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Environmental Laws And Policies In Pakistan: A Discussion

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Abstract:

This article discusses environmental laws and policies in Pakistan, emphasizing challenges like air pollution in cities such as Lahore, Quetta, and Karachi, primarily caused by vehicle emissions and industrial activities. It highlights the role of the Public Trust Doctrine (PTD) in environmental protection, which obligates the state to act as a trustee for natural resources and ensure their preservation for public use. The PTD has been increasingly applied in Pakistani courts, both implicitly and explicitly, to safeguard environmental rights, with landmark cases such as Shehla Zia and Sindh Institute of Urology and Transplantation establishing important legal precedents. These cases demonstrate the judiciary's proactive role in enforcing environmental laws and recognizing the right to a healthy environment as part of the right to life under the Constitution.

Key Word: Environmental laws, Environmental Policies, Judicial Intervention, Pollution, PTD, Public Trust Doctrine,

Introduction:

Environmental laws and policies in Pakistan face another challenge of polluted air which requires proper and timely remedial measures. The top polluted cities of Pakistan include Lahore, Quetta, and Karachi. These cities are provincial capitals and suffer from air pollution. Air pollution pollutants include natural dust, solid waste burning, industry, and vehicles. The emission of gases from these resources causes air pollution. Experts consider that a major chunk of air pollution (60% to 70%) comes from automobile emissions (Akhtar, J. M. 2012). The increase in automobiles domestically and internationally is increasing air pollution. Every day there is an increase in the demand for automobiles. The environment is under threat with the increased use of automobiles in Pakistan. Industrialization is another major contributor to the air pollution index which intensifies the adverse effects of industrial waste from the cosmetic industry, steel mills, sugar mills, fertilizer industries, and cement industries. Due to the use of low-grade fuels in brick-making kilns air pollution increases. This refers to the construction industry's consumption of bricks and their products which is a potent contributor to air pollution in Pakistan (Nadeem, O., & Hameed, R. 2008). Law enforcement agencies are trying to implement environmental laws but it is beyond their capacity. The construction industry is important for economic activity generation but their unsafe practices cause serious damage to the environment. Vehicles contribute to air and noise pollution; moreover, they also contribute to (20% to 25%) carbon monoxide emissions contributing to climate change and global warming. Per mile carbon monoxide emission of a car is estimated at 3.4 grams. The more the increase in the vehicles on road the more the increase in the air pollution index. The release of lead contents in the air is also attributed to the use of petroleum in automobiles. Non-adherence to legal standards the emission of carbon monoxide in Pakistan is far more than European standards (0.35g/L versus 0.15 g/L).

Khan and Iqbal have also highlighted the air pollution increase due to 72% of vehicles using diesel and inefficient fuel grades (Hassan, J. 1996). According to a report, Asian countries are constantly under air pollution threat due to increasing industrialization and automobiles. The air quality index is on the decline due to the release of Particulate Matter, Nitrogen Oxides, and Sulphur dioxide along with the exponential increase in greenhouse gases over the past few decades. South Asian countries are also relying on the consumption of coal and natural gases for their energy requirements but at the same time nonadhering the environmental protection laws and measures. It is pointed out that air pollution is increasing in all major cities and metropolitan cities in Pakistan. Due to the non-availability of gas or its high prices, people cannot afford it and they are helpless to consume firewood which is affecting the environment in two ways smoke emission and cutting of trees for firewood requirements. Biomass burning procedure also produces dangerous gases including carbon monoxide and

carbon dioxide (Kozluk, T., & Zipperer, V. 2013). It is indicated that Air pollution index in Pakistan is 2 to 3.6 times higher than the laid down standards of WHO. Unplanned increases in the urbanization, industrialization, and fast-growing economy environmental threats are also increasingly contributing to air, land, and water pollution. Pollution is the major cause of mortality in countries like Pakistan as 15 to 25 people die because of pollution effects which are more in urbanized areas. Increasing pollution index is a threat to children and underage mortality (Jamal, S. 2018). A research study investigated 1000 traffic wardens which revealed that they were suffering from lung disorders (40%) and ENT / chronic issues (80%) due to increased and direct exposure to automobile emissions. Air pollutants also contribute to winter fog and it increases urban healthcare financial burden. Air pollution is also affecting the crop yield in Pakistan as one research shows a 40% drop in rice crop yield. Pollution directly affects the GDP growth of any country. World Bank estimates that 6% of the GDP is destroyed due to environmental degradation in Pakistan (Mumtaz, M. 2018).

Theoretical Framework of Post Trust Doctrine (PTD)

The PTD imposes a fiduciary duty on the government to protect naturally gifted resources including air, water, outdoors, fauna, water bodies, and jungles. It will surely benefit present and future generations. Governmental entities are stewards of these resources and the public at large. Since the state owns the rights to these public resources, this notion permits the state to administer them as a trustee. As a result, the state bears a duty of care to safeguard these sources. As a result, because these resources are intrinsically public, a sovereign cannot alienate them from private persons. The PTD provides a legal basis for citizens to sue anyone who impedes their relish of natural resources and causes the government to fail to safeguard them. Furthermore, the judiciary can hold a sovereign accountable for failing to preserve reserves.

This theory is a powerful instrument for forcing decision-makers and policymakers to recall the right to a clean and healthy natural world, and it permits judicature to play an active role in environmental protection. The doctrine's main goal is to establish a legitimate framework for protecting the right to a healthy and clean environment (Najam, A., Papa, M., & Taiyab, N. 2006).

In his landmark paper, "Application of Public Trust Doctrine in Natural Resources is considered as Active Judicial Intervention.", Professor Sax explains the doctrine in terms of a potentate's trusteeship over natural resources, their uninterrupted use by everyone, and the non-allocation of public resources to individuals. (Sax, J. L. 1970).

Professor Serena Williams justifies the notion by citing three theoretical philosophies from Joseph Sax's paper. Initial, 'some stakes are so inherently valuable to every national that their unrestricted obtainability inclines to distinguish the social order as one of the inhabitants rather than helot. Subsequently, "certain stakes are so distinctively advantageous to the entirety of the populace that they ought to be designated for them." In conclusion, "some uses have a predominantly public aspect that renders conversion to exclusive use undesirable" (Williams S., 2002).

In his famous article 'The Public Trust Doctrine, Environmental Rights, and the Future of Private Property,' David Takacs discusses the fundamental features of the Public Trust Doctrine while analyzing the instance of the Illinois Central Railroad. A government upholds some resources for the public's pleasure. Thus, jurisdictional acts relating to the practice of the PTD while appearing to violate the separation of powers, help to safeguard these rights, and democracy is preserved to put it simply, the public has an inalienable trust in certain earth resources, and the government is the custodian of that trust. Any person, acting in his or her capacity as receiver, has the right to sue the state for not safeguarding these resources, and the PTD is like a public easement; it allows the public to use the environment without infringing on other people's property rights. (Takacs, D. 2008).

The PTD places several limitations on government officials. To begin with, it is the state's responsibility to ensure that members of the public have unrestricted access to these natural resources. Second, the government cannot sell these natural resources or real estate to private parties. Last, these resources should be put to a specified use. Using the San Francisco Bay as an illustration, Professor Sax elucidates the previous issue. The courts, in carrying out the PTD, must take into account the two-pronged character of governmental duties; the bay is to be utilized only for commercial or recreational reasons; it is not to be utilized for garbage disposal or any other type of house development. (Jamal, S. 2018).

The Public Trust Doctrine has dual vital functions. For starters, it compels officials of the government to manage prudently and efficiently all natural resources. Second, it empowers the nationals to bring relevant officials of the government already a specified jurisdictional venue to be held accountable. Furthermore, the PTD allows the general public a cause of action against private parties that meddle with these naturally gifted resources, as well as against government officials who fail to fulfill their responsibilities as trustees Professor Sax clarifies the preceding matter by employing the San Francisco Bay as an example. No residential development or garbage disposal operations are authorized on the bay; its exclusive use is for commercial or recreational reasons. The courts must recognize the two-pronged character of government duties while carrying out the PTD (Hussain, M., Butt, A. R., Uzma, F., Ahmed, R., Irshad, S., Rehman, A., & Yousaf, B. 2020).

Development and Application of the Public Trust Doctrine in Pakistan

It is contended that judicial mentality is critical to the PTD's progress. There have also been suggestions that judges ought to step in when public servants are endangering the environment or neglecting to protect it. Numerous suo moto measures made by the Pakistani judiciary to implement environmental legislation illustrate the judiciary's apparent proactive approach. In Pakistan, the courts have used this theory in two ways: explicitly and implicitly. The *Ardeshir Cowasjee* and *Salt Miners* cases

employed this theory in a subtle, if not explicit, manner; following the *Sindh Institute of Urology and Transplantation* case, the courts are now employing it unswervingly. (PLD 1995 SC 423).

The Supreme Court's Larger Bench in the Shehla Zia case, a groundbreaking case on environmental law in Pakistan, defined "life" under Article 9 read with Article 14 of the Constitution to encompass "these and all other rights and privileges that a citizen of a free nation is constitutionally and legally authorized to relish without restriction." The judiciary today substantially relies on the conceptual framework established by this precedent-setting decision. While the grid station is being constructed in the village of the petitioner; the petitioners sued the Water and Power Development Authority ('WAPDA'). The petitioners thought that the electromagnetic radiation from the grid station might be harmful to the health of the locals. For a variety of reasons, this case is notable. There was an expansion of one's right to life to encompass environmental rights as a first step. Second, it established the groundwork for the Precautionary Principle, which is closely related to the PTD. Third, even though the Rio Declaration 1992 is not directly binding on the SC, the court relied on it, indicating that it should be followed at least in spirit, if not in writing. Fourth, the court established a history of establishing a commission, which helped to shape the PTD's evolution. Finally, the court's interpretation of the word "right to life" included, last but not least, the importance of maintaining a healthy and pollution-free environment. Almost all future environmental law lawsuits in Pakistan have referenced this case (1994 SC 693).

Unlike Indian courts, Pakistani courts do not discriminate between the PTD and the right to life. According to the Indian Constitution's Article 21, the right to life encompasses "the right to a healthy environment and the right to livelihood." The PTD is the right to life's third side. Because of their heavy reliance on Indian case law, Pakistani courts ostentatiously incorporate the PTD into the right to life. According to this view, environmental rights are just as important as any other kind of fundamental human rights. (Boer, B. 1998).

PTD's direct application

In 2005, courts in Pakistan made the initial direct application of the PTD. When the *Sindh Institute of Urology and Transplantation* case came up for the first time, the court specifically referenced the PTD. The subsoil water could be harmed if Nestle were to acquire the property and construct a water plant.

The court's decision established the public trust in resources like fresh water, wood, and air. Everyone, regardless of their financial situation, should have access to these services, according to the court's order. The court concluded that protecting natural resources for the benefit of present and future generations was the state's duty. Encouraging the private exploitation of these natural resources could compromise the fundamental rights of the populace. As a result, water under the surface belonged to everyone. For three reasons, this is a significant case. For starters, the court used the Public Trust Doctrine at first time, since Professor Sax proposed it. Second, the court was the first to broaden the theory to include groundwater as a natural resource. Third, the court's decision was based on the 1972 Stockholm Declaration, which promotes the preservation of natural resources for the benefit of future generations. These resources include land, air, water, flora, and animals (Patrie, P. T., & Work-Fatherland, P. 2016).

The *Moulvi Iqbal case* was the second lawsuit on this topic in terms of chronological order, in which the petitioner opposed the development of a golf course in a public park. A public park was turned into a golf course, and the Supreme Court ruled that this constituted an invasion of people's fundamental rights. "Reasonable access to the sea" and "the freedom to cross a dry sand beach" are said by Mr. Iftikhar Chaudhry, the then Chief Justice, to be "integral components of the public trust theory." (2007. CLC 1358)

The case of Muhammad Tariq Abbasi was another instance that bolstered the PTD's inclusion in Pakistani law. Justice Sarmad Osmany used Article 9 of the Constitution to state that the public interest in beaches, lakeshores, and other public areas should be preserved and protected by the state, a principle that has been acknowledged globally for a long time. Since the PTD was stretched to encompass the right of access to public spaces, this case was significant because citizens now have an additional remedy for unfettered access to public locations, in addition to the constitutional remedy, thanks to this case. (2007. CLC 1358).

In the *Cutting of Trees suo moto* case, the petitioner raised objections to the extension of Canal Bank Road in Lahore, laying bare this principle. After hearing an explanation of the idea, the Lahore High Court's Division Bench proclaimed the road's green belt a public trust. This was the most vital PTD case since it was the first time the PTD was discussed completely in the situation of Pakistan. In the beginning, the court designated well-known environmentalist Dr. Pervez Hassan to act as a mediator. Secondly, the court used groundbreaking research by Professor Serena M. Williams to determine the scope and limits of the PTD. Thirdly, the scope of the concept was specified by the court, who said that private ownership could not be bestowed upon public property unless there was a compelling public need. Finally, the court discussed sustainable development, which is a closely related notion to the PTD (Suo Motu Case No.25 of 2009).

The idea resurfaced four years later in the *Labore Bachao Tebrik case*. Justice Mian Saqib Nisar, speaking on behalf of the SC's Larger Bench, elaborated on the doctrine's breadth:

"... A resource that belongs to the public cannot be used for private or any other purpose that is not intended for the public..."

Signal Free Junction Azadi Chowk Lahore project is also challenged by the individuals who filed the petition in the Young Doctors Association case in the same year. They argued that it was negatively impacting a section of the Lady Willingdon Hospital. However, their claim is dismissed by the court on the bases that the project violated the principles of public trust doctrine (PTD) and sustainable development. The court based its decision on the Cutting of Trees case, which concluded that "The public trust notion supported the diversion of one-half acre of park space as "just a diversion of an adequate amount of public land from a public purpose to a different public use."

The most recent case by Imrana Tiwana in context of PTD, which expanded the doctrine's reach to include the Environmental Impact Assessment (EIA) process. Imrana Tiwana's petitioner challenged the Signal Free Corridor Project before the Lahore High Court's Larger Bench. The petitioner claimed that the EIA was not once completed by the Lahore Development Authority. The court found in the petitioner's favor, stating that: "It seems to us to achieve environmental justice, we must adhere to the following international environmental principles: eco-friendly growth, intergenerational fairness, public trust theory, EIA, basic human rights to existence, freedom, and dignity (article 14), and the democratic, egalitarian, social, economic, and political justice principles laid out in our Resolution of Purposes. (2015 SCMR 1739).

Further work on the signal-free corridor has been halted by the court. The case was significant for several reasons. The court first professed that the Environmental Protection Agency (EPA) was completely 'Regulatory Captured.' Second, the first principle of the Stockholm Declaration was referenced by the court. This principle states: "Man has an inherent right to freedom, equality, and suitable living situations in an environment of outstanding quality allowing him to live a life of reverence and joy. He bears a severe responsibility to preserve and enhance the environment for millennia to come." (Patrie, P. T., & Work-Fatherland, P. 2016).

The court ruled that environmental restrictions are in place to protect both human health and the natural world, referencing concepts such as "Sustainable Development," the Precautionary Principle, the Environmental Impact Assessment, equality between generations, and the PTD. The court concluded by elaborating on the EIA's definition, review procedure, and scope. The lawsuit's incorporation of the EIA considerably increased the PTD. Nevertheless, the Lahore High Court's decision was reversed by the Supreme Court, which ruled that legislation could not be invalidated by citing the Objectives Resolution, Principles of Policy, or Article 2-A of the Constitution. (Constitution 1973).

Public Trust Doctrine Implied Application

Several environmental law cases in Pakistan indirectly included the PTD. Although Pakistani courts have adopted several notions related to the doctrine, the PTD has never been formally mentioned. By depending only on the *Shehla Zia case*, the courts handed down decisions based on public policy and the right to life. In addition, the courts used several doctrine concepts, including the following: the right to access clean water, the specific use of publicly owned property, the general public's accessibility to that land, and the prohibition of turning publicly owned property into privately owned property (1994 SC 693).

A compilation of cases involving the purported application of the PTD in Pakistani higher courts has been prepared by Justice Munib Akhtar. Housing developments, power plants, firms' usage of antennas and towers, construction of high-rise buildings, parks, garbage, emissions, water dumping, smolder pollution, CNG stations, air pollution (asbestos), and lawsuits surrounding these topics are all on the rise.

Supposedly, the PTD was first used in the *Ardeshir Cowasjee case*, where a bigger Supreme Court bench had to decide whether a revolving restaurant or a commercial-cum-residential complex should be constructed on a site next to a public park. The court has mandated the construction of a community-beneficial revolving restaurant on the ground adjacent to the public park. It is constructed by the court, "That the usage of the Park involves pleasure of life, which is encompassed by the concept of life used in Constitution's Article 9". Furthermore, the court ruled that the property in question must be utilized for a "certain sort of use," namely, the construction of the revolving restaurant. Professor Sax's idea is built around the concept of a "certain form of use of a public property." As an illustration of his last point, he brings up San Francisco Bay, which is off-limits to any kind of residential development or trash pickup and is instead reserved for commercial and recreational usage exclusively. An analogous issue arose in *Shehri CBE* when the SC halted the construction of a multiplex cinema on property that was often used for hockey, football, and cricket games (PLD 1995 SC 423).

To protect their right to drink safe water, the plaintiffs in the *Salt Miners case* went to court. Industries and Mineral Development Punjab, the defendant, was found guilty of reducing the water catchment area and poisoning the water reservoir. Those who filed the petition said that reservoirs and waterways would be polluted due to the controversial project. Justice Saleem Akhter cited the *Shehla Zia case* when he said, "The right to have water free of contamination and pollution is a right to life itself." The court mandated that the Pakistan Mineral Development Corporation construct an extra pipeline to safeguard potable water. The court also mandated the establishment of a commission to investigate the mining enterprise. (1994 SC 693).

The same year, in response to the of a newspaper regarding the dumping of nuclear and industrial trash near Baluchistan's shore, the Supreme Court acted suo moto in a Human Rights case. The Supreme Court ruled that "Baluchistan's coastland stretches for roughly 450 km. Dumping waste items from industrialized countries, particularly radioactive waste, would be

hazardous not only to people's health but also to the ecosystem and aquatic organisms in the area" (Human Rights Case No. 31-K/92 (Q).

The New Murree Project case is the most recent example when the doctrine was indirectly utilized. The apex court destroyed the venture, citing the consequence ideals of equitable prosperity and safeguarding the environment for posterity that were upheld by the PTD. The project was labeled an environmental hazard by the Supreme Court's full bench because it could harm thousands of acres of forest (2010 SCMR 361).

The Public Trust Doctrine encompasses the geological scope and parameters.

According to Professor Sax's idea, The PTD would apply to ecological assets such as ecosystems, habitats, and fisheries. The courts in the United States have been highlighted as having a significant impact on managing natural resources in three key areas: fishing, navigation, and commerce. The Public Trust Doctrine was utilized in various activities such as wildlife habitat management, fishing, swimming, sailing, boating, preservation of the park's environment, and appreciation of scenic beauty. The California Supreme Court concluded in the case of *Marks v. Whitney* that the doctrine's aims are sufficiently flexible to safeguard the environment (Sax, J. L. 1970).

The protection of land for recreational and ecological uses, such as "scenic features, open space, aquatic and terrestrial habitat, and ecological study," was a unique application of this philosophy in the case of the *National Audubon Society*. According to the Environmental Protection Agency, the court in the *Kootenai Tribe* case also considered aesthetic value and water purity while determining the PTD (425 U.S. 463, 1976).

The doctrine's scope is very extensive in Pakistan. Examples of direct application of the principle include cases involving water, parks, green belts, recreational use of public property, and privatization of public land. Furthermore, the doctrine is implicitly applied in a number of scenarios involving particular public property uses, potable water, environmental hazards, housing developments, power stations, cellular companies' antenna and tower usage, skyscraper construction, air pollutants (asbestos), compressed natural gas stations, parks, wastewater, waste, water disposal, and smoke pollution. (Orangias, J. 2021).

Supreme Court laid down the scope of PTD in the *Cutting of Tree* decision. The court clarified the doctrine's reach in the *Cutting of Trees* decision. In policy matters, the courts are required by the Constitution to use judicial restraint. The court held that the doctrine only applies when government officials break a law or a regulation. When we talk about fundamental rights enforcement, such as environmental human rights, a constitutional clause may be invoked. To determine the doctrine's reach, Justice Jilani asked the following question: "How far can this concept stymie a public or private initiative, and to what extent can public use of a trusted resource be transferred to private use or used for a different public purpose?" (Suo Motu Case No.25 of 2009). To back this up, he referenced an essay by Professor Williams, who identified two main methods—the substantive test approach and the legislative approach—for determining the breadth of the PTD. The idea, according to Professor Williams, has some limits and is not an absolute concept. Both of those options are great for putting the plan into action. There is the "Legislative Approach," which is also called the "Massachusetts Approach." Here we stand. *Gould v. Grey Lock* forbids "parkland alienation or diversion without unambiguous and unequivocal law to that end." Therefore, laws can be crafted to circumvent the principle. (Williams S., (2002).

The 'Substantive Approach,' often known as the 'Wisconsin Cases,' is the second method. To isolate or avert public land, there are five different conditions are prescribed in said case; which are as follows:

1. that the area in question would be governed by public institutions;
2. that it would serve public goals and be accessible to the whole public;
3. that the first usage area would be a negligible fraction of the total area;
4. that ensuring that the existing area's public usage would not be seriously damaged or eliminated; and
5. that the inconvenience experienced by those who had hoped to use the space for its original purpose would pale in
6. comparison to the number of people who will use the facility and benefit from it.

The Supreme Court narrowed the application of the theory in the case of *Labore Bachao Tebrik*, finding that public property could not be transformed into private property. But in this instance, it was decided that expanding a road is good for the public and should thus be allowed. In this particular case, the goal of expanding the road was to alleviate traffic congestion and provide commuters with an easier experience. According to the courts' definition of the PTD's scope, the PTD will not apply if a project is generally helpful but somewhat breaches the idea. So, when it comes to projects that aim to benefit the public, the theory isn't really applicable (Suo Moto Case No. 25 of 2009).

Restrictions on the State's Right to Trust

A critic of the PTD James Huffman states that Individuals' right to private property, popular sovereignty, legal due process, and the principle of separation of powers are all allegedly violated by the PTD, (Huffman, H. 2000). The doctrine's common-law origins and impact on administrative and legislative governance have been questioned by experts. William Araiza also critiques the concept's common law base and wonders how an unwritten common law doctrine interacts with constitutionally protected environmental rights. It is a doctrine with disputed, vague, and ancient roots, according to Dave Owen. Araiza further claims that the PTD's legal underpinning is shaky, with restricted reach and weak policy backing. The doctrine's legal foundations are hazy, and its reach is ambiguous and contradictory. Owen contends that, like statutory

provisions of law, high-profile doctrines frequently do not perform well. This is also one of the reasons why landmark cases are frequently restricted in scope (Araiza, W. D. 2019). Huffman further argues that, "Think about a law that, like the last hypothetical court ruling, was either declared by the courts or approved by the legislature, ensuring that private property owners could do anything they wanted with their land so long as the state could limit the use of private property to an infinite degree. Could it be that following such a standard by the judiciary would be consistent with the rule of law? Not at all. This kind of assurance of property rights is equivalent to providing no property rights at all. Using such ruling as a precedent would be ridiculous." (Huffman, H. 2000).

Furthermore, it is said that the PTD is the polar opposite of a country's economic prosperity. Infrastructure, environmental preservation, and education are all dependent on economic development. The idea of an emancipated public trust cannot advance the common good by putting more constraints on private property rights. The development of environmental statutes and administrative regulations has rendered the notion obsolete. "Governmental environmental law will be undermined by resurrecting a common law and property-based legal framework that had worked in favor of environmental protection," he says of the plan. Furthermore, without effective property rights, a country's economy will wither away (Sax, J. L. 1970).

In Pakistan, the question of judicial restraint has come up in many cases. In the *Cutting of Trees* case, Justice Jillani said that the economic and social consequences of governmental policy actions were often brought before the court. Judicial restraint is mandated by the Constitution concerning the trichotomy of authority. When the executive branch's policies and actions violate basic human rights—especially those related to the environment—and any statute or constitutional requirement, the court steps in. (Suo Motu Case No.25 of 2009). The court in the *Young Doctors Association* case decided on a restricted application and scope of the PTD, ruling that if a project was started by a competent authority after consulting the relevant departments or if a project was launched by a competent authority after consulting. The issue of public trust would not emerge if government organizations and reputable corporations like NESPAK were consulted (Writ Petition No.2521 of 2014).

The petitioners in the case of the *Lahore Conservation Society* opposed the construction of a flyover. They believed that the construction would necessitate the removal of a lot of plants and trees, which would harm the residents' health. The court dismissed the petition, stating that the flyover would be extremely advantageous to citizens, particularly in the future, as it would alleviate traffic congestion. Furthermore, it was believed that the flyover's construction would save valuable time. Cases involving responsible authorities' policymaking and decision-making are within the jurisdiction of the Lahore High Court, as previously indicated in the *Kamil Khan Mumtaz* case (*Lahore Orange Line Metro Train Project Case*). When making decisions that are illogical, absurd, or arbitrary, or when there is a violation of the law. However, the courts have the authority to order the state or government to rigorously follow the law: Although it has imperfections, Babcock asserts that the PTD functions as a temporary solution in the absence of a full legislation on the matter. As an example, he refers to the establishment of an Executive Economic Zone ('EEZ') to tackle the problem of endangered wildlife resulting from a lack of regulations. The PTD can fill that void. Because common property resources are not fully safeguarded by positive law, this notion is particularly important. In cases when an adequate political-legal framework is lacking to deal with the root causes of social damage, it can also confront regulatory commons. (C.M.A. NOS.8215 & 6171 OF 2016 and Civil Appeal No.2144 OF 2016). This doctrine's historical roots are less relevant than the social function it serves. In the same way, he supports court intervention in environmental justice by quoting Flournoy and David M. Driesen, who say that a social event is a judicial judgment. A court decision, like the enactment of a Federal Act, is the result of a collision of societal forces: Behind the decision are social forces at work, giving it impetus and direction; beyond the decision are human behaviors that are influenced by it (Flournoy and David M. Driesen, 2010).

It is claimed by them, that numerous states have passed new legislation as a result of the PTD. According to Albert Lin, there are many powerful tools for preventing administrations and private parties from infringing on public rights like PTD, and Tort's Public Nuisance theory, which defends the public interest. It's worth noting that both doctrines have a common law foundation. Judges make decisions based on public policy issues in both philosophies. Lin agrees that the theory arose from individual case law, which is effective in a narrow setting. However, this very from-situation-to-situation and case-to-case approach which is insufficient for inclusive regulation that contains widespread effects. He claims that, although statutory laws protect the environment directly and consistently, there are always gaps. The doctrine is an ideal substantial and corrective stratagem to fill in the gaps left by statutes. Some researchers argue that generalist judges, who are typically unfamiliar with environmental issues, are the most likely to apply the concept. Instead of the concept, it is believed that we should enhance regulatory power to address environmental problems. Lin argues that "instead of seeing the idea as undemocratic or unaccountable actions, it could be seen as *corrective solutions to democratic process political shortcomings*." The concept has the power to correct environmental laws' ineffectiveness and solve issues such as dwindling fisheries, climate change, and harmful substances (Lin, A. 2021). Different environmental and health setups need to collaborate for the achievement of targets set for environmental safety by coping with issues like deforestation to preserve air from getting polluted. These organizations can make arrangements to arrest deforestation along with extensive plantation of new trees by milking tree plantation seasons. The responsibility of environment preservation is equally on the common people as it is on the government organizations as they are always present to safeguard nature and to identify the wrongdoers (Lin, A. 2021).

TV broadcasting and the use of media can spread awareness among the general population about the preservation and conservation of the environment to reduce air and water pollution. Educational institutions should spread awareness among

students about the importance of environmental protection and educate them about factors contributing in environmental degradation resulting in air and water pollution such as an increase in the number of automobiles, industrialization, and solid waste. The government is to discourage huge investments in the car-owning business which is directly increasing emissions causing damage to air quality. Car leasing programs must be discouraged and effective transportation projects for mass transit should replace private car-owning habits to reduce environmental damage. Long-term projects are required to meet the requirement of safe drinking water and by reducing damage to the freshwater reserves.

The solution to urbanization lies in the effective regulation and legislation along with their implementation by the concerned agencies (Hassan, J. 1996). Governance failure in the cities has led to unprecedented population expansion in the cities by the settlement of people in unhealthy conditions and slums. Urban societies need serious intervention in the promotion of efficient resource management and improvised urban strategies. The top priority goes to vehicle control in metropolitan cities. Emergency preparation is required for the management of solid waste produced in urban communities, its collection, and disposal. In the non-compliance of environmental laws and policies, the quality of life will be at stake. Adequate steps are required to counter pollution by providing due facilities and managing solid waste in the urban dwelling areas. The situation of the Pakistani construction sector is also shaky in this regard as it lacks awareness, weak enforcement, and ineffective legislation contributing to air and water pollution. Policies have been formulated and announced but it lacks a call to action. This negligent attitude of concerned departments encourages the construction sector to violate occupational health and safety by putting lives in danger. The findings of this research highlight that health and safety conditions in the construction sector are not up to the mark and desired standards.

The production of dust and toxic materials also puts lives in danger; moreover, accidents in the construction sector are not reported. Violation of occupational health and safety is made at the cost of human lives. Construction sector uses materials which are to be used in a controlled environment but no one pays heed to safety regulations. Occupational safety implementation along with the provision of a controlled environment for material processing and use of personnel protective equipment can bring positive outcomes in the interest of the environment. The preservation, conservation, and improvement of the environment is a collective responsibility in which everybody is a potential stakeholder. Governments in collaboration with NGOs, the private sector, and other stakeholders must stand for environmental protection for our generations to come (Mumtaz, M.2018).

Pakistani courts apply the PTD in its entirety, which states that it is established that specific natural resources are inherently public assets that cannot be transferred or given away, and the government is responsible for managing and protecting these resources. As beneficiaries, citizens have the legal entitlement to seek legal remedies in court if anybody attempts to transfer, alter, or harm these resources. It is a common law notion with origins in Roman and English legal systems. Environmentalists are also critical of the law's common law roots. The PTD, according to critics, breaches individual property rights, popular sovereignty, and the theory of separation of powers. Additionally, they raise doubts about the role of the court in carrying out the PTD. They argue that the courts ought to have limited power in matters about the environment. The courts ought to rely on statutes rather than the PTD. Environmental specialists, on the other hand, defend the approach, claiming that it can serve as a useful stopgap measure. It, like the common law notion of public nuisance, can play a significant role (Mumtaz, M. 2018).

The theory was applied implicitly in Pakistan previous to the case of the Sindh Institute of Urology and Transplantation, but today it is directly adopted by courts. The courts have not only successfully recognized the exact scope and boundary of this concept, but they have also applied it in its entirety. In Pakistan, the idea has a fairly broad application. The notion was promptly implemented in scenarios including lakes, public property for recreational use, parks, green belts, and the transformation of public property into private property. Courts are appointing commissioners and mediators to offer technical expertise on environmental issues. (2017 PTD. 603).

Moreover, a suitable and committed statute would be better, even if constitutional courts have gradually interpreted Article 9 to include environmental rights and the PTD. Similar to how South Africa included section 24 in their constitution, the government may consider including similar provisions in Part II, Chapter I of the Constitution.

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