

Environmental Law Enforcement in Islamabad Capital Territory

by Justice Riaz Ahmad Khan¹

My Lord Mr. Justice Mian Shakirullah Jan, Judge, Supreme Court of Pakistan

Honourable Mr. Justice Yahya Afridi, Judge, Peshawar High Court

Distinguished guests, ladies and gentlemen!

It is indeed an honour to address this gathering of luminaries and at the very outset I must confess my limitation regarding environmental knowledge. Since my topic is environmental law enforcement in Islamabad capital territory so it would be better if I give you a little bit of legal background.

In Pakistan, the basic environmental law is Pakistan Environmental Protection Act, 1997. The apex body established under this Act is the Pakistan Environmental Protection Council. It is headed by the Prime Minister. The functions of the Pakistan Environmental Protection Council include enforcement of Pakistan Environmental Protection Act, 1997. Under the Council exists the Pakistan Environmental Protection Agency. Since these powers have been given to all the Provinces, so in each Province, there is a Provincial Environmental Agency, however, in Islamabad exists Pakistan Environmental Protection Agency. This Agency has the powers to arrest without warrant any person against whom reasonable suspicion exists of his having been involved in an offence under Pakistan Environmental Protection Act, 1997, but in Islamabad those powers have never been exercised by the Agency. The Agency also has the powers to issue summons and enforce attendance of any person, who is contravening provision of Pakistan Environmental Protection Act, 1997. The Agency in addition to that, has the following powers:-

- That person (including companies) under its prohibitory and regulatory provisions not to discharge or emit any effluent or waste or air pollutant or noise in contravention of the National Environmental Quality Standards.
- That no proponent of a project shall commence construction or operation unless he has filed with the Pakistan Environmental Protection Agency, an environmental assessment report according to the sensitivity of the area, or where the project is likely to cause an adverse environmental impact.
- That no person may dispose of waste on public land or on a highway or on a land owned or administered by a local council, unless done in accordance with the provisions of the Pakistan Environmental Protection Act, 1997.
- That no person may import hazardous waste, as defined in the Pakistan Environmental Protection Act, 1997. That no person may operate a motor vehicle

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from which air pollutants or noise is being emitted in an amount, concentration or level, which is in contravention of the National Environmental Quality Standards.

Contravention of the provisions of the Pakistan Environmental Protection Act, 1997, is punishable with imprisonment extending up to five (5) years, or with fine extending up to Rupees one million or with both.

The Government may also constitute environmental tribunals, but these tribunals could hear the case on complaint in writing by the Pakistan Environmental Protection Agency, or the local council, or any aggrieved person who has given at least thirty (30) days' notice to Pakistan Environmental Protection Agency of the offence. Unfortunately, there is no environmental tribunal in Islamabad and the Agency exists, but in name. We hardly find any activity of that Agency.

In Islamabad the situation is that for the violation of any environmental law, the complaint is filed before Environmental Tribunal working at Lahore and the decision given by the Tribunal at Lahore regarding Islamabad, is challenged before Islamabad High Court, Islamabad. Presently we have got only five appeals pending in Islamabad High Court. So keeping in view these facts, the only conclusion that a prudent person can draw is that there is no environmental problem in Islamabad and that everything is okay but the problem is that everything is not okay in Islamabad.

In Islamabad the legal position is that in 1960, Capital Development Authority Ordinance was passed and by virtue of this Ordinance, Capital Development Authority had come into existence. Under the said Ordinance different regulations were introduced and one of such regulations was the Islamabad Capital Territory (Zoning) Regulations, 1992. On the basis of this Regulation, five zones were created in Islamabad, which are as follows:-

Zone-1 = Sectors up to G.T. Road

Zone-2 = Residential Sectors beyond G.T. Road

Zone-3 = Margalla Hills and 2 Km around Rawal Lake

Zone-4 = South of Rawal Lake and areas around Lehtrar Road

Zone-5 = Area around Soan River up to G.T. Road.

It will not be possible for me to discuss all the problems prevailing in each zone however certain main problems and the legal position requires the attention of this august house.

Sanitation

CDA has provided sanitation services in Zone-1, which consists of residential sector, commercial areas etc. and the main problem is regarding waste management.

The CDA collects solid waste which includes municipal/kitchen/green/domestic waste, commercial building material and other scrape, but does not include hazardous/toxic, hospital, industrial waste, so in other words, the CDA is not responsible for the waste generated by these organizations. The volume of the solid waste generated per day was 550 to 600 Metric Tons in the year 2005 and today it has gone up to 1000 Metric Tons per day.

Leaving aside the fact that the CDA does not have even the required vehicles to collect this waste, there is no way to dispose of this solid waste. Apparently, the CDA says that they dump this waste in Sector I-12, but the fact is that, this solid waste is never dumped. In fact, the requirement is to permanently dispose of this solid waste, if other arrangements for recycling, is not made. As far as law is concerned, we have got the *Islamabad (Upkeep of Cleanliness) Regulations, 1979*, but unfortunately, this Regulation is for others, and not for the CDA. There is no law which would bind CDA to permanently collect and dispose of this solid waste. This matter had come up before Honourable Supreme Court of Pakistan in case reported in PLD 2008 SC 716, but nothing happened.

The second problem is regarding the waste generated by hospitals in Islamabad; there are famous hospitals like PIMS, Poly Clinic, Capital Hospital, Maroof International Hospital, Al-Shifa International Hospital, Ali Medical Centre and some other clinics and small hospitals. The strange thing is that none of these hospitals provide incineration facility to incinerate the hospital waste properly. Nobody knows as to how they manage and dispose of hospital waste, because CDA has not provided anything for the disposal of hospital waste. Under the law we have proposed rules by the name of Hospital Waste Management Rules, which are to be promulgated under the Pakistan Environmental Protection Act, 1997, but so far no rules have been provided. The effect of the general solid waste as well as hospital waste is surface and ground water contamination and spreading of diseases.

Ghauri Town Islamabad

According to master plan Zone-I was to be developed by the CDA, Zone-II and V were residential sectors to be developed by private housing schemes under CDA. In Zone-IV no private housing scheme was allowed. Unfortunately, neither CDA nor Government in Islamabad could stop the private people from developing housing sectors in this Zone IV and one such like town is by the name of Ghauri Town. This Ghauri Town was developed, plots were offered for sale, houses were constructed and today almost every street of the town has become a canal if not a river and the residents of the town filed a petition under the public interest litigation in Islamabad High Court. Certain photographs were attached with the petition, which are as follows:-

Since this case was pending in my Court, so I got report from CDA as well as Deputy Commissioner Islamabad. The contention of the CDA was that this Town was developed by the sponsors at a time when nobody had the permission to develop a housing sector in Zone-IV and the CDA had made a publication in the newspaper to stop the people from purchasing plots or constructing houses, but nobody listened. The CDA expressed inability to help the residents of this Town. On the other hand, Deputy Commissioner, Islamabad was of the view that since Zone-IV was under the administrative control of CDA, he has nothing to do with the problem being faced by the residents. He, however, expressed his intention to help the residents on humanitarian grounds. In the year 2010, the Cabinet Division approved a change in the Policy and permission was granted to develop residential housing scheme in the private sector and now the CDA is asking the sponsors to produce plans. Mockery of law is that when the law provided that nobody can develop housing scheme in Zone-IV, so certain blue-eyed were permitted to develop scheme and now when the town is developed, the sponsors are being asked to provide the plans. How the problem is going to be solved is a million dollar question.

MARGALLA HILLS

Margalla Hills were declared as National Park as notified under section 21 of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979. In the Margalla Hills, a restaurant by the name of "Monal" was permitted to be established. Apparently, the object was to provide recreational facility to the residents of Islamabad. This restaurant is situated at Pir Sohawa, and was planned and developed by the CDA. Close to this restaurant, another restaurant has also been developed by the name of "La Montana" Restaurant. Once the mischief started then it could not be stopped and the result is that now 24 numbers of huts of different sizes have been given to different people for decoration, tea, coffee, popcorn, fast food etc. In such a way the whole nature of the area has been changed and the effects are:-

- Increase in road accidents
- Increase in vehicle pollution
- Effects on Flora (plants) and Fauna (birds)
- Increase of solid waste on roadsides.
- Migration of birds due to noise pollution.

Under the law we have the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979, the Islamabad (Preservation of Landscape) Ordinance, 1966, the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Rules 1983, Islamabad Capital Territory (Zoning) Regulations, 1992 and the guidelines provided in judgments of Honourable Supreme Court of Pakistan in suo motu case No.10 of 2005 reported in 2010 SCMR 361 and case titled as "*Moulvi Iqbal Haider Vs. Capital Development Authority*" reported in PLD 2006 SC 394, but the problem is not this that we do not have the law or the guidelines, problem is that we do not realize the gravity of the situation.

Islamabad Industrial Estate

This Industrial Estate is situated in Sector I-9 and I-10/3. In Sector I-9, 446 plots were allotted for industries and in Sector I-10/3, 224 plots were allotted for different trades. This industrial sector was separated from residential area through a buffer zone, but unfortunately, this buffer zone was also converted into residential area and houses were constructed over it. As a result, industrial area became part of residential area. There is no provision for the collection of waste material collected from the industrial zone and the result is that there is increase in diseases of toxic Imation and also increase in surface and ground water contamination. This matter was also taken up by the Supreme Court of Pakistan in suo motu case No.318 of 1993. My Lord Justice Mansoor Ali Shah of Lahore High Court had filed a wonderful report regarding this area consisting of two big volumes, but then His lordship was elevated to the Bench and nothing happened.

The above said problems aside, even today there are two proposals under consideration one for private residential housing scheme in zone III and residential scheme.

The purpose of giving all this background was that it would not be correct to say that there is no environmental problem in Islamabad. It would also not be correct that there is no law

for providing remedies for environmental problems; in fact the issue is implementation of law.