

Functioning of Environmental Protection Tribunals – A first-hand experience

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Honourable Judges and distinguished guests

Assalam-o-Alaikum!

I am thankful to the organizers of the, 'South Asia Conference on Environmental Justice', for providing me the opportunity to address this august gathering of renowned adjudicators and environmentalists. As you know the objective of present conference is to share our individual experiences, in respect of environmental adjudication and to derive collective benefits by brainstorming for suggestions towards its empowerment and improvement.

In this context, I will be highlighting the functioning of Environmental Protection Tribunals in Pakistan, as a first-hand experience. Before sharing my experience being the Chairperson of Environmental Protection Tribunal Karachi, I find it pertinent to mention that the history of law related to environment in Pakistan, prior to the recent enactments, was on a piece-meal basis. The scattered laws on the subject covered particular areas under the umbrella of environmental laws, there was, however, no comprehensive code of law on the subject of environment.

Pakistan framed its first consolidated Environmental Law in the year 1983 named as, 'Pakistan Environmental Protection Ordinance, 1983'. Unfortunately it remained dormant and ineffective due to inherent deficiencies, lack of will for implementation by the authorities concerned and inadequate public awareness. Environmental cases were, therefore, brought under the ambit of Public Interest Litigation, before the Honourable Supreme Court of Pakistan and the Honourable High Courts. While exercising such jurisdiction certain landmark judgments were delivered such as Shehla Zia v/s WAPDA (PLD 1994 SC 672). This became a stepping stone that paved way for further development in environmental jurisprudence. There is a long list of other Landmark judgments which led to further development of law in this particular and sensitive field.

The existing law was then revised and a comprehensively codified statute regulating and channelizing Environmental adjudication was enacted as, 'Pakistan Environmental Protection Act, 1997'.

The Environmental Courts and Tribunals were established in 1999, when initially two Environmental Tribunals were setup, one at Lahore with jurisdiction over Punjab and NWFP (now Khyber Pakhtunkhwa) provinces and other at Karachi with jurisdiction over Sindh and Balochistan province. Thereafter, in 2005 separate Tribunals were created for Balochistan and Khyber Pakhtunkhwa. Each Environmental Protection Tribunal is composed of three

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members bench comprising of a Chairperson, a Member Technical and a Member Legal for tenure of three years. And according to section 20(3) of Pakistan Environmental Protection Act, 1997 for every sitting of Environmental Tribunal the presence of Chairperson and not less than one member is necessary. Environmental Protection Tribunals are empowered to exclusively try all contraventions punishable under section 17 of Pakistan Environmental Protection Act, 1997 by way of exercising the jurisdiction as provided under section 21 of the Act. Under section 21 of Pakistan Environmental Protection Act, 1997 in exercise of its criminal jurisdiction, the Environmental Protection Tribunals are vested with the same powers as that of the court of sessions under the Code of Criminal Procedure (Act V of 1898). Section 22 of Pakistan Environmental Protection Act, 1997 prescribes the appellate jurisdiction of Environmental Protection Tribunals, in exercise of which they shall have the same powers and shall follow the same procedure as provided to the civil courts under the Code of Civil Procedure Code (Act V of 1908). This was the gist of composition of Tribunals working in Pakistan.

It may be pertinent to mention here that since the status of Pakistan Environmental Protection Act, being a special law, vis-à-vis general laws is overriding, environmental tribunal being a product of Pakistan Environmental Protection Act has a very distinct jurisdiction as opposed to the ordinary civil courts. They are treated as a Specialist Court adjudicating upon all matters relating to environment. Its legal jurisdiction extends to pollution control (including but not limited to noise, air, water), land use and planning in terms of prior approval required from its agency (Initial Environment Examination and Environmental Impact Assessment, hereinafter referred to as IEE/ EIA, respectively), preservation of natural resources such as forests, mining, wildlife, fisheries, etc. and the coastal waters of Pakistan i.e. marine areas. As mentioned earlier, constituted pursuant to Pakistan Environmental Protection Act, the Environmental Protection Agency is the one enforcing and prosecuting administrative body that initiates all actions pertaining to the environmental protection besides institution of complaints by private litigants.

Upon assuming charge as the Chairperson of Environmental Protection Tribunal in July 2009 the tribunal firstly decided to call upon the Director General, Environmental Protection Agency, Sindh and issued certain directions to him for improving the working of the system, as the number of complaints which were being instituted by the Sindh Environmental Protection Agency (SEPA), was very low, rather alarming, especially considering the fact that Sindh is the second largest province of Pakistan having Karachi as its capital which is the epicentre of all commercial and industrial activities in Pakistan. In Sindh the Tribunal started functioning in the present manner for the first time therefore, its proceedings received much media coverage, adding to the public awareness in this regard. Resultantly, many people belonging to the poor class in our society come forward to agitate their environmental issues before the Tribunal. But this coverage was gradually discontinued due to the pressure of influential Industrialists facing trial before the Tribunal.

While adjudicating the cases of environmental violations we mainly focus that not only are the cases decided on merits but also ensure that the orders/directions made therein are implemented. It is relevant to mention here that in almost 80% cases decided by Tribunal we have issued certain directions or observations and those cases are kept for follow-up from time to time to oversee and ensure their implementation. Many people ask the question as to how the orders are implemented, the reply is very simple, under the Pakistan

Environmental Protection Act, 1997 we have ample powers to get the orders implemented or complied with. It is just that we have to be proactive and find ways to see that the orders are executed in letter and in spirit. Their implementation cannot be taken lightly because any Environmental violation is not simply a crime against any individual but it is a crime against the society at large. For instance I would like to discuss the case of flyovers constructed by the City District Government Karachi over a critical passage in the city of Karachi. In the case of Shehri CBE v/s. Sindh EPA and another (**Complaint No.1 of 2010**), one NGO approached the tribunal complaining that the City District Government has started construction of four flyovers without conducting the Environmental Impact Assessment (EIA) which is a prerequisite to town planning and land use, consequently serious environmental breaches have accrued.

The tribunal in this case after hearing the parties ordered the City District Government Karachi to undertake the Environmental Impact Assessment, and subject to its approval, then continue the construction of project. The Tribunal not only passed orders for carrying out the EIA but also ordered for a compliance report. The City District Government Karachi complied with the said orders and in this way a silent message was conveyed to the government, municipal and local bodies that not only orders will be passed but that their compliance and implementation will also be ensured. This was an important message in a high profile case attracting public interest, which had to be communicated through.

In another high-rise building case Naeem Ahmed Mughal Vs. Jabir and others (**Complaint No.1 of 2009**), the Tribunal ordered for conducting EIA (Environmental Impact Assessment) and the violators complied with the directions given.

In another case titled Sarfraz Khan Vs. Government of Sindh and others (**Complaint No.2 of 2009**), an ice factory was operational in a residential area posing constant threat to the health of residents of the neighbourhood. This is a common feature in our country due to lack of awareness and planning, which has resulted in mushroom growth of such industries in residential areas. The Chief Secretary of the Province of Sindh has been directed to undertake a comprehensive study of such violations and to take necessary steps for framing policy and making arrangement in order to check, control and shift all such industrial units from residential to industrial sites, which are scattered throughout the province without any proper permission, in violation of environmental laws. Now a committee has been formed by the Chief Secretary which is working on it and its follow-up is monitored.

Apart from it there were four cases against the sugar industries which were discharging their untreated waste water hazardous to the residents of the area as well as to the ecosystem. During the proceedings in these cases it was observed that some officials of the Environmental Protection Agency were not performing their duties vigilantly.

Therefore, Secretary Environment was directed to probe into the matter, fix the responsibility and after taking action under Sindh Civil Servant (Efficiency and Discipline) rules 1973, report the matter to the Tribunal. Besides this, the Director General was also ordered to take action under regulation 14 of the National Environmental Quality Standards (certificate of Environmental Laboratories) Regulation 2000 against the Laboratory which was issuing certificates and test reports in violation of the Pakistan Environmental Protection Act 1997 and rules made thereunder. Sindh Environmental Protection Agency finally suspended the license of the Lab involved in such practice. This action on part of

Tribunal was necessary to avoid occurrence of such practice in future. As the beneficiaries of these irregularities were only the polluters/ violators of Environmental Law.

In a case filed by Pakistan Steel Mill (Complaint No.1 of 2011) against Tariq Trading Company involved in business of coal crushing, without observing the precautionary measures and causing air pollution in the area not only the respondent was convicted but the business was also ordered to be stopped till proper protective measures be taken. The respondent was directed to restore the environment at his own cost and such compliance report is to be submitted through Sindh Environmental Protection Agency.

In case of Director General Sindh Environmental Protection Agency V/s Najmuddin Karimi, Fibertex Industries, having business of hard board sheet, not only a conviction was awarded but he was also ordered to conduct an environmental audit of his industry through some reputable consultant and to comply within a period of three months. The case is being monitored and report is awaited.

In few cases of oil and paper industry before passing the judgment on merit, the concerned respondents were given specific time to improve their working system and to ensure that all environmental violations are removed/cured, so that loss to the environment or the public is curtailed.

The responsibility upon the judges in this regard is twofold. On one hand they have to perform their duty in accordance with law while at the same time they cannot put a stop to industrialization rather have to regulate it in a healthy manner. Thus not only the environment is to be protected but at the same time development is to be promoted to meet the challenges of present day modern society.

On the basis of my personal experience I would also propose few amendments in Pakistan Environmental Protection Act and suggestions in general.

Suo Moto Power

Environmental Protection Tribunals should be empowered to take suo moto action and such amendment may be made in Section-21 of the Pakistan Environmental Protection Act, 1997. This would allow the tribunal to, in situations where, for e.g. a violation comes to the notice of the Tribunal, be able to exercise powers to take cognizance of the violation at its own accord and to direct the Environmental Protection Agency to probe into the matter and submit a report within a specified time period. This shall enable the tribunal to take necessary steps to address the issue or alternatively, the violation of Pakistan Environmental Protection Act, 1997. It will also help in removing the bottle neck procedures in the present law due to which in many cases relating to Environmental issues, no timely action is taken which results in aggravating the situation.

Section 21 sub-section 3(b) of the Pakistan Environmental Protection Act, 1997 may be amended to the extent of deleting the word, "aggrieved".

Pre-trial Negotiations

The concept of pre-trial negotiations may be introduced in the proceedings before the Tribunals. It is commonly observed that the cases sent by the Environmental Protection Agency are prepared in a haphazard manner without applying legal mind or the apt

procedure, which can ultimately result in failure of prosecution. Consequently, this gives a bad image to the society and the violators tend to become more powerful. Furthermore, in some of the cases the parties who appear before the tribunal already show willingness to fulfil the legal requirements. Hence in order to implement the Law in its true spirit it would be advisable if pre-trial negotiations were held before the tribunal and matters were disposed of at an early stage without entering into the lengthy process of trial. This would ultimately produce more effective, acceptable results and minimize undesirable or vexatious litigation.

Change in Pattern of Conviction

Section 17 of Pakistan Environmental Protection Act, 1997 deals with penalties and prescribes imposition of fine. There should be changes in the pattern of conviction also, as community services such as to build a park or plant trees should also be added, to make it more effective and result oriented.

Environmental Audit

To ensure the implementation of Environmental laws, regular environmental audit on yearly basis should be made compulsory for all the stakeholders, proponents.

Strengthening EPAs at Provincial Level

In order to implement the Environmental Protection Laws the Environmental Protection Agencies at provincial level should be strengthened. In my view provincial Environmental Protection Agencies shall have a legal cell divided into three independent departments or sections i.e. investigation, prosecution and enforcement/monitoring. Besides this, measures are required to be taken for building the capacity of officials of the Environmental Protection Agency. In this regard help can be taken from specialized institutions like IUCN and the Judicial Academies etc.

Capacity building programs

Specialized training programmes for judges, prosecutors, members of the bar and court staff, may be arranged on regular basis keeping in mind the areas in which their capacity and knowledge of Environmental Law needs to be enhanced.

Publicity of Environmental Laws

Environmental Laws need more publicity. In my view the key to success in controlling the environmental hazards would mainly depend upon public awareness and forming of public opinion at large scale by checking such activities at individual as well as collective level, which are causing Environmental hazards. For that purpose it is required that requisite literature is published in national as well as Local Languages so that the masses get awareness. It should be introduced at school and college level. Besides this, awareness programmes should be launched through electronic media which is the most popular means of communication these days.

Having given my recommendations, I would conclude by saying that while recognizing that legal issues need redressal, we need to diagnose the root cause of our Environmental problems. Environmental Protection is the joint responsibility of the State and each

individual. It is not the absence or flaw of any law but in most of cases it is the lack of will to implement them. For that we need to change our own mind-sets towards recognizing pollution as a 'Social Crime'. It is also imperative that we inculcate in ourselves both at personal and collective levels the habit of caring for the environment because every environmental violation of ours ultimately resonates and comes back to haunt us. But I am confident that platforms like this will play a pivotal role in improving the situation and strengthening Environmental adjudication.

Once again I would like to thank the organizers for inviting me.

Thank you

Pakistan Zindabad