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**a lawyer's reference to
environmental public interest
cases in Pakistan**

Nelma Akhund
Zainab Qureshi



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IUCN
The World Conservation Union



IUCN – The World Conservation Union

Founded in 1948, The World Conservation Union brings together States, government agencies and a diverse range of non-governmental organizations in a unique world partnership: 954 members in all, spread across 140 countries.

As a union, IUCN seeks to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. A central secretariat coordinates the IUCN Programme and serves the Union membership, representing their views on the world stage and providing them with the strategies, services, scientific knowledge and technical support they need to achieve their goals. Through its six Commissions, IUCN draws together over 8,000 expert volunteers in project teams and action groups, focusing in particular on species and biodiversity conservation and the management of habitats and natural resources. The Union has helped many countries to prepare National Conservation Strategies, and demonstrates the application of its knowledge through the field projects it supervises. Operations are increasingly decentralized and are carried forward by an expanding network of regional and country offices, located principally in developing countries.

The World Conservation Union builds on the strengths of its members, networks and partners to enhance their capacity and to support global alliances to safeguard natural resources at local, regional and global levels.

In Pakistan, the Union seeks to fulfill this mission by empowering communities to participate in the implementation of the National Conservation Strategy.

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The views expressed in this publication are not necessarily those of IUCN.

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IUCN-The World Conservation Union, Pakistan
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The development of environmental law in the courts of Pakistan has been greatly facilitated by the judgements of Mr. Justice (Retired) Saleem Akhtar during his tenure with the Supreme Court. His expansive definitions of “life” in Article 9 of the Constitution will help not only environmental cases but the full range of human rights issues. The people of Pakistan are indebted to him.

Environmental law is also now receiving the necessary statutory support through which institutions are being created and workable laws have been framed. A further debt of gratitude is due to the 5,000 people who were a part of the consultative process involved in the formulation of the Pakistan Environmental Protection Act when it was in draft form. The rules and regulations of the Act are in the process of being framed and for this, as well as for the principal drafting of the Act, appreciation is due to Mr. Zahid Hamid.

Like its companion volume, *You Can Make a Difference: Environmental Public Interest Cases in Pakistan*, this publication has been over two years in the making. To NORAD, which has funded both volumes, is due our gratitude both for their financial support and for their patience.

Nelma Akhund
Zainab Qureshi

Foreword

Awareness about the environment as a necessary part of our daily life attained recognition and much deserved respect with the Stockholm Declaration in 1972. It achieved global importance with the Rio Summit in 1992.

In Pakistan, however, the Pakistan Environmental Protection Ordinance, 1983, though promulgated, was never properly implemented. It was window dressing, to be used for political mileage and exploitation.

The Pakistan Environmental Protection Act, 1997 was enacted on 6 December 1997. The Act intends to bring discipline to the environmental field which, in Pakistan, has remained an untrodden path. What is necessary is both environmental awareness to ensure the smooth operation and implementation of the Act; and awareness about the environmental rights, duties and liabilities of people. This should apply to both the regulators and the government, who should know how rights are to be respected, duties performed and liabilities enforced. Environmental protection and economic development need not be conflicting issues for sustainable development has emerged as a cornerstone of policy decisions on economic development.

This lawyer's reference on environmental public interest cases in Pakistan aims at providing information not only to lawyers but to members of the judiciary, who in the future will have an important role to play in the field of environmental law. Along with its companion volume, it also provides necessary information to the general public who, though conscious of their rights and duties, are unable to enforce these

fundamental rights. A comprehensive and analytical work, it should go a long way in introducing environmental law.

Justice (Retired) Saleem Akhtar

Introduction

This is a companion volume to *You Can Make a Difference: Environmental Public Interest Cases in Pakistan* which was written for the benefit of people who are not lawyers, to lay out the range of options open to them when confronted with an environmental problem. For example, it includes a chapter on How to use the courts (Chapter 3) which outlines the main laws available, what is likely to be involved in a court case and the kind of remedies the court can order.

This volume is intended to help lawyers with the details of the laws upon which the cases in the Guide were based. It is hoped that this book will help overcome the traditional apprehension with which lawyers usually approach public interest cases, and particularly those involving the environment. This apprehension may be attributed to a number of factors: incomplete environmental laws, lack of a solid body of precedents or simply a lack of familiarity.

This volume will focus on the three main types of cases described in the Guide: cases brought under the Pakistan Environmental Protection Act, 1997, cases involving fundamental rights and cases seeking the enforcement of government obligations. The latter two are, of course, brought under the Constitution.

The Pakistan Environmental Protection Act, 1997 has been in place for a short time. It is a welcome law, although its newness means the implementing rules and regulations are not yet in place (although these are in the process of being drafted), nor is any supporting case law which

would resolve the inevitable ambiguities. Chapter 2 describes its main features, and how it is relevant for a case involving public interest.

Chapter 3 considers how the Supreme Court can assist with public interest environmental cases. Its jurisdiction arises through its power to make orders for the enforcement of fundamental rights, as set out in Article 184(3) of the Constitution.

In Chapter 4, the ways in which a High Court can assist are detailed. As with the Supreme Court, it has the power, through Article 199(1)(c) of the Constitution, to make orders for the enforcement of fundamental rights. Additionally, a High Court has power, through Article 199(1)(a) of the Constitution, to make orders requiring the government to observe or enforce the law.

Finally, the concluding chapter, Chapter 5 gives a brief summary of where and on which grounds a case should be brought before the courts. It also includes a request, which is repeated here, that readers should send in additional information, culled from their own experiences. If this material serves to update or amend this publication, it will be included in its next edition. This will enhance the value of this volume, whose very purpose is to help lawyers assist the public in resolving the environmental problems that affect them.

Pakistan Environmental Protection Act

The Pakistan Environmental Protection Act, 1997 (PEPA) is framework legislation covering the whole of Pakistan. To date, the rules and regulations for PEPA are not in place (although they are in the course of preparation), nor have some of the institutions and offices envisaged been created. However, over time, PEPA is expected to play a very significant role in the protection of the environment.

This chapter contains a comprehensive overview of PEPA including the role of the public in enforcing its provisions. An overview is provided first, because of PEPA's central role in environmental issues and second, because it is a new law that is not yet completely operational and lawyers are unlikely to be fully acquainted with it. A full understanding of its provisions is necessary for its effective use for the public's benefit.

But first, a few more words about its central role in the enforcement of environmental law. Before this Act was passed, a wide range of environmental problems could be brought as constitutional cases, as described in Chapters 3 and 4. However, PEPA provides that certain cases arising under it must be dealt with exclusively by an Environmental Tribunal (section 21(2)) or by an Environmental Magistrate (section 24(1)). This is not to say that PEPA can override the Constitution, but that before bringing constitutional cases under Article 199(1)(a) and (c) (Chapter 4 of this volume) you must first have tried any other adequate remedy available in law and PEPA is now the main relevant law. Secondly, where a case is brought to the Supreme Court under Article 184(3), the Court may enquire why an applicant has not used the avenues provided under PEPA.

It is therefore very important to know which cases fall under PEPA and which do not. Not all will. For example, a factory may be complying with the National Environmental Quality Standards (NEQS) but, at the same time, its emissions may be damaging to health. This would not fall under PEPA and would need to be brought as a constitutional case or a case under another law.

Introduction

PEPA has two main functions: it creates institutions and it regulates activities. The institutions that it creates, in general, cover a broader subject area than the specific activities that PEPA regulates. PEPA is enforced through a mixture of administrative measures, judicial sanctions and the active involvement of civil society. This overview will look at all three elements: institutions created, activities regulated and compliance mechanisms.

Institutions created by PEPA

Briefly, the institutions it provides for are:

Pakistan Environmental Protection Council (section 3): this is headed by the Prime Minister and includes relevant federal and provincial ministers as well as up to 35 representatives from various sectors. Its role (section 4) is one of overview, supervision and coordination and, amongst other things:

- to approve the National Environmental Quality Standards;
- to approve comprehensive national environmental policies;
- to provide guidelines for the protection and conservation of species, habitats and biodiversity in general and for the conservation of non-renewable resources; and
- to ensure that sustainable development is fully incorporated.

It also has the power to direct any part of government to prepare, submit, promote or implement projects for the protection, conservation, rehabilitation and improvement of the environment, the prevention and control of pollution and the sustainable development of resources. This power can be exercised either on the Council's own initiative or at the request of any person or organisation.

As such, it is possible for a member of the public, an industrial concern or an NGO to seek a solution to an environmental problem through this route. The potential for effectiveness is high—how the power might be exercised in practice is yet to be seen.

Environmental Protection Agency (the federal EPA) (section 5): this is the central implementing agency for the Act. Its functions and powers are extensive (section 6) and cover all aspects of implementing the Act. For the purposes of this volume, the following are likely to be the most relevant:

- administer and implement the provisions of PEPA and its rules and regulations (paragraph 6(a));
- prepare, revise and establish the NEQS (subject to prior publication for the purposes of soliciting public opinion) (paragraph 6(e));
- ensure enforcement of the NEQS (paragraph 6(f));
- establish standards for the quality of ambient air, water and land (paragraph 6(g));
- establish systems for surveys, monitoring, inspection and audits to prevent and control pollution, and to estimate the costs of cleaning up pollution and rehabilitating the environment (paragraph 6(i));
- render advice and assistance in environmental matters (paragraph 6(m));
- encourage the formation and working of NGOs, community organisations and village organisations to prevent and control pollution and promote sustainable development (paragraph 6(s)); and
- take all necessary measures for the protection, conservation, rehabilitation and improvement of the environment, prevention and control of pollution and promotion of sustainable development (paragraph 6(t)).

In exercising these functions, subject to its own resources, the federal EPA (and/or its delegates) has the potential to significantly assist the public in seeking solutions to environmental problems.

The federal EPA will not itself necessarily exercise these functions. Section 26 provides that the federal government may delegate any of the functions of the federal EPA to any specific part of the federal government or to a provincial government, local council or local authority. Although the relevant provincial EPA will ordinarily be delegated such powers for its own province, it does not follow that a provincial EPA will necessarily be the relevant body exercising delegated functions.

It is important to additionally note that in exercising its functions, the federal EPA and the provincial EPAs are bound by directions given to them in writing by the federal government. Similarly, a provincial EPA is bound by directions given to it by the provincial government (section 27). This has potential for either positive or negative influence from external sources.

Provincial Environmental Protection Agencies (section 8): these will exercise those powers and functions of the federal EPA which have been delegated to them by the provincial governments (which were delegated to them by the federal government pursuant to section 26).

Provincial Sustainable Development Funds (section 9): these are to be set up to provide financial assistance to environmental projects and to further the objectives of PEPA.

Environmental Tribunals (section 20): these are to be set up to try the more serious offences under PEPA as well as issue arrest warrants (section 21) and act as an appeal body from the directions or orders of an EPA¹ (section 22). More details on their jurisdiction and functioning are provided later in this chapter.

Environmental Magistrates (section 24): these will be judicial magistrates especially empowered by the High Court to try the less serious offences under the Act. More details on their jurisdiction and functioning are provided later in this chapter.

Activities regulated by PEPA

PEPA focuses on two primary areas: pollution and the preparation of environmental impact assessments (or initial environmental examinations) for projects.

Pollution control and abatement

Pollution is controlled through four main provisions:

Discharge or emission in excess of NEQS. The primary anti-pollutant measure is contained in section 11. This prohibits the discharge or emission of any effluent, waste, air pollutant or noise in an amount exceeding the National Environmental Quality Standards (to be prescribed in the rules and regulations) or ambient standards for air, water or land (set under paragraph 6(g)).

Motor vehicle emissions in excess of NEQS. This provision (contained in section 15) applies to motor vehicles and prohibits noise or air pollutants in an amount exceeding the National Environmental Quality Standards or ambient standards for air, water or land (set under paragraph 6(g)). It is not possible to be charged under both section 11 and section 15.

1. Any reference to "the EPA" means the federal EPA or a provincial EPA, as the context may require.

Prohibition on import of hazardous waste. This is a blanket prohibition (contained in section 13) on the importation of hazardous waste into Pakistan, its territorial waters, the exclusive economic zone or Pakistan's historic waters (as specified pursuant to section 7 of the *Territorial Waters and Maritime Zones Act, 1976*).

Handling of hazardous substances. Section 14 prohibits the generation, collection, transportation, treatment, disposal, storage or handling of hazardous waste except under a licence issued by the EPA or in accordance with the provisions of any domestic law or relevant international Convention (in particular, the *Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal, Basel, 1989*).

Assessing environmental impacts

Section 12 provides that no one can commence construction or operation of a project, where such a project falls within a prescribed category, unless in respect of that project:

- a) an initial environmental examination (IEE); or
 - b) where the project is likely to cause adverse environmental effects, an environmental impact assessment (EIA),
- has been filed with the EPA and its approval has been obtained.

Section 12 is not yet in effect because sub-section 12(6) provides that section 12 will only apply to such categories of projects as may be prescribed. These are still being finalised.

The rules and regulations will also specify the content of an IEE or EIA. In concept, an IEE is a preliminary document as its full title initial environmental examination suggests. Its purpose is to deal with those classes of projects where a full environmental impact assessment may not be warranted. Upon receipt of an IEE, the EPA must either give its approval to the project or require the submission of an EIA (section 12(2)(a)).

With an EIA, the EPA has the power:

- to approve the project (with or without conditions);
- to require that the EIA be resubmitted with modifications; or
- to reject the project as being contrary to environmental objectives (section 12(2)(b)).

However, before the EPA can issue its approval, it must carry out a review of the EIA with public participation and this is an entry point for the public

to make its point of view known (section 12(3)). The public also has the right to inspect the registers of IEEs and EIAs which will contain brief project particulars and a summary of decisions taken (section 12(7)).

For both an EIA and an IEE, the EPA must give its approval or otherwise within four months of receiving it, provided that the EIA complies with the prescribed procedure. If the EPA fails to do so, then the project will be deemed to have been approved to the extent that it does not contravene the Act or its rules and regulations (section 12(4)). This means, for example, that an industrial unit that would produce emissions exceeding the limits set out in the National Environmental Quality Standards could not be taken to be approved under this provision. This four-month period may be extended by the federal government in a particular case. Note that this power is placed in the hands of the federal government rather than the federal EPA (although it may be delegated under section 26).

Compliance mechanisms

Compliance under PEPA is facilitated through a mixture of administrative measures, judicial sanctions and the active involvement of civil society.

Administrative measures

Pollution charge. Under section 11, the federal government may levy a pollution charge on someone who is responsible for discharges or emissions in excess of the NEQS. Anyone who pays the pollution charge cannot be charged with the offence of breaching the section (section 11(3)). However, this provision will not apply to projects which commenced industrial activity after 30 June, 1994 (section 11(4)). This is because this was the date upon which the NEQS were set under the former legislation, the Pakistan Environmental Protection Ordinance, 1983. All new projects were on notice from that date of the applicable standards. The government is in the process of working out with industry the mechanisms of the pollution charge and its enforcement may, in practice, be undertaken largely by industry and civil society itself.

Environmental Protection Order. This is the most potent instrument of enforcement in the Act. Where an EPA is satisfied that, in violation of the provisions of the Act, its rules or regulations or conditions of a licence:

- the discharge or emission of any effluent, waste, air pollutant or noise;
- the disposal of waste;
- handling of hazardous substances; or
- any other act or omission;

is likely to occur, is occurring or has occurred and is likely to cause, is causing or has caused an adverse environmental effect, the EPA may, after giving the responsible person an opportunity to be heard, issue an Environmental Protection Order (section 16(1)).

This order may direct the person responsible to take such measures within such period as the EPA considers necessary and may include:

- immediate prevention, stoppage or remedying of the offending action (section 16(2)(a));
- installation, alteration or replacement of the offending equipment (section 16(2)(b));
- action to dispose of offending substances (section 16(2)(c)); or
- restoration of the environment to its prior state (section 16(2)(d)).

If a person fails to comply with an Environmental Protection Order, then in addition to any proceeding initiated under the Act, the EPA may itself take the actions specified in the Order and recover the costs from the responsible person as arrears of land revenue (section 16(3)). Failure to comply with an Environmental Protection Order constitutes an offence for which penalties are provided under section 17.

However, if someone is aggrieved by the Environmental Protection Order, he or she can appeal to the Environmental Tribunal (section 22).

Administrative penalty. Under section 17(7), where a Director-General of an EPA is of the opinion that someone has contravened the Act, then that person may be required to pay the EPA an administrative penalty for each day that the contravention continues. Anyone paying the administrative penalty will not be charged with an offence for the contravention. This provision is only applicable when there has been no previous conviction or previous administrative penalty charged (section 17(8)).

Judicial sanctions

Enforcement through the courts is available where the pollution charge (under section 11) or the administrative penalty (under section 17(7)) have not been paid. There are three levels of penalties provided in the Box on PEPA penalties (p. 10).

PEPA also contains a controversial provision that is likely to receive a lot of attention once it is enforced: where an offence is committed by a corporate body or a government agency (that is, by an organisation) then if it is proved to have taken place with the consent, connivance or is

attributable to the negligence of persons within the organisation (as specified in PEPA) then such persons are also deemed guilty of the offence and shall also be punished (sections 18 and 19).

A person convicted by an Environmental Magistrate may appeal to the Court of Sessions. In these cases, the role of the public is excluded. However, any person aggrieved by any final order of the Environmental

Box : PEPA penalties			
	Court	Offence	Penalty
Level 1 (section 17(2))	Environmental Magistrate (section 24)	<ul style="list-style-type: none"> ● Section 14: handling of hazardous substances ● Section 15: motor vehicle pollution ● Non-compliance with order of PEPC or EPA 	<ul style="list-style-type: none"> ● Up to Rs 100,000 ● Additional daily fine of up to Rs 1,000 for every day the contravention continues
Level 2 (section 17(1) and section 17(4))	Environmental Tribunal (section 21)	<ul style="list-style-type: none"> ● Section 11: polluting in excess of NEQS ● Section 12: IEE and EIA ● Section 13: import of hazardous waste ● Section 16: non-compliance with an Environmental Protection Order 	<ul style="list-style-type: none"> ● Up to Rs one million ● Additional daily fine of up to Rs 100,000 for every day the contravention continues ● Additional fine commensurate with the amount of monetary benefit gained by the offender
Level 3 (section 17(5))	Environmental Magistrate/ Environmental Tribunal (by reference to the relevant Level 1 or Level 2 offence)	<ul style="list-style-type: none"> ● Subsequent conviction under PEPA 	<p>In addition to specific penalties relating to the offence:</p> <ul style="list-style-type: none"> ● Copy of order of conviction to the relevant Chamber of Commerce and Industry ● Imprisonment up to 2 years¹ ● Closure of factory ● Confiscation of factory, equipment, materials, documents or other objects involved in the offence ● Restoration ● Compensation to any person for loss or injury to person or property.
<p>1. Until 3 December 2000, the option of imprisonment will apply only to offences relating to hazardous waste.</p>			

Tribunal may appeal to the High Court. How widely the expression “aggrieved” will be interpreted is an open question at this stage. However, see the discussion in Chapter 4 on its interpretation in Constitutional cases. Finally, the Environmental Tribunal itself has an appellate jurisdiction in respect of orders or directions made by an EPA. Again, the right to appeal is given to a “person aggrieved”.

To date, two Environmental Tribunals have been formed. Environmental Magistrates have been appointed only in the NWFP.

Civil involvement

The public may seek assistance for environmental problems—and participate in their resolution—through a number of different avenues in PEPA.

Approach the PEPC. Under section 4(2), at the request of any person, the PEPC may direct any part of government to prepare, submit, promote or implement projects for:

- the conservation, rehabilitation and improvement of the environment;
- the prevention and control of pollution;
- the sustainable development of resources; or
- research in any specified aspect of the environment.

Approach the EPA. Under section 6(1)(m), it is the mandate of the EPA to render advice and assistance in environmental matters, including giving such information and data as may be required (subject to confidentiality restrictions).

Participate in EIA reviews. Under section 12(3), every review of an EIA must be carried out with public participation.

Lodge a formal notice with the EPA about an infringement. Where an offence under PEPA is committed which comes under the jurisdiction of an Environmental Tribunal (Box 1) an aggrieved person can lodge a formal complaint with the Environmental Tribunal. First, however, such person must have lodged a formal notice at least 30 days in advance with the EPA about the contravention and his or her intention to lodge a complaint with the Environmental Tribunal (section 21(3)(a)). This will give an opportunity to the EPA to take action and to conserve the resources of the Tribunals.

Lodge a formal complaint with the Environmental Tribunal. Where, as described above, a notice is first lodged with the EPA, a formal complaint

may then be made to the Environmental Tribunal which may then take cognizance of the offence. Again, for a person to do so, he or she must be aggrieved. As previously stated, the breadth of this term under PEPA has not yet been tested; however, refer to Chapter 4 for a discussion of the term in the context of Article 199(1) of the Constitution.

The Supreme Court

The word life has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person in a free country is entitled to enjoy with dignity, legally and constitutionally... it seems reasonable to take preventative and precautionary measures straight away instead of maintaining the status quo because there is no conclusive finding...measures should be taken to avert any possible danger...

Justice Saleem Akhtar in *Shehla Zia vs. WAPDA*²

The *Shehla Zia vs. WAPDA* case sets out two of the most critical foundations of environmental law in Pakistan. First, by virtue of the broad meaning of the word "life" as contained in Article 9 of the Constitution, together with the requirement for dignity of man as contained in Article 14, the fundamental right to an unpolluted environment has been established. Secondly, the case established the application of the precautionary principle where there is a hazard to such rights.

For the public, the upholding of fundamental rights may be secured through one of two routes, either through Article 199 (referable to the High Court and discussed in Chapter 4) or through Article 184(3):

...Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with

2. *Shehla Zia vs. WAPDA*, PLD 1994 Supreme Court 693, p. 712.

reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved, have the power to make an order of the nature mentioned in the said Article...³

Article 184(3) of the Constitution has been consistently invoked to uphold the fundamental rights of the ordinary citizen against oppressive laws, bureaucratic or other actions. It has been used, not only in environmental cases, but cases of bonded labour and other human rights abuses.

Anyone acting bona fide and in the public interest can initiate an action under Article 184(3). This has been instrumental in the development of public interest litigation in Pakistan. Public interest litigation is brought before the courts not to resolve issues between two conflicting parties but to promote and vindicate the public interest.

Although environmental cases based on the concept of fundamental rights are relatively new (dating from the *Shehla Zia* case) these cases built on the rich body of case laws on the Article that were already there.

In this chapter, the elements of a Supreme Court action brought under Article 184(3) will be examined, paying particular attention to those aspects which differ from normal court practice. First to be addressed is the question of whether the Court will hear the case. This includes the issue of standing (or locus standi) and what this concept means in the context of Article 184(3). It also includes the issue of whether the case is of public importance.

Next, the way the rules of procedure may be applied where a member of the public brings an action and how this represents a leap forward in making the courts more accessible is examined.

Third, it looks more closely at the wide view of human rights applied by the Court in the context of the environment.

Fourth, the flexibility introduced into the types of remedies that the Court can order is described. And finally, there is a review of the suo moto jurisdiction of the Supreme Court as it has been exercised in environmental cases; it has been responsible for much of the development of environmental public interest litigation.

3.. The Constitution of the Islamic Republic of Pakistan, Article 184(3).

Will the Court hear the case: standing and other preliminary issues

To answer the question of whether the Supreme Court will hear a particular case under Article 184(3), two factors have to be considered:

- Does the person bringing the case have standing?
- Is it a matter of public importance?

Each of these questions will be addressed in turn.

Standing

The principle of locus standi (standing) provides that actions in the courts may only be brought by persons who have an interest in the particular matter being litigated. This principle has been inherited from the Anglo-Saxon system of jurisprudence and has its basis in the adversarial system of law. It is considered to be based on sound policy grounds as it saves the courts' time by preventing them from being flooded with potential litigants who may have no interest in the cause of action.

The principle of locus standi is not, however, compatible with cases involving public interest litigation. This is because, unless someone can bring a case on their behalf, large sections of society would be left without a remedy owing to their inability to bring an action themselves because of economic and social deprivation.

Although Article 184(3) has no equivalent requirement to that of Article 199(1) (which requires that the person bringing the action be "aggrieved") several issues surrounding the question of who can bring an action have been considered and resolved in a manner which gives very wide access to actions under Article 184(3).

The Indian Supreme Court, in the *S.P. Gupta vs. Union of India* case relied on a similar article in the Indian Constitution, to allow a person to bring an action on behalf of another "who...by reason of poverty, helplessness or disability or a socially or economically disadvantaged position, is unable to approach the courts directly".⁴ It warned, however, that a person who approached the courts in a case of this kind must be "acting bona fide and not for personal gain or private profit".⁵

Another modification made by the Indian courts to the principle of locus standi is by allowing actions to be brought by a person not as a

4. *S.P. Gupta vs. Union of India*, AIR 1982 Supreme Court 149, p. 188.

5. *Ibid.*, p. 195.

representative of a class but as a member of a class. This is important because it enables claims to be brought by a member of a class who may not have directly suffered any harm. It has been observed that the justification for the development of citizens' standing is not to improve access to justice for the poor, but to vindicate rights, which are so diffused among the public generally that no traditional individual right exists to be enforced.⁶ An example of such an action is a case involving the leak of chlorine gas from a chemical plant.⁷

The courts of Pakistan have followed their Indian counterparts in dispensing with the principle of locus standi in certain cases. In *Benazir Bhutto vs. Federation of Pakistan*, the Supreme Court held that there was no legal bar to a person acting bona fide from bringing an action for the enforcement of fundamental rights of a group or class of persons who are unable to seek relief from the courts for several reasons. It was further observed that:

...After all the law is not a closed shop and, even in adversary procedure, it is permissible for the next friend to move the Court on behalf of a minor or a person under a disability. Why not then a person, if he were to act bona fide, activate the Court for several reasons. This is what public interest litigation seeks to achieve as it goes further to relax the rule on locus standi...⁸

In *Mohammad Nawaz Sharif vs. President of Pakistan* the Supreme Court held that Article 184(3) is an effective weapon provided to secure and guarantee fundamental rights.⁹ It held that Article 184 can override the Article 199 requirements of being aggrieved and having no alternative remedy. Depending upon the circumstances, even laches cannot bar a petitioner from seeking relief under Article 184.

In the case of *General Secretary vs. Director Industries* (known as the *Salt Miners* case), the Supreme Court affirmed its expansive approach to Article 184(3) in the following terms:

...It is well settled that in human rights cases/public interest litigation under Article 184(3), the procedural trappings and restrictions, precondition of being an aggrieved party, and other similar technical objections, cannot bar the jurisdiction of the Court. The Court has

6. Journal of Indian Law Institute, Volume 29, Oct-Dec 1987, p. 8.

7. M.C. Mehta vs. Union of India, AIR 1987 Supreme Court 965.

8. Miss Benazir Bhutto vs. Federation of Pakistan and another, PLD 1988 Supreme Court 416, p. 490.

9. Mian Muhammad Nawaz Sharif vs. President of Pakistan and others, PLD 1993 Supreme Court 473, p. 805.

vast power, under Article 184(3), to investigate into questions of fact as well as independently by recording evidence, appointing commission or any other reasonable and legal manner to ascertain the correct position. Article 184(3) provides that this Court has the power to make order of the nature mentioned in Article 199. This is a guideline for exercise of jurisdiction under this provision without restrictions and restraints imposed on the High Court. The fact that the order or direction should be in the nature mentioned in Article 199, enlarges the scope of granting relief which may not be exactly as provided under Article 199, but may be similar to it or in the same nature and the relief so granted by this Court can be moulded according to the facts and circumstances of each case...¹⁰

It may therefore be concluded that lack of standing will not be considered a bar to any person bringing a case under Article 184(3) in the public interest providing that the person is acting bona fide.

Matter of public importance

The power to make an order under Article 184(3) is dependent on the Court's own judgement as to whether a matter involves a question of public importance by reference to the enforcement of fundamental rights. In the *Manzoor Elahi vs. Federation of Pakistan*¹¹ case, the Supreme Court held that in order to acquire public importance the case must obviously raise a question which is of interest to or affects the people or an entire community.

In the 1988 *Benazir Bhutto* case the term "public importance" was given a wide interpretation. It was held that the term "public importance":

...Should be defined in such a manner so that it should not be understood in a limited sense but in the gamut of the constitutional rights of freedom and liberty...¹²

This interpretation stands even though the individual who is the subject matter of the case may be of no particular importance.

Procedure: making the courts accessible

In cases not conducted by a lawyer, the Supreme Court may relax the rules of procedure for actions brought under Article 184(3).

10. General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Jhelum vs. The Director, Industries and Mineral Development, Punjab, Lahore, 1994 SCMR 2061, p. 2071. The source approach has also been followed in *Asad Ali vs. Federation of Pakistan*, PLD 1998 Supreme Court 161, p. 295.

11. *Manzoor Elahi vs. Federation of Pakistan*, PLD 1975 Supreme Court 66, p. 145.

12. *Benazir Bhutto*, 1988, p. 491.

The Supreme Court in Pakistan early on took a purposive approach to procedure. In the case of *Imtiaz Ahmed vs. Ghulam Ali* it was held that:

...The proper place for procedure in any system of the administration of justice is to help and not thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with on grounds of public policy. Any system which by giving effect to the form and not to the substance defeats substantive rights [and] is defective to that extent...¹³

The courts have recognised the potential injustices that procedural constraints may cause and in the case of *Bandhua Mukti Morcha vs. Union Of India* it was held by Justice Bhagwati:

...Strict adherence to the adversarial procedure can sometimes lead to injustice, particularly where the parties are not evenly balanced in social or economic strength...It is necessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring necessary material before the Court for the purpose of securing enforcement of their Fundamental Rights...If we blindly follow the adversarial procedure in their case, they would never be able to enforce their fundamental rights and the result would be nothing but a mockery of the Constitution...¹⁴

This case concerned a letter which was written by an organisation dedicated to the release of bonded labourers and was sent to a judge of the Supreme Court of India. The letter alleged, amongst other things, that certain labourers in different parts of India were living in bondage and under inhumane conditions. The Supreme Court of India stated that such a letter could invoke its jurisdiction and should be treated as a writ petition filed by the organisation. In reference to Article 32 of the Constitution of India, the judge stated that it was possible for the Indian Supreme Court to be moved by “appropriate” proceedings. The Court held that in circumstances where:

...A member of the public acting bona fide moves the Court for the enforcement of a fundamental right on behalf of a person or a class of persons, who on account of poverty or disability, or socially or economically disadvantaged positions cannot approach the Court for relief, such member of the public may move the Court even by

13. *Imtiaz Ahmed vs. Ghulam Ali*, PLD 1963 Supreme Court 382, p. 400.

14. *Bandhua Mukti Morcha vs. Union of India and others*, AIR 1984 Supreme Court 802, p. 815.

just writing a letter, because it would not be right or fair to expect a person acting pro bono publico to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition... and in such a case a letter addressed by him can be regarded as an 'appropriate' proceedings...¹⁵

Similarly in *S.P. Gupta vs. Union of India* it was held by the Indian Supreme Court:

...It must not be forgotten that procedure is but a hand maiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would, therefore, unhesitatingly and, without any qualm of conscience, cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of a public minded individual as a writ petition and act upon it...¹⁶

The Supreme Court of Pakistan in the first *Benazir Bhutto* case laid strong foundations for access to the Court under Article 184(3):

...This Article does not state what proceedings should be followed then whatever be its nature must be Judged in the light of its purpose, that is, the enforcement of Fundamental Rights. It is therefore permissible when the lis is between an aggrieved person and the Government or an authority to follow the adversary procedure and in other cases where there are violations of Fundamental Rights of a class or group of person who...are unable to seek judicial redress from the Court, then the traditional rules of locus standi can be dispensed with and the procedure available under public interest litigation can be made use of, if it is brought to the notice of the Court by a person acting bona fide. On the language of Article 184(3), it is needless to insist on a rigid formula of proceedings...it is worded in the widest possible terms which is a clear manifestation of the intention of the framers of the Constitution not to place any procedural technicalities in the way of the enforcement of Fundamental Rights...¹⁷

In the case of *Darshan Masih vs. State*,¹⁸ the Supreme Court, for the first time in Pakistan, invoked jurisdiction on the basis of a telegram. The

15.Ibid., p. 814.

16.S.P. Gupta vs. Union of India, 1982, p. 189.

17.Benazir Bhutto, 1988, p. 491.

18.Darshan Masih vs. State, PLD 1990 Supreme Court 513.

telegram had been sent to the Chief Justice of Pakistan by a group of brick kiln bonded labourers and their families. The labourers and their families were in hiding and were concerned about their security. The Supreme Court held that the telegram could form the basis of a Supreme Court action under Article 184(3) of the Constitution.

The judge in the *Darshan Masih* case further stated that the acceptance of the telegram could also be viewed as an extension of the principle laid down in the *Benazir Bhutto* case:

...Such extension/s would depend upon the facts and circumstance of each case and nature of public importance involved and importance thereof...¹⁹

It was noted in the same case that in circumstances where letters or telegrams are used as the basis for initiating proceedings they should be addressed to the Chief Justice and not sent to individual judges.

It should be emphasised, however, that where an action under Article 184(3) of the Constitution is initiated by lawyers and not public spirited individuals acting bona fide then the above procedure would not apply. Lawyers would have to ensure that they comply with the relevant provisions of the requisite Supreme Court Rules and principles of the Civil Procedure Code. As was observed by the Supreme Court of India²⁰ it is eminently desirable that normally the procedure prescribed in the rules of the Supreme Court should be followed and that other cases should be treated as exceptional.

Grounds: taking a wide view of human rights

The Supreme Court has held that the interpretative approach should not be ceremonious observance of the rules and usage of interpretation but regard should be had to the object and purpose for which article 184(3) is enacted.²¹ This has applied to environmental cases commencing with the *Shehla Zia* case²² mentioned in the introduction.

In this case, the complainants were a group of citizens who were concerned about the construction of a grid station by WAPDA. They sent a letter to this effect to the Supreme Court who took cognisance of the matter upon receipt of the letter and invoked its jurisdiction under Article 184(3). The complainants claimed that the construction of a grid station by

19. Ibid., p. 554.

20. Bandhua Mukti Morcha, 1984, p. 815.

21. Benazir Bhutto, 1988, p. 490.

22. Shehla Zia, 1994, p. 712.

WAPDA would be a health hazard to the people living in the locality because of the presence of high voltage transmission lines. They also alleged that the construction of the grid station was on a green belt and would have a negative impact on the environment. WAPDA argued that the case did not fall within the ambit of Article 184(3) of the Constitution.

It was held by the Supreme Court that this case did fall within the provisions of Article 184(3) of the Constitution. This was because the construction of the grid station appeared to be in contravention of Articles 9 and 14 of the Constitution. Article 9 provides that no person shall be deprived of life and liberty save in accordance with the law. As noted in the introduction to this chapter, the word “life” was given a wide interpretation:

...The word life has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person in a free country is entitled to enjoy with dignity, legally and constitutionally. For the purposes of the present controversy suffice to say that a person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of a grid station, any factory, power or such like installation...²³

The Court further held:

...In cases, where the lives of citizens are degraded, the quality of life is adversely affected and health hazards are created affecting a large number of people, the Court in exercise of its jurisdiction under Article 184(3) may grant relief by stopping the functioning of factories which create pollution and environmental degradation...²⁴

This precedent was also applied in the *Salt Miners* case²⁵. Since then, these cases have been used as precedents for environmental cases. The Supreme Court assumed suo moto jurisdiction under Article 184(3) of the Constitution in two cases, one involving the importation of plastic scrap which was to be used as wrapping material for food and medicines for children and the other, the alleged purchase of the coastal areas of Balochistan by businessmen to be used as a dumping ground for waste material. It was held that the provisions of Article 184(3) of the Constitution

23.Ibid., p. 712.

24.Ibid., p. 715.

25.Salt Miners, 1994, p. 2070.

could be made use of in both cases, as the offending actions under consideration were contrary to Article 9 of the Constitution (see also p.26).

In a complaint submitted by the Karachi Port Trust, it was alleged that the disposal of industrial effluents and garbage, by various industries, in the Lyari and Malir rivers was polluting the environment, destroying marine life and proving a health hazard to people living in the area. The Judge's decision, after considering the facts, was that any objection to the jurisdiction of the Supreme Court in such a case under Article 184(3) of the Constitution would not hold:

...Article 9 can be pressed into service as the offending act violates the right to life which includes its qualitative enjoyment and not only physical or animal existence...²⁶

In a case²⁷ concerning pollution of the environment caused by smoke emitting vehicles, the Supreme Court, under Article 184(3), passed an interim order for taking effective and remedial measures in order to streamline the process of checking as a first step towards eliminating vehicle pollution in Karachi. It was implicitly taken as settled that a case of environmental pollution fell under the heading of a human rights case. Similar cases were taken up in respect of the same subject matter in Islamabad, Rawalpindi and Lahore.

In *Human Rights Case No. 9-K/1992* (unreported), a complaint was made by the Karachi Administrative Womens Welfare Society about the health hazards first, from open stormwater drains used for the disposal of sewage and second, from water contaminated by sewage from damaged adjoining water and sewer pipes. On the basis of the facts it was held that the jurisdiction of the Supreme Court could be invoked under Article 184(3) of the Constitution.

In *The Employees of the Pakistan Law Commission vs. Ministry of Works*,²⁸ the Supreme Court affirmed that an adequate level of living is essential for enjoyment of rights and this includes freedom from want and illiteracy.

In a judgement, on the charge of telephone tapping by Intelligence Bureau, the judge referred to Article 9 and interpreting the word "life" observed:

...It [life] carries with it the right to live in a clean atmosphere, the right to live where all Fundamental Rights are guaranteed, the right

26. Human Rights Case No. 30-K/1994 (unreported).

27. In re: Pollution of Environment Caused by Smoke Emitting Vehicles, Traffic Muddle, 1996 SCMR 543.

28. The Employees of the Pakistan Law Commission, Islamabad vs. Ministry of Works and two others, 1994 SCMR 1548, p. 1552.

to have the rule of law, the right to have a clean and incorruptible administration to govern the country and the right to have protection from encroachment on privacy and liberty...²⁹

It was further observed:

...The object of guaranteeing Fundamental Rights and providing for their enforcement under Article 184(3) is intended to promote social, economic and cultural conditions, which promote life, liberty and dignity. The right to life, therefore, not only guarantees genuine freedom but freedom from wants, illiteracy, ignorance and, above all, freedom from arbitrary restraint from authority...³⁰

The case of *Karachi Building Control Authority vs. Saleem Akhtar Rajput* offers an additional and very important principle in environmental law. The Court considered a case relating to the building of additional multi-storey apartments in a locality in which there were already other multi-storey apartments. A right was claimed for building more multi-storey apartments irrespective of the effect on the air, light and environmental pollution of the locality. It was held that if there is a conflict between personal right and the environment, the personal right must yield in favour of the environment.³¹

Finally, the Court will not expect a complainant to produce conclusive evidence of the likely adverse environmental effect. In the *Shehla Zia* case the Court held that it was reasonable that in such cases preventative and precautionary measures should be taken straight away.³²

It can be seen that the Supreme Court has consistently used a wide interpretation of fundamental rights and will apply that interpretation to protect the environment.

Remedies: widening the options

The nature of an order which can be passed by the Supreme Court under Article 184(3) of the Constitution is the same as that which can be passed under Article 199 of the Constitution. This is clear from the language of Article 184(3) which provides that the Supreme Court shall:

29. Mohtarma Benazir Bhutto and another vs. President of Pakistan and others, PLD 1998 Supreme Court 388, p. 619.

30. Ibid., p. 607.

31. *Karachi Building Control Authority and another vs. Saleem Akhtar Rajput and two others*, 1993 SCMR 1451, p. 1455.

32. *Shehla Zia*, 1994, pp. 709, 710.

...If it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights...is involved, have the power to make an order of the nature mentioned in the said Article...

The breadth of remedies under Article 199 of the Constitution incorporates those which are detailed in Article 199(1)(c). Article 199(1)(c) of the Constitution provides:

Subject to the Constitution a High Court may...

(c) make an order giving such directions to any person or authority...as may be appropriate for the enforcement of any of the Fundamental Rights.

In *Muhammad Nawaz Sharif vs. President of Pakistan*³³ it was observed that the relief which can be granted under Article 184(3) was of the nature mentioned in Article 199 and the word “nature” is not restrictive in meaning but extends the jurisdiction to pass an order which may not be strictly in conformity with Article 199.

In the case of *Rashid Ahmed vs. Municipal Board Kairana*, the petitioner made an application under Article 32 of the Constitution of India for the enforcement of his fundamental right to carry on his business which had been stopped pursuant to certain bye-laws framed by the respondent. It was held by the Indian Supreme Court that:

...The powers given to this Court under Article 32 are much wider and are not confined to issuing prerogative writs only...³⁴

In the case of *Rudul Sah vs. State of Bihar* the Indian Supreme Court considered whether under Article 32 of the Constitution of India it had the jurisdiction to make an order for damages. The case was concerned with the illegal detention of the petitioner for 14 years and was brought as a public interest litigation case since the petitioner was deprived of his fundamental right to life and liberty. The Supreme Court held that the petitioner could be entitled to monetary compensation as a consequence of being deprived of his fundamental right to life and liberty. The Judge stated that if the Court refused to pass an order of compensation in favour of the petitioner, it would “be doing mere lip service to his fundamental right to liberty”.³⁵

33. Mian Mohammad Nawaz Sharif, 1993, p. 805.

34. Rashid Ahmed vs. Municipal Board, Kairana, AIR 1950 Supreme Court 163, p. 165.

35. Rudul Sah vs. State of Bihar and another, AIR 1983 Supreme Court 1086, p. 1089.

If the above precedents of Indian case law are followed in Pakistan, it can be said that the remedies available under Article 184(3) of the Constitution are not restricted to issuance of appropriate writs but may also include damages. This view is strengthened in the case of *Darshan Masih vs. State* where the Supreme Court extended the nature of remedies that may be available under Article 184(3) of the Constitution:

...Even if for the time being it be assumed that the nature of the order is confined only to the Orders under sub clause (c) of Article 199(1) and not to the other Orders under Article 199, it would be seen that any just and conceivable order can be passed...The principle of extension involved in the relevant phrase used in Article 199(1)(c): an order giving such directions to any person or authority ...as may be appropriate for the enforcement of the...cannot be abridged or curtailed by the law. As to how far it can be extended, will depend on each case...³⁶

Suo moto jurisdiction: when the court begins its own case

The Supreme Court can, in certain cases, assume jurisdiction over a matter of its own accord without being moved by a party. This is done by directly taking judicial notice or cognisance of a matter where the conscience of the Court has been so struck by a particular issue that justice demands that the matter be brought for adjudication before the courts of law. The Supreme Court can assume suo moto jurisdiction even on the basis of being alerted to an issue by the press.

This power of the Supreme Court to assume suo moto jurisdiction is contained in the wording of Article 184(3) which does not require a party to move the Court in order for it to exercise its powers to make orders in an appropriate case. It enables the Supreme Court to initiate proceedings for the enforcement of fundamental rights.

In the first *Benazir Bhutto* case it was held by the Supreme Court that:

...The plain language of the said Article shows that it is open ended. The Article does not say as to who shall have the right to move the Supreme Court nor does it say by what proceedings the Supreme Court may be so moved or whether it is confined to the enforcement of the Fundamental Rights of an individual which are infringed or extends to the enforcement of rights of a group or class of persons whose rights are violated...³⁷

36. Darshan Masih, 1990, p. 545.

37. Benazir Bhutto, 1988, p. 488.

The assumption of suo moto jurisdiction by the Supreme Court has provided the law of Pakistan with excellent precedents in several cases. Several have been mentioned under the heading of Grounds in this chapter.

Additionally, Justice Saleem Akhtar took notice of an article entitled “N-Waste to be dumped in Balochistan” published in *Dawn* on 3 July 1992. The article expressed concern that certain businessmen were attempting to purchase land in the coastal areas of Balochistan and convert it into a dumping ground for waste material. This, if it were true, would be a health hazard to people living along the coast and would be in contravention of Article 9 of the Constitution which provides that no person shall be deprived of life or liberty save in accordance with law. An order was passed that all allotments of land along the coastal area should be looked into and no such allotment should be made for the purpose of disposing of industrial and nuclear waste “as this would be a clandestine act in the garb of a legal and proper business activity.”³⁸

As a final example, in *Human Rights Case No. 35-K/1992* (unreported), the same judge took cognisance of a matter under Article 184(3) of the Constitution after reading a report dated 18 December 1992 published in *The Friday Times*. The report concerned the importation of plastic scrap which was being used as wrapping material for food and medicines for children. The learned judge ordered that expert opinion should be obtained on how such use of plastic scrap would affect the health of people and the environment.

38.Human Rights Case (Environmental Pollution in Balochistan), PLD 1994 Supreme Court 102, p.104.

High Court

Through an expansive interpretation of its terms, the courts have developed the character of Article 199(1) of the Constitution of Pakistan to provide for public interest litigation in the High Courts of the provinces.

Public interest cases can be brought under one of two heads of Article 199(1)—that of enforcing government obligations (paragraph (a)) or of upholding fundamental rights (paragraph (c)):

Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,

- (a) on the application of an aggrieved party, make an order
 - (i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the federation, a province or a local authority, to refrain from doing anything he is not permitted to do, or to do anything he is required by law to do; or
 - (ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the federation, a province or a local authority has been done or taken without lawful authority and is of no legal effect; or...

- (c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.³⁹

Article 199 has been the subject of innumerable judgements and books. This chapter does not attempt to reproduce such material but instead outlines some key introductory issues that might arise in public interest environmental cases. It will then be for the reader to use these leads to undertake any necessary research in the Constitutional texts.

The elements of a High Court action brought under Article 199(1)(a) and (c) will be examined, paying particular attention to those aspects which differ from normal court practice. First to be addressed is the question of whether the court will hear the case. This includes the issue of standing (or locus standi) and what this concept means in the context of Article 199(1). It also includes the issues of whether there is any other adequate remedy provided by the law and whether the court will exercise its discretion to hear the case. Next, the way the rules of procedure may be applied where a member of the public brings an action is examined. Third, it looks at the grounds on which an action may be brought. Finally, the types of remedies that the court can order are described.

Will the court hear the case: standing and other preliminary issues

To answer the question of whether a High Court will hear a particular case under Article 199(1), three factors have to be considered:

- Does the person bringing the case have standing? In a case under Article 199(1), this question translates as: “is the person aggrieved”?
- Is there any other adequate remedy provided by the law?
- Is the court willing to exercise its discretion to hear the case?

Under Article 199(3), an order cannot be made under Article 199(1) if it is on the application of, or in relation to, a member of the armed forces or to any person who is for the time being subject to any law relating to the armed forces. This exclusion applies to applications in respect of terms and conditions of service or any matter arising in respect of his or her service or any action taken by him or her while falling within those categories.

³⁹The Constitution of the Islamic Republic of Pakistan, Article 199(1)

The courts' facilitation of public interest litigation under Article 199(1) has largely focused on the necessity to give an expansive meaning to the expression "aggrieved party" under Article 199(1)(a) or "aggrieved person" under Article 199(1)(c). The reference to a party as being "aggrieved" is one of the main points of distinction between an action which is brought under Article 184(3) in the Supreme Court, which does not have such a requirement, and an action brought under Article 199(1).

Using an expansive meaning, this point of distinction is now blurred in public interest cases but by no means can it be disregarded. As will be seen, the court will still address this component of the Article even though the test may not be considered stringent. And this requirement is the reason that the High Court, unlike the Supreme Court, cannot assume suo moto jurisdiction.⁴⁰

What is meant by aggrieved? The term "aggrieved person" has been given a wide meaning by the courts in cases falling within the ambit of Article 199(1)(c). This is done by the courts to avoid any restrictions which would prevent a person from enforcing his or her fundamental rights. In the case of *Sindh Graduates Association vs. State Bank Of Pakistan* it was held by the court that:

...A High Court in exercise of its jurisdiction under Article 199(1) can under its sub-Article (c) assume jurisdiction if an aggrieved person approaches it for redress of violation of any of the Fundamental Rights conferred by Chapter 1 Part II of the Constitution. No doubt power conferred on a High Court under Article 199(1)(c) of the Constitution of the Islamic Republic of Pakistan (1973) restricts exercise of jurisdiction in case of an aggrieved person but sub-Article (2) of Article 199 of the Constitution clearly lays down that subject to the Constitution the right to move the High Court for enforcement of any Fundamental Right conferred by Chapter 1 of Part II shall not be curtailed...⁴¹

For a person to have standing and invoke the jurisdiction of the High Court under Article 199(1)(a) of the Constitution he or she must be an "aggrieved party".

40. In. re: Juvenile Jail, Landhi, Karachi, 1990 PCrLJ 1231; Muhammad Sadiq vs. Khairati, 1984 CLC 2239.

41. *Sindh Graduates Association and another vs. State Bank of Pakistan and another*, 1992 MLD 2238, p. 2244.

There is no specific definition of the term “aggrieved party” on which the courts have relied. Early interpretations of the term were more restrictive than later interpretations. An examination of case law shows the different interpretations that have been afforded to the term. However, it is clear the courts have gradually tended to construe the terms “aggrieved person” and “aggrieved party” widely. In *ex parte Sidebothan in re: Sidebothan* (cited in *Mohammad Abdus Salam vs. Chairman East Pakistan Election Authority*) it was held that:

...A person aggrieved must be a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something or wrongfully affected his title to something...⁴²

However, the court in the case of *Mohammad Abdus Salam vs. Chairman East Pakistan Election Authority* held that the definition of “aggrieved person” is not exhaustive and whether a person falls within the definition is to be decided on the facts of each case.⁴³

In the context of an application for certiorari under sub-clause (ii) of Article 199(1)(a), it has been held that the expression “aggrieved person” has to be construed in the context of the relevant statute.⁴⁴ It follows that if the matter affects the general public then “aggrieved party” will be construed accordingly. Similarly, if the matter arises out of a statute concerning personal rights or property then “aggrieved party” may be construed more strictly.

In the case of *Mian Fazaldin vs. Lahore Improvement Trust* the respondent formulated a development and housing scheme. The petitioner relied on this scheme and purchased a piece of land. However, this scheme was slightly altered by the respondent and the petitioner argued that he could no longer avail the advantageous facilities of the original scheme. It was objected by the respondent in the case that the petitioner had no right in the matter and could not qualify as an “aggrieved party”. It was held that:

...The right considered sufficient for maintaining a proceeding in writ jurisdiction is not necessarily a right in the strict juristic sense but it is enough if the applicant discloses that he had a personal interest

42. *Mohammad Abdus Salam vs. Chairman East Pakistan Election Authority*, PLD 1965 Dacca 231, p. 240.

43. *Ibid.*

44. *Bar Council Maharashtra vs. M.V. Dabholkar*, AIR 1975 Supreme Court 2092.

in the performance of the strict legal duty which if not performed or performed in a manner not permitted by law would result in the loss of some personal benefit or advantage or the curtailment of a privilege or liberty or franchise...⁴⁵

This approach was confirmed in the case of *Muntizma Committee vs. Director Katchi Abadis Sindh*. It was held by Justice Syed Haider Ali Pirzada:

...An aggrieved party within the meaning of Article 199 of the Constitution does not necessarily mean a person having a strict legal right. Even a person who is deprived of a benefit privilege etc by an illegal act or omission can be considered as an aggrieved person...⁴⁶

This case involved a Constitutional petition filed by the petitioners under Article 199. The petitioners sought a direction that the respondents should not disturb them in their use of a plot in Goth Abass Town on which several amenities were being provided to the public. It was alleged that the respondents were illegally and unlawfully trying to usurp the plot and demolish the structures built on it. The respondents contended that the petitioners had no standing to bring the action under Article 199 of the Constitution.

The judge cited the Indian case of *Fertilizer Corporation Kamagar vs. Union of India*⁴⁷ in which Chief Justice Chandrachud speaking for the majority ruled that the question whether a person has the standing to file a proceeding depends mostly on whether he possesses a legal right and whether that right has been violated. But in an appropriate case it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus standi to initiate a proceeding be it under Article 199 or Article 184(3) of the Constitution. In the *Fertilizer Corporation* case, Justice Krishna dealt elaborately with the question of access to justice and observed:

...Public interest litigation is part of the process of participate justice and 'standing' in civil litigation of that pattern must have liberal reception at the judicial doorsteps...⁴⁸

45. Mian Fazaldin vs. Lahore Improvement Trust, PLD 1969 Supreme Court 223, p. 231.

46. Muntizma Committee, Al-Mustafa Colony (Regd.) Karachi and 3 others vs. Director Katchi Abadis Sindh and 5 others, PLD 1992 Karachi 54, p. 60.

47. Fertilizer Corporation Kamagar Union Regd. vs. Union of India and others, AIR 1981 Supreme Court 344.

48. Ibid., p. 355.

In Pakistan, the Supreme Court has affirmed a wide approach in its interpretation of the term “aggrieved party” in cases involving public interest litigation under Article 199(1).

In the case of *Multiline Associates vs. Ardeshir Cowasjee* the petitioners appealed to the Supreme Court against a decision of the Sindh High Court. The case concerned a Constitutional Petition filed by five private respondents in which it was alleged that the construction of a building comprising of ground level and nine floors by the petitioners on a plot in Frere Town, Karachi, violated the Karachi Building and Town Planning Regulations. The respondents sought an order that such construction should be stopped. One of the grounds for appeal raised by the petitioners concerned the standing of the respondents. It was argued by the petitioners that the respondents did not have the standing to file the writ petition as they were not immediate neighbours to the plot where the construction was taking place. It was held that:

...For the facts and reasons, and case law on the subject of locus standi...we find that even though some writ petitioners are shown to be residing at distances far away from the building in dispute and since the area is same, requirement of locus standi as contemplated under Article 199 of the Constitution is to have extended scope as this case has characteristics of public interest litigation and the writ petitioners are pro bono publico. For such reasons we hold that they could file the writ petition and they had locus standi...⁴⁹

Any other adequate remedy

It is a pre-condition for bringing a case under Article 199(1) that no other adequate remedy is provided by law. Even if an applicant has a genuine cause of action under Article 199(1) he or she may still be unable to invoke the jurisdiction of the High Court if there is an adequate alternative remedy available.

...I consider it to be wrong on principle for the High Court to entertain petitions for writs except in very exceptional circumstances, when the law provides a remedy by appeal to another tribunal fully competent to award the requisite relief. Any indulgence to the contrary by the High Court is calculated to create a distrust in statutory tribunals of competent jurisdiction and to cast an undeserved reflection on their honesty and competency and

49. *Multiline Associates vs. Ardeshir Cowasjee and others*, 1995 SCMR 362, p. 379.

thus to defeat the legislative intent. And in a case where the right which the petitioner for a writ claims to vest in him is entirely the creation of statute, it is all the more imperative on him to exhaust the remedies provided by statute before he comes to the High Court. He cannot be permitted to say that while he will have one or all the benefits of the statute, he will comply with none of its remedial processes...⁵⁰

However, the possibility of appeal to an alternative forum does not necessarily exclude an action under Article 199(1). In *Nagina Silk Mill vs. Income Tax Officer* it was held:

...In cases of absence or excess of jurisdiction or where the impugned order suffers from illegality on the face of the record, a certiorari could may be granted even though the right of statutory appeal had not been availed of. A certain amount of flexibility is allowed by the law in the case of a prayer for a writ...⁵¹

This was followed in the case of *Allah Dost vs. Mohammad Alam* where the court also addressed the factors that the court will look to in exercising its discretion:

...No doubt a High Court normally does not entertain a writ petition when other appropriate or suitable remedy is available under the Law. However superior courts have time and again determined the scope and meaning of adequacy contained in opening para of Article 199 of the Constitution. It may be observed that generally the question of adequacy is not a rule of law, barring or limiting jurisdiction of the court, rather it controls and regulates the same. Therefore, the mere availability of an alternate remedy does not ipso facto debar an aggrieved party from invoking the constitutional jurisdiction of this Court. Thus, the question whether a writ may be entertained in spite of alternate remedy is always within the discretion of the High Court depending upon the type of grievance, the nature of other remedy available to the aggrieved party, expense, speed, convenience, impact or the extent of damage which may be caused by the act or omission...⁵²

50. Tariq Transport Company, Lahore vs. Sargodha Bhera Bus Service, PLD 1958 Supreme Court 437, p. 448.

51. Nagina Silk Mill, Lyallpur vs. Income Tax Officer Ward A, Lyallpur and another, PLD 1963 Supreme Court 322, p. 327.

52. Syed Allah Dost vs. Haji Mohammad Alam, PLD 1987 Quetta 235, p. 238.

In *The Murree Brewery vs. Pakistan*,⁵³ the court has affirmed the rule, that the High Court will not entertain writ petitions when another appropriate remedy is available, is not a rule of law barring jurisdiction but a rule by which the court regulates its jurisdiction.

In *Mehboob Ali Malik vs. Province of West Pakistan*⁵⁴ the test of adequacy was formulated as a three-part test which looks at the nature and extent of the relief to be obtained under the alternative law; when the relief would be available; and the conditions on which the relief is available, particularly those conditions which relate to the expense and inconvenience in obtaining it.

Exercise of discretion

The jurisdiction of the High Court under Article 199 of the Constitution is a writ jurisdiction and is discretionary in nature. Writs cannot be issued as of right and whether or not the High Court decides to issue a writ would depend upon the exercise of its discretion.

The case law shows the circumstances in which the High Court would be willing to exercise its jurisdiction. It has been held by the courts that the discretionary jurisdiction of the High Court is available to see that justice is done in accordance with law, equity and good conscience. In *Zameer Ahmed vs. Bashir Ahmed*⁵⁵ it was held by Justice Nasim Hasan Shah that the High Court could not exercise its writ jurisdiction in aid of injustice.

The courts have also set other parameters to the exercise of their discretion. In the case of *Sultana Begum vs. The Chief Settlement & Rehabilitation Commissioner*⁵⁶ it was held by the High Court that the writ jurisdiction is appropriate only in such cases where a “substantial right” of an applicant has been so far invaded so as to prejudicially affect him if the judgement is not reversed. It also declines to act as a Court of Appeal since its Constitutional jurisdiction is an original jurisdiction.⁵⁷

In certain cases the High Court can exercise its discretion and refrain from granting a person relief under Article 199(1)(a) and (c) of the Constitution even if such a person has good grounds for invoking the jurisdiction of the High Court. This was done by the High Court in the case of the *Federation*

53. *The Murree Brewery Co. Ltd. vs. Pakistan*, PLD 1972 Supreme Court 279.

54. *Mehboob Ali Malik vs. Province of West Pakistan*, PLD 1963 Lahore 575.

55. *Zameer Ahmed vs. Bashir Ahmed*, 1988 SCMR 516, p. 517.

56. *Asfia Sultana Begum vs. The Chief Settlement & Rehabilitation Commissioner*, PLD 1964 Peshawar 114.

57. *Akhtar Ali vs. Member Board of Revenue Consolidation Punjab, Lahore*, 1980 CLC 159; *Utility Stores Corporation of Pakistan Limited vs. Punjab Labour Appellate Tribunal*, PLD 1987 Supreme Court 447; *Monoranjan vs. Collector of Custom*, AIR 1953 Calcutta 753.

of *Pakistan vs. Haji Mohammad Saifullah Khan*. The case concerned the dissolution of the National Assembly by the President by invoking his powers under Article 58(2)(b) of the Constitution. The High Court refused to grant relief by restoring the National Assembly and reinstating the dissolved Federal Cabinet. It was held by the Supreme Court in this case:

...The writ jurisdiction is discretionary in nature and even if the court finds that a party has a good case, it may refrain from giving him the relief if greater harm is likely to be caused thereby than the one sought to be remedied. It is well settled that individual interest must be subordinated to the collective good...⁵⁸

The fact that the exercise of discretion under Article 199(1)(a) and (c) may involve a cost would not be a bar to the High Court in exercising its jurisdiction. In the case of *Riffat Parveen vs. Selection Committee*, the petitioner claimed that the admission policy of the Bolan Medical College was ultra vires as it infringed the fundamental rights of the petitioner. The petitioner's application for admission in Bolan Medical College was refused in the case on the ground that her parents had not completed their twelve years stay in the province. It was held by the court that although creating a seat for the petitioner in the Bolan Medical College might cost the respondent a certain amount, the "legal and constitutional rights of citizens are not to be measured in terms of the cost involved."⁵⁹

Procedure

In the *Muntizma Committee* case, the court accepted that the procedure required under Article 199 of the Constitution may be relaxed in cases involving public interest litigation in the same manner as the Supreme Court.⁶⁰ It was held that:

...Public interest litigation is not that litigation which is meant to satisfy the curiosity of the people, but it is litigation which is instituted with a desire that the court would be able to give effective relief to the whole or a section of the society. In the interest of administration of justice, some of the old and well established procedural rules and practices have been altered. Public interest litigation can now be initiated not only by filing formal petitions in court but even by writing letters and telegrams...⁶¹

58. *Federation of Pakistan vs. Haji Mohammad Saifullah Khan*, PLD 1989 Supreme Court 166, p.194.

59. *Ms. Riffat Parveen vs. Selection Committee through Principal Administrator Bolan Medical College and 7 others*, PLD 1980 Quetta 10, pp. 20, 23.

60. See also Chapter 3 under the heading of Procedure.

61. *Muntizma Committee*, 1992, p. 64.

Where a lawyer is used to conduct the case, the ordinary rules of procedure apply. Under Article 22 of the Constitution, the High Court can formulate its own procedure. The jurisdiction of the High Court under Article 199, although a constitutional jurisdiction, is treated as an original jurisdiction and the principles of the Civil Procedure Code have been applied to applications made under Article 199 of the Constitution.⁶²

If an interim order (or stay order) is applied for, the provisions of Article 199(4) will apply and provides that if:

...An interim order would have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to public interest or state property or of impeding the assessment or collection of public revenues, the court shall not make an interim order unless the prescribed law officer has been given notice of the application and he or any person authorised by him in that behalf has had an opportunity of being heard and the court, for reasons to be recorded in writing, is satisfied that the interim order would not have such effect as aforesaid, or would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction...

Unless the interim order is earlier withdrawn, under Article 199(4)(a) it may lapse after a period of six months. Moreover, under Article 199(4)(b), where an interim order has been made, it should be disposed of on its merits within six months.

Grounds

Under Article 199(1)(c), the grounds for an application relate to the enforcement of fundamental rights. This has been comprehensively covered under the heading of Grounds in Chapter 3.

Under Article 199(1)(a), the grounds for an application relate to enforcing government obligations. The grounds relate to an action or inaction by a

62. Therefore, together with a Constitutional Petition filed under Article 199, the following documents would also be likely to be required:

- a) Any order challenging the Petition by the authorities;
- b) Affidavit in support of the Constitutional Petition;
- c) Application requesting exemption from having to produce the original documents under section 151 of the Civil Procedure Code;
- d) Application for an interim order (a stay application) under Order 39 Rules 1 and 2 of the Civil Procedure Code read with section 151 of the Civil Procedure Code;
- e) Affidavit in support of the stay application;
- f) Application under Rule 9, Chapter 111-A Volume V of the High Court Rules to treat the Constitutional Petition and the stay application as urgent;
- g) Affidavit in support of the urgent application; and
- h) Vakalatnama noting the lawyer on record for the Petitioner.

part of government (local, provincial or federal) which is not permitted by law or required by law to be done, respectively. There will be a presumption of validity of the government action or inaction and the court should explore all possible explanations for their validity before deciding to interfere.⁶³

There are two general categories of grounds of an action which the court will not hear. First, a distinction needs to be drawn between the actions of the government with respect to a legal obligation and those with respect to policy. Article 199 does not sit in judgement on policy.⁶⁴ Secondly, Article 199 does not provide a forum for the settlement of disputes relating to the facts. In the case of *The Province of East Pakistan vs. Kshiti Dhar Roy* the petitioners appealed to the Supreme Court against a decision of the Divisional Bench of the High Court. It was stated by the Supreme Court in the case that:

...The principle is now well settled that a proceeding in the writ jurisdiction is more in the nature of a summary proceeding in which the examination of disputed questions of fact of a complicated nature is not, as a general rule, undertaken nor investigation of title to property made. It provides a means of obtaining a speedy decision in a case where a clear disregard of a statutory obligation or duty has resulted in the infringement or denial of a legal right about the existence of which there is not any reasonable dispute or controversy...⁶⁵

Disputes relating to questions of law can, however, be considered by the court and a petition involving substantial questions of law cannot be summarily dismissed.⁶⁶

Although the court will hear a case where the ground is non-exercise of discretion which, according to law, has to be exercised, it will not direct that the discretion be exercised with a particular result.⁶⁷ It may, however, hear a case where the grounds are that an administrative body has acted unreasonably, capriciously or arbitrarily.⁶⁸

Remedies

Since the jurisdiction conferred on the High Court under Article 199(1)(a) and (c) of the Constitution is a writ jurisdiction, it is discretionary in nature.

63. Lahore Improvement Trust vs. Custodian of Evacuee Property, PLD 1971 Supreme Court 811.

64. Zohra vs. Government of Sind, PLD 1996 Karachi 1, p. 26.

65. The Province of East Pakistan vs. Kshiti Dhar Roy, PLD 1964 Supreme Court 636, p. 647.

66. Alam Hussein and others vs. Syeda Shamim Akhtar, PLD 1974 Supreme Court 100.

67. District Magistrate, Lahore and Commissioner Lahore Division vs. Syed Raza Kazim, PLD 1961 Supreme Court 178.

68. Abdul Majid vs. Province of West Pakistan, PLD 1956 Lahore 615, p. 622.

Writs therefore are not issued as of right but depend upon the discretion of the High Court. Even if the applicant under Article 199 shows good grounds for the invoking of the jurisdiction of the High Court, it may still refuse to issue a writ under Article 199(1)(a) or grant an appropriate remedy under Article 199(1)(c).

The discretion available to the High Court whilst granting relief under Article 199 of the Constitution is very wide. In the case of *Aftab Ahmad Sherpao vs. Government of North-West Frontier Province* it was held that:

...The grant of relief is the discretion of a court under Article 199 of the Constitution. It is not bound by any precedent in exercising such a discretion. Each case entails its own objective conditions and the relief is granted or refused on the basis of such condition...⁶⁹

The case law suggests the situations in which the court would grant relief under Article 199(1)(a) and (c). In the case of *Muhammad Gul vs. Shahru Bibi* it was held by the court that:

...A relief under Article 199 of the Constitution is granted only when such grave injustice is going to take place against a person who has come to Court with clean hands...⁷⁰

In the case of *Multiline Associates vs. Ardeshir Cowasjee* it was held that:

...It is imperative upon the Court while exercising jurisdiction in a Constitution[a]l petition to see that discretion is to be exercised in such a way that mischief and chaos is prevented...⁷¹

Under Article 199(1)(c), the relief that may be granted by the court relates to the enforcement of fundamental rights. This has been comprehensively covered under the heading of Remedies in Chapter 3.

Under Article 199(1)(a), the grounds for an application relate to enforcing government obligations. In the case of *Abdul Hafeez vs. Chairman, Municipal Corporation* it was held that:

...On the language of...the Constitution a High Court of a Province may, provided the other conditions are fulfilled, make an order

69. Aftab Ahmed Sherpao vs. Government of NWFP, PLD 1990 Peshawar 192, p. 209.

70. Muhammad Gul vs. Mst. Shahru Bibi, PLD 1995 Peshawar 77, p. 78.

71. Multiline Associates, 1995, p. 387.

directing a person performing in the Province functions in connection with the affairs of the Centre, the Province or a local authority to refrain from doing that which he is not permitted by law to do, or do that which he is required by law to do; or declaring that any act done or proceeding taken in the Province by such a person or a local authority has been done or taken without lawful authority and is of no legal effect. The powers thus conferred on the High Court are very wide indeed; in case the functionaries under this Article have acted or are likely to act in excess of the law or failed to act as required by the law, the High Court may intervene on the application of an aggrieved party...⁷²

Three remedies are provided for in Article 199(1)(a). Under sub-clause (i) a High Court can issue writs in the nature of prohibition or mandamus. Under sub-clause (ii) a High Court can issue a writ in the nature of certiorari. The difference between them is that to justify the former, there must have been a clear violation of a mandatory provision by an act or omission while a writ in the nature of certiorari is referable to a statutory act which was judicial in nature.⁷³

A writ of prohibition is used to prevent a person from doing something which he is not empowered to do under the law and a writ of mandamus is used to compel a person to do something which he is required by law to do. Although in certain cases the writ of prohibition may be granted as of right, ordinarily it is issued at the discretion of the High Court. The writ of mandamus is a completely discretionary remedy. The basis on which the High Court decides to grant the writs of prohibition and mandamus varies and depends on the facts of a particular case. The writ of prohibition is appropriate where it is intended to restrain a person who assumes or threatens to assume jurisdiction which the person does not possess. The writ of mandamus is appropriate where a person is under a clear obligation to act and has failed to do so. The court will only exercise its discretion and issue the writs of prohibition and mandamus in situations where the grant of such writs would be necessary for the promotion of justice.

In *Federation of Pakistan vs. Muhammad Saifullah Khan* the Supreme Court extensively considered the nature of the remedies provided by Article 199(1).⁷⁴ The Court quoted with approval the following summary relating to the writ of prohibition:

72. Dr. Abdul Hafeez vs. Chairman, Municipal Corporation, Lahore and others, PLD 1967 Lahore 1251, p. 1281.

73. Faridsons Limited vs. Government of Pakistan, PLD 1961 Supreme Court 537, p. 547.

74. *Federation of Pakistan*, 1989, p. 194.

...While a writ of prohibition may go as a matter of right where the absence of jurisdiction is plain and application is made in proper time by a party who has no other adequate remedy and has not lost his right thereto by misconduct or laches, ordinarily it is granted, not as a writ of right, but as one of sound discretion to be granted, or withheld by the Court exercising supervisory control; according to the nature and circumstances of each particular case. Prohibition, it has been said, is not favoured by the courts. In any event, the writ of prohibition should be used with caution and forbearance for the furtherance of justice and for securing order and regularity in and among inferior tribunals and it should issue only when the absence and excess of jurisdiction or the right to relief is clear...⁷⁵

In the same case, the Court also approved the following summary in connection with mandamus:

...The Court in the exercise of its discretion may and should take into consideration a wide variety of circumstances in determining whether the writ should issue. It may and should consider the facts of a particular case: the exigency which calls for the exercise of its discretion, the consequences of granting the writ, and the nature and extent of the wrong or injury which would follow a refusal or the writ. The Court is not bound to allow the writ merely because the applicant shows a clear legal right for which mandamus would be an appropriate remedy, even though without mandamus, applicant would be without a remedy. The writ will not be issued on mere technical grounds, and it may be granted or refused depending on whether or not it promotes substantial justice...⁷⁶

Again, in the same case, the Supreme Court cited its own judgement in *The Lahore Central Co-Operative Bank Ltd vs. Pir Saif Ullah Shah* in which it was held, in respect of the writ of mandamus:

...Mandamus is a discretionary writ. It is not an order granted as of right and it is not issued as a matter of course, so that the Court may refuse the order not only upon the merits, but also by reason of the special circumstances of the case...⁷⁷

75. 73 Corpus Juris Secundum, p. 18 cited in *ibid*, p. 217 (also see 73 Corpus Juris Secundum (1983 Recompiled Issue), p. 23).

76. 55 Corpus Juris Secundum, p. 31 cited in *ibid*, p. 218 (also see 55 Corpus Juris Secundum (1998 Revised Issue), p. 29).

77. *The Lahore Central Co-Operative Bank Ltd. vs. Pir Saif Ullah Shah*, PLD 1959 Supreme Court 210, p. 214.

A writ of certiorari is a remedy that, in contrast to the writ of prohibition, is issued after an impugned order is made and seeks to nullify that order. Again, in *Federation of Pakistan vs. Muhammad Saifullah Khan*⁷⁸ the Supreme Court considered the nature of this writ, approving the following summary:

...The power to make a declaratory judgement is discretionary; the discretion should be exercised with due care and caution, and judicially, with regard to all the circumstances of the case, and, except in special circumstances, should not be exercised unless all parties interested are before the Court. It will not be exercised where the relief claimed would be unlawful, unconstitutional, or inequitable for the Court to grant, or contrary to the accepted principles upon which the Court exercises its jurisdiction. The Court will not make a declaratory judgement where the question raised is purely academic, or the declaration would be useless or embarrassing, or where an adequate alternative remedy is available, such as an action for damages, and it will be slow to make a declaration as to future or reversionary right ...⁷⁹

In *I.G. Frontier Corps Balauchistan vs. The Superintendent Central Jail, Mach* it was held that the writ of certiorari has to be specifically prayed for otherwise it cannot be issued since the court would not be able to issue it suo moto.⁸⁰

The High Court under Article 199(1)(a)(ii) is empowered to pronounce upon the illegality or unconstitutionality of an order and to declare that it is “without lawful authority and of no legal effect”. It cannot, however, substitute its own judgement with that of the impugned order. Further, a High Court whilst issuing the writ of certiorari does not act as an appellate court but has supervisory jurisdiction. If there has been no error of jurisdiction or no illegality a High Court cannot issue the writ of certiorari to correct other mistakes in law or review the facts. In *Agriculture Development Bank of Pakistan vs. Noor Mohammad* it was held that the supervisory jurisdiction of the High Court is to be exercised with restraint and in aid of justice.⁸¹

78. Federation of Pakistan, 1989, p. 194.

79. Halsbury's Laws of England, 4th Edition, Volume 1, p. 174 cited in *ibid.*, p. 216 (also see Halsbury's Laws of England, 4th Edition (Reissue), Volume 1(1), p. 277).

80. Inspector General Frontier Corps, Balauchistan vs. The Superintendent, Central Jail, Mach, 1990 MLD 2258, p. 2279.

81. Agricultural Development Bank of Pakistan vs. Noor Mohammad, PLD 1985 Quetta 74, p. 85.

Conclusion

This volume started with an overview of the Pakistan Environmental Protection Act, 1997. This will always be the starting point for addressing any environmental problem even before the problem becomes one for the courts. This Act offers various entry points for the public in dealing with environmental issues which include approaching the Pakistan Environmental Protection Council or the Environmental Protection Agencies for assistance or participating in the review of environmental impact assessments. Where a breach of the Act is involved a formal complaint can be submitted to an Environmental Protection Agency. Following that, a complaint may be lodged directly with an Environmental Tribunal.

However, until the institutions set up under the Act are operational, or if they have not operated in accordance with the law, or the problem falls outside the activities regulated by the Act, then recourse to constitutional provisions can be considered.

Does the case involve a breach of fundamental rights? The Supreme Court has interpreted this term very widely and it would cover many environmental problems. If so, is it a matter of public importance? Then a case in the Supreme Court can be considered. Standing will not be an issue where the person bringing the public interest action is acting bona fide. And the remedies which the Court may order are very wide.

In a case involving fundamental rights, an action in the High Court may also be considered. However, the issue of standing needs to be addressed

first even though the expression “aggrieved person” has been interpreted so as to give life to public interest cases. Like the Supreme Court, the range of remedies which the High Court may order are very wide.

Is it a case of the government not doing what, by law, it is supposed to do? If so, then a High Court action for remedies of prohibition, mandamus or certiorari may be applied for. Again, standing will be an issue. For this type of case, the significant body of case law attaching to these remedies will shape how the case will proceed.

This volume is meant to help lawyers assist the public in resolving environmental problems affecting them. As environmental laws and their judicial interpretation evolve, it is hoped that future editions of this volume can be prepared in order to keep the community of lawyers fully informed. Readers are requested to send in additional information for inclusion in the next edition since

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