taken an expansive view, expanding their scope of authority in environmental cases.

While the Supreme Court did take note of the noise and pollution case, The *Islamuddin Case* (Islamuddin and others vs. Ghulam Muhammad and others (2004) PLD (SC) 633. (PAK)) holds that any noise, even if it is produced in the course of lawful labor, that causes discomfort and is detrimental to health or the community is a public nuisance. In addition, the court acted on its own initiative (Suo moto) in *Pir Sohawa Valley Villas Case* (Suo Moto (2005) Case No. 13 (PAK). See: Report 2005 – 2006 SC of Pakistan), where the challenged housing development threatened the sustainability of the Margala Hills in Islamabad. Two kilometers from the Margalla Hills, where the housing proposal was unveiled, the Supreme Court initiated suo motu proceedings in *Islamabad Chalets* and *Pir Sohawa Valley Villas*, halting the development of both areas. The Margalla Hills ecology would have been directly impacted by the proposed housing development. The New Murree Project brought up the theme of our responsibility to future generations and the importance of environmental protection for future generations' well-being. The court ruled the proposal to be unlawful due to concerns about fairness between generations and the promotion of sustainable development. Similarly, the Court in the *MAX Theatre Case* (Sheri – CEB v. Authority (2006) SCMR (SC) 1202. (PAK)) stated that erecting a cinema in Public Park without first completing the requisite environmental evaluation. This behavior was deemed illegal and prohibited by the Act.

The courts have weighed in on the significance and goal of environmental impact assessments, noting that they represent humanity's earliest attempt to maintain order. It is another regulatory framework to safeguard the environment and other variables impacting it. In the *Shehla Zia Case*, the courts have been continually transparent while addressing numerous ecological concerns. To sum up, challenges and new problems do not render previous decisions and methods obsolete. The aforementioned sources further demonstrate how courts have adopted a holistic view of the issues at hand. In reality, they begin with them. With the courts' limited ability to render ecological justice, putting these laws and strategies into viable execution calls for a monstrous sense of duty. (Hassan P. , Judicial Commissions and Climate Justice in Pakistan, 2018)

Conclusion

For obvious reasons, global progress and development are aggravating environmental issues. Throughout investigations, it became clear that environmental problems are on the rise, and not just in the realms of law and implementation. Because of irresponsible human use of natural resources, finding a middle ground between economic growth and environmental protections is challenging. Pursuing progress that is in the nature of humans while also adhering to the natural and moral ideal of conserving the environment is a holistic solution to all the challenges that plague our species. The goals of economic progress and environmental protection are not mutually exclusive, and there is still time to find a middle ground. If more people became involved in both disciplines, and aggressive environmental justice procedures were put in place, we might be able to reach our aims.

It deals with judicial activism in environmental issues or environmental justice are grounded in a review of the courts' function in upholding the constitutionality of the right to the environment in the contemporary era. The court cannot ignore the environmental objection made by my neighborhood. Nor will it restrict its authority to the already-in-place tools for corrective action. It should be noted that the court has little room to consider the issue because Pakistan does not have a separate explicit provision on the right to a healthy and safe environment. Since this is a matter of the right to life, the courts are taking action, but this does not solve the problem of environmental deterioration that does not threaten human or animal life. Therefore, it is essential to

recognize people's inherent right to a pristine natural setting. While the courts are responsible for enforcing the law, the promotion and prevention of crime are the purview of the legislature and the government, respectively.

Recommendations

Active Involvement of Organizations

The American Conservation Experience (ACE) serves as an inspiration for our need for a reputable local organization to focus on environmental justice by tackling the underlying classism that contributes to environmental degradation's disproportionate impact on the poor and their resource use. Organizations like ACE that focus on environmental education for children need adequate funding to carry out their missions effectively.

Amendment in Section 17 of the Act

For environmental protection, Section 17 of the Act has to be revised so that offenders are instead required to complete community service projects like encouraging the greening of neighborhoods or planting trees. This approach is more likely to provide the intended outcomes.

Environmental Assessment

After researching international standards and practices, we concluded that in developed countries, environmental audits of companies, industries, stakeholders, and government projects are conducted on a yearly basis to promote accountability in industrial activities and control environmental violations.

Suo Moto Power

The findings of this study will suggest that environmental tribunals be granted suo moto action authority, as stated in Section 21 outlining the jurisdiction of environmental tribunals. The tribunal has the authority to act independently when it becomes aware of a breach.

Defects in Decision-Making Procedures

PEPC is obligated by law to hold two meetings every year, although in recent years it has failed to do so. Based on our research, we've determined that the ability granted to the president to call meetings is flawed. Nevertheless, this is not the case because the president is tasked with many responsibilities at once. If the appropriate minister is granted the authority to convene meetings for the proper follow-up of procedures, this fault will be corrected.

Integration of Ecology and Microeconomics

Considering environmental contamination and polluter penalties, we suggest a cutting-edge accounting system that flips the script on regional and national natural resource consumption. In addition to discussing the rise in GDP, it is important to discuss the utilization of available resources. It needs to make it very obvious that the Treasury's wealth has decreased. There needs to be some consideration for the costs to national resources that will accrue if market regulations are not followed and environmental damage is caused.

Independent Legal Right to a Healthy Environment in the Constitution

The constitutional right to an acceptable environment must be justified in terms of its practical advantages because exercising this right is analogous to exercising other constitutional rights. It maintains harmony between a citizen's individual rights and the rights of the community, which serve a broader purpose. A ruling by a Belgian court that successfully found a compromise between competing economic and environmental concerns is inspiring to consider. The sole protection of the right to a clean environment is ensured by a constitutional provision.

References

- (1985) AIR (SC) 653 (IND).
- Anton, D. (2008). Is the environment a human rights issue? *ANU College of Law Research Paper*, 3 (11), 08-11.
- BANG. Const. Art. 66. (1972).
- Bekker, P. H. (1998). Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment. *American Journal of International Law*, 2 (92), 273-278.
- Boyd, D. R. (2010). The environmental rights revolution: constitutions, human rights, and the environment. *Journal of University of British Columbia*, 1 (8), 111-145
- BR. Const. Art. 225. (1988).
- Brunnée, J. (2009). Climate change, global environmental justice and international environmental law. *Environmental law and justice in context*, 4 (12) 316-332.
- CBE v. EPA (2012) C.P.D (HC) 3851. (PAK).
- Charte de l'environnement*, Art. 7. (2004).
- Chopra., A. D. (2017). Whales: Their Emerging Right to Life. *International Legal Personality*, 393-434.
- D'Amato, A. (1990). Do we owe a duty to future generations to preserve the global environment? *American Journal of International Law*, 1(84), 190-198.
- Dube, I. (2007). Environmental Jurisprudence-Polluter's Liability. *Environmental Jurisprudence: Polluter's Liability, LexisNexis Butterworths*.
- Elder, P. S. (1984). Legal Rights for Nature-The Wrong Answer to the Right (s) Question. *Osgoode Hall LJ 22*, 285.
- Emond, D. P. (1984). Co-operation in Nature: A New Foundation for Environmental Law. *Osgoode Hall LJ 22*, 323.
- Glazebrook, S. (2009). Human rights and the environment. *Victoria U. Wellington L. Rev.* 40, 293.
- Goldstein, C. G. (1989). Law reform or world re-form: The problem of environmental rights. *McGill LJ 35*, 345.
- H. P. et al. v. Canada, C. (1991). U.N. Doc. CCPR/C/43/D/358/1989.
- Hameed, O. N. (2008). Evaluation of environmental impact assessment system in Pakistan. *Environmental Impact Assessment Review*, 8 (28), 562-571.
- Hassan, J. (1996). Environmental Law of Pakistan. *Glob. Env'tl. L. Ann*, 15.
- Hassan, P. (2002). From Rio 1992 to Johannesburg 2002: A Case Study of Implementing Sustainable Development in Pakistan. *Sing. J. Int'l & Comp. L.* 6, 683.

- Hassan, P. (2018). Judicial Commissions and Climate Justice in Pakistan. *Asia Pacific Judicial Colloquium on Climate Change: Using Constitutions to Advance Environmental Rights and Achieve Climate Justice, Lahore, Pakistan*, 4 (31), 26-27.
- Hope v British Nuclear Fuels Ltd; (1993) QBD (HC) (UK).
- IND. Const. art. 48, 51 – A,37. (1949).
- International Law Commission. (1994). *Draft articles on the law of the non-navigational uses of international watercourses and commentaries thereto and resolution on transboundary confined groundwater*. Yearbook of the International Law Commission.
- Islamuddin and others vs. Ghulam Muhammad and others (2004) PLD (SC) 633. (PAK).
- Kamble, R. M. (2013). Impact of Globalization on Human Rights and Environmental Protection. *International Journal of Scientific and Research Publications : .*, 3(5), 1-5.
- Kamble, R. M. (2016). *HUMAN RIGHTS AND ENVIRONMENT*.
- KE. Const. Art. 42. (2010).
- Khewra v. Mineral (1994) SCMR (SC) 2061. (PAK).
- Kumar v. Pradesh (1991) JT (SC) 538.
- Kumar, R. (2011). *Environmental Laws*. APH Publishing.
- LCB v. UK, 108 (ECHR 1998).
- Ms. Shehla Zia v. WAPDA, PLD 1994 SC 693 (PAK).
- Mughal v. Jabir, (2006) (SC) Human Rights Case No. 3747, (PAK).
- Naureen, M. (2009). Development of environmental institutions and laws in Pakistan. *Pakistan Journal of History and Culture*, 1 (30), 93-112.
- PAK Const. Art. 9 & 14. (1973).
- Pavel Ocepek, Breg pri Komendi, Up-344/96, 04/01/1999 (Constitutional Court 1999).
- Qamar, M. Y. (2020). The Aspects Of Legislation In Environmental Management: Case Study Of Punjab Province (Pakistan). *Pakistan Journal of Science*, 2(72), 45-58.
- Saeed, A. S. (2012). Environmental impact assessment (EIA): an overlooked instrument for sustainable development in Pakistan. *Environmental monitoring and assessment*, 4 (17) 1909-1919.
- Sardar Aasif Sial, S. M. (2018). *Review of existing environmental laws and regulations in Pakistan. Punjab, Pakistan*. WWF-Pakistan.
- Shanthakumar, S. (2008). *Introduction to Environmental law*. Wadhwa and Company.
- Sheri – CEB v. Authority (2006) SCMR (SC) 1202. (PAK).

State vs Canada, 3 (Arbitral Tribunal 1941).
https://legal.un.org/riaa/cases/vol_III/1905-1982.pdf

Suo Moto (2005) Case No. 13 (PAK). See: Report 2005 – 2006 SC of Pakistan.

UNHumanRightsCouncil. (24 February 2009). *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea* (U.N. Doc. A/HRC/10/18).

UNResolution. (12 April 2011). *Human rights and the environment* U.N. Doc. A/HRC/RES/16/11. Human Rights Council.

UNResolutions. (27 May 2016). *UN Environment Assembly at its second session*. Committee of Permanent Representatives.

Venkat, A. (2011). *Environmental law and policy*. PHI Learning Pvt. Ltd.