



STATUS OF JUDICIAL REVIEW ON EXISTING ENVIRONMENTAL LEGISLATION IN PAKISTAN

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Abstract

This research article examines the status of judicial review on existing environmental legislation in Pakistan. The article discusses the relevance of judicial review in ensuring the effectiveness of environmental laws and regulations. The research questions explore the extent to which the courts in Pakistan have used their power of judicial review to enforce environmental protection laws. The research objectives are to identify the challenges faced by the courts in exercising judicial review and to suggest recommendations for improving the effectiveness of environmental law enforcement in Pakistan. The research methodology used is a mix of literature review and case studies. The findings reveal that the courts in Pakistan have been reluctant to exercise their power of judicial review, resulting in the lack of enforcement of environmental laws. The literature review suggests that this reluctance is due to various factors, including political interference, lack of awareness, and insufficient resources. The article concludes by recommending the strengthening of the institutional framework for environmental law enforcement, increasing public awareness, and providing adequate resources to the courts to enable them to effectively exercise their power of judicial review.

Keywords: Judicial Review, Environmental legislation, Environmental law, Sustainability

Introduction

Pakistan is confronted with serious environmental issues, such as pollution of the environment, destruction of forests, and changes in the climate. The country has a number of environmental laws and regulations to address these issues, but the lack of effective enforcement has hindered their



implementation. Judicial review is an essential tool for ensuring the effectiveness of environmental laws and regulations. This research article examines the status of judicial review on existing environmental legislation in Pakistan, with a focus on the challenges faced by the courts in exercising their power of judicial review and the recommendations for improving the effectiveness of environmental law enforcement in the country.

According to the literature analysis, Pakistan has a variety of regulations and laws pertaining to the environment, such as the Environmental Protection Act of 1997, the Forest Act 2013, and the Pakistan Environmental Protection Rules 2009. However, these laws and regulations have not been effectively implemented due to various factors, including political interference, lack of awareness, and insufficient resources. The literature also suggests that the courts in Pakistan have been reluctant to exercise their power of judicial review, resulting in the lack of enforcement of environmental laws.

Research Questions

1. What are the existing environmental laws and regulations in Pakistan?
2. How has Pakistan's court system used its judicial review jurisdiction to enforce environmental laws?
3. What are the challenges faced by the courts in exercising their power of judicial review?
4. What are the recommended strategies for improving the effectiveness of environmental law enforcement in Pakistan?

Research Objectives

1. To identify the existing environmental laws and regulations in Pakistan.
2. To determine the extent to which the courts in Pakistan have used their power of judicial review to enforce environmental protection laws.
3. To highlight the difficulties that courts encounter when applying their judicial review power.
4. To suggest recommendations for improving the effectiveness of environmental law enforcement in Pakistan.

Research Method

The research methodology used in this article is a mix of literature review and case studies. A comprehensive literature review was conducted to identify the existing environmental laws and regulations in Pakistan and to examine the existing research on the use of judicial review in environmental law enforcement. To gain a comprehensive understanding of the hurdles encountered by the courts when exercising their power of judicial review, case studies were undertaken on specific environmental cases in Pakistan. These case studies aimed to delve deeper into the challenges faced in such context.



Literature Review:

The book *Judicial Review of Environmental Law in Pakistan* provides an in-depth analysis of the judicial review of environmental law in Pakistan, including the legal framework, case law, and current challenges. It covers topics such as the interpretation and application of environmental laws, the role of the judiciary in environmental protection, and the impact of judicial review on environmental governance in Pakistan. The book is based on a comprehensive review of the relevant literature and case law, and includes practical examples and insights from experts in the field. It is a valuable resource for legal scholars, policymakers, and environmental advocates interested in understanding the judicial review of environmental law in Pakistan and its implications for sustainable development.

The courts in Pakistan have been reluctant to exercise their power of judicial review over environmental cases, resulting in the lack of enforcement of environmental laws. The author cites several cases where the courts have failed to take appropriate action against polluters, despite the existence of robust environmental laws. (Ali, 2017)

“*Environmental Law in Pakistan: A Critical Analysis*” by M. Asif Khan and Saud Khan (2019) – This article provides an overview of environmental law in Pakistan, including the legal framework, judicial review, and challenges in enforcement.

“*Judicial Review of Environmental Law in Pakistan: A Study of the Jurisprudence*” by Adeel Hussain (2020) – This book provides a comprehensive analysis of the judicial review of environmental law in Pakistan, including the legal framework, case law, and current challenges.

“*Environmental Governance in Pakistan: Challenges and Opportunities*” by Riaz Hussain and Muhammad Asif (2018) – This article discusses the challenges and opportunities in environmental governance in Pakistan, including the role of the judiciary in environmental protection.

“*The Role of Judiciary in Environmental Protection: A Study of Pakistan*” by Aisha Khan and Muhammad Asif (2017) – This article examines the role of the judiciary in environmental protection in Pakistan, including the interpretation and application of environmental laws, and the impact of judicial review on environmental governance.

“*Environmental Law and Judicial Review in Pakistan: A Critical Analysis*” by Muhammad Asif and Riaz Hussain (2016) – This article provides a critical analysis of environmental law and judicial review in Pakistan, including the legal framework, case law, and challenges in enforcement.

A study on the role of judicial review in environmental protection in Pakistan and found that the courts have been hesitant to intervene in environmental cases, citing lack of technical expertise and political influence as major factors. The author suggests that the judiciary in Pakistan needs to



be more proactive in enforcing environmental laws and regulations. (Bhatt, 2015)

The environmental jurisprudence of the Pakistani courts and found that there is a lack of clarity and consistency in the application of environmental laws. The author suggests that the courts need to adopt a more holistic approach to environmental protection, taking into account the rights of future generations and the principle of sustainable development. (Chaturvedi, 2017)

The impact of environmental degradation on the rights of the poor in Pakistan and found that the lack of effective judicial review has resulted in the violation of these rights. The author suggests that the courts need to play a more proactive role in protecting the rights of the poor and enforcing environmental laws. (Hassan, 2018)

A study on the effectiveness of environmental law enforcement in Pakistan and found that the lack of political will and inadequate funding are major obstacles in the enforcement of environmental laws. The author suggests that the government needs to take more concrete steps to address these issues and ensure the effective enforcement of environmental laws. (Khan, 2016)

The environmental impact assessment (EIA) process in Pakistan and found that the lack of transparency and public participation in the EIA process is a major obstacle in ensuring environmental sustainability. The author suggests that the government needs to strengthen the EIA process by ensuring transparency and public participation in the decision-making process. (Sattar, 2017)

The role of public interest litigation (PIL) in environmental protection in Pakistan and found that PIL has played a crucial role in enforcing environmental laws and protecting the rights of the affected communities. The author suggests that the courts need to encourage more PILs to ensure the effective enforcement of environmental laws. (Shah, 2018)

In conclusion, the literature suggests that the courts in Pakistan have been reluctant to exercise their power of judicial review over environmental cases, resulting in the lack of enforcement of environmental laws. The authors suggest that the government needs to take more concrete steps to address the issues and ensure the effective enforcement of environmental laws.

In December 1997, the Pakistan Environmental Protection Act (PEPA) was enacted after extensive consultations with various stakeholders. This legislation was introduced as an improvement to the Pakistan Environment Protection Ordinance (PEPO) of 1983. The PEPA incorporated and consolidated existing sectoral laws related to factories, forestry, wildlife, motor vehicles, local government, and canals, thereby strengthening and expanding the scope of environmental protection in Pakistan. A comprehensive regulatory framework for the preservation, protection, and management of preservation, cleanup, or restoration of the clean environment, as well as the avoidance or management of pollution or contamination as well as support or advocacy for



sustainable development. This action fulfilled the environmental awareness, but there are still many technological and legal challenges with its adherence.

Although the PEPA, 1997 is a comprehensive law, most of its provisions can only be put into practice under the rules and regulations that are prescribed under its legislative scheme. Since this is the first comprehensive special law on the environment, it includes specific provisions to address both current and future environmental issues as a result of climate change. Because of Pakistan's commitment during its participation in the United Nations at the 1992 Rio de Janeiro (UN) Conference on Environment and Development, Pakistan signed the Rio de Janeiro a statement adhering to Agenda 21. After devolution and after the 18th Amendment was put into effect, provincial laws have been implemented as a result of federal laws being delegated to the provinces. This Act established ten notified and two draft rules, as well as one draft and two notified regulations. Annexure-IV contains further information. The following are industry-specific laws and regulations:

1. Rules for Industries' Self-Monitoring and Reporting on National Environmental Quality Standards in 2001.
2. Amended Rules for Industries' Self-Monitoring and Reporting in 2001.
3. Draft Rules for Hazardous Waste and Hazardous Substances under the Pakistan Environmental Protection Act of 1997 in 2016 (Section 13 and 14).
4. Rules for Compound Offences and Payment of Administrative Penalties in October 2015.
5. Rules for Environmental Sampling in 2001.
6. Regulations for the Pakistan Environmental Protection Agency's Review of Initial Environmental Examination/Environmental Impact Assessment in 2000.
7. Rules for Calculation and Collection of Pollution Charges for Industries in 2001.
8. Draft Rules for Hazardous Substances in 2003.
9. Pakistan Biosafety Rules in 2005.
10. Regulations for National Environmental Quality Standards on Certification of Environmental Laboratories in 2000.
11. Regulations for the Pakistan Environmental Protection Agency's Review of Initial Environmental Examination/Environmental Impact Assessment in 2000.

Some Case Judgments with References on The Status of Judicial Review on Existing Environmental Legislation in Pakistan

1. *Pakistan Environmental Protection Agency v. Emirates Electric Company (2004)*:
In this case, the Supreme Court of Pakistan held that the Environmental Protection Agency (EPA) had the power to regulate and enforce environmental laws, and that the EPA's decisions were subject to judicial review. The Court also directed the EPA to take measures to protect the environment and prevent pollution. (SCC, 2004).

2. *Ghulam Mustafa & Others v. Government of Sindh & Others (2013)*:



In this case, the Sindh High Court held that the government had a constitutional obligation to protect the environment and ensure that environmental laws are enforced. The Court also directed the government to take measures to prevent pollution and protect the environment. (GoS, 2013).

3. *Nazia Jamshed v. Government of Pakistan (2015):*

In this case, the Lahore High Court held that the government had a constitutional obligation to protect the environment and ensure that environmental laws are enforced. The Court also directed the government to take measures to prevent pollution and protect the environment.

Laws Regarding Environmental Protection 1992's The Pakistan National Conservation Strategy

In 1992, Pakistan's National Conservation Strategy (NSC) was approved by the central cabinet. It served as the main policy document for the nation's environmental issues. There are 14 main areas of the NCS, including:

- I). Sustainable growth
- II). Preservation of nature's riches
- III). Effectively use and manage resources.

2005's National Environment Policy

Through sustainable development, the policy seeks to preserve, repair, and improve Pakistan's environment and improve the quality of life for its citizens. The three main goals of this policy are effective management of the environment, conservation, and restoration. Incorporating environmental factors into the planning and policy-making process.

Governmental organizations' and other stakeholders' capacity building at all levels for improved environmental oversight.

2006's National Sanitation Policy

The National Sanitation Policy of Pakistan is designed to enhance and promote sanitation coverage throughout the country by facilitating the development of sanitation strategies, plans, and programs at various government levels, including local, provincial, federally administered, and federal levels. This policy provides a comprehensive framework and policy guidelines to guide and support the efforts of these government entities in improving sanitation conditions across the nation. By aligning their actions with the National Sanitation Policy, the government at different levels can work collectively towards achieving enhanced sanitation coverage and ensuring the well-being of the population. All appropriate levels to enhance both the physical environment and the standard of living of Pakistan's citizens essential to living a healthy life. This policy's main emphasis on sanitation is the secure removal of excreta from residential buildings and workplaces by utilizing a sanitary restroom, which also entails creating an environment free from judgment and the secure elimination of both solid and liquid wastes. (Shah, 2008)



National Drinking Water Policy (2009)

The Pakistani government acknowledges that all citizens have the inherent right to obtain clean drinking water, and it is constitutionally mandated to ensure universal access to this essential resource. It is dedicated to giving everyone access to a sufficient amount of clean drinking water in an equitable/sustainable manner, at a reasonable cost in a way.

In order to fulfill its obligations under the National Environment Policy, the Ministry of Environment 15 and Vision 2030, through a nationwide consultation process, has developed the National Drinking Water Policy. Its Sections 5(a), (b), (c), (d), and (e); Sections 6.3, 6.4, and 6.6 are related sections.

2017's Smog Controlling Strategy

The Punjab Environmental Protection Department introduced this policy in an effort to combat the persistent smog problem that has been present for the past few years. The policy offers a plan of action to address the smog problem and specifies various short- and long-term solutions. This policy highlights the need for greener industrial processes and utilization of fuels with low sulfur content.(Patnaik, 2018).

Role of Tribunals in Environmental Conservation:

The PEPA 1997 (Amendment 2012) created environmental tribunals under Section 20. These tribunals have the exclusive authority to address environmental issues as a trial forum under Section 21 and as an appellate forum under Section 22 of the 2012 Act. They possess the power to impose penalties on industrial offenders who violate provisions of environmental laws related to solid waste, noise, water, and air pollution. Section 17(1), which carries a fine or penalty of up to PKR 5 million in the event of a persistent violation failure, an extra penalty that could reach PKR 100,000 for each day.

In line with Section 17(2) of the Act, the Tribunal is authorized to impose penalties on offenders of Sections 14 and 15, which pertain to environmental regulations concerning noise and air pollution. The penalties can include fines of up to PKR 500,000, with additional penalties being imposed if the violation continues, potentially amounting to PKR 1,000 for each day of non-compliance. According to analysis, environmental tribunals and EPAs can both contribute significantly to environmental preservation through the rigorous application of Pakistan's environmental laws in their respective domains of authority.

The Pakistan Environmental Protection Agency (EPA) holds the primary responsibility for regulating and overseeing environmental laws in the country. Numerous regulations are in place to govern industrial activities concerning the environment. Specifically, the Punjab Environment



Protection Act of 2000 contains provisions related to Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA). These provisions outline the procedures for conducting preliminary assessments of the environmental impacts associated with industrial projects. A firm's IEE/EIA is likely to be handed to the EPA, concerned industry organizations, libraries, and local chambers. The EPA is Pakistan's primary regulatory agency in charge of overseeing and enforcing environmental legislation.

There are various methods used to regulate industrial environmental actions. First, Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA) regulations under the Punjab Environment Protection Act (2000) specify the conditions for the preliminary assessment of the effects on the environment. When a company conducts an IEE or EIA, it is probably submitted to the local chambers, the library, the EPA, and the relevant industrial associations. (Chaturvedi, 2017).

Second, businesses and industries must adhere to the National Environmental Quality Standards. Depending on their level of pollution, they must also self-monitor and report to the EPA on a monthly or quarterly basis. Effluent samples need to be examined and confirmed by an EPA-certified laboratory. Additionally, the local Environmental Protection Agency permitted to set up research laboratories, assess effluents, and notify the EPA and environmental Tribunal.

In line with Section 12 of PEPA 2012, the Environmental Protection Agency publishes a notice in the local newspaper prior to the start of a project to see whether the community has any reservations regarding the project's development. Then, if any emissions or wastewater are to be released, a public hearing is held to examine the nature of the project's purpose and the scope of treatment facilities. Prior to opening, textile processing plants must get environmental approval. Following the IEE/EIA's submission and the testing and monitoring reports, NOC (No Objection Certificate) is given out. Businesses and industries that produce wastewater are required to four months after the wet processing industries were founded, wastewater treatment plants were put up. According to the Pakistan Environmental Protection (Amended) Act of 2012, provincial authorities have been granted the power to levy pollution charges on businesses that violate environmental regulations. The calculation of the pollution charge for liquid and gaseous emissions and effluents can be found in Annexure-VI of the related document.

Under the Environmental Tribunal Rules of 1999, the provincial government has been authorized to establish environmental tribunals. This empowers the tribunals to handle environmental matters and ensure compliance with environmental laws.(Hussain, 2020).

It is important to note that prior to the formulation of environmental laws, industries were required to adhere to the Factory Act of 1934. The enforceability of laws and enactments begins on the day they are published in the gazette. Consequently, industries established prior to the introduction of environmental legislation are exempt from obtaining environmental approvals or no objection



certificates from the relevant Environmental Protection Agencies (EPAs) covered by the PEPA Act of 1997 (Section 12) or the PEPA (Amended) Act of 2012.

However, all commercial organizations and sectors are obligated to abide by the existing laws, guidelines, and regulations pertaining to the environment. This includes regulations aimed at preserving the environment, preventing and managing pollution, and promoting sustainable development (Haydar, S. & Bari, A., 2011).

Findings

1. Existing Environmental Laws and Regulations in Pakistan: The research paper identifies several environmental laws and regulations in Pakistan, including the Environmental Protection Act 1997, the Forest Act 2013, and the Pakistan Environmental Protection Rules 2009. These laws aim to protect the environment and promote sustainable development, but their effectiveness is hindered by the lack of effective enforcement.
2. Challenges faced by the Courts in Exercising Power of Judicial Review: The research paper highlights several challenges faced by the courts in Pakistan in exercising their power of judicial review, including political interference, lack of awareness, and insufficient resources. These challenges make it difficult for the courts to effectively enforce environmental laws and regulations. (Bhutta, 2019).
3. Limited Use of Judicial Review in Environmental Cases: The research paper finds that the courts in Pakistan have been reluctant to exercise their power of judicial review in environmental cases. This is due to several factors, including a lack of awareness about environmental laws and regulations, political interference, and the perception that environmental cases are not priority areas for the courts.
4. Lack of Resources and Infrastructure: The research paper notes that the courts in Pakistan lack the necessary resources and infrastructure to effectively handle environmental cases. This includes a lack of trained personnel, inadequate facilities, and limited access to legal resources.
5. Limited Public Awareness: The research paper finds that there is limited public awareness about environmental laws and regulations in Pakistan. This lack of awareness makes it difficult for the courts to effectively enforce environmental laws and regulations, as the public is not aware of their rights and responsibilities under these laws.

Discussion

Importance of Judicial Review in Environmental Law Enforcement: The research paper emphasizes the importance of judicial review in ensuring the effectiveness of environmental laws and regulations. Judicial review allows the courts to review the decisions of government agencies and other bodies to ensure that they are in compliance with the law and the Constitution.

Need for Strategies to Improve Environmental Law Enforcement: The research paper identifies



several strategies that can be implemented to improve environmental law enforcement in Pakistan, including increased public awareness, training for court personnel, and the establishment of an independent environmental court. These strategies can help address the challenges faced by the courts in exercising their power of judicial review and ensure the effective implementation of environmental laws and regulations. (Mukhtar, 2016).

Role of the Supreme Court in Environmental Law Enforcement: The research paper highlights the importance of the Supreme Court in environmental law enforcement in Pakistan. The Supreme Court has the power of judicial review, and it has been used to challenge the decisions of government agencies and other bodies on environmental issues. The Supreme Court can play a key role in ensuring the effective implementation of environmental laws and regulations by exercising its power of judicial review and providing guidance to lower courts.

Need for a Comprehensive Environmental Law: The research paper notes that Pakistan lacks a comprehensive environmental law that covers all aspects of environmental protection. A comprehensive environmental law can help address the challenges faced by the courts in exercising their power of judicial review and ensure the effective implementation of environmental laws and regulations. (Nazir, 2004).

International Best Practices: The research paper identifies several international best practices that can be adopted to improve environmental law enforcement in Pakistan. These include the use of environmental impact assessments, the establishment of an independent environmental court, and the development of a comprehensive environmental law. Adopting these best practices can help improve the effectiveness of environmental law enforcement in Pakistan.

Conclusion

The research article highlights the challenges faced by the courts in Pakistan in exercising their power of judicial review in environmental cases. The article identifies several strategies that can be implemented to improve environmental law enforcement in Pakistan, including increased public awareness, training for court personnel, and the establishment of an independent environmental court. The article also emphasizes the importance of a comprehensive environmental law and international best practices in ensuring the effective implementation of environmental laws and regulations. By addressing these challenges and adopting these strategies, Pakistan can improve the effectiveness of environmental law enforcement and protect the environment and promote sustainable development.

The study reveals that the courts in Pakistan have been reluctant to exercise their power of judicial review, resulting in the lack of enforcement of environmental laws. The literature review suggests that this reluctance is due to various factors, including political interference, lack of awareness, and insufficient resources. The research findings indicate that the courts face challenges in exercising their power of judicial review, including political interference, lack of awareness, and



insufficient resources. These challenges hinder the effective enforcement of environmental laws, which is essential for ensuring a sustainable future for Pakistan.

Recommendations

1. Strengthen the institutional framework for environmental law enforcement: This can be achieved by providing adequate resources, including financial and technical support, to the environmental protection agency and the courts.
2. Increase public awareness: Public awareness campaigns can be conducted to educate the public about the importance of environmental protection and the need for effective law enforcement.
3. Provide adequate resources to the courts: The courts need to be provided with adequate resources, including financial and technical support, to enable them to effectively exercise their power of judicial review.
4. Encourage public participation: Encouraging public participation in the environmental decision-making process can help to ensure that the rights of the affected communities are protected.
5. Improve transparency and accountability: Improving transparency and accountability in the environmental decision-making process can help to ensure that the environmental laws are enforced effectively.
6. Promoting synergistic partnerships between government agencies and non-governmental organizations (NGOs) is instrumental in ensuring the robust enforcement of environmental laws.
7. Provide training and capacity building: Providing training and capacity building to the enforcement agencies and the courts can help to improve their ability to enforce the environmental laws.
8. Review and update environmental laws: Reviewing and updating the environmental laws can help to ensure that they are effective in addressing the current environmental challenges.
9. Encourage sustainable development: Encouraging sustainable development can help to ensure that the environmental laws are enforced in a way that promotes sustainable development.
10. Foster international cooperation: Fostering international cooperation can help to share best practices and expertise in environmental law enforcement.



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