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**ASGHAR LEGHARI AND ENVIRONMENTAL JUSTICE:
TRANSFORMATIVE CLIMATE CHANGE LITIGATION
JUDGEMENTS ONE STEP AT A TIME**

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ABSTRACT

Climate Change is an urgent, defining crisis of our time. While International Law has responded to this challenge with ambitious texts including the Paris Agreement, governments have been slow in taking measures (Plumer and Popovich 2018)³. Across the world, Courts are fast emerging as the recourse taken by citizens and not for-profit organizations to foster accountability for promised targets. An example of one such case is Asghar Leghari vs. Federation of Pakistan, where the Lahore High Court held that the failure of the National Government in carrying out the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030) offended the fundamental rights of citizens.

BACKGROUND

Asghar Leghari vs. Federation of Pakistan ((2015) W.P. No. 25501/201)⁴ is a public interest litigation filed by a Pakistani farmer, against the national government for failing to carry out the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030). His submission was that food, water and energy security in Pakistan were gravely threatened by climate change and that if the government failed to take

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³ Brad Plumer & Nadja Popovich, The World Still Isn't Meeting It's Climate Goals, THE NEW YORK TIMES (Jul. 18, 2020, 11:56 PM), available at: <https://www.nytimes.com/interactive/2018/12/07/climate/world-emissions-paris-goals-not-on-track.html?mtref=www.google.com&assetType=REGIWALL>.

⁴ (2015) W.P. No. 25501/201.

any action towards conserving water or making a shift to heat resilient crops, his livelihood would become unsustainable, violating his fundamental rights under Article 9 (right to life), Article 14 (right to dignity of person and privacy of home) and Article 23 (right to property).

As per the Lahore High Court, climate change as a “*defining challenge*” of our times and a “*clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of society who are unable to approach this Court.*” The Court held that the Pakistani government, in failing to implement the climate change policy and framework violated the fundamental rights of its citizens. Various rights and principles were used by the Court to support its decision, including the fundamental right to life (Article 9), which comprises within it, the right to live in a healthy environment, pursuant to the Pakistan Supreme Court’s decision in *Lahore Development Authority vs. Imrana Tiwana* (2015 SCMR 1739)⁵, as well as the right to human dignity in Article 14. The Court also brought in the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, public doctrine trust and inter-generational equity through the constitutional principles of democracy, equality, social, economic and political justice.

The Court designed a judicially administered machinery for remedying the breaches under the climate change policy and framework. It directed all relevant ministries and departments to nominate a climate focal person to act as a liason to the Ministry of Climate Change to ensure that the Framework was being implemented. Further, to assist in the monitoring of the department’s progress in the implementation of the framework, the Court ordered the setting up of a climate change commission, which would have members from the relevant government ministries, technical experts and NGOs. The Court also retained for itself continuing mandamus jurisdiction to monitor the progress in the implementation of multiple, urgent, long-term actions.

NOTEWORTHY FEATURES OF THE JUDGMENT

Firstly, the case follows the recent string of public interest litigations in Pakistan, starting from *Imrana Tiwana vs. Province of Punjab* (2015 Lahore 522)⁶, in adopting an inquisitorial approach to the legal system in cases of public interest litigations, thereby completing the case

⁵ Lahore Development Authority vs. Imrana Tiwana, 2015 SCMR 1739.

⁶ Imrana Tiwana vs. Province of Punjab, 2015 Lahore 522.

within one month of the hearing of the case, reducing the litigation costs for the petitioners, belonging to the vulnerable sections of society (Mir 2020).⁷

Secondly, by adopting the Philippine jurisprudence of the writ of continuing mandamus from the *Manila Bay Clean-up case* (G.R. Nos. 171947-48, December 18, 2008, 574 SCRA 661)⁸ and the writ of Kalikasan from the Rules of Procedures for Environmental Cases, 2009 (Bueta 2019)⁹, Leghari has reinforced the commonality that exists between the Asian countries in terms of the way that climate change is going to impact these countries, the effects on the rights of the vulnerable groups, the inability of the government in protecting these rights, and the transformative approach to adjudication that the Courts and other tribunals can take, especially in matters of the fundamental rights of citizens (Peel and Osofsky 2018).¹⁰

Thirdly, in allowing the petition to be filed as a public interest litigation, the Court reinforced the exception in the requirements of locus standi under Pakistani jurisprudence, first propounded in the case of *Benazir Bhutto vs. Federation of Pakistan* (1988 SC PLD 461)¹¹, where, to enforce the fundamental rights guaranteed under Pakistan's Constitution to the poor and other vulnerable groups, public interest litigations are granted an exception to the locus standi rules of common law (Rehman 2017).¹²

Fourthly, Justice Mansoor, in treating the public interest litigation as a rolling review, appointing climate change focal personnel and establishing a climate change commission to monitor the implementation of adaptation measures, can be considered to have committed an act of judicial activism, violating the separation of powers. It can however, be argued that the Court had to step in to given the socio-political situation created by the inability of the government to carry out any meaningful actions to protect its vulnerable population from the effects of climate change.

⁷ Waqqas Mir, Courts in Pakistan are Facilitating Climate Dialogue between State and Citizens, Open Global Rights (Aug. 8, 2020, 1:45 PM), available at: <https://www.openglobalrights.org/courts-in-pakistan-are-facilitating-climate-dialogue-between-state-and-citizens/>.

⁸ Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay, G.R. Nos. 171947-48, December 18, 2008, 574 SCRA 661.

⁹ Gregorio Rafael P. Bueta, Environmental Jurisprudence from the Philippines: Are Climate Litigation Cases Just Around the Corner?, IUCN (Aug. 29, 2020, 6:23 PM), available at: <https://www.iucn.org/news/world-commission-environmental-law/201906/environmental-jurisprudence-philippines-are-climate-litigation-cases-just-around-corner>.

¹⁰ Jacqueline Peel & Hari M. Osofsky, A Rights Turn in Climate Change Litigation? 7 Transnational Environmental Law 37, (2018).

¹¹ Benazir Bhutto vs. Federation of Pakistan, 1988 SC PLD 461.

¹² Talha Rehman, Article 199 (Locus Standi) and Public Interest Litigation, Courting the Law (Sep. 4, 2020, 3:46 PM), available at: <https://courtingthelaw.com/2017/08/31/commentary/article-199-locus-standi-and-public-interest-litigation/>.

Fifthly, the eighteenth amendment to the Constitution of Pakistan made environment pollution and ecology provincial subjects, while climate concerns were added to the concurrent list. In practice, however, the federal government has largely abstained from legislating on these subjects, except in cases affecting international trade or national security. On the other hand, the only environmental regulation seen in the provinces has been that of giving clearances to projects and regulating industries causing pollution (Peel and Osofsky 2018).¹³ According to a recent study conducted jointly between the WWF and the Lahore University of Management Science (LUMS) (Alam 2015)¹⁴, climate change, mitigation and adaptation all remain foreign terms in the provinces and there are no climate adaptation policies in any of the provinces.

Sixthly, Leghari showcases a trend towards where rights based claims are increasingly being used in climate change lawsuits, and the increasing willingness of courts to such petitions. The Pakistan Constitution does not specifically protect environmental rights; the Courts have taken the existing fundamental rights protected under the Constitution, such as democracy and equality, and read environmental rights like intergenerational equity and the precautionary principle under those. This has helped to connect the commitments of the Pakistani government under international environmental treaties with their obligations under the Constitution in the protection of fundamental rights.

The Lahore court deployed specific interpretive techniques in interpretation of the fundamentals rights and acted as agents of both the domestic and international legal system, a sort of double role. Such interpretation of fundamental rights in the context of climate change is essential because of challenges in compliance with International Environmental Laws. We still do not possess the wherewithal to effectively implement international law norms and prevent the further deterioration of the climate. Given that there is no single enforcement system for international law norms, they are highly susceptible to being breached and when international law aspires to address apparently intractable global challenges, such as climate change, which are inherently spurred by the current system of production and consumption (Colombo 2017).¹⁵

¹³ *Supra* note 8.

¹⁴ Ahmad Rafay Alam, Pakistan Court Orders Government to Enforce Climate Law, *Courting the Law* (Aug. 17, 2020, 9:23 PM), available at: <https://courtingthelaw.com/2015/09/28/commentary/pakistan-court-orders-government-to-enforce-climate-law/>.

¹⁵ Esmeralda Colombo, Enforcing International Climate Change Law in Domestic Courts: A New Trend of Cases for Boosting Principle 10 of the Rio Declaration? 35 *Journal of Environmental Law* 98, (2017).

Seventhly, according to Mansoor Ali Shah J, there is pressing need to interpret the existing environmental jurisprudence in a way that it can be used to combat the urgent and overpowering issues of our time. This would require a distinction to be made between environmental justice, which is more localized, and climate justice, which is a more complicated problem, with a more global effect. His sees the fundamental rights defined in Pakistan's Constitution as the answer to climate justice, rather than the Framework or the Policy, given that the Framework is seen more as a 'living document'. (Barritt and Sediti 2019).¹⁶

CONCLUSION

Leghari is a bold decision which should be read alongside other landmark climate change litigation judgements such as the *State of the Netherlands v. Urgenda Foundation* ([2015] HAZA C/09/00456689)¹⁷, where the District Court of the Hague ruled that the Dutch Government has a duty to cut its greenhouse gas emissions by at least 25% by the end of 2020, and *Juliana v. United States* (339 F. Supp. 3d 1062 (D. Or. 2018))¹⁸, where the United States District Court of Oregon held that access to a clean environment was a fundamental right. However, the *Leghari* judgement has not garnered enough media attention (Peel and Osofsky 2018)¹⁹, as compared to the *Urgenda* and *Juliana* decisions. Especially as a transformative judgement coming from the developing nations, this judgment requires far more scholarly attention (Barritt and Sediti, 2019)²⁰ from both the developed as well as developing nations.

Even among developing countries, Pakistan is highly vulnerable to climate change, with the Global Climate Risk Index for 2020 placing the country fifth on the list of countries most vulnerable to climate change in its annual report for 2020 (Dawn 2019)²¹. This vulnerability includes increased variability of monsoons, receding Himalayan glaciers, impacting the Indus water system and extreme events like floods and droughts (Faisal 2011)²². The Leghari judgment, with the establishment of the Climate Change Commission has ensured fast results

¹⁶ Emily Barritt & Boitumelo Sediti, The Symbolic value of Leghari v. Federation of Pakistan: Climate Change Adjudication in the Global South, 30 King's Law Journal, 203 (2019).

¹⁷ *State of the Netherlands v. Urgenda Foundation* [2015] HAZA C/09/00456689.

¹⁸ *Juliana v. United States*, 339 F. Supp. 3d 1062 (D. Or. 2018).

¹⁹ *Supra* note 8.

²⁰ *Supra* note 12.

²¹ Pakistan Ranks Fifth on Global Climate Risk Index, Dawn, (Sep. 1, 2020, 5:12 PM), available at: <https://www.dawn.com/news/1520535>.

²² Islam Faisal, Hilary Hove & Jo-Ellen Parry, Review of Current and Planned Adaptation Action: South Asia, International Institute for Sustainable Development 137, (2011).

with the government no longer responsible only for taking necessary precautions while carrying out its activities, but also having to take proactive steps to stabilize the situation due to climate change as a matter of rights of its citizens. According to a report submitted by the Climate Change Commission, more than half of the priority items in the Framework have been fulfilled since its establishment ((2015) W.P. No. 25501/201).²³

Leghari then sets a precedent for developing nations as a transformative judgement. It uses a rights argument as a legal foundation of a climate change suit. This could point out to a potential rights-based model. While the government is struggling to meet expectations and several agencies and instrumentalities of the government have not been effectively prompt in their response, climate change litigation is seen as an effective alternative remedy (Peel and Osofsky 2018).²⁴

²³ *Supra* note 2.

²⁴ *Supra* note 8.