



Environmental Jurisprudence of Pakistan: Mediation, Arbitration and other tools of Dispute Resolution

Justice Ali Baqar Najafi
Judge Lahore High Court
Pakistan

Importance of Environment



Problem of pollution being more dangerous as compared to destruction by Hydrogen Bomb, it is proper and high time to implement the law in letter and spirit without discrimination as the life of human being is more precious.

Anjum Irfan v. LDA (PLD 2002 Lah. 555)

Legislative Regime for Mediation and Arbitration of Environmental Disputes

- Pakistan Environmental Protection Ordinance, 1983
- Pakistan Environmental Protection Act, 1997
- Khyber Pakhtunkhwa Environmental Protection Act, 2014
- Sindh Environmental Protection Act, 2014
- The Baluchistan Environmental Protection Act, 2012
- The Punjab Environmental Protection Act, 1997 (Amended 2012)



Environmental Dispute Resolution under General Laws

Code of Civil Procedure

Section 89-A CPC

- Use of ADR at the Option of Court
- For Expeditious Disposal
- Consent of Parties is mandatory
- Mediation and Conciliation

Arbitration of Environmental Disputes

Arbitration Act, 1940

Three Scenarios for Arbitration

- Arbitration without intervention of a court
- Arbitration with intervention of the court where there is no suit pending
- Arbitration in suits



General applicability of Mediation and Arbitration in Pakistan



Mediation and
Arbitration are
not favorite
tools of
Dispute
Resolution in
Pakistan



- Formerly Karachi Center of Dispute Resolution (KCDR) now National Center of Dispute Resolution (NCDR) is also working on this front.
- Lahore ADR Center is in offing.

Environmental jurisprudence

Personal Right v. Environmental Right

If there is conflict between a personal right and environment, the personal right must yield in favour of environment.

*Karachi Building Control Authority vs Saleem Akhtar
Rajput 1993 SCMR 1451*

Environmental Jurisprudence

Environment as a part of Right to Life

- In *Shehla Zia* case right to life extended.
- Healthy environment declared as a part of right to life and Dignity.

Ms. Shehla Zia and others v. WAPDA PLD 1994 SC 693

Precautionary Principle

August court therefore ruled in favour of **precautionary policy** by relying on Rio Declaration on Environment and Development principle No.15.

Ms. Shehla Zia and others v. WAPDA PLD 1994 SC 693

Sustainable development

Court held:

“Therefore, a method should be devised to strike balance between economic progress and prosperity and to minimise possible hazards. In fact a policy of sustainable development should be adopted.”

Ms. Shehla Zia and others v. WAPDA PLD 1994 SC 693

Right to clean Water



In Khewra Mines Case Court held that availability of clean water to population is necessary facet of life. (1994 SCMR 2061)

Nuclear Pollution Case



Supreme Court prohibited allotment of any land for dumping of nuclear waste in Baluchistan. (PLD 1994 SC 102)

Traffic Pollution



Supreme Court passed necessary directions to control traffic pollution in Karachi. (1996 SCMR 543)

Amenities Pollution

Supreme Court passed necessary directions to control pollution by multistoried buildings in below cases:

- Mst. Zubaida A. Sattar vs Karachi Building Control Authority 1999 SCMR 243
- Jawad Mir Muhammadi vs Haroon Mirza and others PLD 2007 Supreme Court 472
- Farooq Hamid vs L.D.A. and others 2008 SCMR 468
- Sheri-CBC vs Lahore Development Authority 2006 SCMR 1202

Right to Pure Food

An attempt to import infected Betel nuts was blocked.



Adeel-ur-Rehman vs Federation of Pakistan 2005 PTD 172

Sustainable Development and General Protection of Environment



New Murree Project was questioned on the basis of sustainable development and same was dropped by the Government voluntarily. (2010 SCMR 361)

Environmental Jurisprudence of Present Decade



Sustainable Development through Mediatory Approach

- In Widening of Canal Road case, Mediation Committee was appointed.
- Matter resolved on the report of Mediation Committee. (2011 SCMR 1743)



Decent Environment

Decent environment is a part of right to life. **(PLD 2011 SC 619)**



Enforcement of Corporate Social Responsibility

Supreme Court took suo motu notice to enforce corporate social responsibility for protection of environment. (PLD 2014 SC 350)



Sustainable development in present decade

In Signal Free Corridor case, Supreme Court declare the project environment friendly.

(2015 SCMR 1520)



Green Benches & Green Courts

- Green benches at High Courts have been established to deal environmental cases exclusively.
- Green Courts at District level have been established to deal environmental cases.

CEEJ

- Committee for Enhancing Environmental Justice has been established.
- It consists of Senior Judges of Superior Courts to oversee the matters of environmental justice.

New Dimensions

- Suo Motu
- Amicus Curiae
- Departmental Reports
- Commissions
- Expert Committees
- Mediation

Thanks