



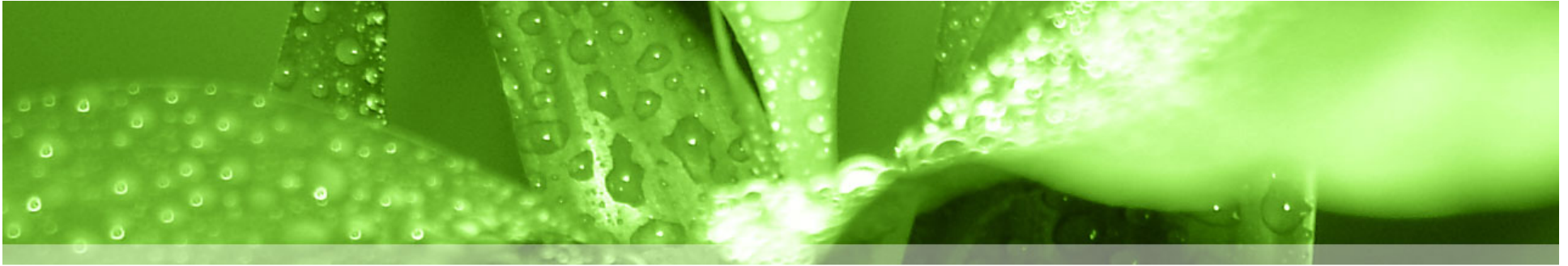
DEVELOPMENT OF
ENVIRONMENTAL JUSTICE

THE CASE OF URBANIZATION

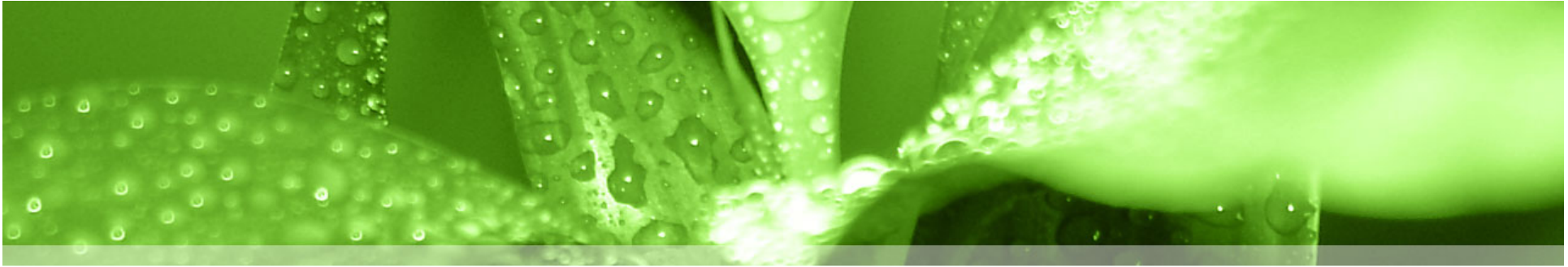
BY

JUSTICE SYED MANSOOR ALI SHAH
LAHORE HIGH COURT

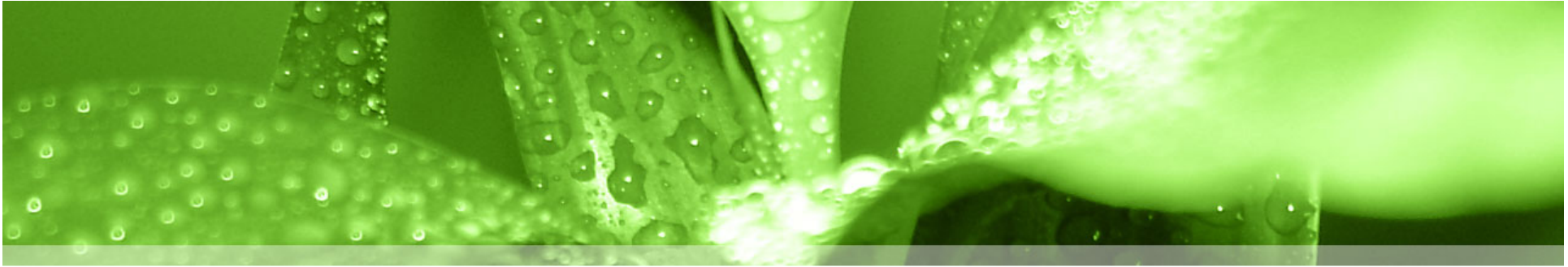
Conference on Environmental Justice Bhurban, Murree 24th -25th March, 2012



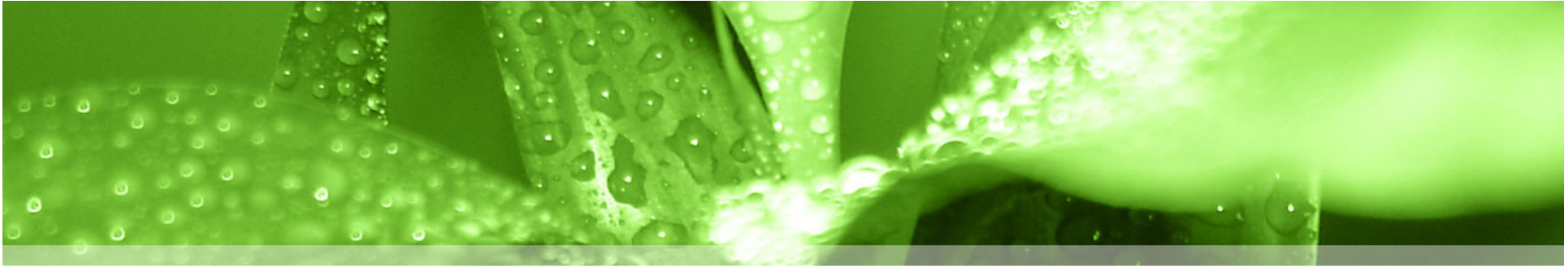
□ JUSTICE vs ENVIRONMENTAL JUSTICE



- Everyday we impart “Justice” by giving one his due share under the law.
- Such cases are, ordinarily, inter parties, arising out of violation of some law, cast in an adversarial setting and in the end one party succeeds.



- ❑ Environmental Justice, on the other hand, requires a little more.
- ❑ Legal principles plus a fair understanding of the environment and environmental science is required to decide an environmental case.
- ❑ Proceedings shift from adversarial to an inquisitorial setting
- ❑ Court becomes guardian of nature (besides its standard role as protector of fundamental rights)
- ❑ Judicial philosophy requires resetting – the court has to zoom out of the dispute and judge the issue on a broader level.
- ❑ Judgment does not simply protect the rights of the parties but actually protects the systems of nature and provides a sustainable solution keeping in view future generations.



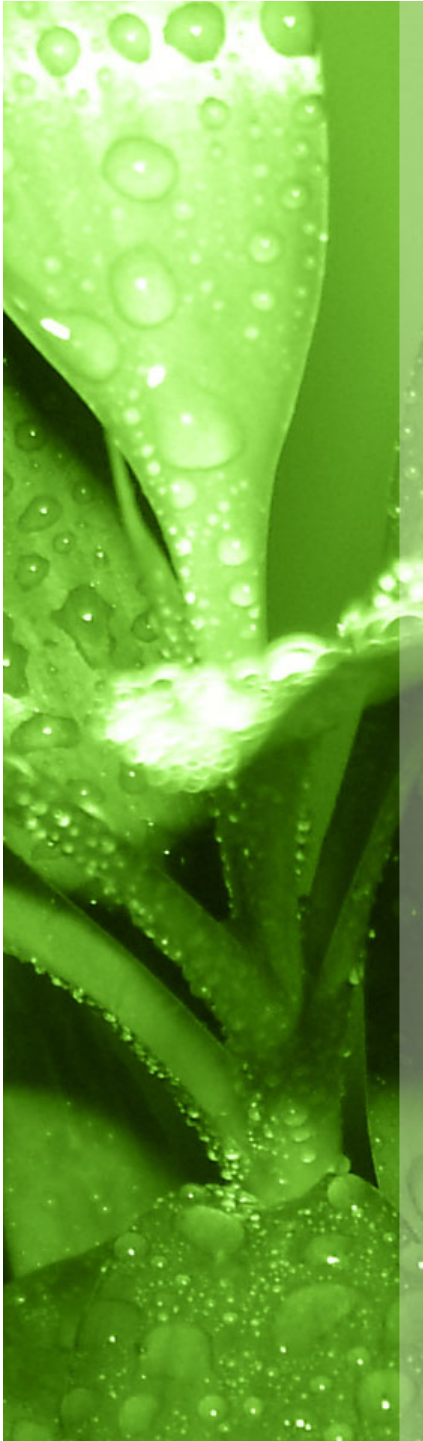
- **"Environmental justice** is about social transformation directed towards meeting basic human needs and enhancing our quality of life, economic quality, health care, housing, human rights, environmental protection, and democracy."
- -South African Environmental Justice Networking Forum:



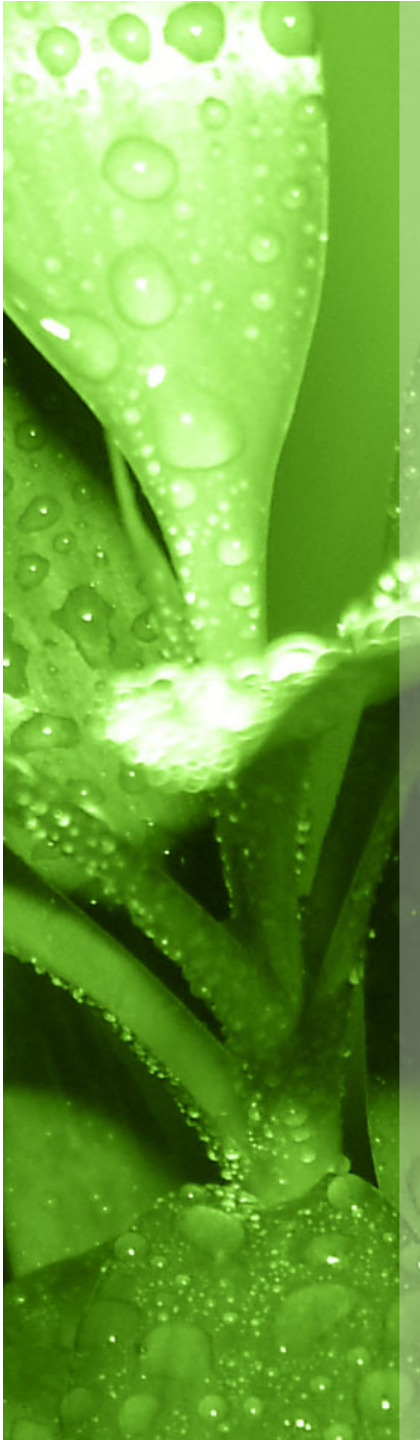
***Showcasing
urbansiation as a theme.***

***I share five stories of environmental
justice with you.***

Conference on Environmental Justice Bhurban, Murree 24th -25th March, 2012

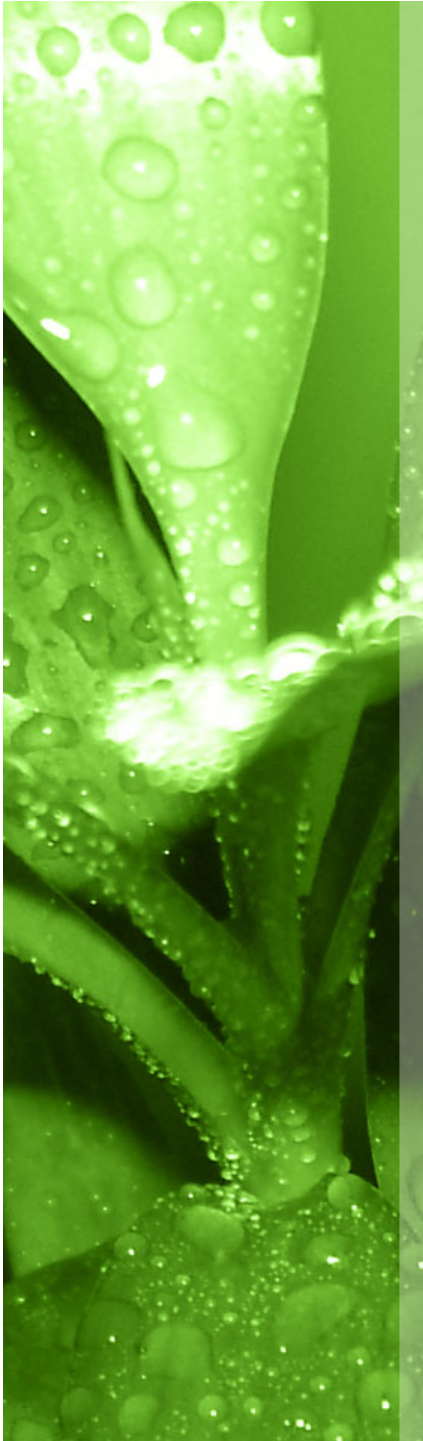


Why Urbanization as a theme ?



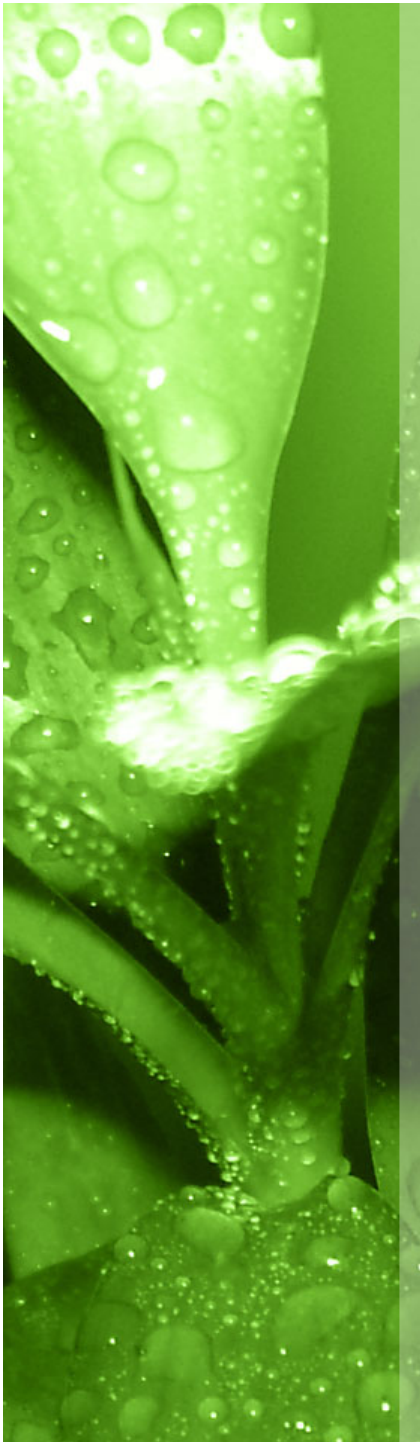
Meaning

- Urbanization is a shift from a rural to an urban society and involves an increase in the number of the people in urban areas. It is an outcome of social, economic and political development leading to immense pressure on the natural and built environment.



World Statistics

- More than half of the world's 6.6 billion people live in urban areas, crowded into 3 percent of the earth's land area (UNFPA, 1993).
- The proportion of the world's population living in urban areas, which was less than 5 percent in 1800 increased to 47 percent in 2000 and is expected to reach 65 percent in 2030 (UN, 1990;1991)
- More than 90% of future population growth will be concentrated in cities in developing countries and a large percentage of this population will be poor.
- Africa and Asia is expected to be 54 % urban by 2025 (UN 2002).

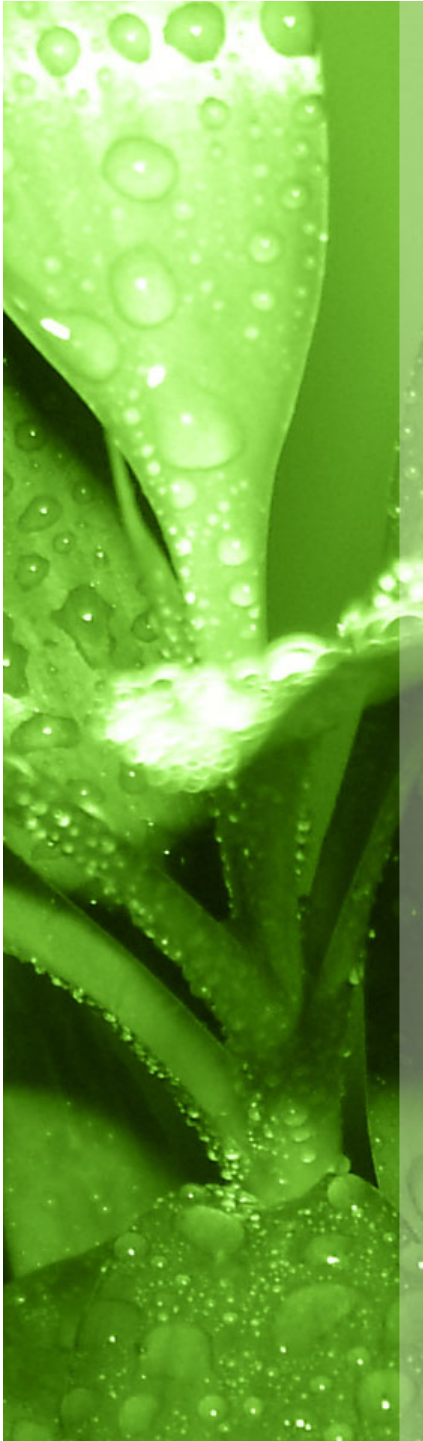


In Pakistan

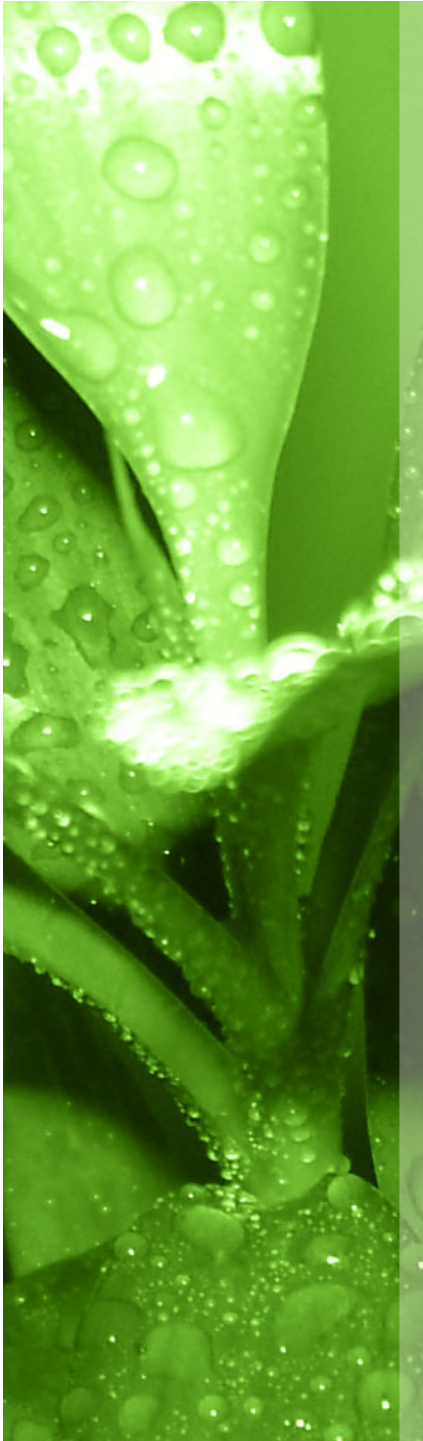
- Pakistan's Population is 164.64 million with an estimated 57.14 million urban citizens (35%) in 2008.

Lahore

- Population 8.5 million
- Cars: 1.2 million cars including 23,515 buses and 27,878 minivans.
- Rapid increase in population, absence of decent public transport and the high growth in the number of private vehicles have had a negative impact on the air quality of Lahore.
- Motor vehicles account for 90 of the total emissions of hydrocarbons and carbon monoxide in cities.



- Sustainable Urbanization is the need of the hour

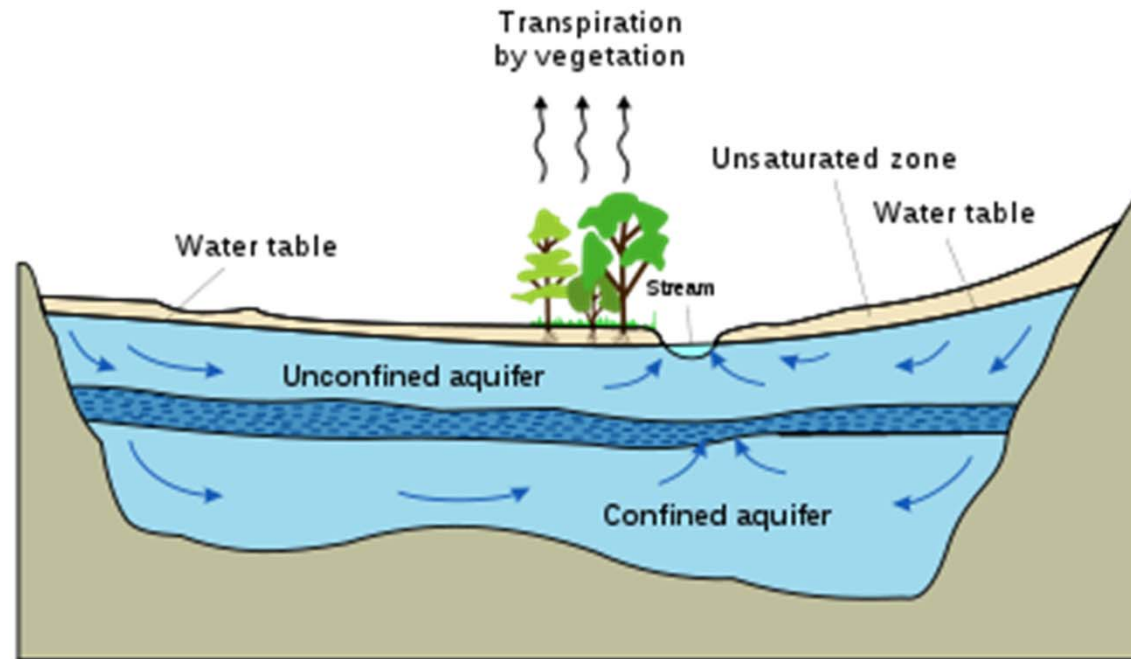






First story

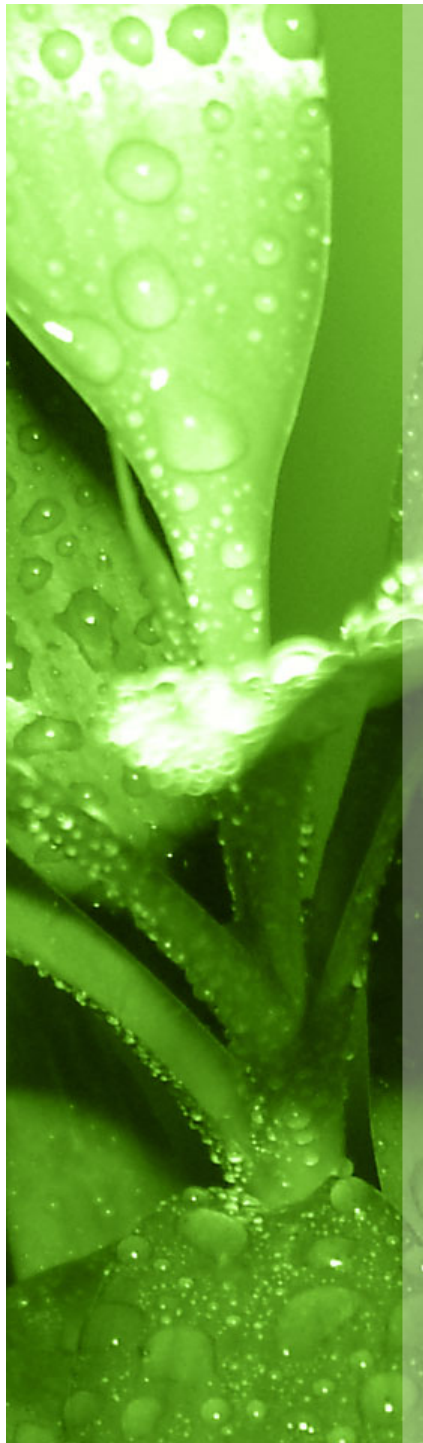
The Aquifer



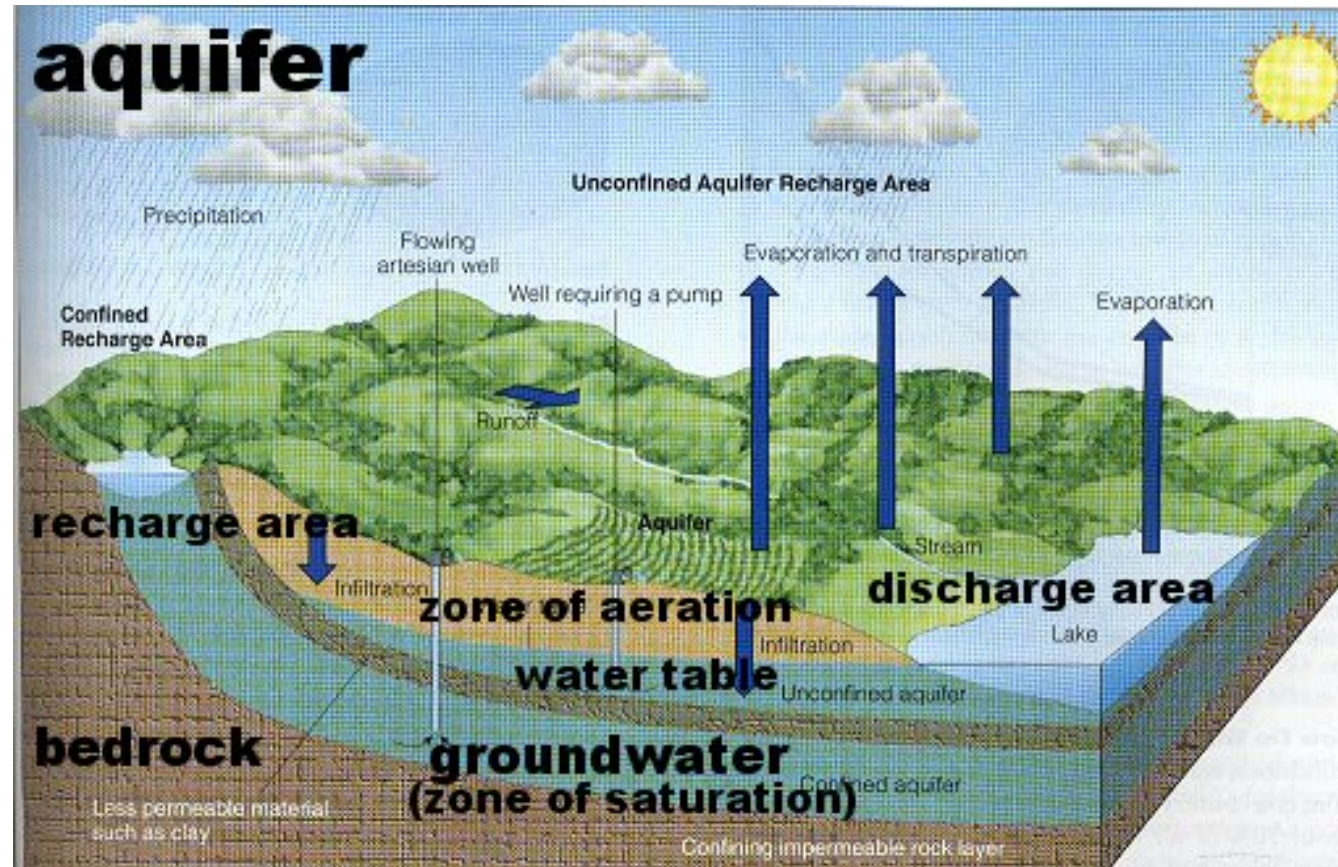
First story – The Aquifer



-  High hydraulic-conductivity aquifer
-  Low hydraulic-conductivity confining unit
-  Very low hydraulic-conductivity bedrock
-  Direction of ground-water flow

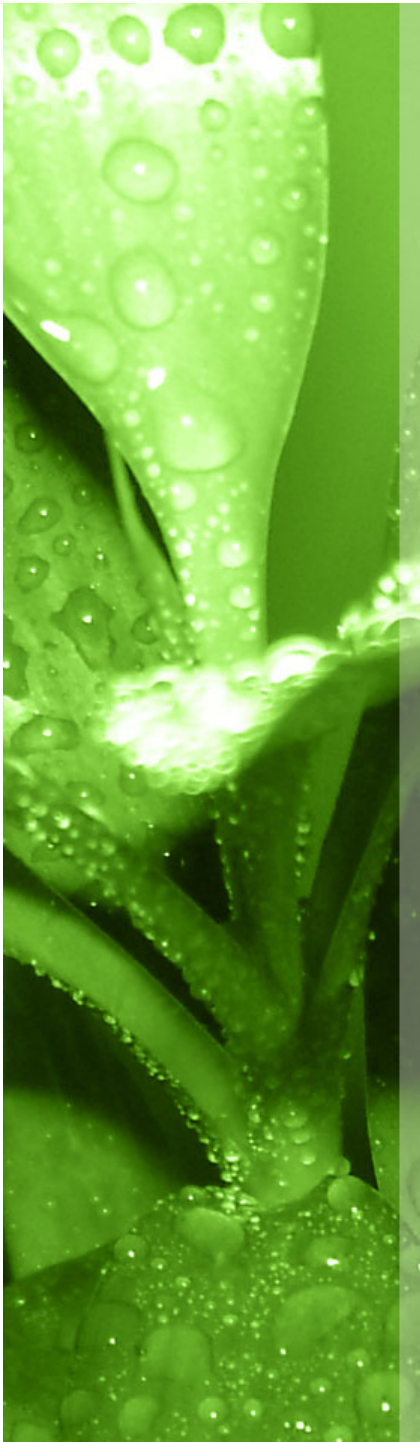


First story – The Aquifer



Meaning

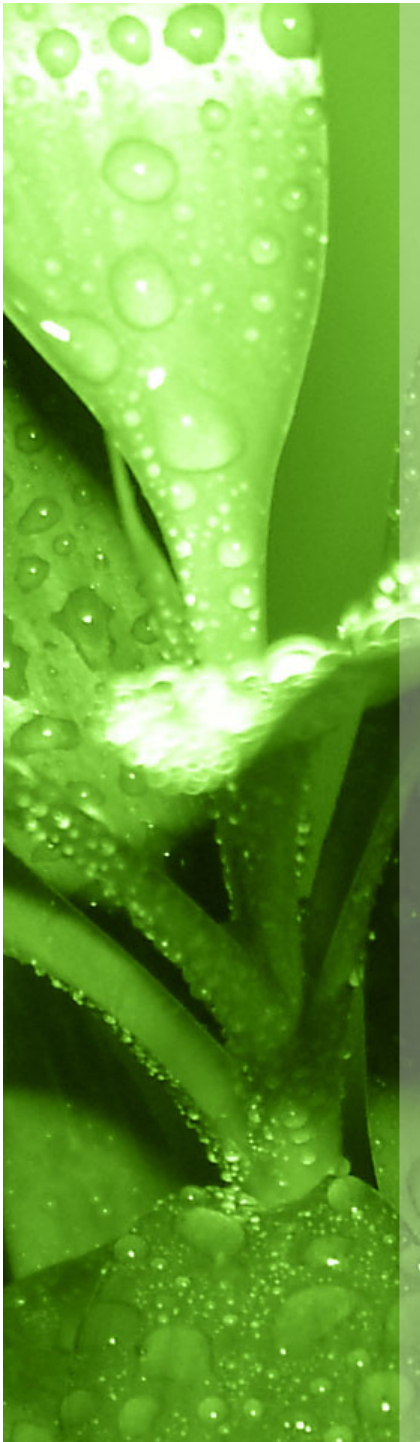
- Meaning: A wet underground layer of fresh water.
- Pakistan is an arid and water scarce country hence protection and sustainability of aquifers is critical and more so in a populated urban city.



Case¹

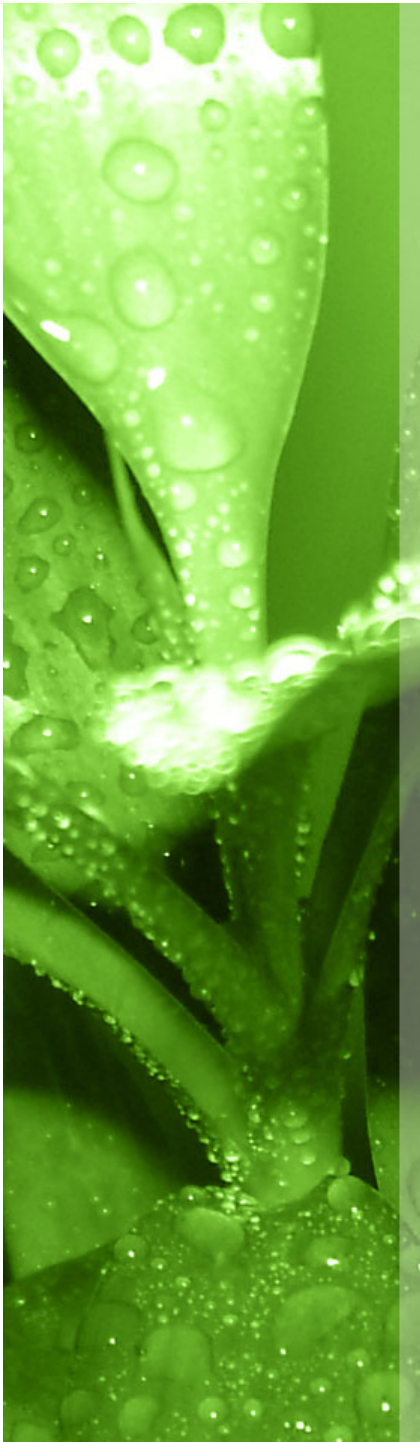
- In 1998 Lahore Development Authority (LDA) imposed an aquifer charge on persons extracting water through tubewells in the city of Lahore.
- Under the law, development authority had an exclusive right to use ground water resources and private tubewells could only be installed with the permission of the authority.
- This was never seriously taken and tubewells flourished all over the city without regulation.
- Imposition of aquifer charge was therefore a step towards regulation of the aquifer.

1: *Seven Up Bottling Company (Pvt) Ltd vs LDA, etc* (2003 CLC 513) upheld by the Supreme Court of Pakistan (2003 SCMR 1742)



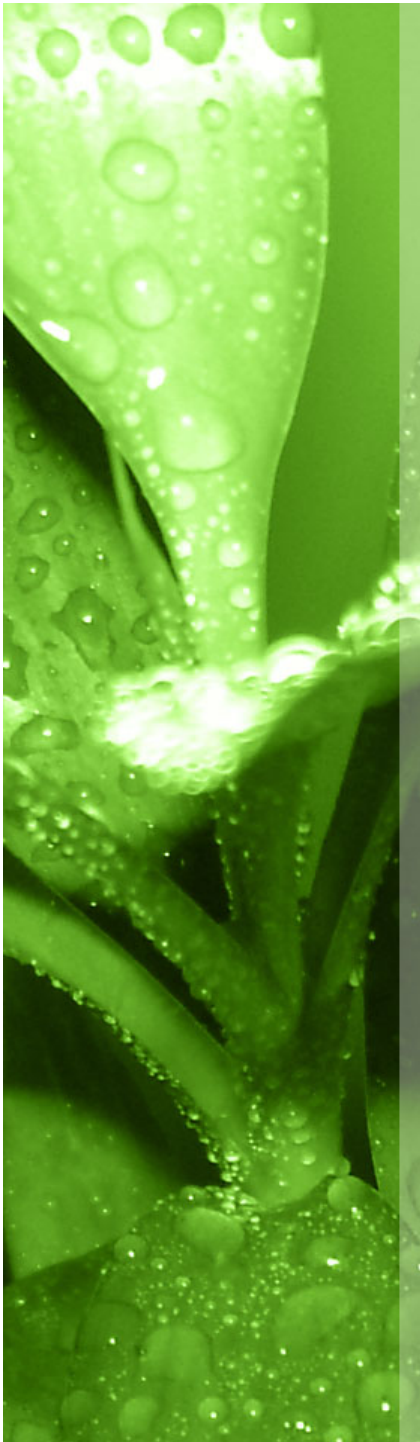
Case 1 (Contd.)

- The matter was brought before the Lahore High Court in 2002 by the beverage companies who were extracting huge quantities of water from the aquifer using tubewells installed at their factories in urban areas
- The argument was the aquifer charge could not be imposed as it is not related to any service rendered by LDA and did not fall within the category of “water supply” made by LDA (Wasa)



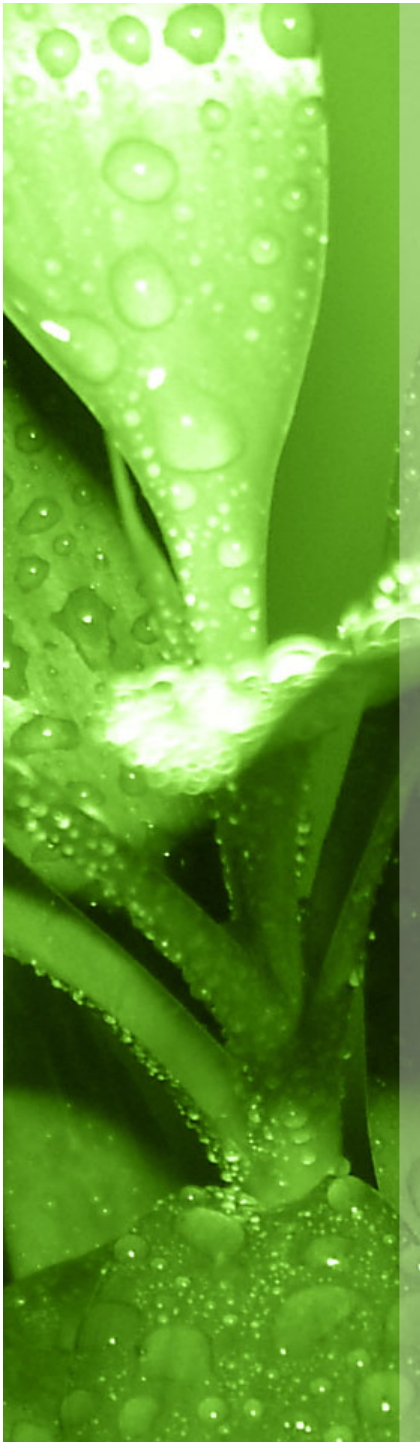
Case 1 (Contd.)

- The challenge succeeded and aquifer charge was struck down on legal grounds holding that LDA had no power to impose the said charge under the law.
- The case was fought and decided in the context of the aquifer charge being a tax or a fee and the relevant provisions of LDA law were interpreted accordingly.



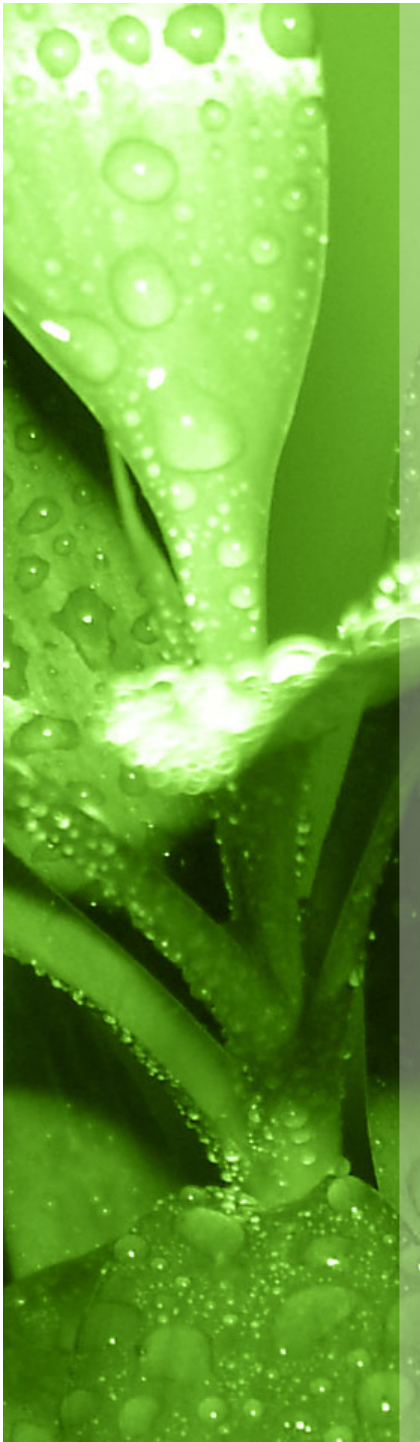
Case 1 (Contd.)

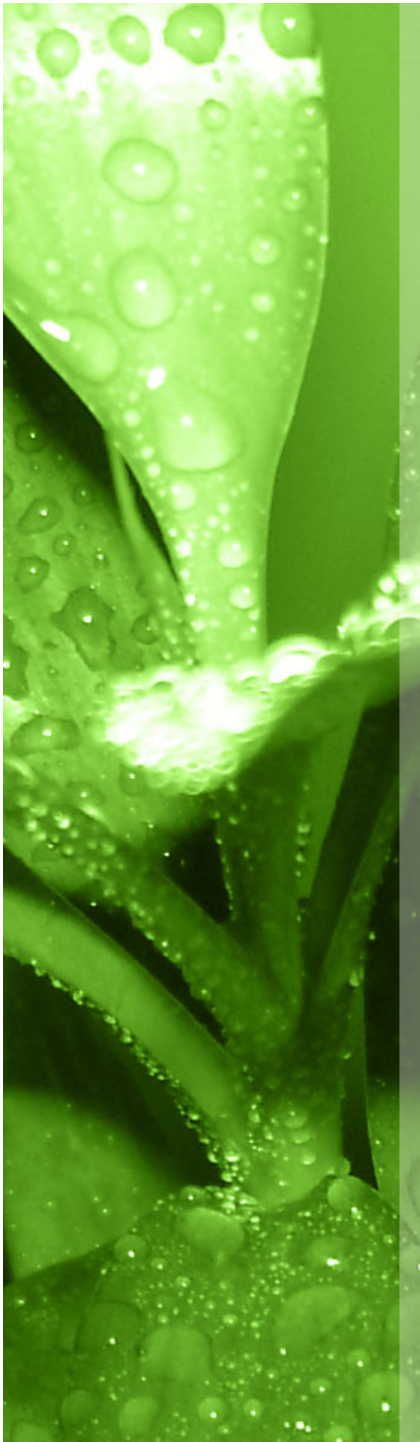
- The lurking environmental damage - i.e., the depletion of the aquifer and its severe consequences on the urban communal life went unnoticed.
- What LDA wanted to regulate was the excessive use of underground water as it would affect the availability of water for other residents of the city.
- Hence a huge environmental issue passed by – justice took place but environmental justice went untouched.
- *I must confess that I was one of the counsel for the petitioners and I am willing to take the blame.*



- Two years later, the point was picked up.
- In Nestle Case², Sindh Institute of Urology and Transplantation purchased a large tract of land earmarked for Education City in Karachi.
- The claim brought before the Sind High Court by Qazi Faez Isa, advocate, for the plaintiffs (now CJ Baluchistan High Court) was that a bottling plant in the area has been allowed to be set up which will use sub-soil water from the aquifer in huge quantities causing serious prejudice to the availability of the water for use by the plaintiffs.

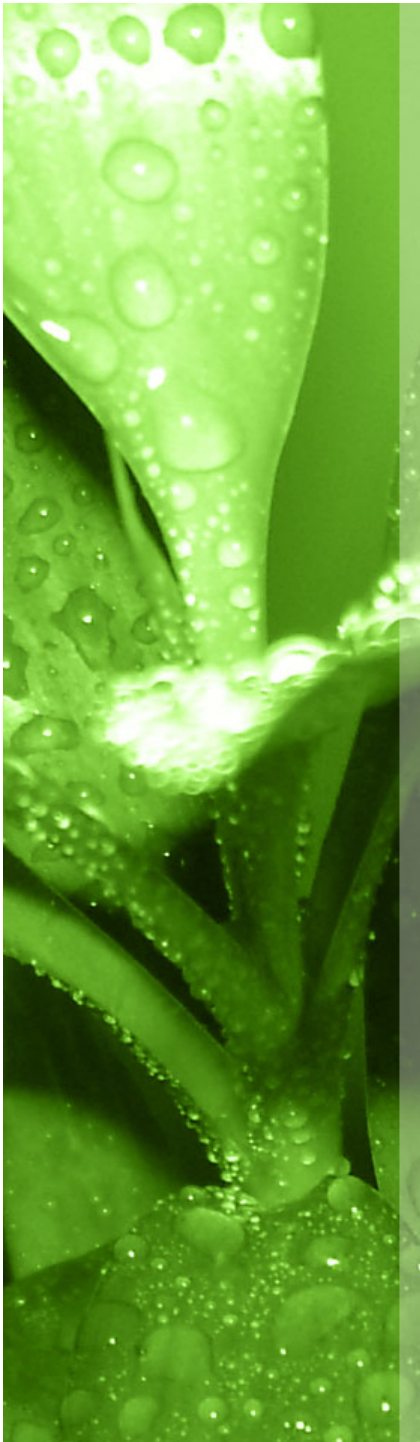
2:TITLED SINDH INSTITUTE OF UROLOGY AND TRANSPLANTATION and others v. NESTLE MILKPAK LIMITED and others (2005 CLC 424)

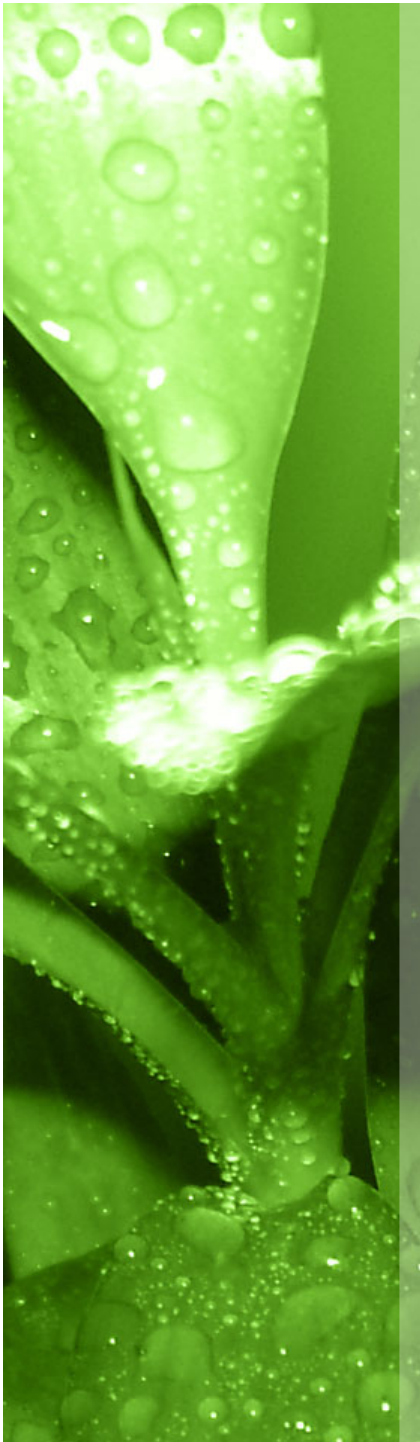




- It was argued that the water resource in the aquifer is a public resource and under **Public Trust Doctrine** everyone has equal access to the same.
- The court interfered and granted an injunction.

- S. Ali Salam Jafri J spoke for the court:
- “ ...no civilized society shall permit the unfettered exploitation of its natural resources by anyone particularly in respect of the water which is a necessity of life. Ground water is a national wealth and belongs to the entire society. It is a nectar, sustaining life ... Doctrine of Public Trust as developed during the days of ancient Roman Empire, enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes..”



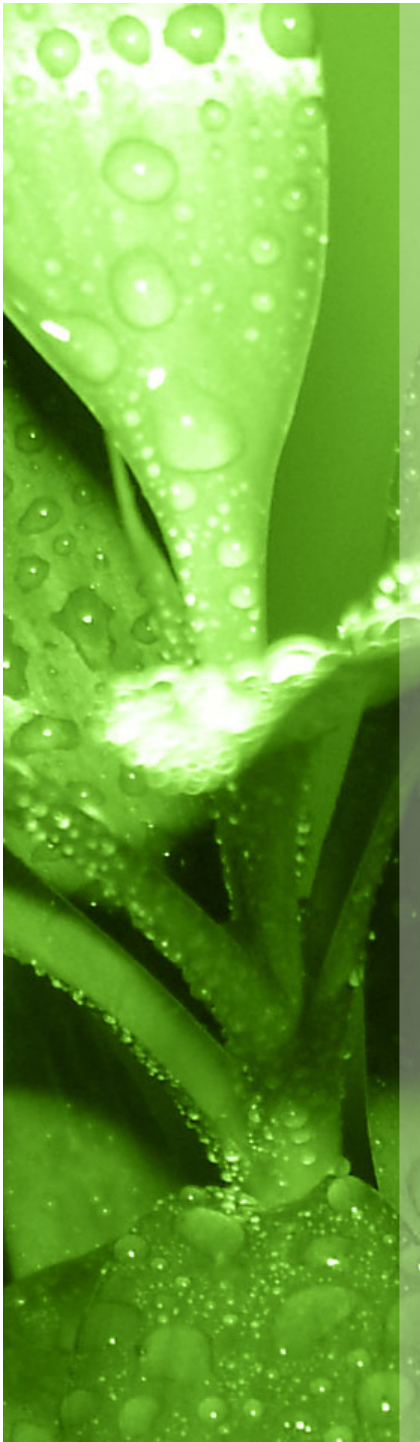


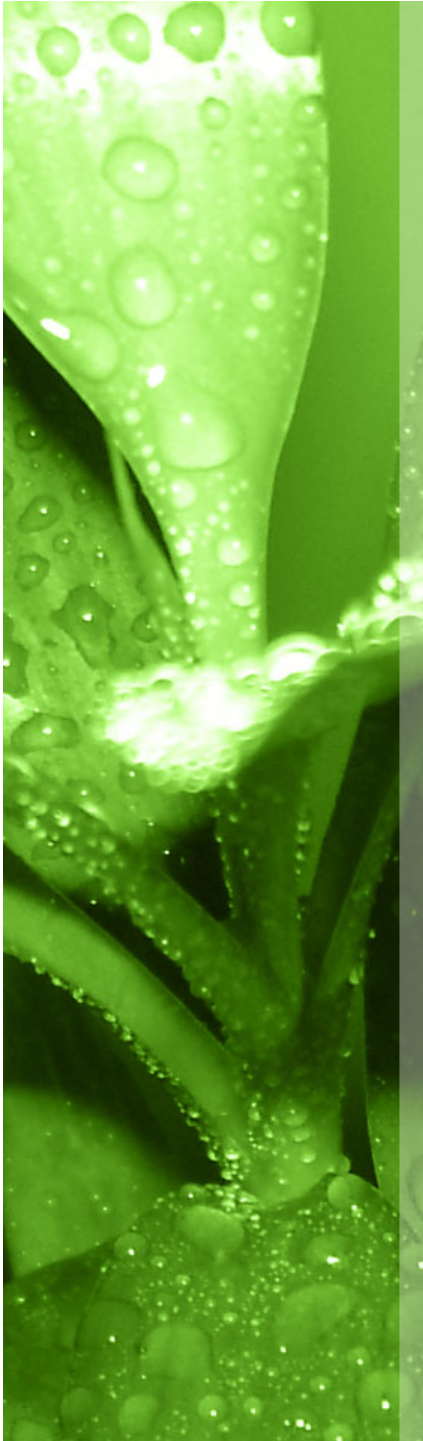
- The injunction was upheld in appeal: Justice Anwar Zaheer Jamali³ spoke for the court:
- “...it is hard to believe that extraction of...water from the aquifer ..in such huge quantities..., will not disturb the aquifer and the environment of the area, ... particularly when the area is situated in a country where natural source of water for aquifer i.e., raining , is negligible and highly insufficient.”

³:PLD 2007 Kar 11

Lesson

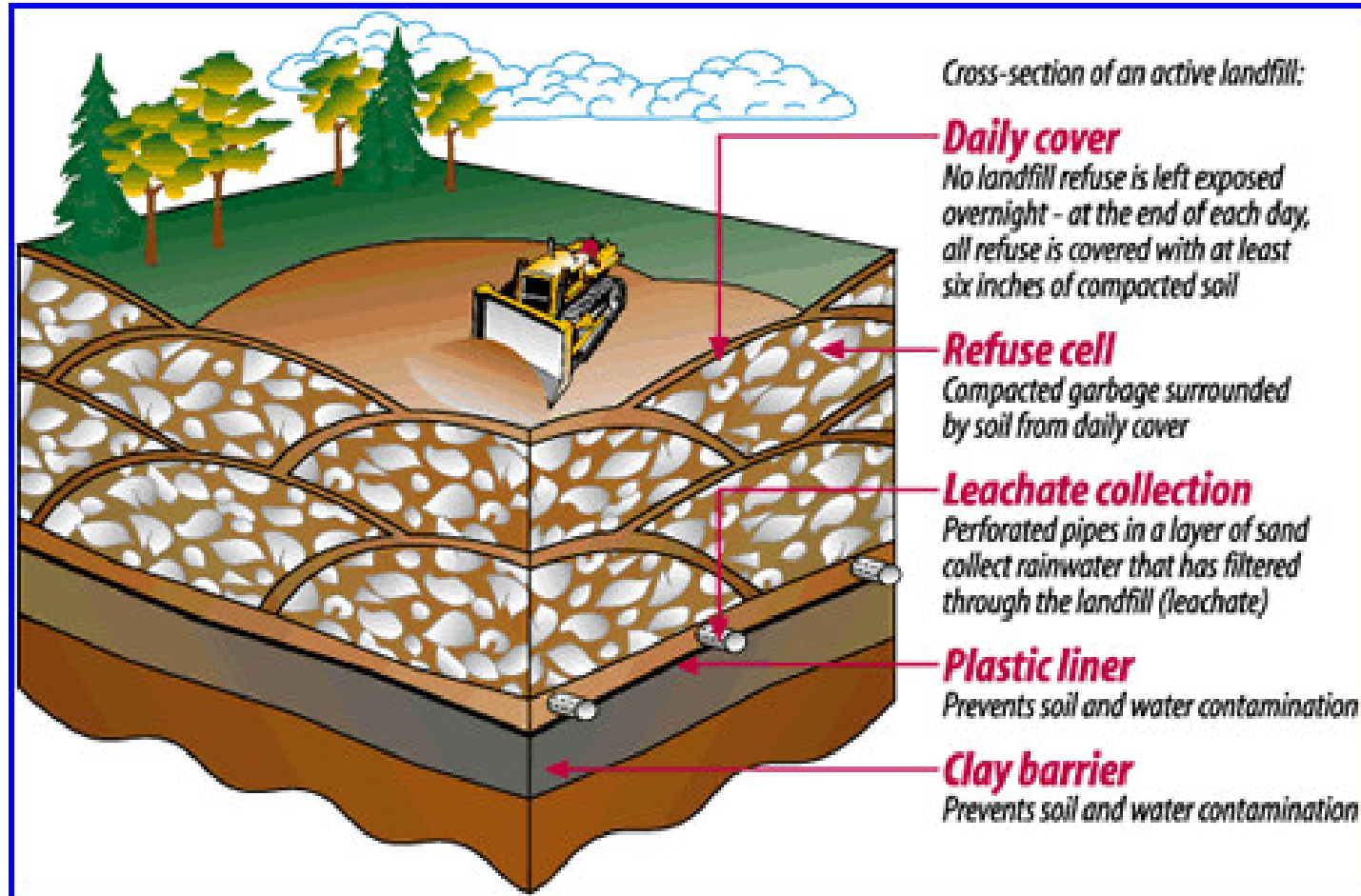
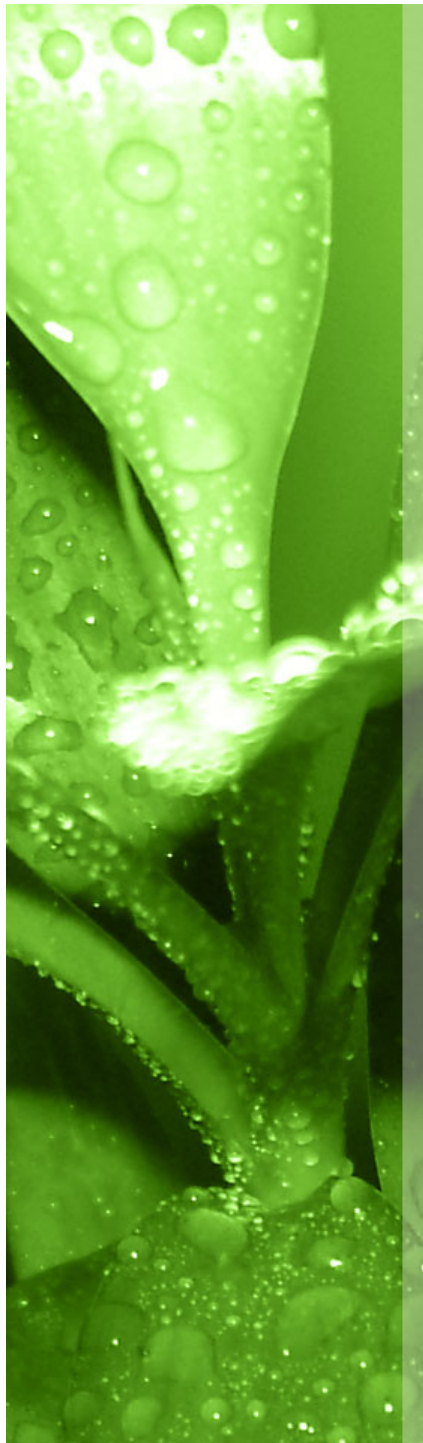
- It took three years but the Courts moved from justice to environmental justice.
- It was a huge leap forward for Environmental Justice. Public Trust Doctrine was recognized and implemented.
- It also flags that Pakistan is an arid country and scarcity of water is a major environmental concern.
- The Court cut through the chase and identified the real issue hidden under the wraps of legal jargon. Awareness of the key environmental issue is essential for the court.



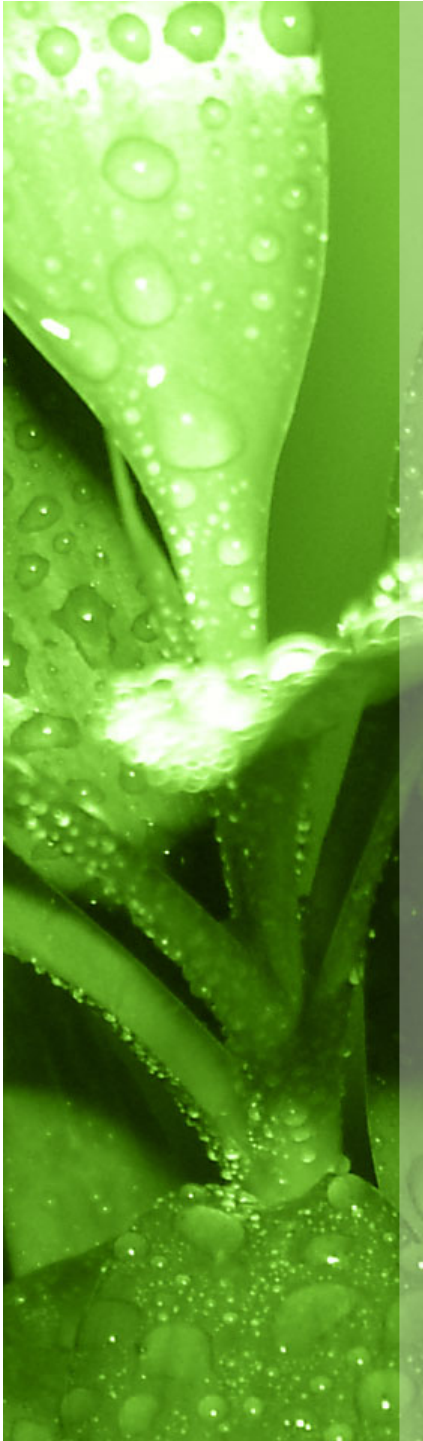


Second story

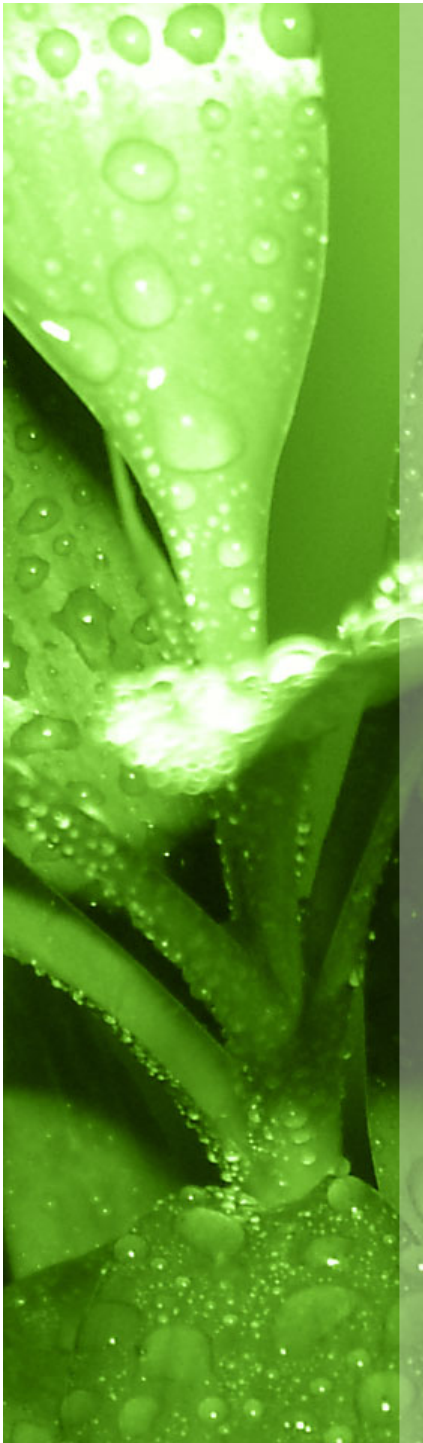
The Landfill



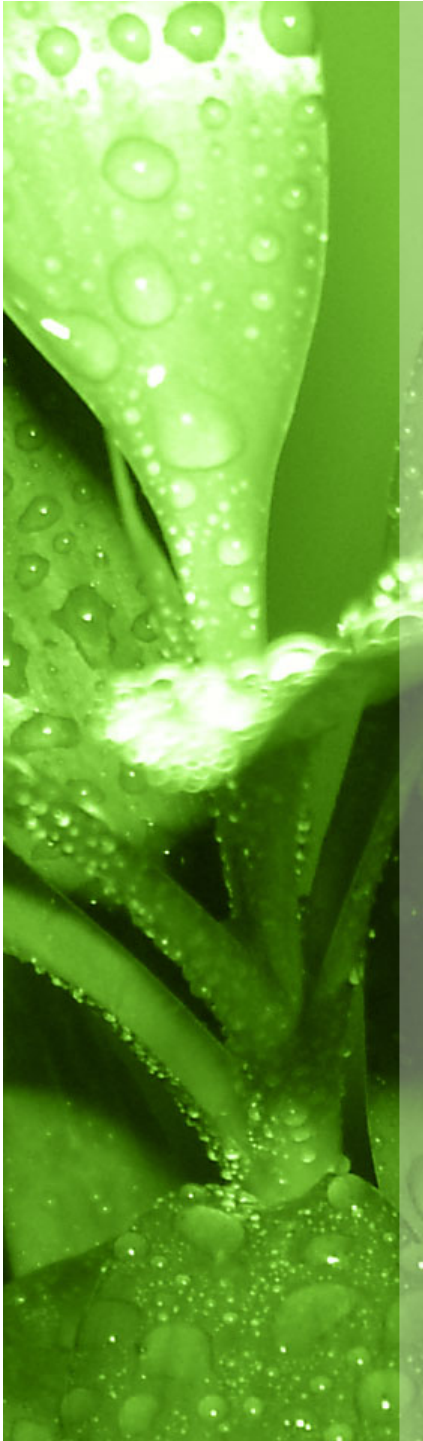
Second Story – The Landfill

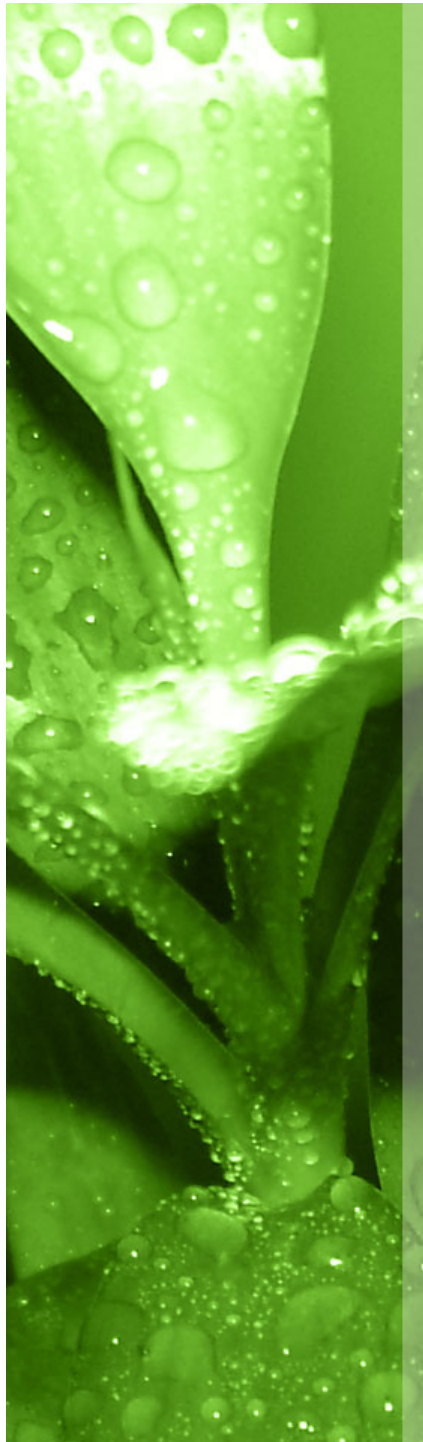


Second story – The Landfill



Second story – The Landfill

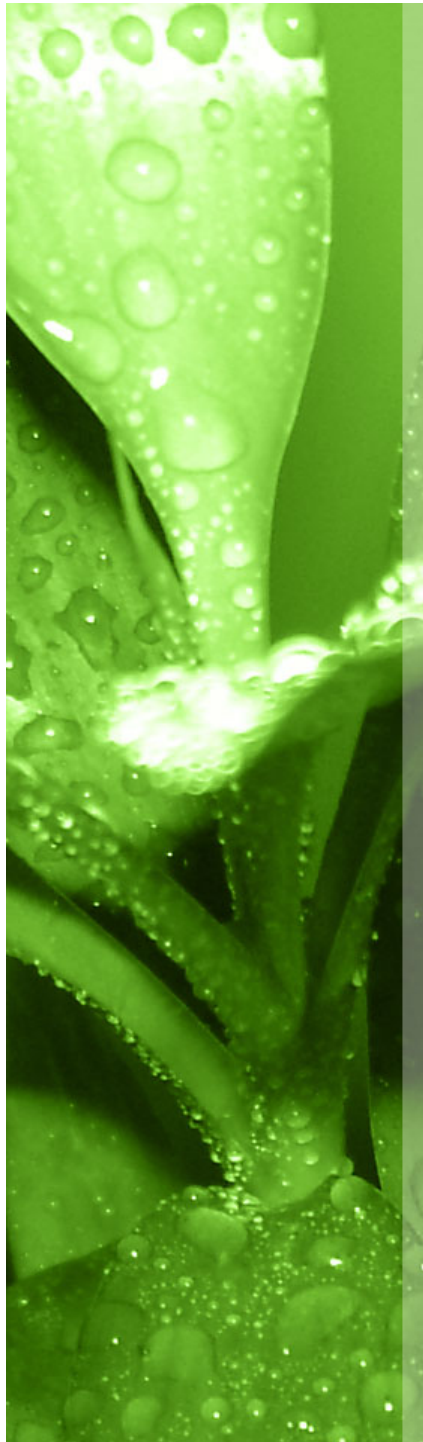




Meaning:

Second story – The Landfill

- Meaning: A site for burial of garbage (solid waste).
- Solid Waste (garbage) of a city has to be collected, stored and finally disposed of –it can be recycled, composted, incinerated or buried in a landfill.



Case⁴:

Second story – The Landfill

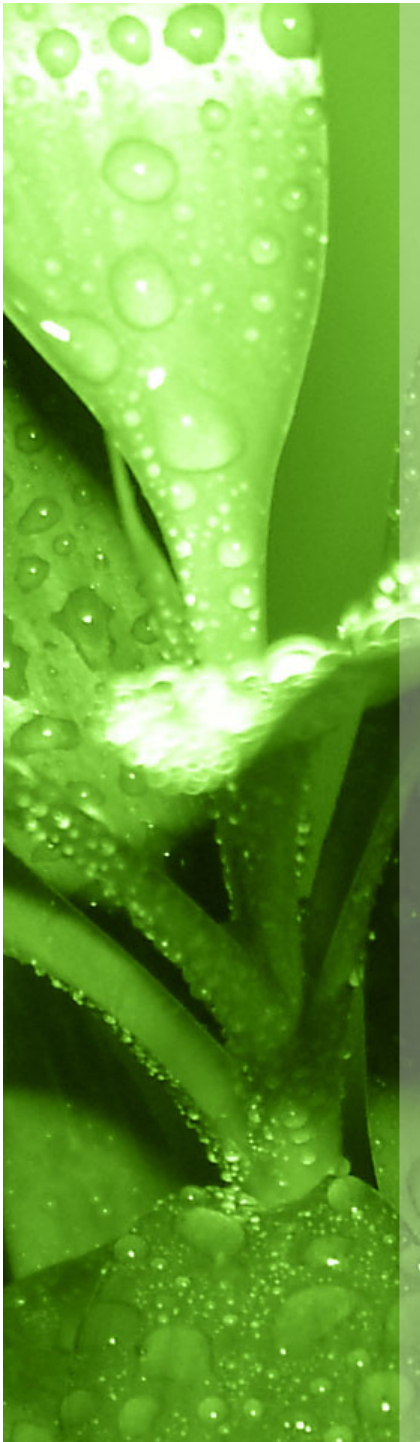
- Residents of an area in Lahore agitated that a large tract of land is being used as an open dumping ground for solid waste, which not environmentally friendly. The local commission (an advocate) appointed by the court reported that there was dirt, filth and heaps of garbage and other dirty stinking material at the dumping site. The court directed MCL to shift the site to any other location away from the residential area within a year and till then take precautionary measures.

⁴*Muhammed Yousaf vs Province of the Punjab (2003 CLC 576)*

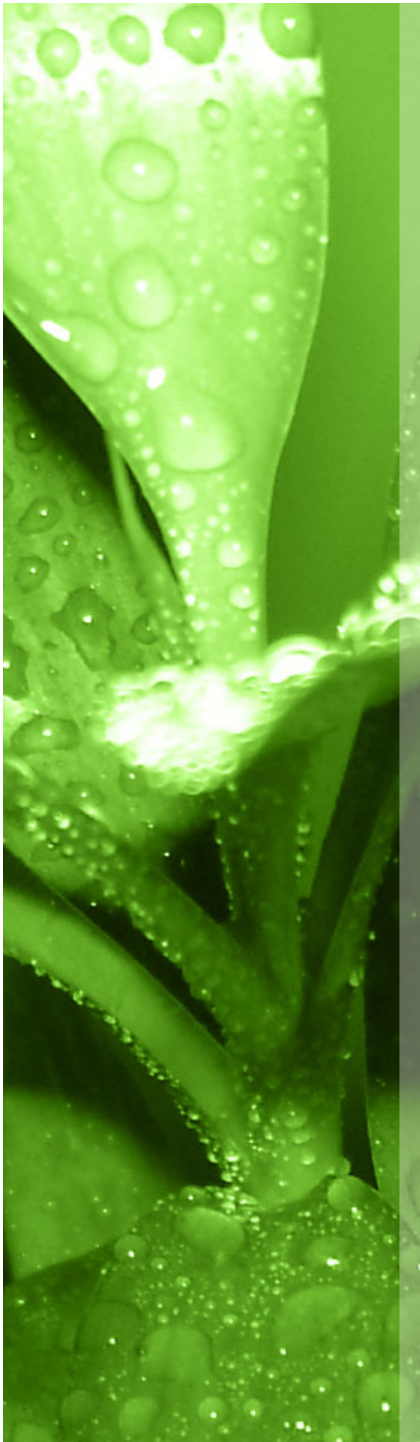
- In appeal⁵ the case took a different turn. Justice Tassaduq Jillani, heading the bench, realizing the importance of the case appointed Committee of Experts to suggest a sustainable plan for the open dumping site.
- The Committee reported that the area was appropriate for disposal of solid waste provided the local government establishes a proper

SANITARY LANDFILL,
A RECYCLING PLANT AND
A COMPOSTING PLANT.

⁵: ICA no. 798/2002.

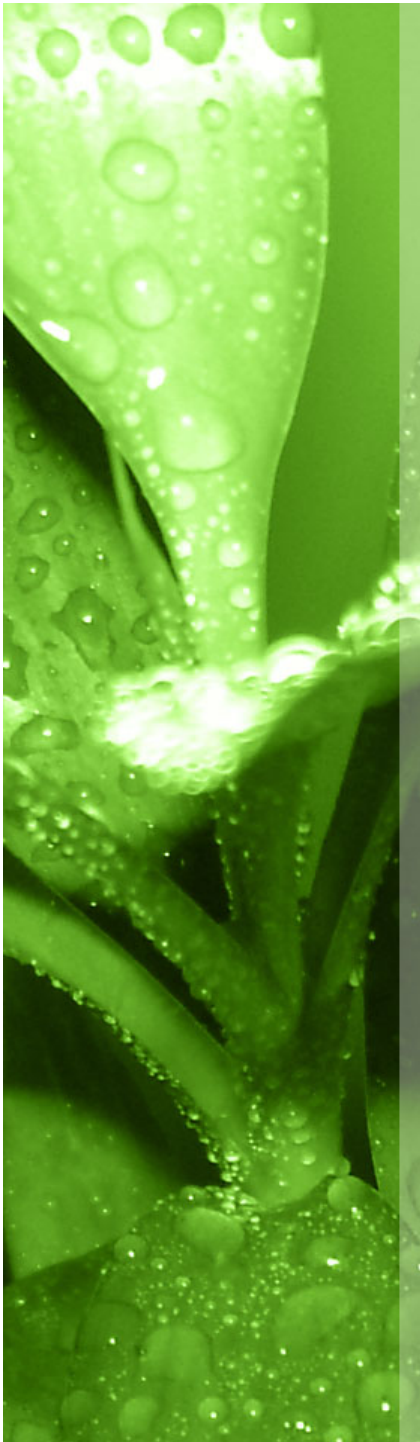


- The matter was finally decided by another Bench on 13-1-2005 as Justice Jilani had been elevated to the Supreme Court. The new bench, with respect, treated it as just another case, while acknowledging the Report of the Committee allowed the appeal of MCL to set up a Compost Plant as prayed for perhaps assuming that the said plant will resolve the environmental issues of the area.



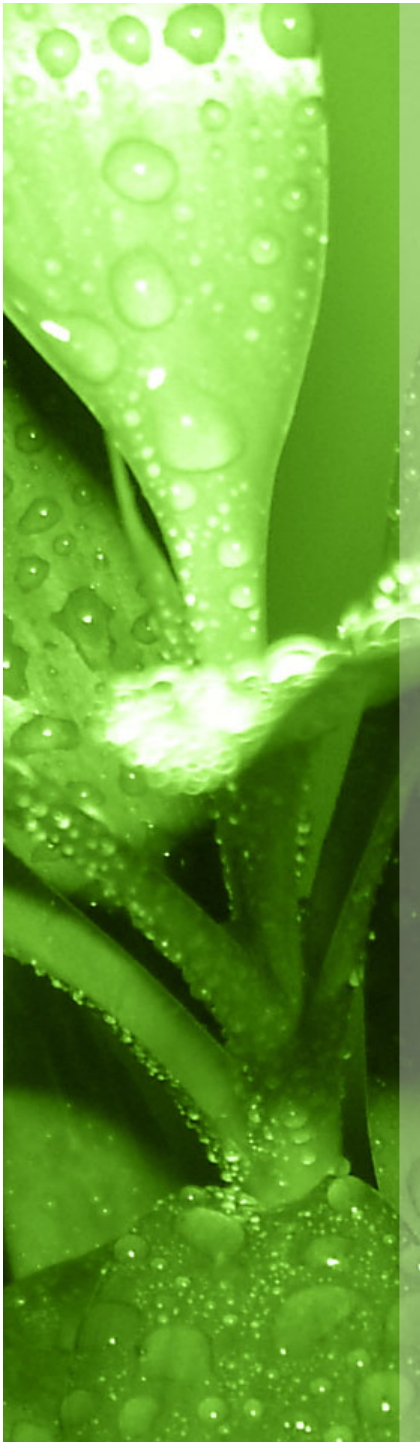
Lesson:

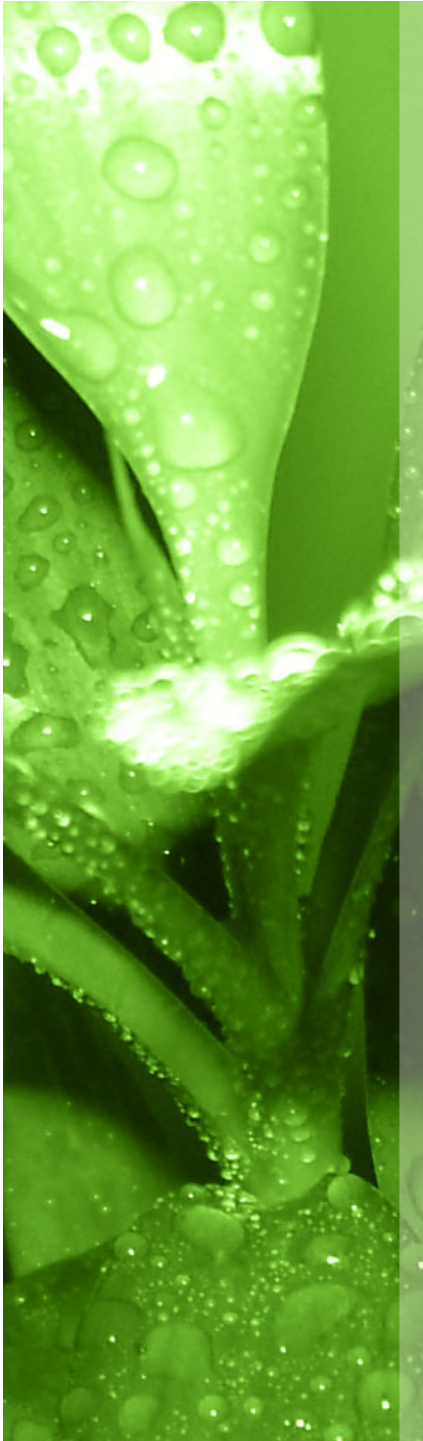
- The appellate court geared up to do Environmental Justice but ended up doing justice only.
- Change of Judges changed everything.
- An important opportunity was lost to give Lahore its first proper sanitary landfill. Current status- it is still an open dumping site . No recycling plant or an incinerator has been installed. (contd.)



Lesson: (Contd.)

- An Open Dumping Ground is disastrous for the underground water. Rainfall on an open garbage dump trickles down in the shape of LEACHATE into the ground water thereby contaminating it. It is no wonder that water in Lahore is largely contaminated – even though water is available at 120 ft, clean water not available till 700 ft (which was 400 ft – 10 years ago).

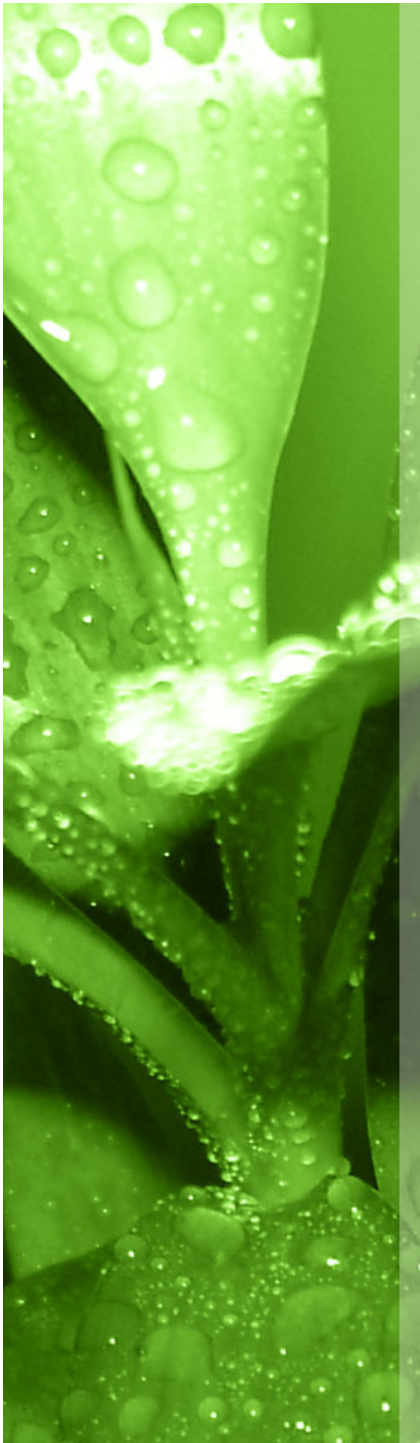




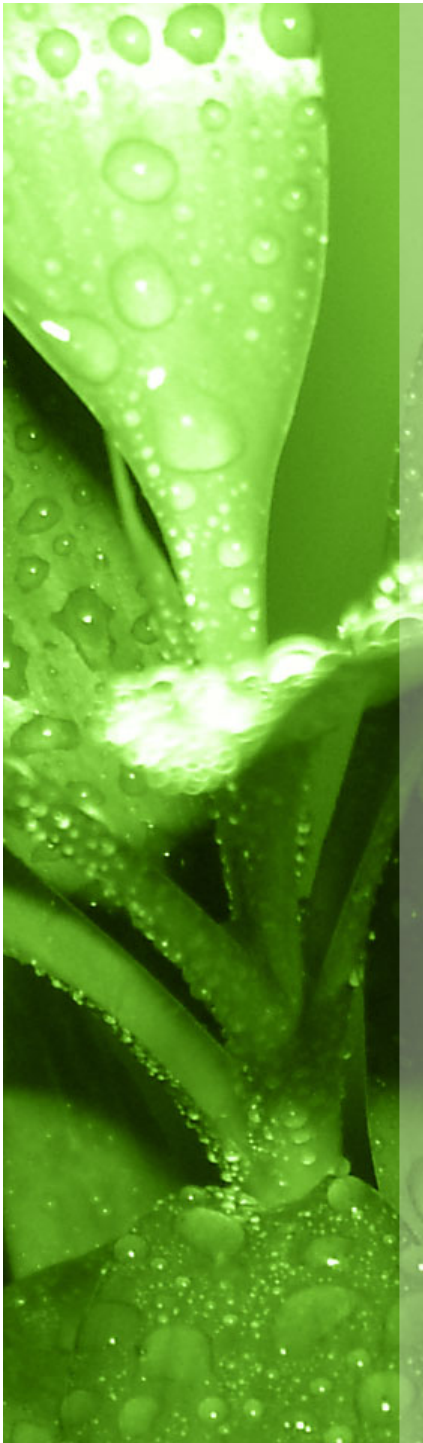
Third story

The Park

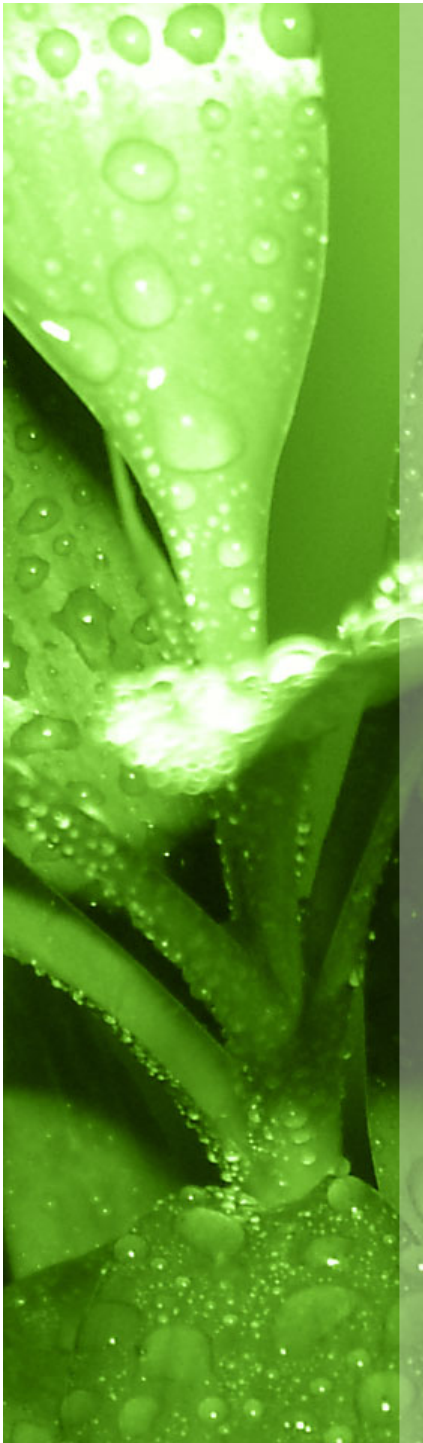
Third story – The Landfill



Third story – The Landfill

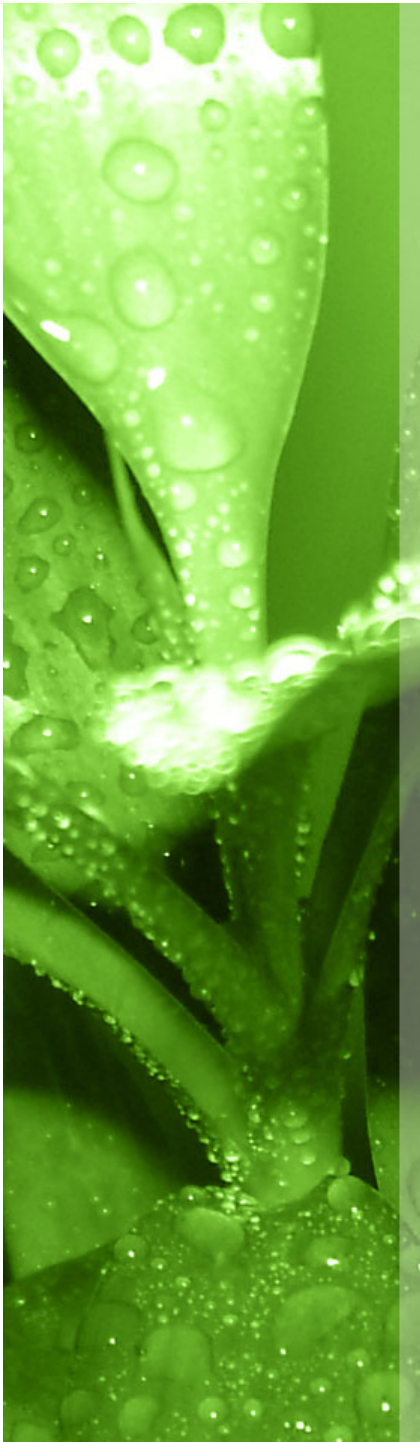


Third story – The Landfill



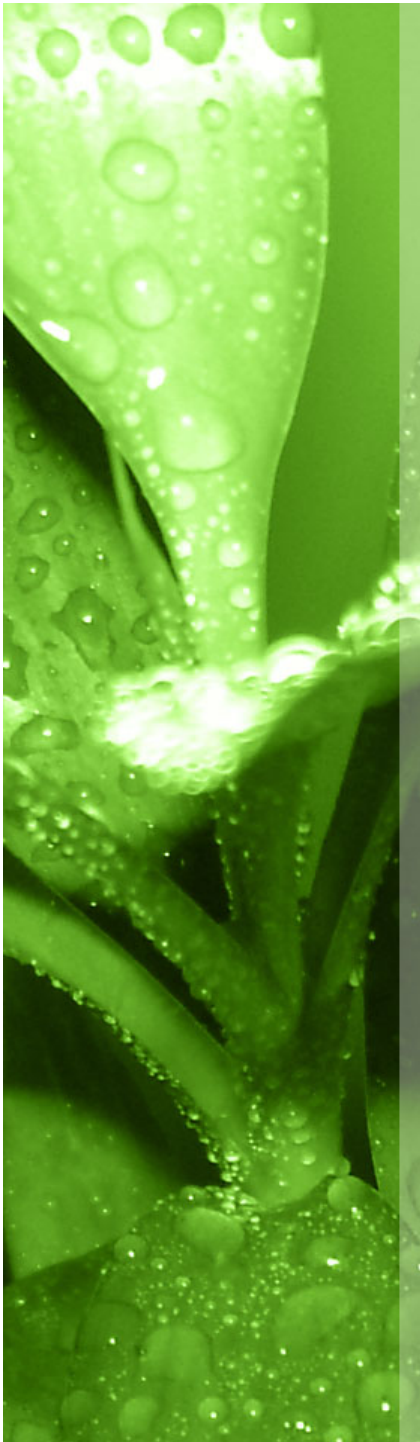
Environmental Benefits:

- Parks can contribute significantly to the environmental and ecological health of an area. First, green spaces absorb excess rainwater. This not only reduces the risk of flooding, but also allows urban runoff to be absorbed into the soil. Park trees drastically improving air quality because their leaves remove pollutants from the air. They also sequester carbon dioxide (CO₂) from the air, mitigating the impact of the greenhouse effect. Furthermore, their biological functioning and canopy structure perform significant shading and temperature-regulating tasks, reducing urban air temperatures in the summer and blocking winds in the winter.



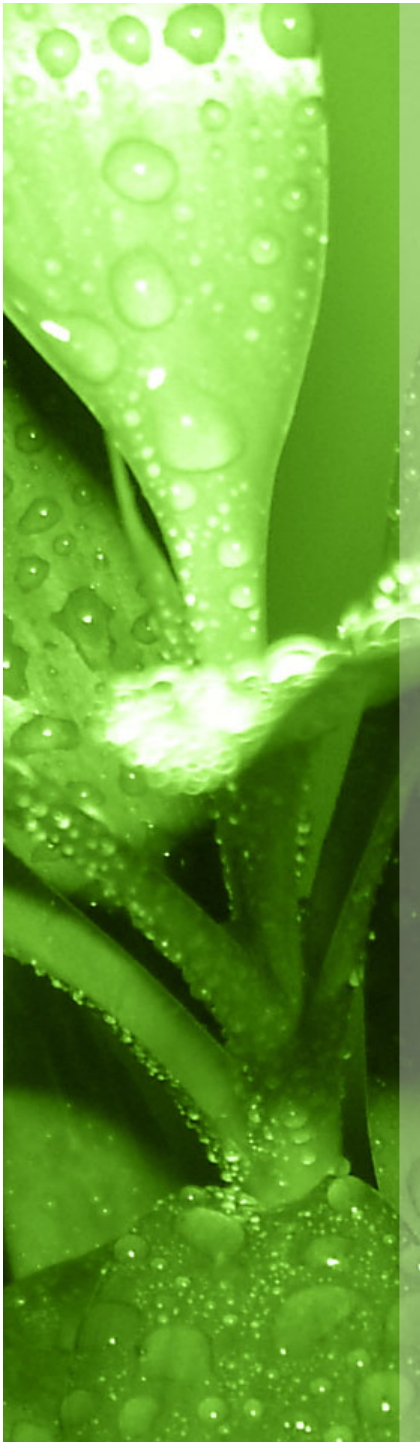
Recreational Benefits:

- The most obvious benefits of parks relate to the recreational opportunities they provide. These range from active play and exercise that might involve specific facilities or equipment (i.e. basketball courts or playgrounds), to more passive activities such as strolling, picnicking, or reading. Indeed, each piece of open space, whether possessing particular facilities or not, is a multi-purpose area that can offer any number of options to all types of people. This attribute makes parks such positive, dynamic assets to communities.



Social Benefits:

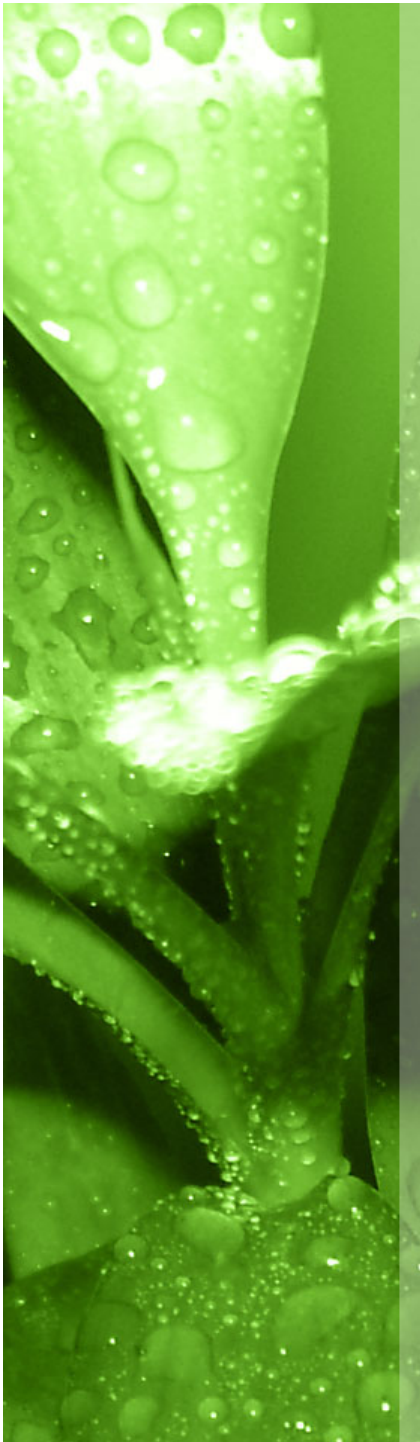
- Parks are believed by some to be ideal community gathering places. They are public spaces that can be accessed by all, and thus allow people to come together informally and intermingle - a well designed park can be a significant center in a neighborhood, a place where people meet and socialize. Parks can also provide sites for more formalized gathering such as community or cultural events.



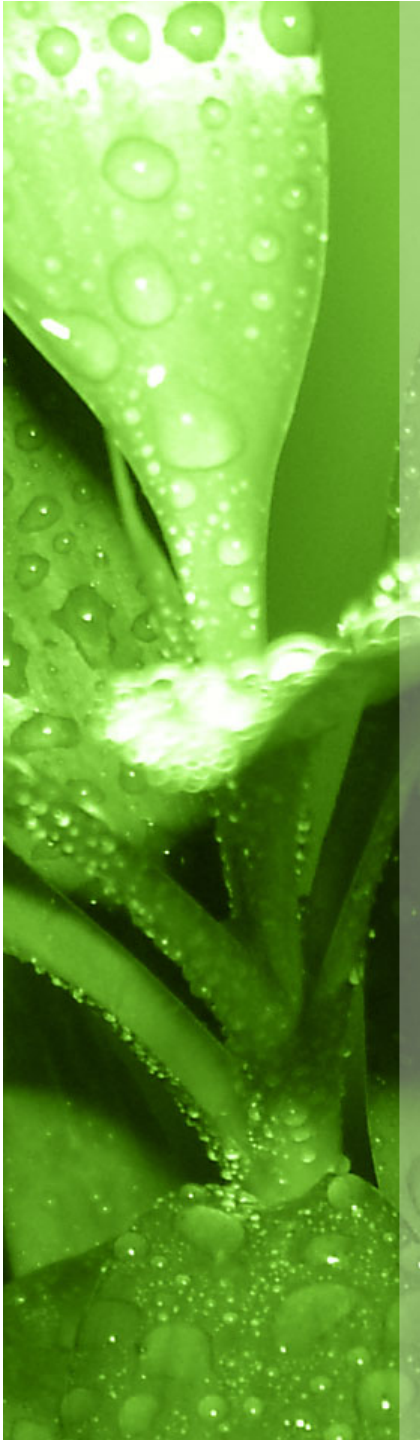
Case⁶:

- In Doongi Ground case an IMAX cinema and a shopping mall were proposed to be set up by the provincial government in a public park. The Park was cordoned off one night and it was after a few months that the residents noticed construction being raised inside the park.

⁶: titled: *Sheri-CBE and others vs. LDA, and others.* 2006 SCMR 1202

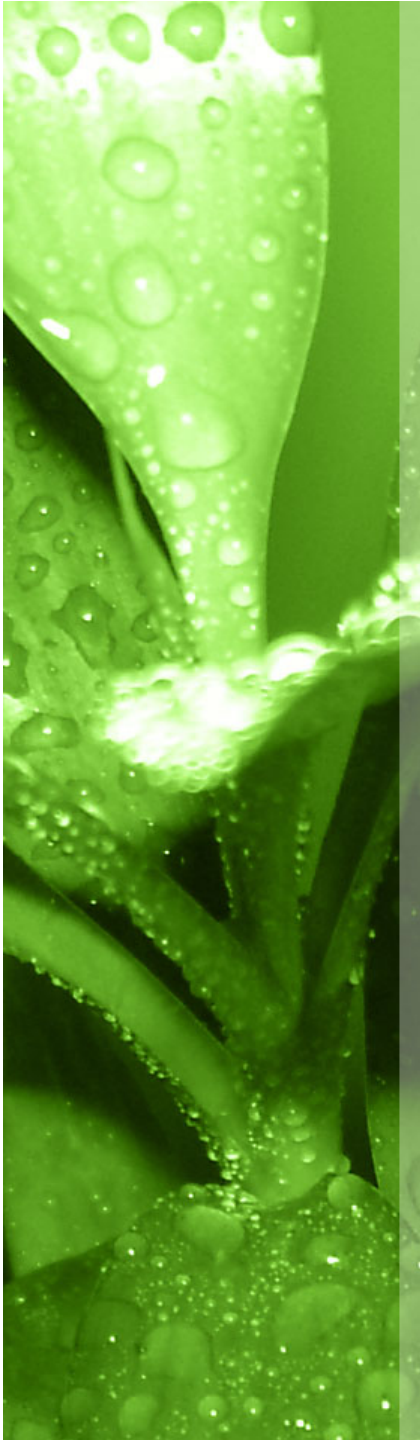


- The conversion was challenged by the residents, an NGO and certain public spirited individuals. Justice Saeed Akhtar (as he then was) of the Lahore High Court granted an injunction against setting up of the IMAX Cinema and the bowling alley. (Contd.)

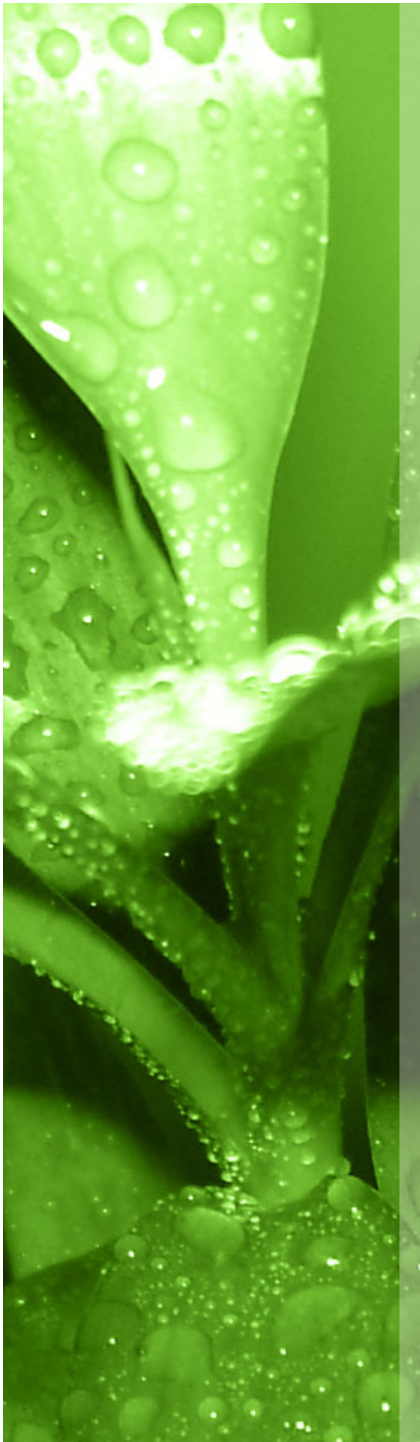


- The case was finally decided by a full bench of the Court⁷. By this time, change of Provincial Government had taken place, the new government withdrew the plan to set up an IMAX cinema in the public park, however, prayed that they be allowed to retain the cement structure raised in the park, as well as, the three storeyed car parking underneath the park as it cost the Government a sum of Rs.156.72 million. They proposed to use it as a library, etc.

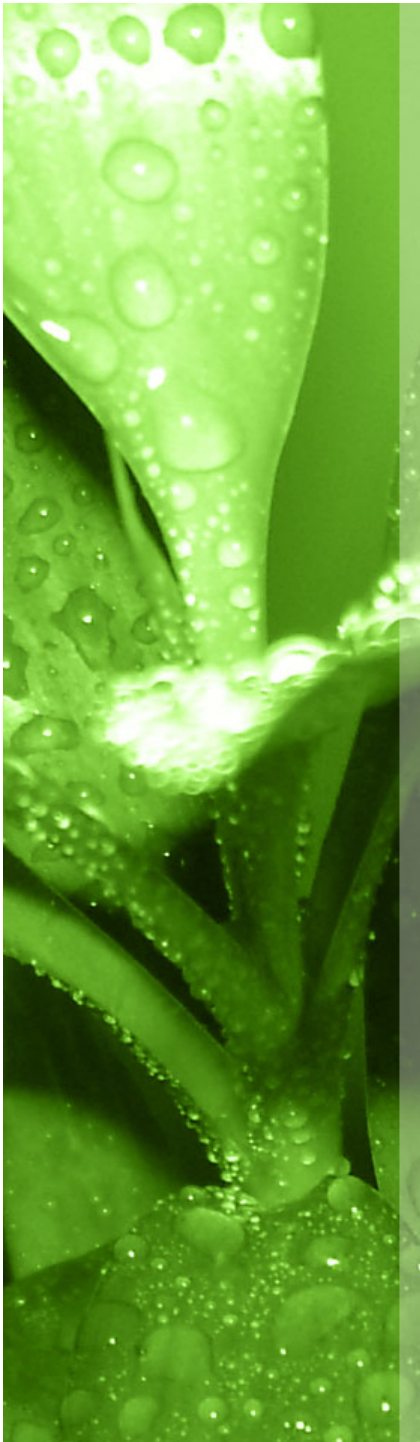
⁷: W.P. No.1226/2006 vide judgment dated 20.06.2011



- Hon'ble Chief Justice Sh. Azmat Saeed of LHC, speaking for the court said
- “rights of the petitioners and the public at large with regard to the park in question cannot be sacrificed at the altar of political and bureaucratic insensitivity and incompetence. No doubt some construction can always be raised in parks for providing facility or the benefits of the public. Such construction is ordinarily upon minuscule portion of the park and is usually tucked away in an obscure corner thereof. A massive construction over a measurable portion would violate the sanctity and integrity of the park. (Contd.)

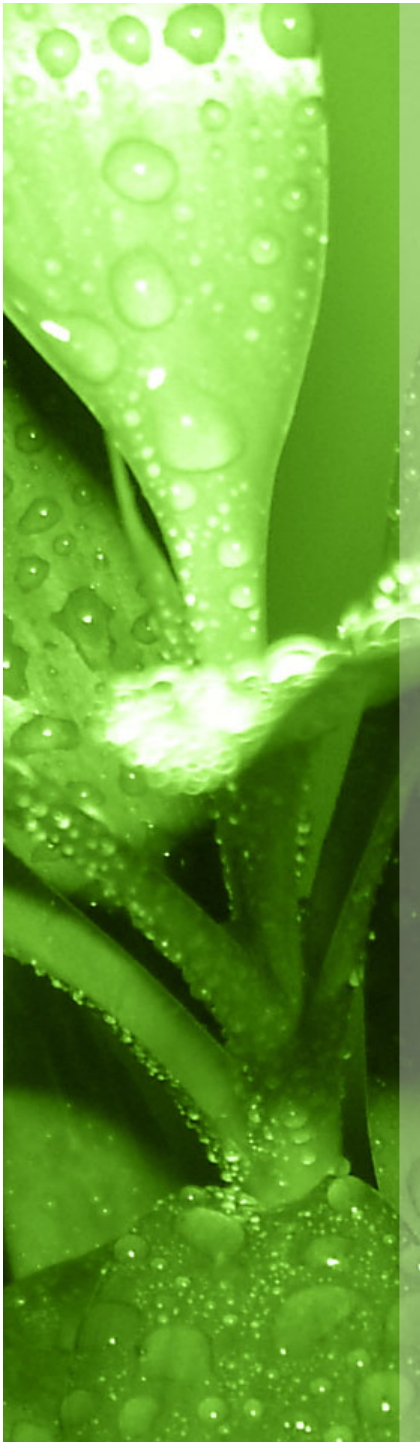


- We are afraid if 18% of the park/playground as proposed is allowed to be constructed upon the site, it will lose its essential feature as a park/playground, and shall stand converted at best into a public building with lawns, which would for all intents and purposes amount to conversion of the park/playground to the prejudice of the rights of the petitioners and other inhabitants of the locality which cannot be permitted, therefore, we direct that incomplete structure above ground cannot be allowed at site and must be removed.”



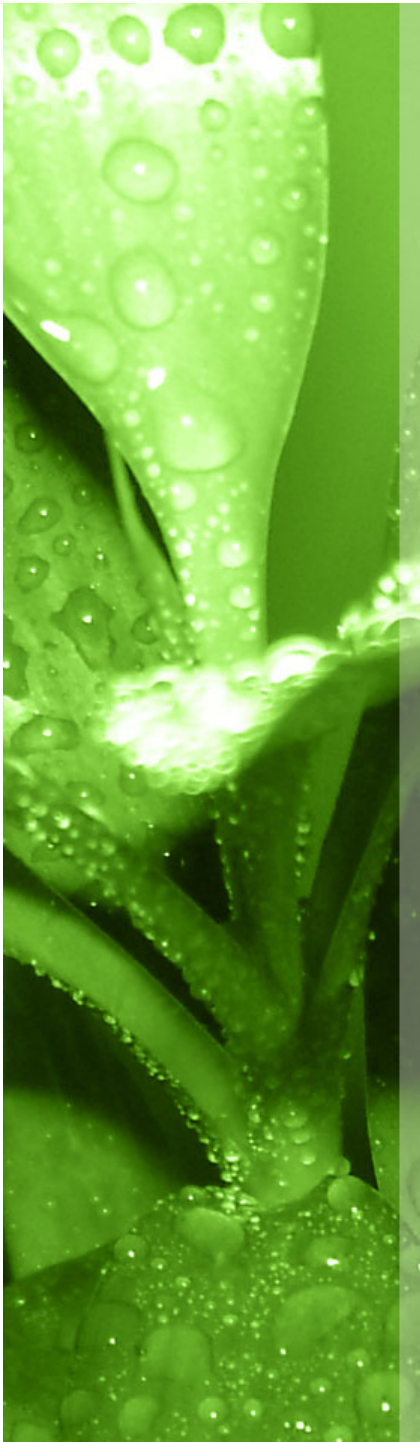
- Similarly, in Makro-Habib case⁸, where Makro megastore was built on a children playground, Jawwad S Khawaja J. speaking for the Supreme Court held:
- “The said land was reserved as an open space dedicated for use as a playground in the Master Plan...Makro–Habib is allowed three months from the date of this judgment to remove its structures and installations from the playground, restore it to the same conditions as existed on the date of the sub-lease and hand over its vacant possession to the CDGK ...who shall develop and maintain the land as a playground ..”

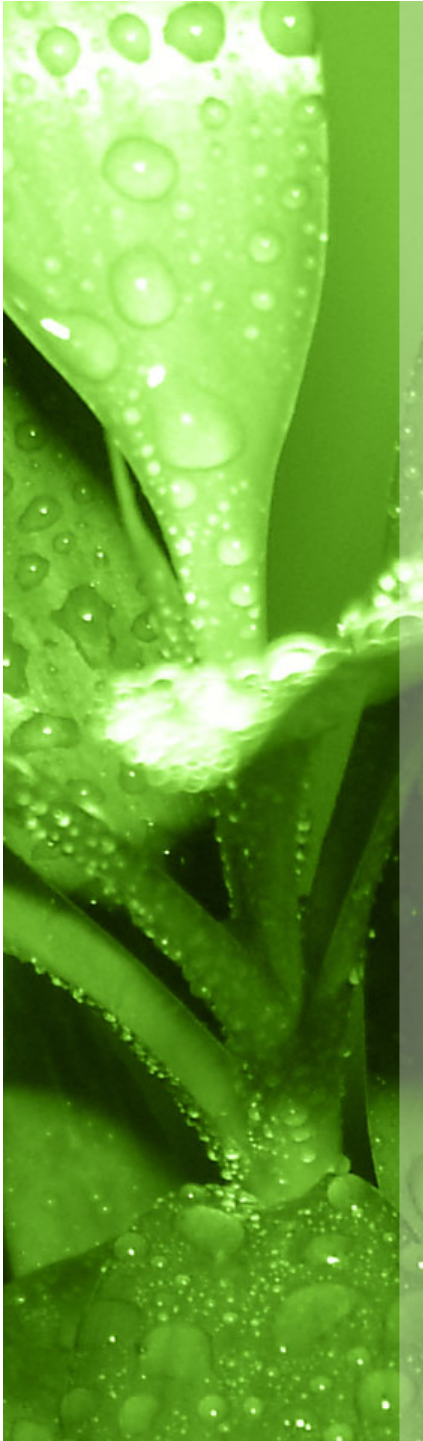
⁸: 2010 SCMR 885



- In Model Town Case⁹, once again Chief Justice Azmat Saeed of the Lahore High Court laid down the importance of a master plan and the requirement of an EIA before any change in land use is proposed especially when it pertains to conversion of a public space (garden) into a commercial area for setting up a shopping mall.

⁹: 2007 CLC 374

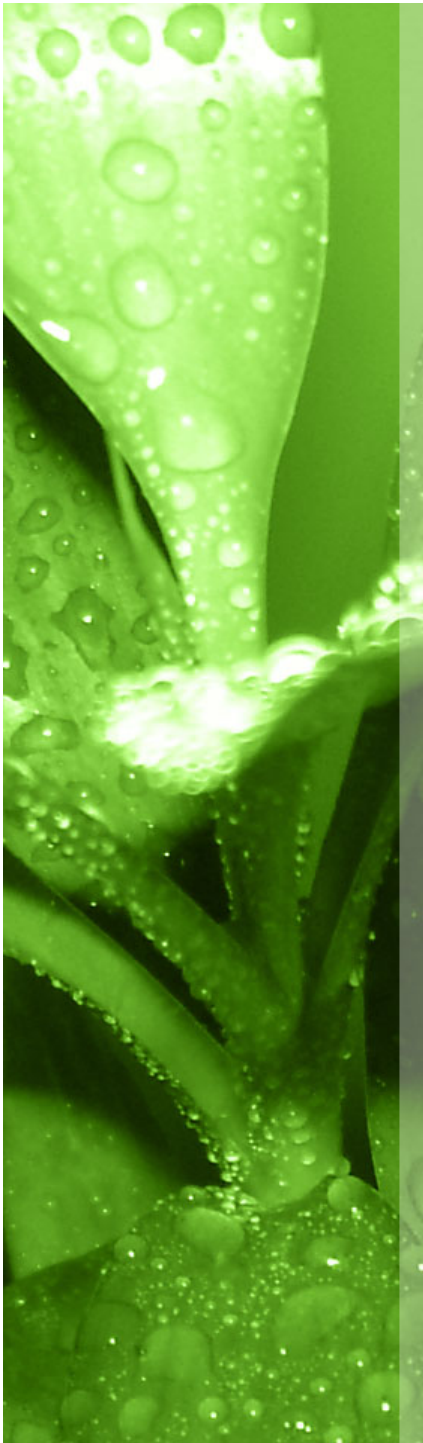


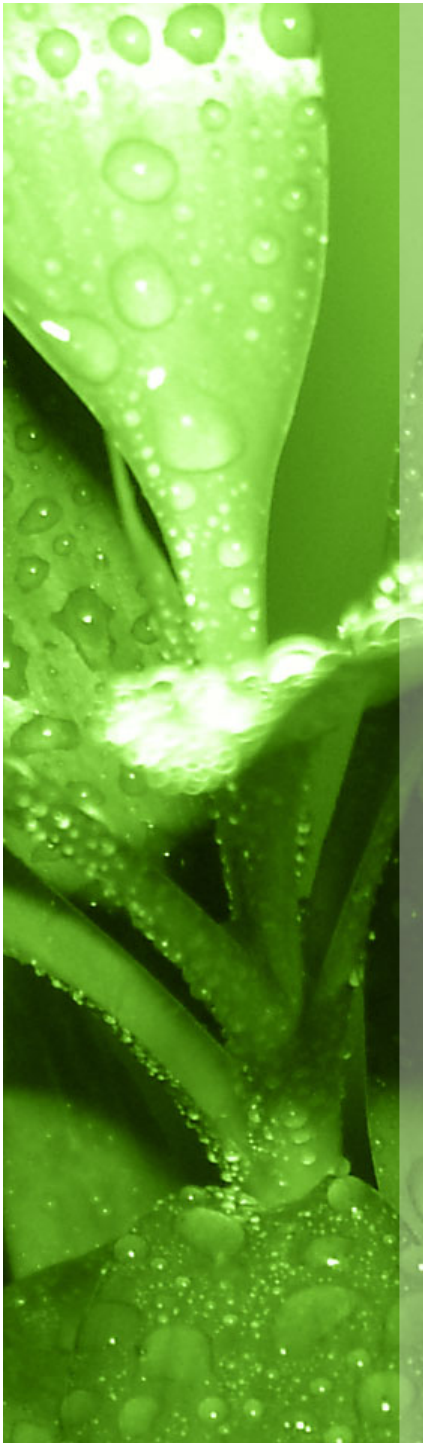


Fourth story

The Two Stroke **Rickshaws**

Fourth story – The Two Stroke Rickshaws

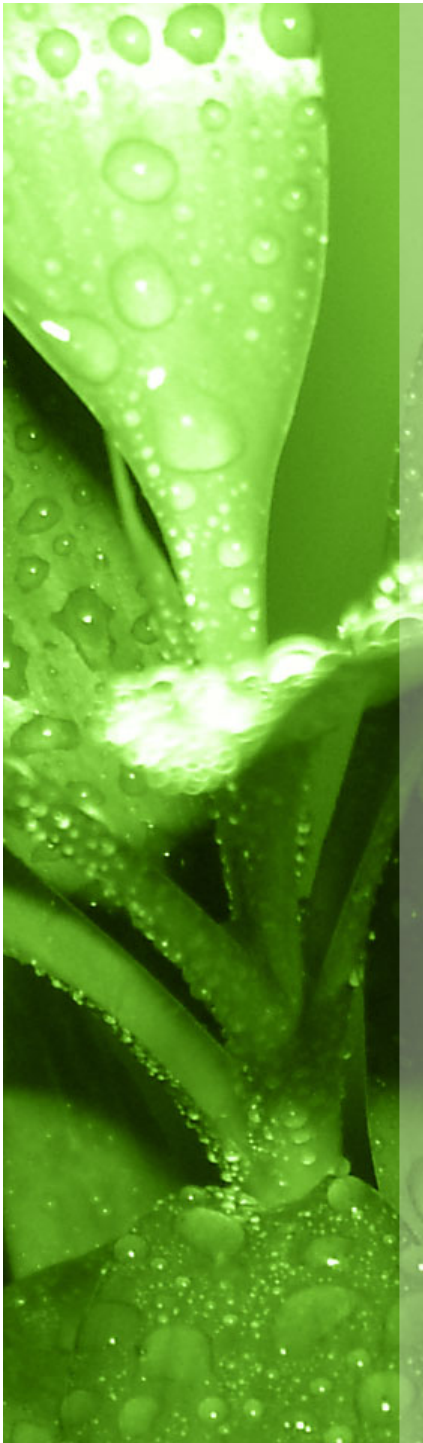




Fourth story – The Two Stroke Rickshaws

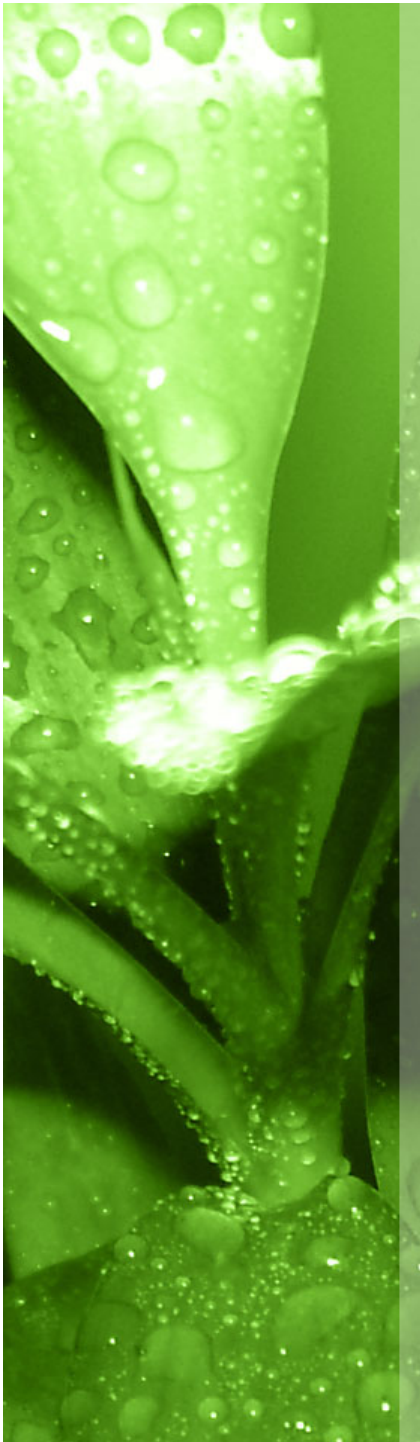


Fourth story – The Two Stroke Rickshaws



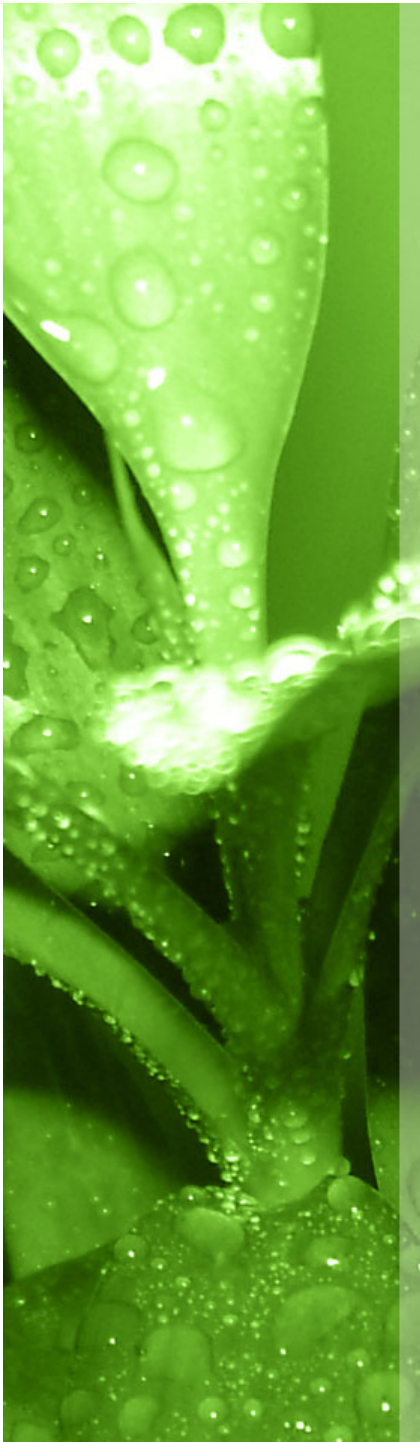
- We all know that air pollution causes lung irritation, sinus problems, bronchitis and asthma, whereas lead emitted by gasoline vehicles cause liver dysfunction and impairment of mental health. estimated 22,000 premature deaths are estimated amongst the adults annually due to air pollution. Noise level of 89 to 90 decibels is commonly experienced on all major roads of Lahore, which exceeds the maximum advisable limit of 85 decibels.

¹⁰: Pakistan Strategic Country Environmental Assessment Report- World Bank & Institutional Barrier to Sustainable Urban Transport in Pakistan – Muhammad Imran, Oxford (p147).

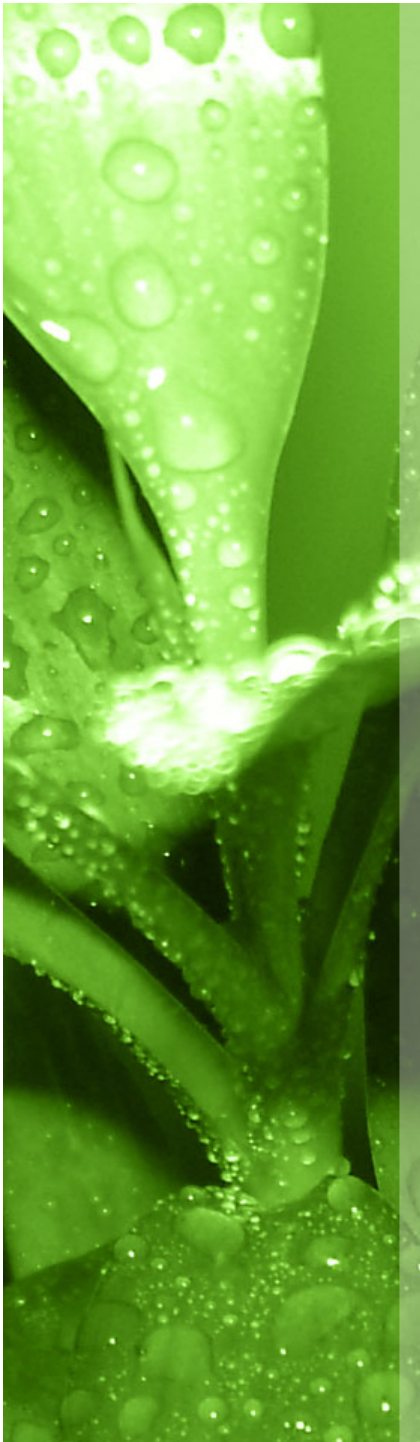


- In the *Air Pollution Case*¹¹ the petitioners complained of the air pollution and poor air quality in the city of Lahore, mainly caused, by the increasing number of the vehicles.
- The case did not progress much till Justice Sair Ali (as he then was) took up the matter and tried to find a sustainable solution to the problem.
- A Clean Air Commission was constituted for the purpose
- Commission after extensive consultation with the stakeholders and experts recommended:

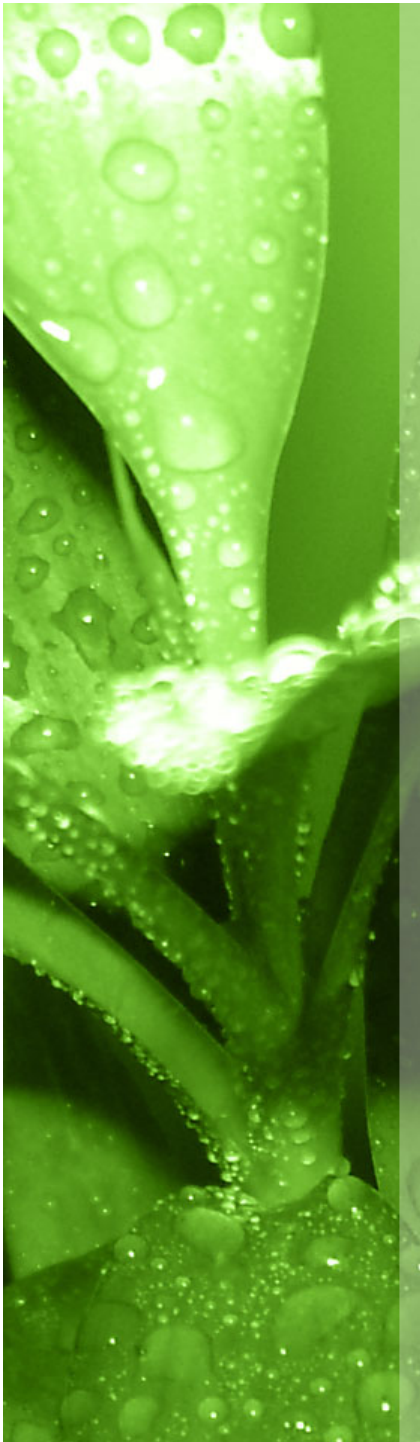
¹¹: titled: *Syed Mansoor Ali Shah v Government of Punjab* PLD 2007 Lahore 403

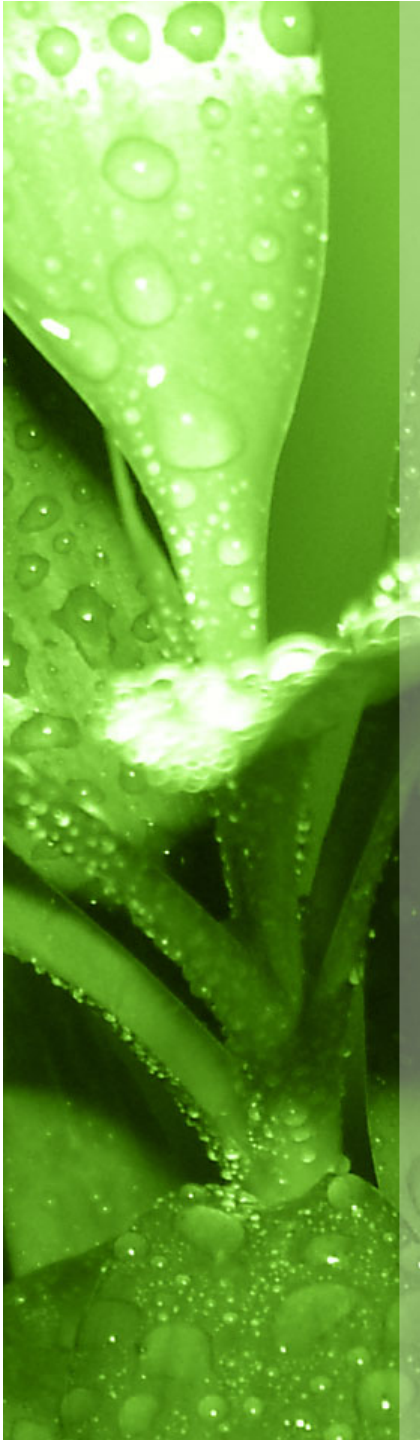


- That CNG buses be introduced in the metropolis, which are Euro II compliant - phasing out of the existing polluting buses by 2007 and the certified conversion of existing buses.
- Capping the age of buses to 10 years
- Setting up of dedicated bus lanes in transport planning.
- phasing out of wagons from Urban centers and replacing the same with mini buses
- Introducing 4 stroke CNG rickshaws in Lahore. Phasing out of existing Autocab rickshaws from Lahore by December 2007.
- Strictly enforcing the existing ban on the registration of two stroke motorcycle rickshaws.
(Contd.)



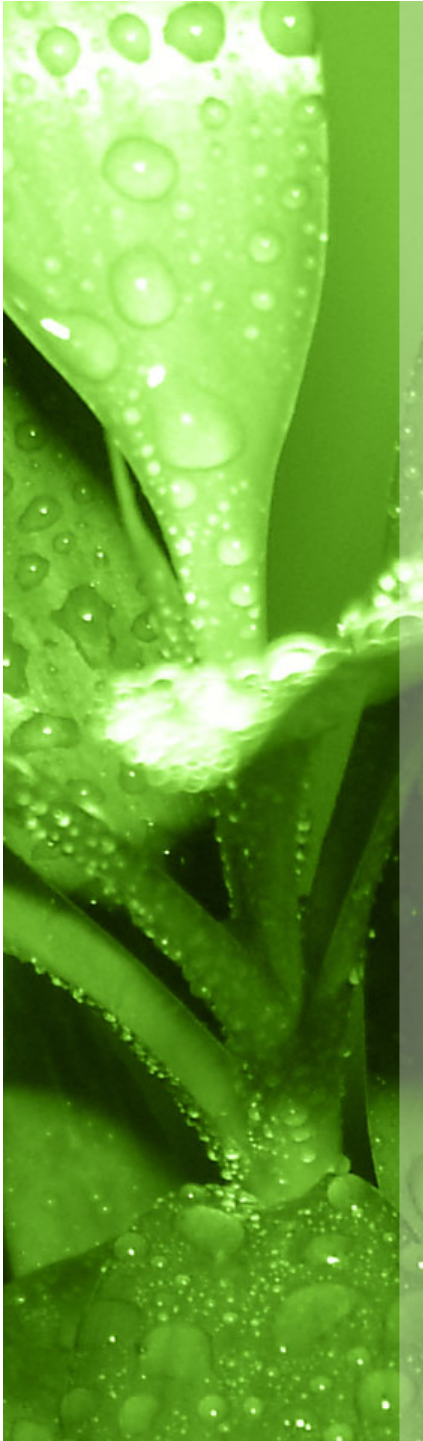
- Setting ambient air quality standards by 2007 in respect of air quality and vehicular emission standards in terms of fuel.
- This case is perhaps the first of its kind, where extensive effort was made to find viable transport solutions to the rapid urbanization of the city.





Fourth story – The Two Stroke Rickshaws

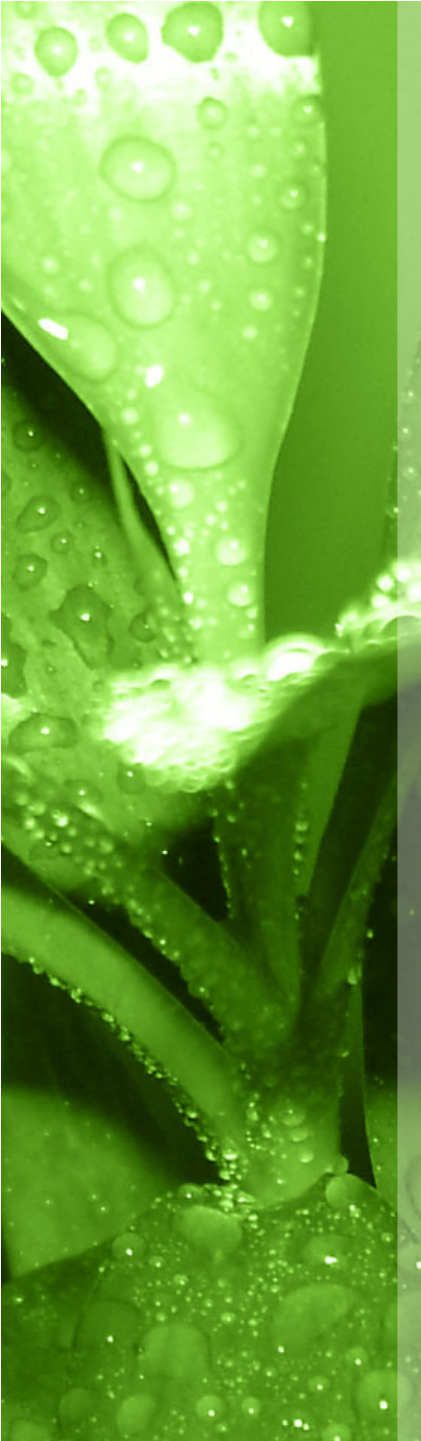
- In spite of the judgment we still have two stroke rickshaws plying on the roads of Lahore.
- Environmental Justice is not an exclusive domain of the judiciary. The Executive is equally under an obligation to have environmental justice in their policies and actions.
- In this case in spite of all the effort, nothing came out as the Executive was ineffective in implementing the judgment.



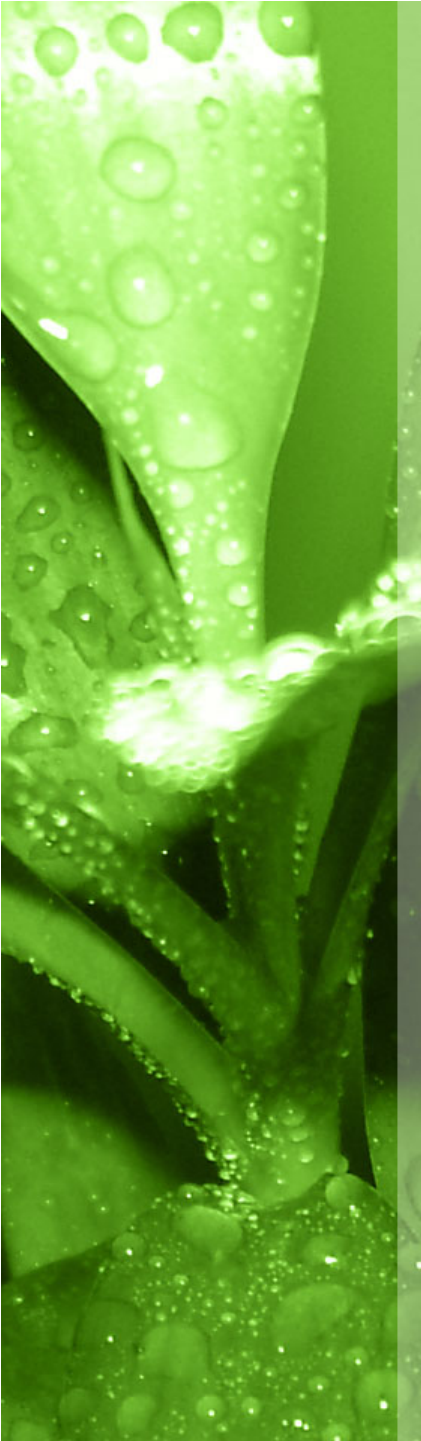
Fifth story

High-rise Buildings

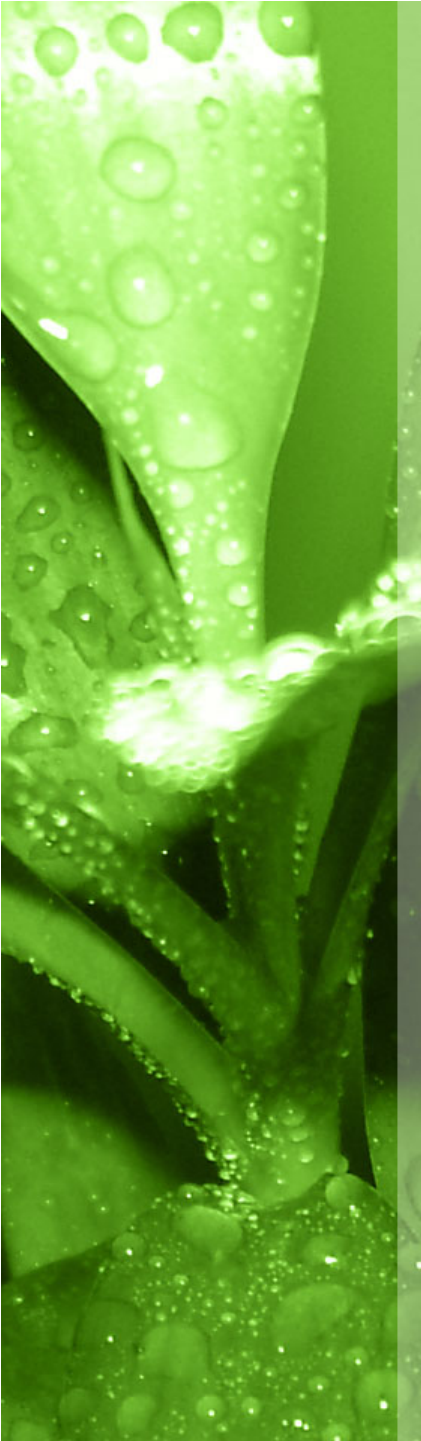
Fifth story – High-rise Buildings



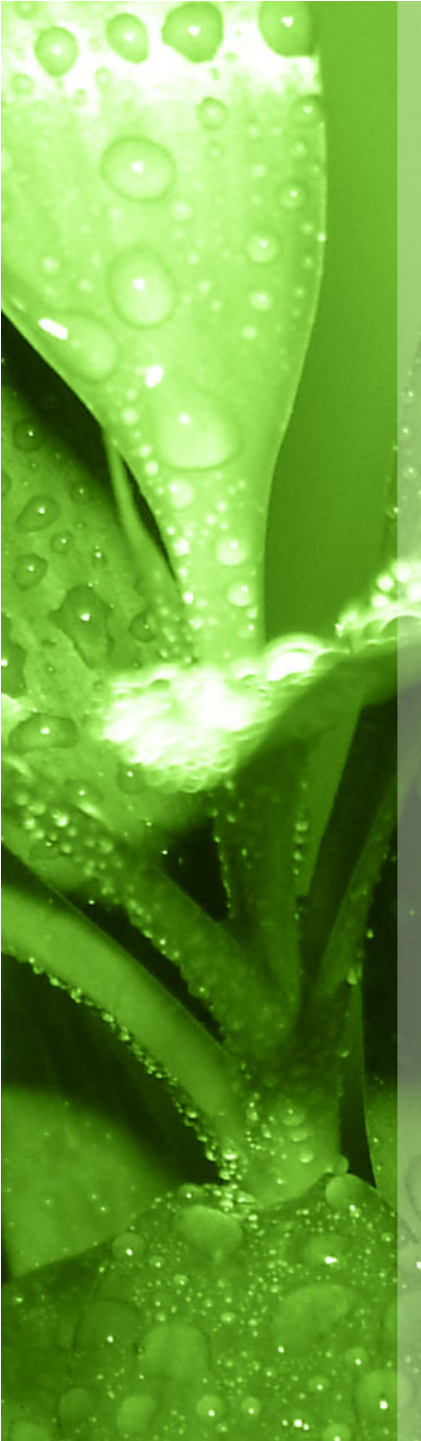
Fifth story – High-rise Buildings



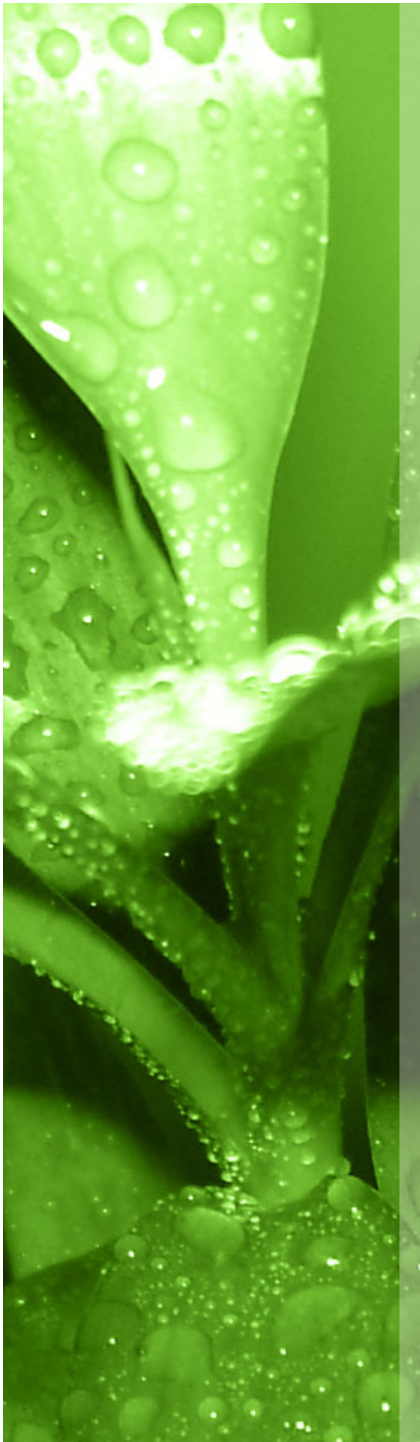
Fifth story – High-rise Buildings



Fifth story – High-rise Buildings

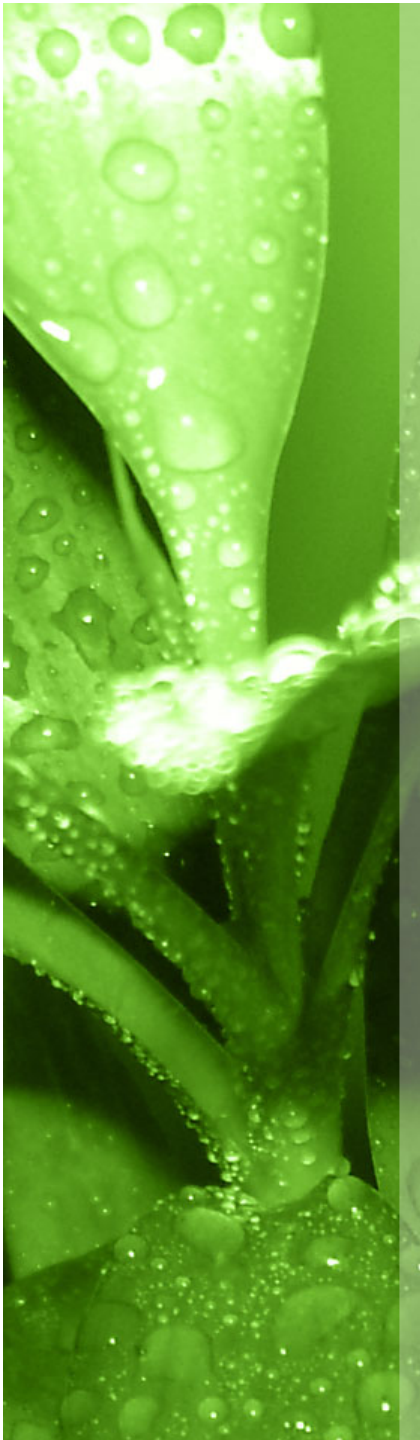


- High rise buildings are the face of modern urbanization. These buildings are high energy consumption structures, they create pressure on the natural and built environment and encourage rapid urbanization leading to more traffic and congestion.

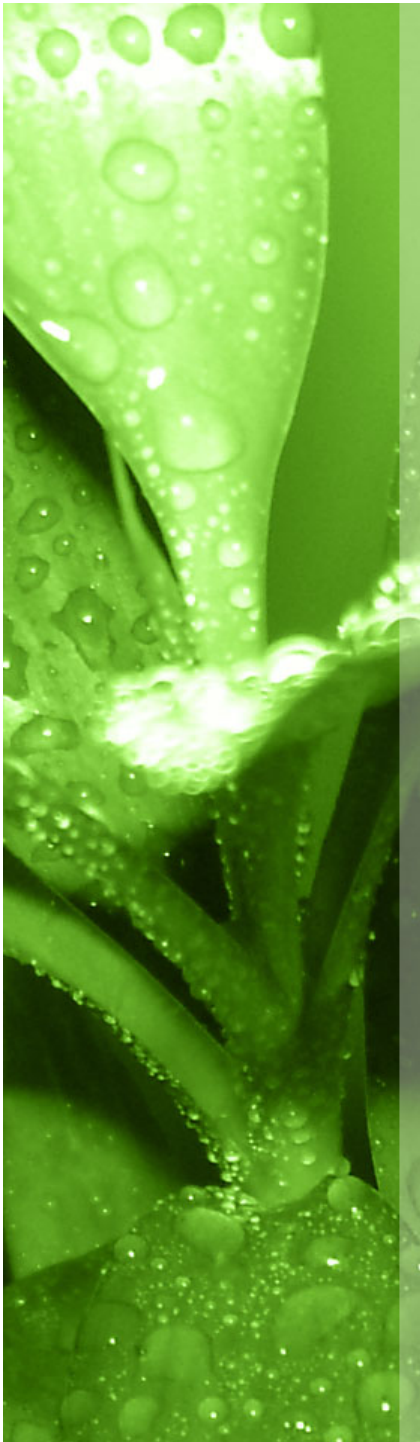


- In a High rise Case¹² the excavation for constructing a multi-storeyed shopping-cum-residential plaza resulted in lateral movement of the adjacent land thereby damaging the adjoining house of the petitioner.
- The piling done by the builder were faulty.
- A simple suit for negligence and consequential damages filed before the trial court bloomed into an environmental case before the Supreme Court of Pakistan.

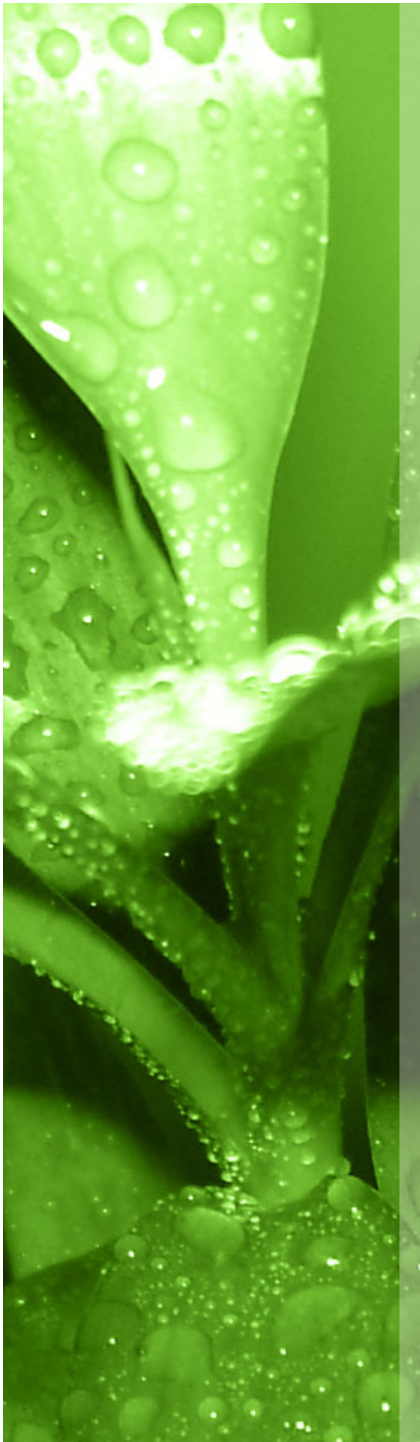
¹²: Farooq Hamid and others vs. L.D.A. and others, (2008 SCMR 468).



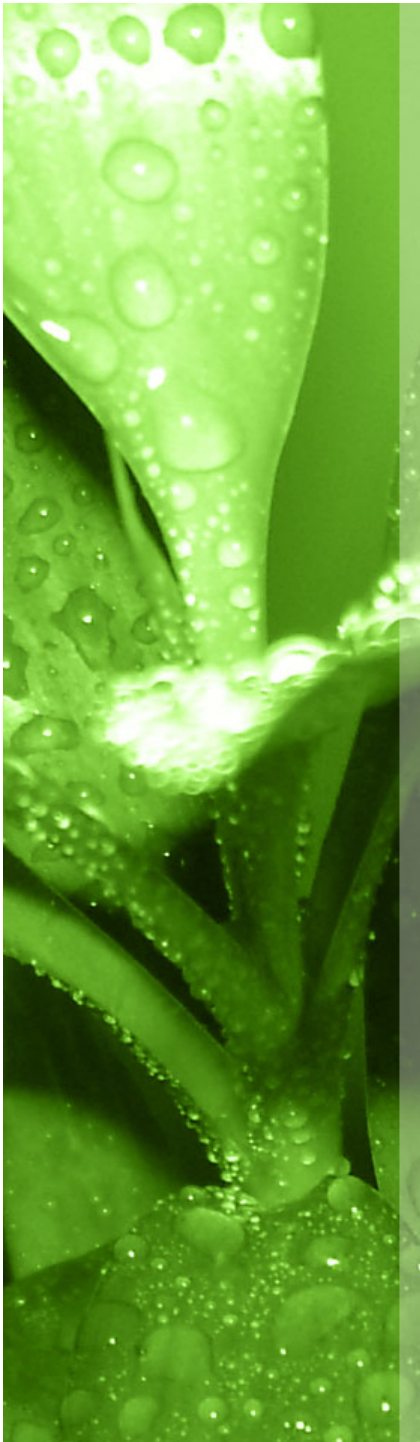
- It was discovered that there were serious violations of the Building Regulations and no E.I.A. had been conducted under the provisions of Pakistan Environmental Protection Act, 1997
- During the course of hearing it was also discovered that the Regulatory Authority i.e., the LDA did not have a single structural engineer to verify the structural strength of the multi storied building under construction.

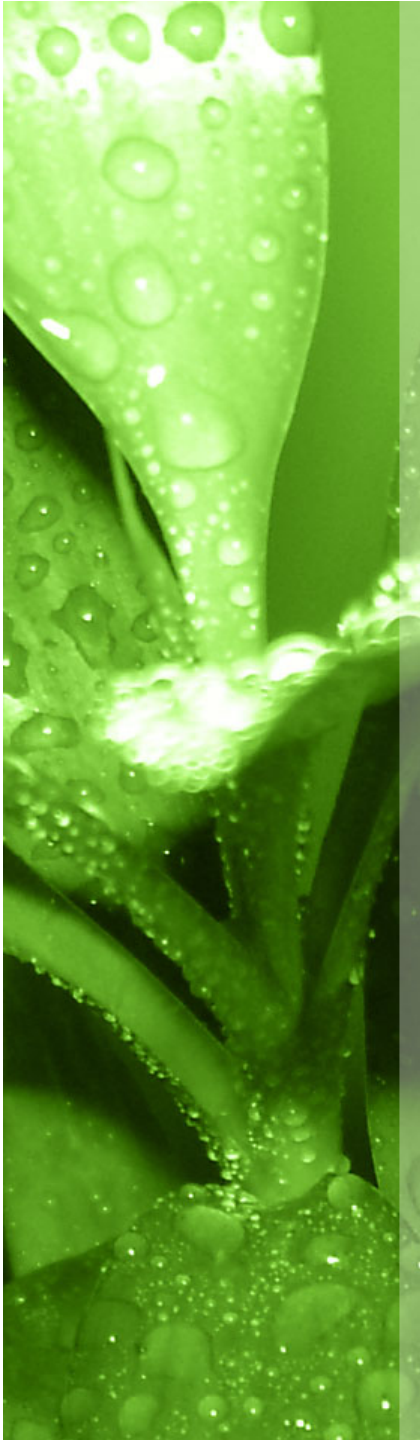


- Justice Khalil Ramday (as he then was) speaking for the Court made the following observations:-
- “We were surprised to notice that the required supervision and the control to be carried out and exercised by the LDA was completely absent which was a criminal neglect of duties on the part of the concerned officials and LDA....On our call the LDA has submitted a tentative list of more than 100 plots comprising of three stories and more which were being constructed in various parts of the city of Lahore including the areas in the old city like Shahalam Gate etc...The situation is alarming. Such a large number of multiple-storeyed high rise buildings are being constructed all over the city without ensuring compliance of security measures, proper supervision and adherence to the law.”



- Thereafter the Court investigated through a Commission of Experts into the construction of a 1000 multiple-storeyed plazas being built around Lahore and passed orders for the demolition of buildings or portion thereof which had been built in violation of the building plans.





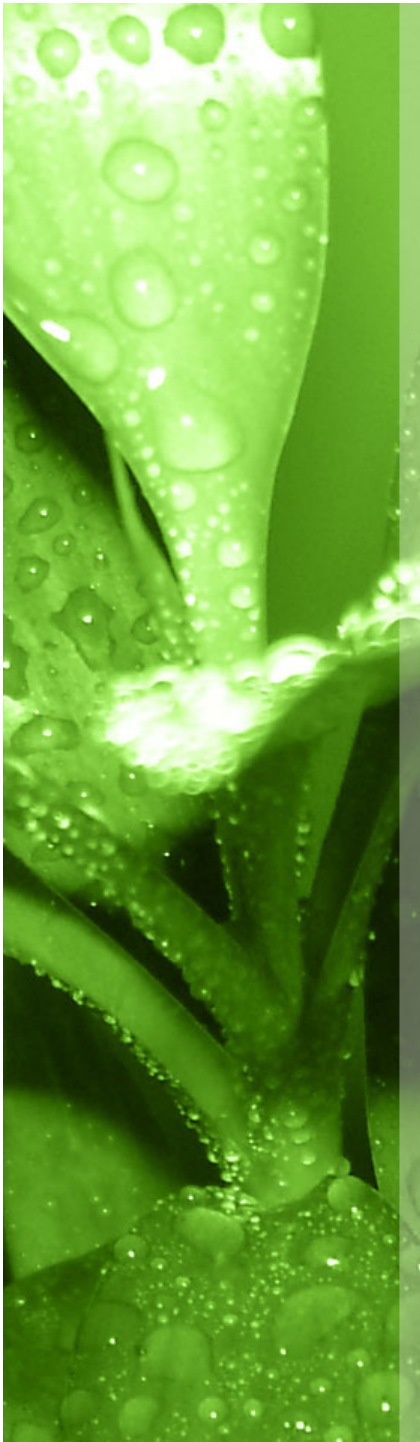
- The case mainly dealt with the built environment and its safety.
- It also settles that change in land use cannot be a mindless activity.
- It was also observed by the court, during the course of hearings, that the high rise buildings are being raised on residential plots which earlier housed a few family members and now the new mutli-storeyed structure houses hundreds of people, which have a severe impact on the existing infrastructure like water supply, sanitation, sewage, car parking, traffic, etc.
- The case is still pending.

THE ROAD AHEAD FOR ENVIRONMENTAL JUSTICE.

□ A JUDGE'S PERSPECTIVE

1. UNDERSTANDING NATURE- the big picture

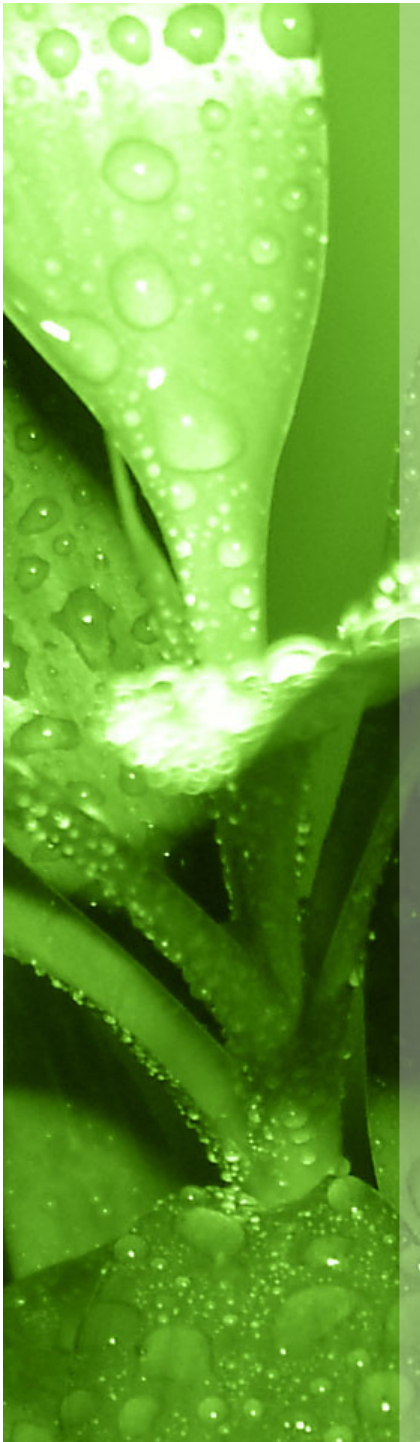
- a.** A judge today must be conscious and alive to the beauty and magnificence of nature, the interconnectedness of life systems on this planet, the interdependence of ecosystems, the fundamental importance of biodiversity and respect for all life forms. He must protect nature at all times – the source of our and our future generation's sustainability.
- b.** If all the judges are not interested- GREEN BENCHES be constituted. We cannot through away these opportunities to protect nature, as discussed above, as we owe it to our children.



THE ROAD AHEAD FOR ENVIRONMENTAL JUSTICE. (Contd.)

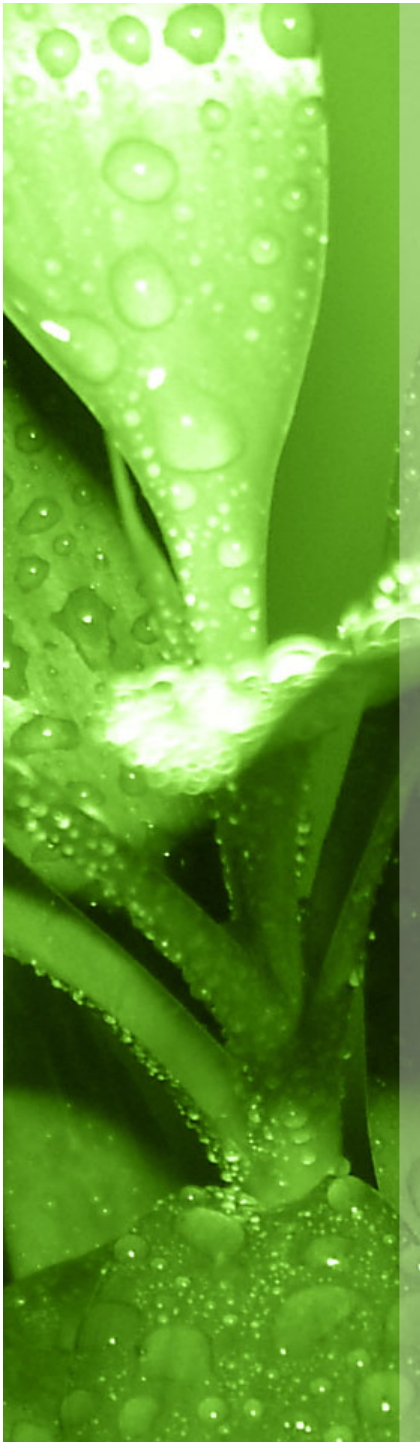
2. ENVIRONMENT IS NOT A LOCAL ISSUE

- a) Environmental case is neither *inter parties*, nor localized to a restricted area. It relates to human life and involves the entire living community including the flora and fauna. Judge must therefore approach an environmental case not only wearing all the laws on his robe but also by wearing several hats i.e., of an engineer, planner, developer, wildlife expert, etc. These cases require a sustainable solution. For example, remedying traffic congestion through widening of a road by cutting the trees is not be a sustainable solution. Amendments in Master plan, recourse to urban transport, opening up of alternate routes could have been more long lasting solutions and more beneficial for the generations to come



THE ROAD AHEAD FOR ENVIRONMENTAL JUSTICE. (Contd.)

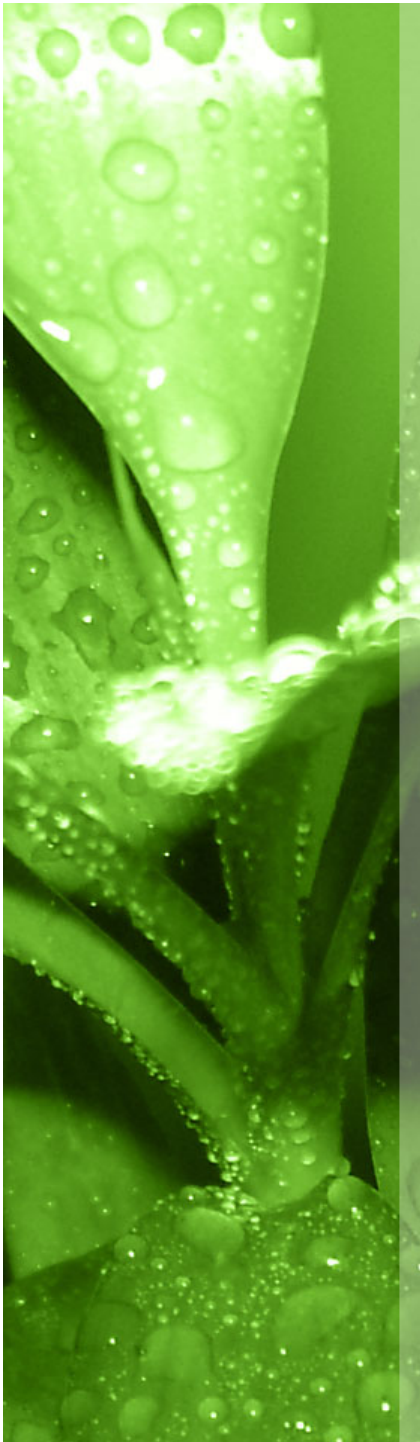
- b) The environmental cases do not have a quick fix – they require a more sustainable policy to be evolved. It requires the judiciary to go the extra mile in formulating a solution which protects the environment and yet provides a window for development. The right balance must always favour the environment.
- c) It is helpful not to rush into deciding the matter at the expense of environment but rather supervise the issue till a sustainable solution is evolved. The concept of **“continuing mandamus”** keeps the court in the supervising seat till a sustainable solution is evolved.



THE ROAD AHEAD FOR ENVIRONMENTAL JUSTICE. (Contd.)

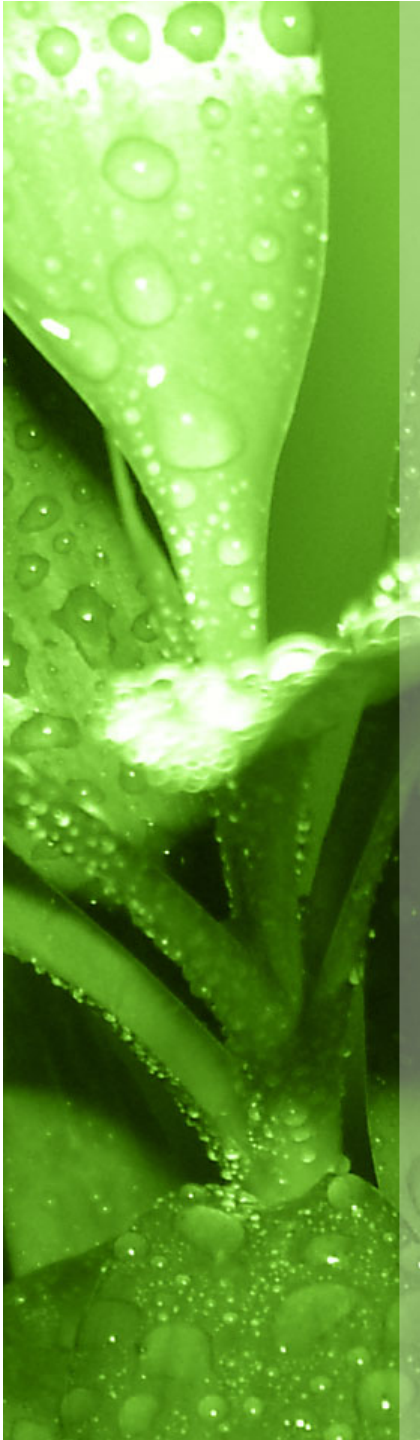
3. ENVIROMENTAL LAW – DIFFERENT FROM OTHER LAW SUBJECTS

- a) Unlike regular civil and criminal cases, which is limited to parties before the court and revolve around specific provisions of law and result in a decision that benefits one party, environmental case os larger than life – it is connected with the way we live and want our children to live within our limited resources. It is about human survival and has a broader canvas. It is not about deciding between one party or the other but is about protecting nature and finding a sustainable solution to the issue. It is not the parties but the environment that has to come out as a winner.



THE ROAD AHEAD FOR ENVIRONMENTAL JUSTICE. (Contd.)

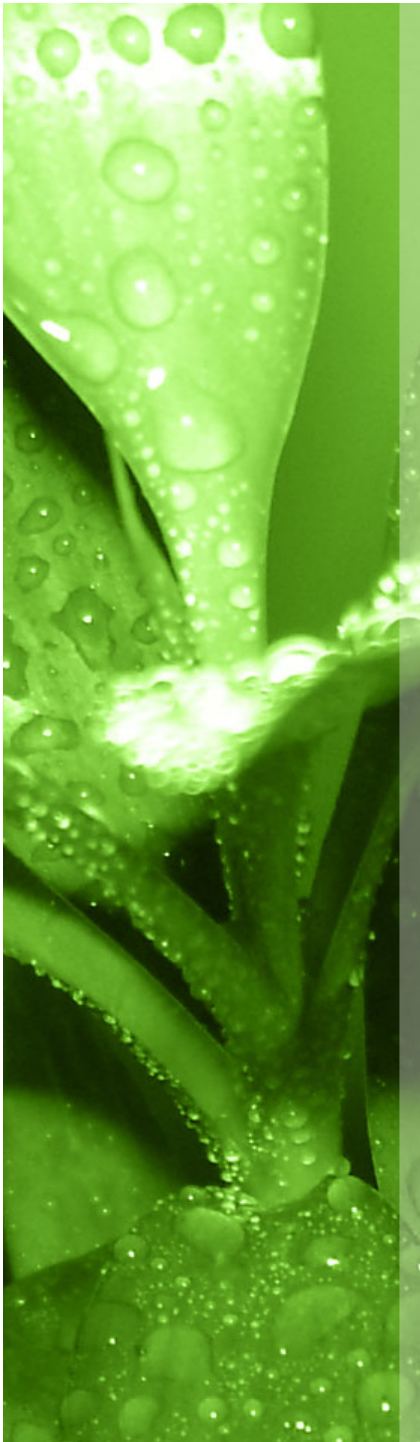
- b) The rules of procedure are also different. The traditional adversarial template applied to regular cases is replaced by inquisitorial proceedings. The judge is not bound by the pleadings or restricted to the evidence on the record. The judge can inspect and inquire into the factual position through commission of experts.



THE ROAD AHEAD FOR ENVIRONMENTAL JUSTICE. (Contd.)

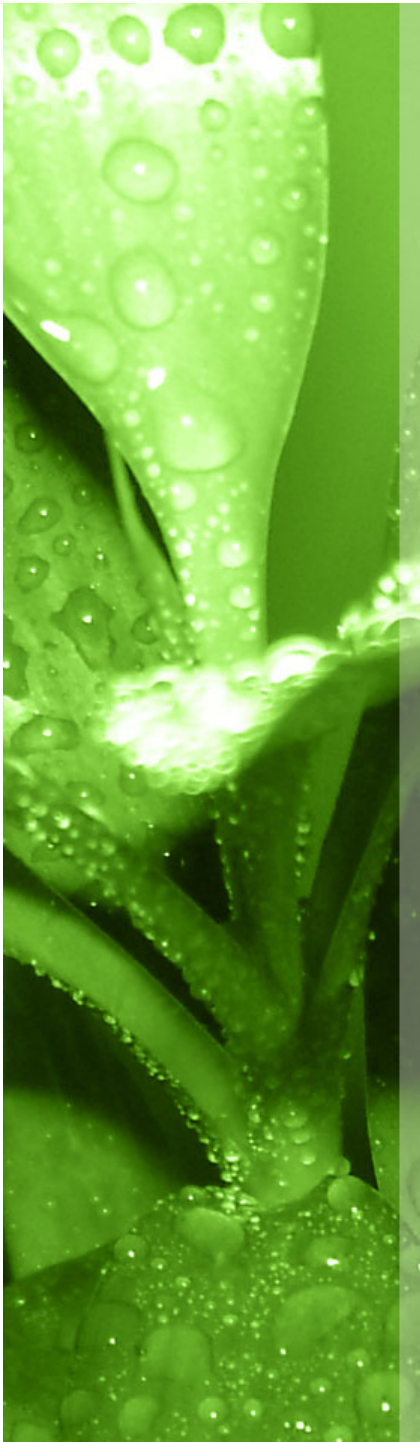
4. UNDERSTANDING OF ENVIRONMENTAL SCIENCE

- a) It is not possible for the courts to even begin to dispense environmental justice unless they have a good understanding of environmental science. In order to strike a balance between economic progress, development and environment- the judge must have a good understanding of the environmental science behind the issue or else right balance cannot be achieved. (contd.)



THE ROAD AHEAD FOR ENVIRONMENTAL JUSTICE. (Contd.)

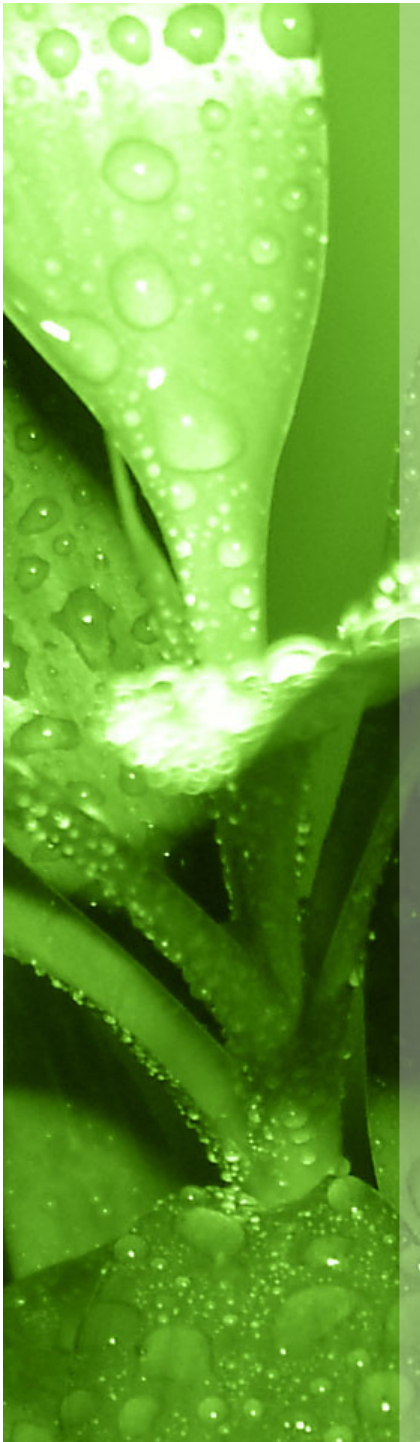
- b) In a recent Trees Case (2011 SCMR 1743) the Supreme Court had to strike a balance between widening of the canal road in order to alleviate the traffic congestion and the cutting down of trees and taking over green area. The court allowed widening of the road and permitted that the trees be cut down, assuming (without any expert evidence on the record) that cutting down of the trees is not going to cause a major environmental hazard. Good understanding of environmental science might have led to a different result. With trees gone, carbon sinks that absorb vehicular pollution are also gone. With widening of the road there will be more cars, more vehicular pollution but less trees and less carbon sinks thereby causing more air pollution. In the long run, there will be more damage than good.



THE ROAD AHEAD FOR ENVIRONMENTAL JUSTICE. (Contd.)

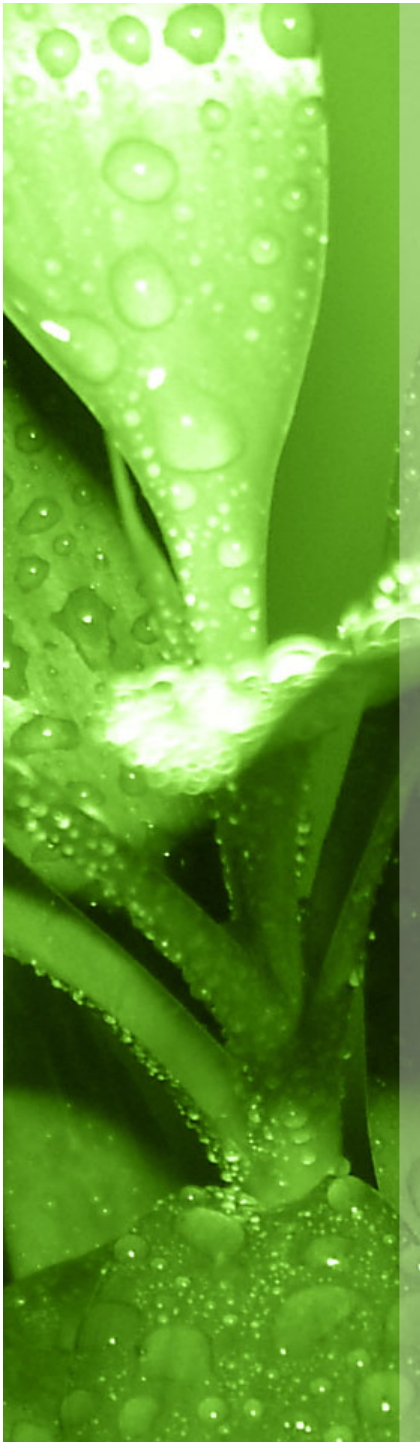
5. OUR ENVIRONMENTAL CASE LAW

- a. We have stopped at *Shehla Zia* (PLD 1994 SC 693) decided 18 years ago. We We need to move on. Create more landmarks. There is a lot more to environmental jurisprudence that requires incorporation into our fundamental rights that just the right to a cleaner and healthier life.
- b. A bulk of cases is against conversion of parks. These cases are decided on the basis of the development and planning laws and not on the environmental grounds. There is hardly a case that while striking down unlawful conversion of parks lays down the environmental importance of a park. The importance of trees, the concept of recharge of the aquifer or highlights various ecosystems and the rich biodiversity of a park, the need for open spaces. (Contd.)



THE ROAD AHEAD FOR ENVIRONMENTAL JUSTICE. (Contd.)

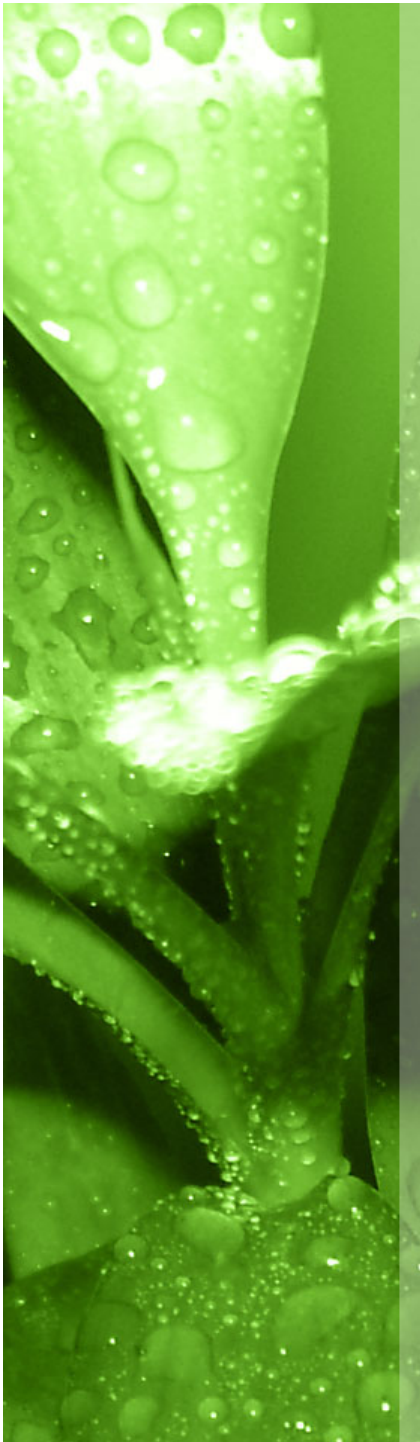
- c) Our cases law has paid little attention to other life forms and species inhabiting the environment. The approach has been human centric. This needs a revisit.



THE ROAD AHEAD FOR ENVIRONMENTAL JUSTICE. (Contd.)

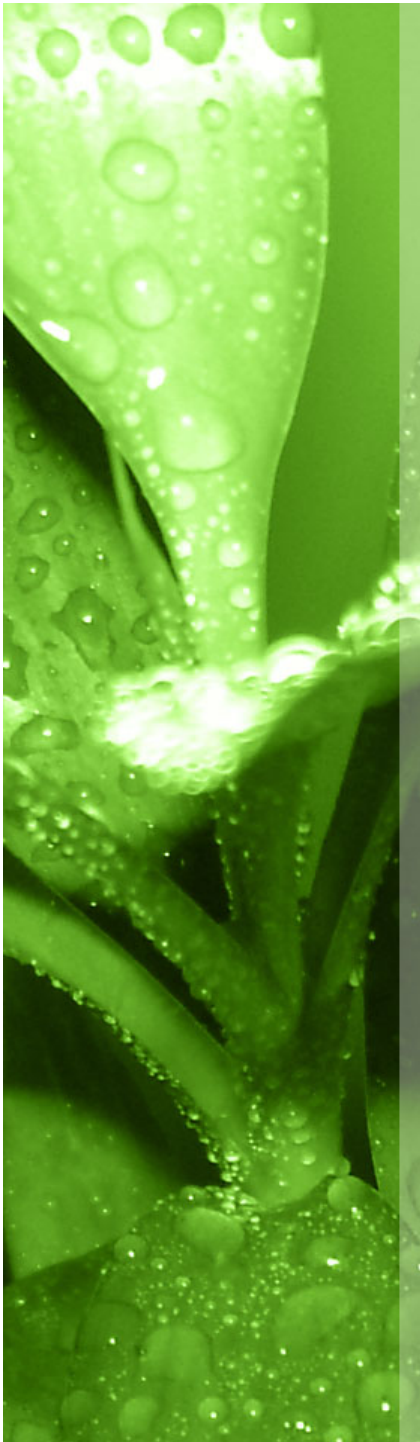
6. ENERGIZING ENVIRONMENTAL RIGHTS

- a) What better starting point than the Constitution of the Republic of South Africa, 1996. Environment is a fundamental right under the South African constitution and reads: “Everyone has the right- (a) to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-
 - i. prevent pollution and ecological degradation;
 - ii. promote conservation; and
 - iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.



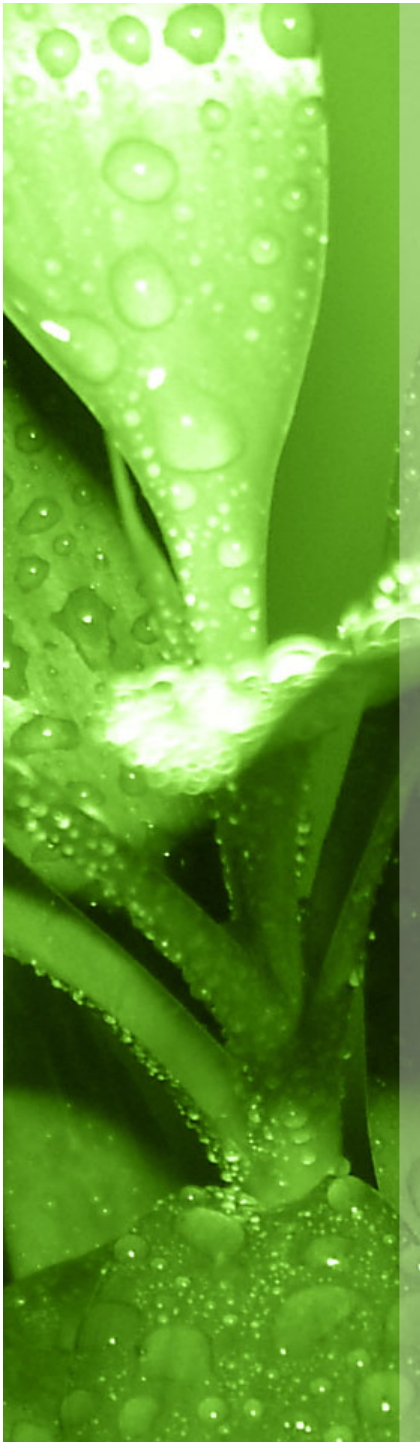
THE ROAD AHEAD FOR ENVIRONMENTAL JUSTICE. (Contd.)

- b. Environment and human rights have had a close relationship. In 1968 the UN General Assembly first recognized the relationship between the quality of the human environment and the enjoyment of basic rights. The 1972 Stockholm Declaration proclaimed that a man's natural and man-made environment 'are essential to his well being and to the enjoyment of basic human rights- even the right to life itself and declared in Principle-1 that "man has the fundamental right to freedom, equality and adequate conditions of life, an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations." (Contd.)



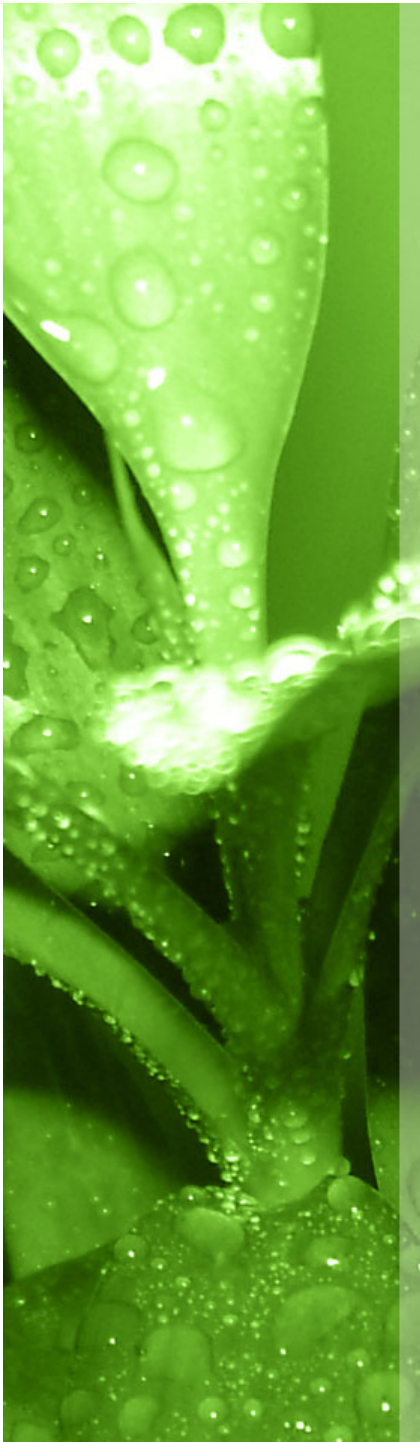
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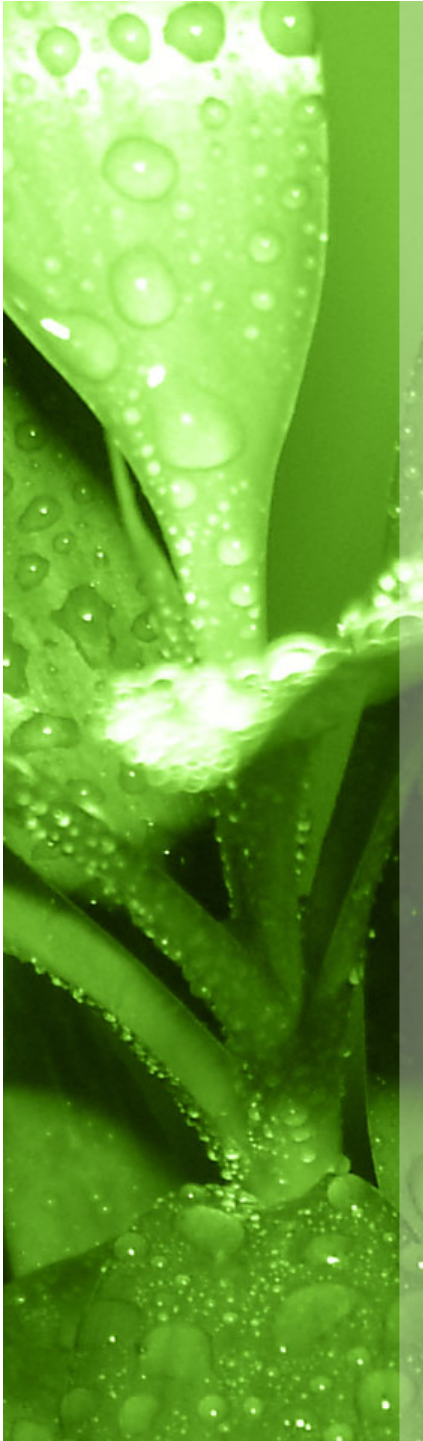
- c. Economic and social rights can be ensured if substantive environmental standards are maintained e.g., right to a standard of living adequate for health and well being, right to highest attainable standard of health, right to safe and realisation of economic, social , cultural right indispensable for dignity. Environmental degradation can be linked to the violation of any of these rights.
- d. Lack of access to drinking water which is free from toxic or other contaminants, pollution of the atmosphere by heavy metals and radioactive materials, the dumping of hazardous and toxic wastes in the vicinity of people's homes can all be viewed and treated as violations of fundamental economic and social rights.



THE ROAD AHEAD FOR ENVIRONMENTAL JUSTICE. (Contd.)

- e. Our untapped provisions in the constitution like social, economic and political justice can easily be read to include environmental justice. Other provisions like article 3 which prohibits exploitation, article 4 which is a due process clause states that every one must be treated in accordance with law- “law” here can include the principles of sustainable development, precautionary principle and the concept of intergenerational and intragenerational equity . Similarly, Articles 23, 37 and 38 can also be reinvigorated with the new environmental spirit. There is nothing more fundamental than the environment and judges must fashion the fundamental rights in this direction.





Thank You