

# Environmental Law – In-Service Judicial Training and Capacity Building

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## Introduction

It is indeed an honor and privilege for me to stand before this august gathering of esteemed, learned and eminent personalities. I would like to begin by quoting Surah Sad- verse No. 20 of the Holy Quran where Allah Almighty says,

*“We did indeed make thee a khalifa on earth so judge thou between men in truth (and justice)”Holy Quran<sup>2</sup>*

Now why you may ask did I begin with a verse from the Holy Quran which exemplifies that sovereignty over the entire universe belongs to Allah only and man is his appointed Khalifa, who has to act in accordance with the purposes intended by The Creator to utilize it, for his own benefit and for the future generations also. The reason is that, I want to dispel the notion that the concept of environment or environmental protection is something new or a recently coined terminology by the west. This in fact is not true as the protection, conservation and sustainability of the environment was made mandatory by Almighty Allah in the Holy Quran and then expounded by the Holy Prophet Muhammad in his sayings and his behaviour. In Islam man has been made accountable for each and every action of his not only in this world but also in the Hereafter therefore if a person is responsible for environmental degradation then he is answerable for his actions in this world and also on the Day of Judgment. In fact all the major religions of the world, Christianity, Hinduism, Buddhism, Jainism have stood up for environmental protection.

The above verse also explains that a duty has been cast upon man as the khalifa to judge with justice. Therefore the concept of justice and environment is interlinked since fourteen hundred years ago.

## Evolution of the Term Environment

In the West, since 1960s there has been a lot of development relating to environment. The term “environment” has emerged from its narrower meaning of air, water and land it has progressed in its broadest sense to mean and include air, water and all layers of the atmosphere, all organic and inorganic matter in living organisms, all ecosystems and ecological relationships, buildings, structures, roads, facilities, all social and economic conditions affecting community life and the interrelationship between any of the factors mentioned above. World over including Pakistan the consciousness’s and awareness of the people is growing about the fact that the planet faces a diverse and growing range of

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<sup>2</sup> Surah Sad- verse 20, Holy Quran.

environmental challenges as the need now for effective law enforcement could hardly be more compelling.

The agenda formidable: curbing greenhouse gases, coping with rising sea levels, acid rain, ozone depletion, climate change, loss of biodiversity, toxic and hazardous products and wastes, pollution of rivers and depletion of freshwater resources, affecting the human rights.

Most nations have enacted environmental laws that address these issues but the enforcement of these laws is very weak. Therefore it is very important to empower the courts to secure compliance with their environmental laws. Governments all over the world have realized the need and importance of strengthening the judicial capacity to enforce environmental laws. Therefore many countries have specialized tribunals like Pakistan.

### **Role of Judiciary in Environmental Protection**

The pivotal role of the judiciary in enhancing environmental governance and the rule of law through the interpretation, development, implementation and enforcement of environmental law in the context of sustainable development is being recognized.

Indeed the importance of the judiciary in the environmental field was considered so crucial that it was thought appropriate, before the World Summit on Sustainable Development, 2002 to convene a meeting of the judges from around the world at Johannesburg with a view to the preparation of a document for the consideration of heads of state at the summit. The result of this meeting was the Johannesburg Principles on the Rule of Law and Sustainable Development, which consisted of a series of guidelines and principles for the judiciary in environmental matters.

The upcoming UN “Rio + 20” Conference in Brazil in June 2012 will discuss the need of the states to embrace the priority of strengthening their environmental judicial capacity.

### **Why the Need for Judicial Capacity Building of Judges**

Judicial institutions serve several functions in society, among them:

1. The peaceful settlement of disputes
2. Upholding the rule of law
3. Applying and interpreting the law

The role of the judge in environmental law is in principle no different from other settings, but for many judges the subject matter may seem complex and unfamiliar. Judges, as guardians of the rule of law, are uniquely positioned to give environmental law force and effect. They can bring integrity and certainty to the process of environmental protection, and help to ensure environmental responsibility and accountability within the government and the private sector. Judges also advance the development of environmental law by their traditional task of interpreting and filling the gaps in the legal texts. They can only fulfil this task if they are adequately informed.

Particularly in developing countries, many environmental cases may not fall within a settled legislative provision or judicial decision but in the gray area not specifically covered by black letter law. Yet they may still be within the reach of existing principles like the precautionary

principle or polluter pays principle as expounded in the *Shehla Zia v WAPDA*, PLD 1994 SC 693 landmark judgment which changed the history of environmental legislation in the world. Honourable Justice Saleem Akhtar, Judge of Supreme Court of Pakistan was the first judge who took the step in this case which broadened the definition of the right to life to include the right to a clean and healthy environment. This case was the starting point in the history of environmental judicial activism where the Court accepted the importance of the *Rio Declaration on Environment and Development and Precautionary Principle* included in its Principle 15.

In the Constitution of Pakistan, there is no right to environment however it was through this landmark judgment that the Supreme Court held that the right to a clean environment is the fundamental right of all citizens of Pakistan, covered by the “*right to life*” and “*right to dignity*” under Article 9 and 14 of the Constitution respectively. Article 9 provides that “*no person shall be deprived of life or liberty save in accordance with law*”. The Supreme Court ruled that the word “*life*” covers all facets of human existence. Although the word “*life*” has not been defined in the Constitution, the Court held that it does not mean and cannot be restricted to mean vegetative or animal life alone nor does it mean mere existence from conception to death but “*life*” includes all such amenities and facilities that a person born in a free country is entitled to enjoy with dignity, legally and constitutionally.

Therefore even in countries where environmental legislation has been enacted in some detail, it is beyond the competence of the legislature to anticipate every factual situation giving rise to environmental considerations, and consequently it is the judiciary that would have to handle such situations when they arise for the first time. All these factors leave a significant area for the appropriate exercise of judicial discretion. The judges are thus positioned, along with other institutions such as legislatures and environmental agencies, at the cutting edge of the development of environmental law and in the forefront of its adaptation to a diverse array of community needs and challenges.

The judges need to be familiar with international norms and standards, as contained in the growing body of treaties, declarations, covenants, protocols and other documents, because judicial decision-making is often significantly informed by such norms and standards.

They need also to have some familiarity with the various international institutions handling environmental matters, their functions, their competence and their geographical reach.

The judiciary is moreover one of the most valued and respected institutions in all societies. The tone it sets through the tenor of its decisions influences societal attitudes and reactions towards the matter in question. This is all the more so in a new and rapidly developing area. Judicial decisions and attitudes can also play a great part in influencing society’s perception of the environmental danger and of the resources available to society with which to contain it.

A judiciary that is adequately sensitized and informed regarding this vibrant area of legal development will be in a good position to handle the cases that are brought.

A well informed Judiciary facilitates environmental adjudication and enables the judges to make decisions promptly and to expand the scope of environmental law.

## **Environmental Capacity Building in the World**

Environmental law as a distinct field of law emerged in 1972 following the United Nations Stockholm Conference when less than five environmental ministries existed.

The Montevideo Programme, 1982 recommendations encouraged all nations to enact environmental statutes and build environment protection agencies.

By 1992, Rio de Janeiro UN Conference on Environment and Development there was consensus that more environmental legislation and administrative implementation was required. As a result of Agenda 21, IUCN Commission on Environmental Law established the first worldwide programs whereby universities collaborated to provide environmental legal education via the IUCN Academy of Environmental Law (at the University of Ottawa, Canada).

In late 1980s several international programs like United Nations Environment Program (UNEP), Environmental Law Programme of The International Union for Conservation of Nature and Natural Resources (IUCN), Asian Development Bank (ADB), Judicial Institutes in Brazil and Overseas Cooperative Programs provided by the US Environmental Protection Agency and the British Commonwealth engaged in capacity building programs for the Judges on environmental law.

From 1985 onwards UNEP and IUCN convened a series of regional gatherings of judges on environmental legislation .These meetings provided information about continuing judicial education and best practices.

The International Network for Environmental Complainant and Enforcement was founded in 1989 and Asian Environmental Compliance and Enforcement Network was launched in 2005.

## **Judicial Academies and Law Schools of the World Teaching Environmental Law**

I have cited a few examples of some Judicial Academies and Law Schools where environmental law is being taught to the judges:

1. In 2008 the Philippines Judicial Academy started providing continuing judicial education for the newly appointed judges of the environmental courts.
2. Vermont Law School with the China University of Political Science and Law in Beijing and Sun Yat School in Guangzhou have organized programs for the judges on environmental law.
3. US Environmental Appeals Board has held several workshops on environmental law in America, Central America and the Caribbean.
4. In Europe, the European forum of judges has been meeting regularly to discuss and enhance judicial capacity building.
5. In Gulf and Egypt in 2004 a Union of Judges of Arab Supreme Courts for the protection of environment was established.

## The Sindh Judicial Academy, its Role and Objectives

### Background

The Sindh Judicial Academy was set up in May 1992 under a resolution of the High Court of Sindh. In the year 1993, the Sindh Judicial Academy Ordinance, 1993 (Ordinance No. XVIII of 1993) was promulgated to provide legal cover for its working and functions. In the year 1994 Sindh Assembly repealed the Ordinance by the Sindh Judicial Academy Act, 1993 which was promulgated on 7th March, 1994 (Act IX/94).

The Sindh Judicial Academy is the oldest Judicial Academy of Pakistan.

### Training Methodology

The Sindh Judicial Academy is the education wing of the high court and it provides institutionalized, specialized, integrated, professionalized, progressive continuing judicial education. To achieve this it conducts conferences, seminars, workshops and training programs designed to upgrade the legal knowledge, efficiency and capacity of the judges, court personal and other stake holders. purpose of carrying out training, seminars, symposia, workshops and continuous study and research in the field of law and justice in order to enhance the competency of human resources of judicial system

Since its establishment it has conducted numerous programs on various aspects of laws. Just to quote, for the academic year 2010 till date (2012) Sindh Judicial Academy reached a total of fourteen hundred and eighteen (1418) participants that include Justices, District Judiciary, Public Prosecutors, Lawyers, Law Students, Corporate Law Mangers, Excise and Taxation Officers and Court Personnel.

### Programs of the Sindh Judicial Academy

The objective of judicial education is to produce and support an impartial, competent, efficient and effective judiciary. Judicial education is also the foundation for the judicial reform. The judicial system, even if it moves in right direction, may not be able to deliver justice to affected citizens efficiently if the judges, judicial officers and prosecutors do not have the requisite operational skills or they are not trained to deliver substantial justice to the litigants. In this background, training, continuing education, sensitization, and information –interaction are required to be imparted to judges and other personnel of judicial system.

The Hon. Director General, Justice Saleem Akhtar while giving his speech on June 16,2007 in the workshop on "Implementation Of Environmental Laws Regulatory Regime said and I quote “ From time immemorial judiciary has always occupied a unique position which protects the rights of the people, decides disputes and creates balance in the society. The Constitution of Pakistan is the most important pillar of the edifice based on trichotomy of power. The courts are manned by judges and their supporting staff. It has been noticed that volume and variety of work is increasing day by day. It is now well recognized that without an in-service training and continuous judicial education of the judges and the staff it may be difficult for judiciary to play an effective, efficient and independent role which the law and the society requires and canons of justice demand. Keeping these ground realities in mind

the Sindh Judicial Academy has devised courses for learning, capacity building and training of judicial officers.”

### Core Programs of the Academy

#### *Pre Service Training of Newly Inducted Civil Judges and Judicial Magistrates*

The Academy conducts Pre-service training of the Newly Inducted Civil Judges and Judicial Magistrates. This program prepares the judges for the assumption of judicial functions through attachment with the courts while at the same time enhancing their knowledge about substantive and other laws which relate to their jurisdiction.

The new program designed for the new batch of civil judges to be inducted includes lectures on substantive and procedural laws like Criminal Procedure Code, Pakistan Penal Code, Civil Procedure Code, and Qanun-e-Shahadat Order including mock trials. Mock Trial and Lectures will also be given on environmental law. The newly design end program also has a skill based component in which the judges will be trained judgment writing , how to write a research report, stress management, human resource management, English language, computer, yoga at workplace, lateral thinking, effective communication skills including public speaking, and time management. The program contains visits to various places like the High Court, libraries, jails, CDC, State bank etc. The program will give an opportunity to the participants to discuss and interact with distinguished personalities and luminaries like retired judges of supreme court and high court, senior lawyers, academia’s, etc.

In the training program for the newly inducted Civil Judges and Judicial Magistrates held in 2006, environmental law was taught and now also for the new batch environmental law has been included in their training program.

### Environmental Law Curriculum and Programs

Environmental protection is one of the great challenges of the modern world. The significance of Environmental Law in fostering equitable sustainable development is now well recognized all over the world In the national and regional context, the challenge is, how the law can be instrumental in providing a balance between the concerns of ecology, urbanization, over-growth of population, and the growing industrial and commercial demands of modern-times. In this context, the *Sindh Judicial Academy, Karachi*, intends to offer a *Courses* in Environmental Law for different target audiences like the Environmental Magistrates, Environmental Tribunal, Environment Protection Agency, Government Departments, Lawyers, Non-Governmental Organizations, Corporate Sector and Media. For this purpose a foundation course has also been prepared.

Interactive training techniques will be used in the training.

#### *Objectives*

1. Appreciate the range of environmental problems faced by Pakistan;
2. Understand the emerging discipline of environmental law in Pakistan in the light of provisions of Constitution of Pakistan;
3. Be oriented in the rationale and objectives of Pakistan Environmental Protection Act 1997;

4. Interpret legal meanings of various environmental provision of the Act in the overall context of body of law in Pakistan;
5. Comprehend jurisdiction of Environmental Tribunals and Environmental Magistrates for processing cases pertaining to violation of environmental law;
6. Revisit landmark environmental decisions made by courts in Pakistan.

### **Pre Service Training of Newly Inducted Additional District and Session Judges**

This program prepares the newly inducted Additional District and Session Judges to efficiently and effectively discharge their functions and to familiarize them with the substantive and procedural laws including judgment writing. It aims to enhance their abilities and to upgrade their practical and theoretical knowledge of law and this become equipped with the skills necessary for a judge.

The Academy organized a training course for the newly inducted Additional District and Session Judges in 2010.

### **Continuing Judicial Education**

Keeping in mind the idea of Continuing Judicial Education (IN SERVICE) the Academy has organized the following programs:

#### ***In-Service Training of District and Session Judges, and Additional District and Session Judges***

Four days Training Program for the District and Session Judges and Additional District and Session Judges was held from 17 January -24 February, 2011.

#### ***Senior Civil Judges***

A series of Five Day Training Programs for the Senior Civil Judges was held from 11 April- 7 May, 2011.

#### ***Civil Judges and Judicial Magistrates***

A series of Five Day Training Programs for the Civil Judges and Judicial Magistrates was held from 23<sup>rd</sup> May – 15 July, 2011.

#### ***Training of Court Personnel***

The programs designed for the court staff prepares them for efficient and effective discharge of their functions and to familiarize them with High Court administrative circulars with focus on work attitude, work ethics, effective communication skills and computer. The Academy is recently conducting a course for newly appointed junior clerks of High Court on Effective Communication Skills from 12<sup>th</sup> -26<sup>th</sup> March, 2012.

### **Training of Government Officers, Government Departments**

On the request of the Excise and Taxation Department, Government of Sindh an eight days workshop was designed by the Sindh Judicial Academy on related laws from 20<sup>th</sup> February to 9<sup>th</sup> March, 2012 in the Sindh Judicial Academy for 40 officers of the Excise and Taxation Department.

The Academy is also in the process of arranging training workshops for the officers of State Bank of Pakistan, Pakistan Navy and Securities and Exchange Commission.

## Conferences, Seminars

In 2007, a workshop on "Implementation of Environmental Laws Regulatory Regime" was held on June 16, 2007. The event was organized by Sindh Judicial Academy in collaboration with Access to Justice Program (AJP) & Pakistan Environmental Legislature Association - PELA and the active support of IUCN. This event was attended by Honourable Mr. Justice Anwar Zaheer Jamali, Chief Justice of Sindh High Court as Chief Guest, Honourable Mr. Justice Sarmad Jalal Usmani, Honourable Mr. Justice Khilji Arif Husain, Honourable Mr. Justice Gulzar Ahmed, Honourable Mr. Justice Maqbool Baqar, Honourable Mr. Justice Attaur-Rehman, Honourable Mr. Justice Mujeebullah Siddiqui and Civil Judges and Judicial Magistrates.

The Academy is also in negotiation with Overseas Chamber of Commerce and Industry (OICCI) to arrange a Conference on Intellectual Property Rights for the Judges of High Court and District Judiciary of Sindh.

## Summit

The 1<sup>st</sup> Pakistan Judicial Academies Summit followed by a Seminar on the Criminal Justice System, Prosecution and Investigation was held at Pearl Continental Hotel Karachi on June 25<sup>th</sup> & 26<sup>th</sup>, 2011. It was organized by the Sindh Judicial Academy in collaboration with the High Court of Sindh. It was Chaired by the Chief Justice of Pakistan and attended by Chief Justice of Federal Sharia Court, Chief Justices of all Provinces, Judges of Supreme Court, Judges of High Court of Sindh, District Judiciary of Sindh and eminent personalities from the legal fraternity. This was the first time in the history of Pakistan that such a summit was organized in which the Federal and Provincial Judicial Academies of Pakistan were together on a common platform for generating ideas and solutions for strengthening of judicial education.

## Training of Corporate Sector and Law Students

The academy also organizes training workshops for the corporate sector and law students.

## Networking and Knowledge Partnerships

As part of its networking and knowledge partnership component the academy is very progressive and has organized a number of training programs for the judiciary in partnership with various non-governmental organizations.

A series of two day workshops was held from October 2010 to January, 2011 for the District Judiciary of Sindh on Alternative Dispute Resolution in collaboration with Karachi Centre for Dispute Resolution.

A one day workshop on "Cyber Laws in Pakistan" was held in January, 2011 in collaboration with Society for Enforcement of Rule of Law (SERL) and Konrad –Adenauer Stiftung Foundation.

One day workshops on Juvenile Justice System, in collaboration with Society for the Protection of the Rights of the Child (SPARC), was held during the training of the Civil Judges and Judicial Magistrates from 23<sup>rd</sup> May – 15 July, 2011.



A one day workshop on “*Strengthening Actions against Bonded Labour*” in collaboration with the International Labor Organization’s (ILO) project for the District and Session Judges and Additional District and Session Judges of Karachi was held on 28<sup>th</sup> July and 20<sup>th</sup> October 2011.

A provincial consultation on the State of Probation and Juvenile Justice System in Sindh was held on 26<sup>th</sup> November, 2011 in Marriot Hotel. This event was jointly organized by the Sindh Judicial Academy, the Home Department Government of Sindh and Society for the Protection of the Rights of the Child (SPARC). This event was presided over by the Honourable Chief Justice of Sindh High Court, Mr. Justice Mushir Alam.

A one day workshop on “*Strengthening Actions against Bonded Labour*” in collaboration with International Labor Organization’s (ILO) was held for 20 Public Prosecutors of Sindh on 28<sup>th</sup> December, 2011.

The Academy has shared the manuals and reports developed by the Academy with other Judicial Academies of Pakistan and has also given a set to Seven Honourable Judges of Maldives from the High Court and subordinate Courts of Maldives and representatives of UNDP when they visited the Sindh Judicial Academy on 25<sup>th</sup>, 27<sup>th</sup> and 28<sup>th</sup> April, 2011. In addition the academy has also sent information to the CJEI newsletter for edition of 2011.

### Research Cell

The Academy has established a research cell and will now be offering courses on the research methodology and how to write a research report.

## Way Forward and Challenges

### *Continuing Judicial Environmental Education*

Environment knows no boundaries .Since environmental protection and law is not only specific to one person or one area but transcends boundaries and nations and its effect in the form of climate change and environmental degradation effects not only us but the future generations also therefore a system for Continuing Judicial Education for all tiers of the judiciary and all relevant stakeholders should be developed keeping in mind the recent developments and emerging changes.

### *Funds*

Due to scarcity of funds the process of Judicial Environmental Capacity Building is hampered and this needs to be seriously looked into by all concerned authorities.

### *Resources*

There exists lack of trained human resources, specialists and experts in different aspects of environmental law in Pakistan. Training programs need to be developed for them .Therefore a Training of Trainers (TOT) needs to be organized.

### *Reading Material*

In addition there is a dearth of reading material and books on environmental law. A library in collaboration with other specialized organizations needs to be developed. Judicial academies need to be given access to digital libraries and law journals on environmental law.

### **Courses on Specialized Subjects**

Courses on specialized and emerging fields of environmental law like desertification, climate change, biodiversity, genetic resources etc. need to be developed.

### **Exchange and Best Practices**

Conferences, Seminars, Focus Group Discussion, internationally, regionally and nationally need to be organized on a regular basis for exchange of best practices and experiences for knowledge sharing.

### **Global Network and Forum of Judges**

An active and vibrant global forum and network of judges of Pakistan on environmental law needs to be formed.

## **Conclusion**

The purpose of training is to change the functional attitude of judges and other personnel of judicial system and bridge the gap between the level of knowledge and actual discharge of duties. Training is indispensable at the threshold before a judge can be asked to discharge the judicial functions. It is not the end point of training but it is a continuous process as the law is not static. It is important that not only freshly recruited judges be given training but is equally important for in service judges.

The Academy plays a vital role in ensuring judicial competence and efficiency through continuing judicial education.

In the words of the of the 19<sup>th</sup> century author Christian Bovee and I quote

“The greatest of all laws is the law of progressive development .Under it, in the wide sweep of things, men grow wiser, as they grow older and societies better”.

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