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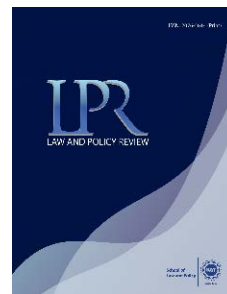
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# Relationship between Domestic Environmental Law and International Environmental Law Principles

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## Abstract

The current study attempted to investigate the integration of concepts from international environmental law into Pakistan's Environmental Protection Act (EPA). Notable instances, such as *Shehla Zia v. WAPDA*, are cited to underscore the judiciary's pivotal role in shaping Pakistan's environmental policies. The study emphasized the judiciary's adherence to global principles, such as the Precautionary Principle and the Stockholm Declaration, relating them with the right to life. It also highlighted the judiciary's steadfast commitment towards environmental preservation and endorsement of international standards to promote a healthier and safer environment in Pakistan. The study not merely focused on the incorporation of international criteria, however, it also analyzed various legislations. These legislations ranged from the Constitution of Pakistan to the Environmental Protection Act (EPA) and their implementation by diverse environmental agencies.

**Keywords:** environmental law, international environmental law, judiciary, Pakistan Environmental Protection Act (EPA), Precautionary Principle, Stockholm Declaration

## Introduction

In recent decades, Pakistan's apex court has issued multiple judgments on environmental issues, establishing a commendable precedent (Ahmed, [2015](#)). Building on this strong foundation, High Courts in each province have embraced and implemented these precedents in handling environmental disputes. Courts throughout Pakistan, beyond the provinces, have also issued numerous rulings addressing diverse environmental concerns encompassing areas, such as industrial waste management, solid waste disposal, water pollution (Mukhtar, [2023](#)), land acquisition, construction, natural resource conservation, bird hunting, air and noise

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pollution, public nuisance, and breaches of international environmental standards (Lau, [2018](#)).

The current study delineated the Judiciary's role in environmental efforts, particularly highlighting the Supreme Court's comprehensive interpretation of the right to life and dignity within the context of environmental legislation as exemplified in the case of *Shehla Zia v. Water and Power Development Authority*. Although, the right to life and environment is not explicitly defined in the Pakistani Constitution, the Courts have provided interpretations that address environmental issues.

Furthermore, the study also delved into the discussion of international treaties and conventions on environmental law concerning Pakistani enactments. The Supreme Court and other Courts have cited principles, such as Principle 15 of the Rio Declaration of 1992, Principle 2 of the Stockholm Declaration of 1972, and Articles 2, 3, 4, and 5 of the 1979 Convention on the Conservation of Migratory Species of Wild Animals (CMS) in various cases (United Nations, [n.d.-a](#)).

The current study aimed to assess the pros and cons of Pakistani legislation on environmental laws and also evaluated the Judiciary's role in environmental protection. It examined how international principles on environmental protection and interpretations of the right to life are applied along with their relevance to the environment. Additionally, the study focused on various environmental agencies' functions to contain pollution by enforcing diverse laws on environmental protection.

### **Legal Development of Environmental Law in Pakistan**

Over the years, the formulation of environmental law in Pakistan has undergone substantial changes to address the country's pressing environmental issues. The impetus for developmental efforts stemmed from the influence of donor organizations, such as the Asian Development Bank, World Bank, numerous Non-Governmental Organizations, and international conventions, aimed at mitigating pollution from sources, such as motor vehicles, industrial waste, and deforestation (Riffat & Khan, [2006](#)). The foundation for environmental protection lies in Pakistan's 1973 Constitution, particularly Article 9, which asserts the right to life, encompassing the right to a clean and healthy environment. In the landmark case, that is, *Shehla Zia v. WAPDA*, the Supreme Court of Pakistan established the constitutional guarantee that a healthy environment falls

under the right to life, reshaping the jurisprudential landscape of environmental challenges in the country.

To address environmental problems, Pakistani Courts have the authority to exercise *suo-motu* powers, although there is limited involvement in public interest environmental cases. Article 24 underscores the state's responsibility for environmental protection, and while not detailed, the state is obligated through other environmental enactments. The Environmental Protection Ordinance of 1983, an initial legislative response, targeted air and water pollution prevention, however, it was insufficient due to its outdated nature and lack of an enforcement mechanism. The ordinance failed to incorporate environmental concerns into growth processes and decision-making, leaving vulnerable populations, especially women and children, unprotected from environmental harm.

Subsequently, the Pakistan Environmental Protection Act (PEPA) of 1997 superseded the 1983 ordinance, offering a comprehensive legal framework for environmental preservation, conservation, waste control, and sustainable development. Despite these efforts, Pakistani cities still contend with some of the highest concentrations of particle pollution globally. Industrial and agricultural waste cause pollution in water resources. Moreover, deforestation rates remain alarmingly high, contributing to soil deterioration, biodiversity loss, and other sustainability challenges. The country is also susceptible to climate change effects, with rising sea levels and glacial melting occurring more frequently and intensely.

The establishment of Pakistan Environmental Protection Agency (Pak-EPA) under PEPA and the implementation of regulations governing environmental impact assessments (EIAs), pollution prevention, and hazardous waste disposal further demonstrate the commitment to environmental management (Ayaz & Ansari, [2013](#); Iqbal et al., [2022](#)). In 2005, Pakistan introduced the National Environmental Policy, outlining key concepts and measures for long-term growth and environmental safeguarding. The judiciary has played a crucial role in environmental protection, with historic decisions setting norms for environmental law in the country. Additionally, both federal and provincial levels have enacted subsidiary legislation and regulations to address specific environmental challenges, bolstering the legal framework (Lau, [2018](#)).

## Role of Judiciary in Sustainable Development in Pakistan

Judiciary plays a significant role in promoting sustainable development in Pakistan which is quite evident. Nasir Aslam Zahid emphasizes that the judiciary is tasked to safeguard and uphold the rights of people. Superior, subordinate, and tribunal Courts have all played crucial roles in this regard over the years (Zahid, [2019](#)). The Supreme Court of Pakistan, in particular, has made substantial contributions to environmental law, exemplified by the landmark Shehla Zia decision, a case well-recognized in Pakistani history for its pivotal role in supporting sustainable development concerning environmental issues. Since the Shehla Zia verdict, the judiciary in Pakistan has garnered substantial authority, notwithstanding potential uncertainties.

The Supreme Court has wielded its judicial powers to address violations of fundamental rights, especially through its extraordinary jurisdiction (United Nations Environment Programme, [2002](#)). The Court emphasizes two critical aspects, that is, exercising extraordinary jurisdiction and recognition of basic rights guaranteed by the Constitution of Pakistan (Abas et al., [2019](#)). Consequently, the Supreme Court has integrated the environment into the right to life and dignity of individuals, as articulated in Article 9 of the Pakistani Constitution, addressing personal safety, and Article 14, which addresses the inviolability of human dignity among other aspects. This illustrates the fundamental goals of safeguarding the individual rights and ensuring a clean, safe, and healthy environment as a basic human right.

In the Shehla Zia case, the Pakistani Supreme Court developed and interpreted the definition of "life" to encompass more than mere vegetative or animal existence, extending to the amenities and facilities that a person in a free country is entitled to enjoy with dignity, legality, and constitutionality. Article 8 of the Constitution renders any law inconsistent with basic rights null and invalid to the extent of such contradiction. Article 37(d) mandates the State to ensure the provision of affordable and timely justice. Additionally, in line with Article 38(d), the State is obliged to provide all citizens who are permanently or temporarily unable to earn a living due to infirmity, illness, or unemployment with the necessities of life. These necessities encompass food, clothing, housing, education, and medical relief, without regard to gender, caste, creed, or race.

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## **General Secretary, West Pakistan Salt Miners Labor Union v. Director Industries**

The residents residing near the mining operation have initiated a legal action against the company due to the pollution it has generated, posing risks to human health, plant life, and animals. In case review, the Court applied Shehla Zia precedent to recognize the right to a clean environment as an integral part of the right to life and human dignity. According to Pakistan Supreme Court's assessment, pollution emanating from the mining industry violates a fundamental right protected by the country's constitution. Consequently, the Court issued a directive mandating the relevant agency to relocate the mining operation to a different site within four months. This ruling was aimed to safeguard the rights of individuals and ensure that they enjoy an environment that is clean and free from the adverse effects of pollution caused by the mining sector (General Secretary, West Pakistan Salt Miners Labor Union v. Director Industries, [1994](#)).

## **Pakistan Chest Foundation vs. Government of Pakistan**

In this matter, the High Court of Lahore prevented advertisements from appearing on television, in newspapers, and on billboards. The Court defended its ruling by using Public Interest Litigation and Public Trust principles, with the aim of preventing ads from being shown on television, print, and electronic media (Pakistan Chest Foundation v. Government of Pakistan, [1997](#)).

## **Pakistan Judiciary and Application of the International Environmental Law Principles**

As a common law jurisdiction, Pakistan's constitution does not explicitly outline provisions for the integration, signing, and ratification of International Conventions. However, Article 97, titled 'Extent of Executive Authority of Federation,' within the Constitution grants the authority to exercise rights, jurisdiction, and authority in areas outside Pakistan. In contrast, the Pakistan Environmental Protection Act of 1997, specifically in Section 31, facilitates the incorporation of rules and declarations from international conventions into national law. This inclusion is essential to enable the judiciary to apply universal principles, as integrating international law principles without such provisions can be challenging for the Courts (Peel & Osofsky, [2018](#)).

Pakistan's judiciary has actively engaged with international law principles in various cases including *Shehla Zia v. Water and Power Development Authority*, *Muhammad Yousaf v. Province of the Punjab*, and *Sindh Institute of Urology and Transplantation vs. Nestle Milkpak Limited*. While, the Courts cannot directly enforce and implement international law, they have established connections with it. The Pakistan Judiciary has incorporated and invoked the principles of international environmental law in various cases. Notably, in the *Shehla Zia* case, the judiciary, for the first time, organized an international environmental law policy, specifically adopting the Precautionary Principle from the Rio Declaration of 1992. In *Muhammad Yousaf vs. Province of the Punjab*, the Lahore High Court also integrated the Precautionary Principle from the Stockholm Declaration of 1972, following the precedent set by the *Shehla Zia* case.

### **Principle 15**

“To protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation” United Nations ([n.d.](#)-a).

### **Sindh Institute of Urology and Transplantation vs. Nestle Milkpak Limited**

The Sindh High Court has affirmed the idea to maintain and safeguard the rights of both the present and future generations in this specific case. The Stockholm Declaration from 1972's Principle 2 was cited by the Court as another worldwide environmental principle (*Sindh Institute of Urology and Transplantation v. Nestle Milkpak Limited*, [2005](#)).

### **Principle 2**

“The natural resources of the earth including air, water, land, flora and fauna, and especially the representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate” United Nations (n.d. b).

### **Precedents Set by International Environmental Law**

The case of *Shehla Zia* is a ground-breaking turning point in the Pakistani environmental legislation. The *Water and Power Development*

Authority was sued by Shehla Zia for erecting a high-voltage grid station close to a residential neighborhood in Islamabad. She then went to the Supreme Court to ask for the grid station to be replaced. In the petition, the Supreme Court raised two important questions. First of all, it questioned whether the government possessed the right to endanger people's lives without their permission. Secondly, it examined whether the zoning legislation permitted the government to violate the basic rights protected by the Pakistani Constitution. While interpreting Articles 9 and 14, the Supreme Court recognized the right to life and determined that a clean and healthy environment is a crucial component of this right. It also proclaimed that all the facets of human existence are included in the word "life." The right to life under environmental law is not specifically addressed in the Pakistani Constitution.

### **Nazim Union Council Allah Bachayo Shoro vs. The State**

In this particular case, the focal point of the discussion revolves around companies releasing pollutants into Kotri's water supply canal. The Court has mandated the relevant agency to initiate legal proceedings against these businesses, in collaboration with the Environmental Protection Agency, for their release of pollutants into the canal. In doing so, the Court invoked Article 38 of the Constitution in connection with this case. The Court's decision draws upon a precedent set by the Supreme Court in 1991 (SCMR), where it affirmed that every citizen has the right to access clean and unpolluted water, irrespective of their place of residence (Nazim Union Council Allah Bachayo Shoro vs. The State, [2004](#)).

### **Muhammad Yousaf vs. Province of the Punjab**

This case involves an industry that was disposing of solid garbage in a nearby residential area. The concerned residents petitioned to the Lahore High Court, prompting the Court to impose a restraining order prohibiting the defendant from dumping rubbish. The High Court noted that pollution and emissions constitute a significant threat to human life, animals, and biodiversity, which is well-recognized. The Lahore High Court cited the Shehla Zia case in its conclusion, as well as another case, Anjum Irfan, in which it asked the Municipal Authority to construct alternate solid waste disposal plans (Muhammad Yousaf vs. Province of the Punjab, [2003](#)).



### **Shahjehan Khan vs. Deputy Commissioner Pishin, 2001**

This lawsuit addresses the operation of a tobacco mill near Baluchistan village of Killi Lumaran. The petitioners expressed their dissatisfaction with the mill's location in a residential area, citing health risks and noises for the inhabitants. However, the Court concluded that the relocation of tobacco mill would be discriminatory and unjust in these circumstances. Instead, the High Court issued orders to local authorities and the Environmental Protection Agency (EPA) to guarantee that the mill followed EPA laws and regulations. This action was taken to ensure that the mill does not pollute the environment (Shahjehan Khan vs. Deputy Commissioner Pishin, [2001](#)).

### **Tanvir Arif vs. Federation of Pakistan, 1999 CLC 981**

By imposing hunting limitations on the houbara bustard in Sindh, the petitioners in this case highlighted the necessity of safeguarding and conserving the wildlife, notably the houbara bustard. They urged the Federal and Provincial governments to take action to restrict wildlife hunting, claiming that permitting people to use national land for this purpose contradicts Pakistani laws and sovereignty. The Court agreed with the petitioners, stating that the Sindh Wildlife Ordinance protects wildlife and natural resources, with the government bearing the main responsibility for conservation and safekeeping. The Court specifically addressed the hunting of houbara bustards in the Sindh's provincial districts of Sanghar and Thatta by dignitaries from the United Arab Emirates. The Court devised the principle and urged that these activities should be prevented in future (Tanvir Arif v. Federation of Pakistan, [1999](#)).

### **Human Right Case**

The Supreme Court issued a directive to the Provincial Authority to implement necessary measures in order to prevent environmental pollution and degradation. The Court specifically ordered that all private and public vehicles must install monitoring devices to assess the level of pollution. Additionally, the Court emphasized that motorcycles and auto-rickshaws should not be operated without proper silencers and the use of pressure horns is strictly prohibited.

## **Role of Environmental Impact Assessment (EIA) in Sustainable Development of Pakistan**

The Environmental Impact Assessment (EIA) emerges as a crucial, yet often underestimated tool in the pursuit of sustainable development within Pakistan's intricate sociopolitical landscape. Amid the complex interplay of urbanization, industrialization, and environmental concerns, EIA provides a structured framework for a comprehensive evaluation of potential consequences associated with the development projects (Saeed et al., [2012](#)).

This systematic approach empowers the stakeholders to identify and address environmental, social, and economic issues before the commencement of a project, mitigating adverse effects and enhancing the overall project sustainability. However, despite its considerable potential, the full implementation of EIA in Pakistan has faced numerous challenges, such as procedural delays, resource limitations, and a lack of public awareness. Consequently, there is an urgent need to refocus efforts on strengthening the EIA systems, enhancing capacity, and fostering collaboration among government departments, private sector entities, and civil society organizations. By effectively harnessing the potential of EIA, Pakistan can strike a balance between economic growth and environmental preservation, charting a course towards a more sustainable and equitable future (Nadeem & Hameed, [2008](#)).

### **Conclusion**

Judiciary plays a crucial role in advancing the societal well-being along with ensuring justice, a fact evident in Pakistan's judicial system. The decisions rendered by both the highest and lowest Courts demonstrate the effective functioning of the judiciary, particularly matters related to environmental law. Within the framework of environmental law, these Courts have adeptly interpreted the well-established concepts, such as right to life and public interest litigation.

An indispensable aspect of human existence is the entitlement to access healthy, safe, clean, and unpolluted water, regardless of one's place of residence. The Courts, in their interpretation of the law, actively fulfill their role in safeguarding this fundamental right. Pakistani Courts are incorporating international environmental law and establishing noteworthy precedents.

It is noteworthy that while the Pakistani Constitution does not explicitly define the term "Environment," the Courts are providing clear explanations by treating it as an integral component of the right to life and the right to human dignity. The highest Court in Pakistan consistently endeavors to uphold laws, rules, and regulations related to environmental protection, embracing both international principles and local law in the process.

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