

# Special Address

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by **Chief Justice Iftikhar Muhammad Chaudhry**<sup>1</sup>

Honourable Chief Justices;

Honourable Judges;

Distinguished Guests;

Ladies and Gentlemen:

Assalam-o-Alaikum!

It is an occasion of extreme pleasure for me to be present here and to address the inaugural session of the South Asia Conference on Environmental Justice organized under the auspices of the Supreme Court of Pakistan in coordination with the Asian Development Bank and the International Union for Conservation of Nature (IUCN).

Man has made a success in the development of science and technology for his comfort and ease but unfortunately, this has been done at the cost of our environment. The environment concerns have crossed the State frontiers, and have developed a new branch of International law. The environmental hazards are now not the issue of any individual State but have become collective and global concerns. Undoubtedly, since the Second World War, enormous legal instruments were formulated in shape of international treaties and conventions, but still their implementation is a matter of prime concern.

Developed countries besides making great progress in science and technology have also evolved and implemented mechanisms for the preservation and conservation of environment issues in their respective countries. The developed countries, in the light of Stockholm 1972 and Rio 1992 conventions, should respond to their obligations to transfer financial resources and technology to the developing countries. Many developing countries have made comprehensive legislation on the environmental issues, but mere legislation would not be enough without scientific knowledge and resources.

In Pakistan, the history of environmental laws started in 1983, when the Environmental Protection Ordinance was promulgated. Considering the growing global concerns, need was felt to refine the existing law in line with the international standards and the commitments made by Pakistan with international community. Thereafter, in 1997, Pakistan Environmental Protection Act, 1997 was promulgated which is holding the field. Its preamble envisages protection, conservation, rehabilitation and improvement of the environment. It also aimed at prevention & control of pollution and promotion of sustainable development. Prior to these enactments, the environmental issues were governed by the Pakistan Penal Code, 1860, which contains elaborate provisions to deal

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<sup>1</sup> Chief Justice of Pakistan

with public nuisance, fouling water of public spring or reservoir, making atmosphere noxious to health, etc. These provisions are still available as general law.

Law is never static rather dynamic and this dynamism allows it to change its flow according to the needs of time. Like many other laws, the environmental law also requires alterations and amendments in order to cater for the contemporary environmental issues. Speaking particularly of Pakistan, let me tell you very briefly that the prime legislation pertaining to the environmental protection is the 'Pakistan Environmental Protection Act' 1997; which, as stated earlier, provides for the conservation, rehabilitation and improvement of the environment and promotion of sustainable development. This Act provides for the establishment of Environmental Protection Agency, Environmental Protection Council, Environmental Tribunals and Environment Courts. The Agency and the Council have to provide National Environmental Policy, implementation of National Conservation Strategy, formulation of National Environmental Quality Standards, Publication of National Environmental Report and the establishment of a system to monitor, examine and inspect the environmental problems and their ultimate solution. A number of central and provincial environmental laws are also in vogue in Pakistan. What is really required from the concerned authorities of Pakistan is to have an overview of environmental law from all the three perspectives i.e. international, sub-regional and national. Mere making of laws does not produce effective results without efficacious mechanism of implementation. No Environmental plans can achieve their objectives without mobilizing the public/opinion and a wakeup call to the stakeholders.

Ladies and Gentlemen:

Environment is indeed the common heritage of mankind and the purpose of arranging this conference is to evolve a joint mechanism for making the environmental legislation more effective and implementable nationally and internationally by making comparative assessments and recommendations within the SAARC sphere. The SAARC region, which comprises one fifth of the human population in the world, is endowed with vast natural resources and habitat, which need special attention by devising effective implementation tools for sustainable development and conservation of the region. The region is highly vulnerable to the extreme climate changes and hydro-meteorological disasters like flash floods, monsoon flooding, tropical cyclones and storm surges. Major national security concerns for SAARC region are likely to arise in terms of its water security, food security and energy security. Over the past century, the region has seen increasing degradation of the quality of natural resources, particularly of water, air and soil caused by climatic impacts. Our future generations must not bear the cost of our exploitation and mismanagement of environmental issues; rather we have to mitigate the environmental damage for the survival of the generations to come.

Environmental law aims at maintaining quality of life. It is a 'continuum of legal relations' from the level of rural and urban authority through the State to the international level. SAARC countries have adopted a series of multilateral environmental agreements to solve the common environmental issues pertaining to climatic changes, stratospheric ozone, shared transnational natural systems and water and air pollution, however, problems still persist. There is a need for building an integrated larger framework for sustainable development. This objective can be achieved through consultation on national policies and

international regimes on which national legislation can be based; as well as sustained commitment on the part of SAARC countries.

Strengthening democratic institutions, socio-economic development, safeguarding human rights and protection of environment are indeed the core values of every society. The correlation between the human rights and the environment is widely recognized and same is the reason that the government and non-governmental organizations are focusing more on the protection of ecological rights.

The Constitution of Islamic Republic of Pakistan does not articulate the issue of environmental protection and preservation in any of its provisions, however, the superior courts of Pakistan have interpreted “right to life” used in Article 9 of the Constitution and have held that the word “life” used in the said Article encompasses the environment in all its dimensions. Thus, the right to life is the most basic principle of environmental justice. Taking this basic principle seriously can lead the courts towards dealing with any action posing threat to human health.

In recognition of the importance of protection of environment, Pakistan is also a signatory to a number of Multilateral Environmental Agreements and Conventions, including United Nations Environmental Program (UNEP) and South Asia Cooperative Environmental Program (SACEP).

The Supreme Court of Pakistan in Shehla Zia’s case held that the installation of the grid station in a residential area would expose the residents to the hazards of electromagnetic fields and endanger their lives in violation of Article 9 of the Constitution of Pakistan. It was held that the word ‘life’ used in the said Article 9 did not mean, nor could it be restricted to the vegetative or animal life or mere existence from conception to death, rather life should be given a wide meaning covering all facets and aspects of human existence. Similarly In re: Pollution of Environment caused by Smoke Emitting Vehicles, Traffic Muddle the Supreme Court of Pakistan set out guidelines for controlling pollution caused by the emission of smoke by vehicles in Karachi. To deal with noise pollution in Karachi, the Court directed to ensure that the motorcycle rickshaws are not allowed to ply without silencers, similarly, the vehicles fitted with pressure horns or multi-tone horns be challaned and pressure horns are disconnected or seized by the police.

The case of environmental hazard on account of proposed New Murree Project was taken up by the Supreme Court of Pakistan in exercise of suo motu powers upon the Report of the International Union for Conservation of Nature (IUCN) submitted to the Government and also published in daily newspapers, making shocking disclosures about the adverse environmental impact of the project. The issues, inter alia, involved conservation of the forests, supply of clean water to the twin cities of Islamabad and Rawalpindi and siltation in Simly and Mangla Dams; likely to affect public-at-large, which the Supreme Court of Pakistan considered violative of the Fundamental Right enshrined in Article 9 of the Constitution of Islamic Republic of Pakistan, i.e. the Right to life. The case was disposed of after assurance from the concerned authorities that the project would be disbanded and there was no likelihood of renewing the same.

In another landmark judgment in a suo motu action taken on a press clipping regarding Joint Venture Agreement between CDA and Multi-Professional Cooperative Housing Society

(MPCHS) for development of land in Sector E-11 Islamabad, the Supreme Court of Pakistan observed that right to life implies the right to food, water, decent environment, education, medical care and shelter, which cannot be snatched away or waived off pursuant to any agreement. The Supreme Court of Pakistan directed the Capital Development Authority, Islamabad to take over the project in accordance with the provisions of the Capital Development Authority Ordinance.

The forest bears great influence on the shaping of the ecology of our planet and in determining the arrangements of life on earth. Trees are the basic source of oxygen which is the prime factor for survival of mankind. The evolution of mankind and subsequent development of human cultures and communities are also indebted to the existence and utilization of trees. The Supreme Court of Pakistan in a suo motu case pertaining to the Canal Widening Project of the Punjab Government, which was likely to axe at least 21,000 trees and devastate 60 acres of green belt along the Bambawali-Ravi-Bedian Canal, restrained its execution considering the project to be against the public interest at large.

Unplanned urbanization and housing schemes in Pakistan are rampant posing major threats to the natural resources, wildlife, conservation of forest and landscapes. In yet another Suo Motu Case, the Supreme Court of Pakistan directed the concerned authorities to make environmental impact assessment of the 'Margalla Chalets Housing Scheme' proposed to be set up on Margalla hills, which would have posed danger to Khanpur Dam, which is the main water reservoir for Islamabad and Rawalpindi, and would have caused annihilation of wildlife and natural habitat. The matter was disposed of after assurance given to the Court for conducting proper investigation into the whole matter by the National Accountability Bureau.

In another case Supreme Court, taking cognizance on the news item published in a daily newspaper that nuclear or industrial waste was to be dumped in Balochistan. The Court ordered the office to enquire from the Chief Secretary of Balochistan whether coastal land of Balochistan or any area within the territorial water of Pakistan had been allotted or was being allotted to any person and if any allotment had been made or applicants had applied for allotment, their full particulars be supplied. After receiving the report, the Court directed the concerned authorities charged with the duty to allot the land in the coastal area to insert a condition in the allotment letter/license/lease that the allottee/tenant shall not use the land for dumping, treating, burning or destroying by any device waste of any nature including industrial or nuclear waste in any form. The Court further directed that the authorities should also obtain similar undertaking from the allottees to whom the allotment has been made for ship-breaking, agriculture or any other purpose whatsoever.

Public parks act as natural buffers for conserving the urban environment and providing quality of life to city dwellers by fulfilling their aesthetic satisfaction. Public parks provide environmental, social and health benefits to the densely populated areas by improving the quality of their physical surroundings. Keeping in view this very aspect of the matter, the Supreme Court of Pakistan, while exercising its jurisdiction under Art 184(3) of the Constitution nullified the lease agreement executed between the Capital Development Authority and a private respondent for the development of Mini Golf Course on the site of Jubilee Park, Sector F-7, declaring the same as contrary to fundamental rights of access to public places by the General Public as enshrined in Article 26 of the Constitution.

Different Government, Semi-Government and Non-government national as well as international organizations, particularly ADB and International Union for Conservation of Nature (IUCN) are working in Pakistan on the subject of environmental conservation and protection. Their efforts for conserving the environment and highlighting environmental issues nationally and internationally are highly commendable. The role of print and electronic media is also laudable, as much of the credit of the relief provided by the Supreme Court of Pakistan in suo motu actions goes to them. However, the development of environmental law is hugely affected by the social, economic, political and cultural factors with impediments, like depletion of natural resources and poverty. Urbanization, unplanned and ill-structured constructions, increased industrialization, poor sewerage systems, illegal brick kilns and crusher machines on privately owned lands, deforestation, damage to wildlife and mountain ranges and particularly the lack of will towards improvement are also some other factors obstructing the development of environmental law.

Pakistan saw worst floods in many of its cities in the year 2010, which left behind innumerable fatal diseases, destruction of crops and natural resources, disruption of normal drainage systems, scarcity of livestock and especially pain and suffering to the downtrodden and poor classes of the country. The Supreme Court in the case of Marvi Memon v. Federation of Pakistan observed that quantum of losses could be reduced by strengthening the embankments and at the same time ensuring maintenance of the same from engineering point of view on annual basis. Therefore, concrete steps were required to be taken to redress these issues.

There is also lack of proper legislation for effective sewerage and drainage systems. Dumping of solid wastes in open places and uncontrolled manufacturing of plastic bags and bottles are not only blocking the sewerage and drainage systems, but also posing a choking hazard to wildlife, especially marine life. Plastic bags including black plastic bags are being manufactured and sold with impunity at all sale outlets in the country. The administrative and municipal authorities can control the hazard of solid waste by specifying drop off locations for recyclable and non-recyclable wastes. Similarly, effective water distribution systems throughout the country would also improve the drainage and sewerage systems.

I had pointed out in my earlier address in a Conference on the Environmental Law held in Balochistan in October 2011 that there is no specific provision in the Constitution of Pakistan 1973 pertaining to the 'protection of environment'. Previously the subject of "Environmental Pollution and Ecology" existed in the Concurrent Legislative List, however, by the Eighteenth Constitutional Amendment; the same has been omitted and transferred to the provinces. This conference needs to consider this aspect and suggest workable mechanism for effective protection of the environment at the Federal and Provincial levels.

Environmental law and environmental justice covers a wide range of subjects and ideas and is not possible to look into each and every subject individually in this short paper, however, it must be kept in mind that while devising any mechanism the ground realities of any particular country have to be taken into view. The role of courts in environmental justice is crucial for the reason that when the courts themselves are blind towards the science of ecology, they cannot administer fair justice in this field of law. Therefore, the role of courts throughout the SAARC region needs to be enhanced. Similarly, training workshops for concerned government and judicial officers and officials; teaching of environmental law as a

compulsory subject in the law schools; public awareness programs and active participation of all the segments of society will prove to be effective steps towards the achievement of sustainable development in the SAARC region.

Before I conclude, I must say that the themes chosen for deliberations in the Conference on Environmental Justice cover the whole spectrum of the environment. I am sure, we will get benefit from the collective wisdom and suggestions/recommendations in the various sessions for the improvement of our environment. I hope that the participants will have purposeful and productive deliberations. The conclusions arrived at the end would go a long way in policy making and sensitizing the society as a whole. Having said that, I pay tribute to the Asian Development Bank and IUCN for their collaborative role in the organization of this Conference on such a crucial and significant issue. I would also like to congratulate my brother Judge Honourable Mr. Justice Anwar Zaheer Jamali and the five Honourable Judges of the High Courts of the country who supervised the conception and implementation of the said Conference. Without their active supervision, this Conference may not have seen the light of day. I also expect that these Honourable Judges will continue patronizing any future plan for implementing the recommendations of this Conference.

Thank you!