

**P L D 2002 Lahore 555**

**Before Ch. Ijaz Ahmad, J**

**Mrs. ANJUM IRFAN--.Petitioner**

**versus**

**LAHORE DEVELOPMENT AUTHORITY  
through Director-General and others---Respondents**

Writ Petition No.25084 of 1997, decided on 14th June, 2002,

**(a) Penal Code (XLV of 1860)---**

----Chap. XIV [Ss.268 to 294-BJ---Offences affecting public health, safety, convenience, decency and morals---Object of Chap.XIV, P.P.C.--Prohibition of pollution of water does not require any particular mens rea: it is negligence because every one has a duty of care based on common sense not to pollute river water which is used for drinking by men and other animals---Spoliation of water and air may take place due to the activities either of private persons or corporation or public authorities--- Public spring like a well is reservoir like a Municipal' Water Tank and is dealt with under S.277, P.P.C.---Corruption or fouling of the water of any public spring or the reservoir so as to render it less fit for the purpose for which it is ordinarily used, is punishable under S.277, P.P.C.

The sole object of including Chapter XIV in the P.P.C. is to safeguard the public health, safety and convenience by causing those acts which make environmental pollution threatening the life of the people, punishable. In other words, all those acts which endanger public health directly or indirectly have been brought under the purview of the Penal Code. The Penal Code in Chapter XIV consisting of sections 268--294-B deals with public nuisance, i.e. the offences relating to public health safety convenience, decency and morals. Criminal liability of companies in Pakistan is quite clear. The company is not exempted from criminal liability merely because it is a juristic person and not a natural person. Section 11 of P.P.C. includes any company or association or body of persons whether incorporated or not into the word person. The provisions relating to the prohibition of pollution of water do not require any particular mens rea. It is negligent because every one has a duty of care based on common sense not to pollute river water which is used for drinking by men and other animals. The spoliation of water and air may take place due to the activities either of private persons or corporation or public authorities. A public spring like a well is reservoir like a Municipal Water Tank is dealt with under section 277 of P.P.C. Corruption or fouling of the water of any public spring or the reservoir so as to render it less fit for the purpose for which it is ordinarily used, is punishable under this section.

**(b) Easements Act (V of 1882)--**

---S. 7(f)---Every riparian owner has a right to the use of the water of a natural stream in its natural condition without any obstruction or pollution of that water.

**(c) Factories Act (XXV of 1934)---**

---S. 14---Disposal of wastes and effluents---Every factory is required to make an effective arrangement for the disposal of waste and effluents in accordance with Rules framed under Factories Act, 1934 which usually require the effluents to be connected to the public drainage system with the prior approval of the Health Authorities---Direct discharge of effluents by the factories into the rivers and seas would be actionable at the instance of those who are aggrieved by the pollution caused by such discharge.

**(d) Civil Procedure Code (V of 1908)---**

---S. 91(1)(2)---Public nuisance---Either the Advocate-General or two or more persons having obtained the consent in writing of the Advocate-General can institute a suit as a tort for declaration and injunction against public nuisance---Section 91(2), C.P.C. cannot be deemed to limit or otherwise affect any right of a suit which may exist independently of its provision.

**(e) Criminal Procedure Code (V of 1898)---**

---S. 133---Removal of nuisance---Magistrate can invoke the power under S.133, Cr.P.C. in the interest of the society in the preservation and improvement of environment.

Municipal Council, Ratlam v. Vardhichand and others AIR 1980 SC 1622 fol.

**(f) Constitution of Pakistan (1973)---**

---Art. 5(2)---Obedience to Constitution and law---Nobody is above the Constitution, even Chief Executive of Pakistan has to work within the command of the Constitution.

Chaudhry Zahoor Elahi's case PLD 1975 SC 383 ref.

**(g) Constitution of Pakistan (1973)---**

---Arts. 9 & 14---Dignity of man--"Life"---Meaning.

Shehla Zia's case PLD 1994 SC 693 quoted.

**(h) Constitution of Pakistan (1973)---**

---Arts. 189 & 190---Judgment of Supreme Court is binding on each and every organ of the State---Non-observance by the State functionaries of the dictum laid down by the Supreme Court is violation of Art.189 of the Constitution.

**(i) Jurisprudence----**

---- Law gives guidance to only law abiding citizens.

**(j) Pakistan Environment Protection Act (XXXIV of 1997)---**

----Preamble---Enforcement of Pakistan Environment Protection Act, 1997--Mere framing of law does not provide good results unless the law is strictly implemented in letter and spirit without fear, favour and nepotism--Involvement and active participation of public is a must in the implementation of environmental programme for the success of pollution control---Duty and obligation of the media to provide sufficient material with regard to the awareness of environmental programmes initiated by the Government or non-Governmental Organisations, to the people of Pakistan--Members of the Bar Associations and Bar Councils to educate the aggrieved persons to act against the offenders---Awareness for and warning to the human beings not to disturb balance in any sphere provided by Holy Qur'an and history with regard to the hardwork done by Muslim Scientists for providing facilities to the people for the betterment of the human beings stated---Development of modern days science and providing many facilities to the people discussed.

Pakistan Environment Protection- Act, 1997 cannot be enforced without the involvement of the public y and its active participation in the implementation of environmental programme as the same is a must for the success of the pollution control. It is the duty and obligation of the media to provide sufficient material with regard to the awareness of environmental programmes initiated by the Government or non-Governmental Organizations to the people of Pakistan. The aggrieved person has two remedies; criminal as well as to file a suit for damages against the offenders. It is the duty of the Members of the Bar Associations and Bar Councils to educate the people and to file suits for damages against the offenders apart from the criminal proceedings against the offenders. In fact awareness has been given to the world 1400 years ago by Almighty Allah in the Holy Book of Qur'an it: "Sura Rehman" by warning the human beings not to disturb balance in any sphere otherwise destruction is a must. The Muslim Scientists had worked very hard to provide facilities to the people for the betterment of the human beings. After the downfall of the Muslims the western countries had taken over the field of science. The developed countries had made a mark in the modern field of science the developed countries had divided the water (if sea into two categories i.e. the high sea and the territorial water. The developed countries have made various experiments in the high sea which not only destroyed the fishes etc. in the sea but also polluted the water. With the passage of time polluted water touched the boundaries of the territorial water which, created pollution in the-developed countries. Due to this fact they have passed the relevant laws. No doubt development of science has provided many facilities to the people but at the same time created lot of problems to the people on account of that development because the same has crossed the natural sphere and entered into the artificial sphere due to which pollution automatically entered in every sphere of the world including air, water etc.

Mere framing of law does not provide good results unless the law is strictly implemented in letter and spirit without fear, favour and nepotism Islam mandates that there shall not be any pollution in any manner even in the actions and speeches.

**(k) Constitution of Pakistan (1973)---**

---Art. 5---Obedience to law---Implementation of law---Mere framing of law does not provide good results unless the law is strictly implemented in letter and spirit without fear, favour and nepotism.

**(l) Constitution of Pakistan (1973)---**

---Art. 5---Obedience to law---Persons who are in authority must have to obey the law.

**(m) Constitution of Pakistan (1973)---**

---Art. 5---Obedience to law---Each and every citizen including the public functionaries are obliged and duty bound to act in accordance with law.

**(n) Pakistan Environment Protection Act (XXXIV of 1997)---**

---Preamble---Constitution of Pakistan (1973), Art.199---Constitutional petition---Pollution free environment for the health and safe living of citizens ---Problem of pollution being more dangerous as compared to destruction by Hydrogen Bomb, it is proper and high time to implement the law in letter and spirit without discrimination as the life of human being is snore precious---High Court provided suggestions for formulating the policy and relevant rules arid law to help the elimination of pollution.

The following suggestions are given for formulating the policy and relevant rules and law:--

(i) The newly established industries are advised/compelled by the Authorities to install exhaustible devices and its success depends on the implementation and enforcement machinery provided under the provisions of Pakistan Environment Protection Act, 1997.

(ii) Public transport should be effective so that people may prefer to travel by public transport instead of private vehicles/cars.

(iii) Efforts should be made for utilization of solar energy which is in abundance in Pakistan.

(iv) Electric rail cars system should be introduced even in urban areas and also for long distances. Time schedule must be observed. Much less pollution results when people do not use their own vehicles/cars but travel on trains and airplanes which is known as Mass transportation. One bus that carries at least forty people does not produce much more

pollution than vehicle/car with one person. Electric trains can be even cleaner, since trains also carry many more people than private small vehicles.

(v) Trees plantation should be patronized by the Government. For this purpose system of check and balance be introduced in Forest Department as well. Every year Forest Department announces that thousands of trees are planted. Due to lack of accountability the ground realities are entirely different.

(vi) Media should play its role to educate people of Pakistan to think and work for the nation and sacrifice their personal interest on the wellknown maxim that national interest is supreme qua individual.

(vii) Implement the law of the land without fear, favour and nepotism without any discrimination. '

(viii) At the time of granting permission for installation of new industry or licence or local permit of new vehicle, there must be coordination between all the functionaries under all the laws so that all the requirements under the law should be complied with at initial stages. There must be one window operation so that people should not suffer on account of inaction of public functionaries.

(ix) There should quarterly be one meeting of all the public functionaries of all the concerned departments for the purpose of review of ground realities so that future steps be taken on the basis of prevailing circumstances and also suggest qua amendment in rules, regulations and law to the competent authority/body The annual report should be published for information of the people and copy of the same be sent to Deputy Registrar (Judicial) of High Court.

(x) The problem of pollution is more dangerous as compared to destruction by Hydrogen Bomb. It is proper and high time to implement the law in letter and spirit without discrimination as the life of human being is more precious. In fact, every one is not saved from the attack of pollution. In this view of the matter each and every citizen, public functionary authority and body must discharge its responsibility to reduce this problem at any rate at any cost.

(xi) Try to speak truth to save the country from attack of all types of pollution so that food chain be maintained.

Authorities are, directed to implement the provisions of Pakistan Environment Protection Act, 1997 in letter and spirit and frame necessary rules and regulations and issue necessary Notifications under the provisions of the Act preferably within six months. Copy of the judgment be sent to concerned authorities who are directed to implement the provisions of the Act in letter and spirit preferably within six months. They are directed to submit report to Deputy Registrar (Judicial) of High Court within the stipulated period. Copy of the judgment was directed to be sent to the following authorities for necessary action and compliance:--

- (1) Chief Secretaries/Inspector-Generals of Police of all the Provinces.
- (2) Secretary Transport.
- (3) Secretaries to the Chief Executives of all the Provinces.
- (4) Principal Secretary to the Chief Executive of the Country.

Irfan Masood Sh. for Petitioner

Dr. A. Basit, Dr. Pervaiz Hassan, Sardar Shahid Iqbal and Sh. Muhammad Asad Ullah:  
Amicus curiae.

Sher Zaman Khan, Dy.A.-G., M. Hanif Khatana, A.A.-G., Mian Muzaffar Hussain, Kh.  
M.Afzal, Legal Advisors, Dr. Mumtaz Ali and Jawed Hassan for Respondents.

Date of hearing: 10th May, 2002.

## **JUDGMENT**

The petitioner has filed this writ petition with the following prayer:-----

"In view of the above, it is most respectfully prayed that an appropriate writ may very graciously be issued and the respondents may kindly be directed to perform their duties in such a manner to ensure pollution free environment for the health and safe living of the citizens of Lahore. "

2. The learned counsel for the petitioner submits that according to the study carried out by the Housing and Physical Environment Planning. Department, Government of the Punjab, 98 % rickshaws any: 77 % mini-buses emit smoke which is beyond permissible limits and round the clock increase pollution in the air; more than 212 million gallons water is being drained out to River Ravi and canal which is untreated and causing immense pollution: quantum of noise pollution can be gauged from the fact that normal level in which human conversion takes place is 6 decimal and the maximum level to be endured by human beings is 90 decimal: respondents are not discharging their statutory duties in accordance with law; it is the duty and obligation of the public functionaries to discharge their duties in accordance with law but the inaction of the respondents has added more fuel to pollution which in turn is causing different diseases. This Court, keeping in view the controversy involved in this case, had recorded the statement of an expert, Professor Dr. Mumtaz Hussain and also called upon the following Advocates to assist the Court as amicus curiae:--

(i) Dr. A. Basit,

(ii) Dr. Pervaiz Hassan,

(iii) Sardar Shahid Iqbal, and

(iv) Sheikh Muhammad Asad Ullah,

3. Dr. A. Basit, Advocate entered appearance on 19-11-1997 and suggested that Secretary Transport, respondent No.5, be directed to collect material relating to proposal for control of pollution ascribed to traffic and to arrange for submission of two copies of the same through a responsible officer. Respondent No.3 be also directed to provide the statistic with respect to the challans of the vehicles emitting smoke and also the details of vehicles impounded so far in this regard, if any. The aforesaid respondents were directed to submit their reports as suggested by the learned amicus curiae, Dr. A. Basit, Advocate.

4. Dr. Pervaiz Hassan entered appearance on 9-4-2001 and suggested to implead the following as respondents:--

(i) Punjab Environmental Protection Agency, Department through its Director-General, Lahore.

(ii) Pakistan Environmental Protection Council through its Chairman, Islamabad.

The learned amicus curiae also proposed that this Court can suo mote implead the aforesaid parties as respondents without any application. The aforesaid proposal of the learned amicus curiae was accepted and office was directed to send notices to the newly-added aforesaid respondents vide order dated 9-4-2001. All the respondents initially mentioned in the amended writ petition as well as the newly-added respondents were directed to file report and parawise comments. In obedience of the direction of this Court, the respondents filed report and parawise comments.

5. Dr. Pervaiz Hassan learned amicus curiae submits that by virtue of section 15(1) of Pakistan Environmental Protection Act, 1997, no person shall operate a motor vehicle from which air pollutants or noise are being emitted in an amount, concentration or level which is in excess of the National Environmental Quality Standards or where applicable the standards established under clause (g) of subsection (1) of section 6 of the aforesaid Act. He further submits that it is the duty and obligation of the public functionaries to issue a notification under the aforesaid section and instructions to the public functionaries to comply with the command of section 15 of the aforesaid Act in letter and spirit. The respondents failed to comply with the command of the aforesaid section, therefore, failed to discharge their statutory duty. He further submits that by virtue of section 15(2) of the aforesaid Act, Federal Agency is statutory bound to direct the competent Authority that any motor vehicle or class of vehicles shall install such pollution control devices or other equipment or use such fuels or undergo such maintenance or testing as may be prescribed. The competent Authority has issued Notification dated 24-8-1993 to the following effect:--

1. Smoke	40% or 2 on the Ringle to be compared with Ringle mann. Scale during engine mann, chart at a distance acceleration mode of 6 metres or more.	To be compared with Ringle mann Chart at a distance of 6 metres or more.
2. Carbon Monoxide	<u>Emission Standards:</u> New , Vehicles 4.5%	Used Vehicles 6%  under idling conditions: Non-despersive infrated detection through gas analyzer.
3. Noise	85 db (A)	Soundmetre at 7-5 metres from the source.
Ministry of Environment, Local Government and Rural Development issued a Notification dated 27-10-1998 to the following effect:--		
1.	Clauses (a), (e), (f), (i), (j), (k), (1), (m), (n), (o), (p), (q), (r), (s) and (t) of subsection (1) of section 6 and subsection (2) of that section.	The system and proce dures for monitoring and measurements under section 6(1)(i), shall be established by the Pakistan Environmental Protection Agency.
2.	Clauses (t), (g), (h), (i) and (j) of section 7	
3.	Section 12	

He further submits that authorities under E.P.D. Act, be directed that industries and projects comply with the prescribed N.E.Q.S. to avoid air and water pollution and that the provisions of the Act and the rules thereunder must be strictly complied with. He further submits that competent Authority shall have to send cases of the offenders to the Environmental Magistrate; He further submits that E.P.D. Authorities be directed to initiate proceedings against the offenders under section 16 of the aforesaid Act. He further submits that this Court may direct the Federal Ministry of Environment, Local Government and Rural Development and P. E. P. C. to develop the National Ambient Air Quality Standards and also necessary -direction be issued to the P.E.P.C. to revise, strengthen and enforce the N.E.Q.S. emission from vehicular traffic and emission and effluents from industries. He further submits that Federal Government be directed to notify the rules for pollution control devices and fuels by virtue of section 15(2) of the Act. He further submits that respondents are duty bound to take action against the offenders in accordance with law. He further submits that superior Courts have already



prescribed parameters qua the controversy involved in this case but the respondents failed to implement the judgments of superior Courts. He further submits that judgment of this Court is binding on each and every organ of the State by virtue of Article 201 of the Constitution whereas the judgment of the Honourable Supreme Court is binding on each and every organ of the State by virtue of Articles 189 and 190 of the Constitution. In support of his contention, he relied upon the following judgments:--

- (1) PLD 1992 Journal 21.
- (2) Ch. Riaz Mahmood Yazdani v. The Federation of Pakistan (1990 CLC 1406).
- (3) Pollution of Environment Caused by Smoke, Emitting Vehicles, Traffic Muddle (1996 SCMR 543).
- (4) Human Rights Case (Environment Pollution in Balochistah (PLD 1994 SC 102).
- (5) Ms. Shehla Zia and others v. WAPDA (PLD 1994 SC 693).
- (6) General Secretary, West Pakistan Salt Mines Labour Union (CBA) Khewra, Jhelum v. The Director, Industries and Mineral Development, Punjab, Lahore (1994 SCMR 2061).
- (7) M.D. Tahir, Advocate and others v. Provincial Government, through its Secretary, Forest Department, Lahore and another (1995 CLC 1730).
- (8) Mst. Ameer Bano v. S.E., Highways (PLD 1996 Lahore 592).
- (9) Asfand Yar. Khan v. Chief Commissioner, Islamabad Capital Territory, Islamabad and 3 others (1996 SCMR 1421).
- (10) Pakistan Chest Foundation and others v. Government of Pakistan (1997 CLC 1379).
- (11) Abdul Qayyum v. D.G., EPA.(1999 PLR 640)
- (12) Tanvir Arif v. Federation of Pakistan (1999 CLC 981).
- (13) M.D. Tahir. v. WAPDA and others 2000 MLD 851).
- (14) Abdul Latif v. Additional Sessions Judge, Sahiwal (2001 CLC 1139).

He summed up his arguments that action of the respondents is in violation of Articles 9 and 14 of the Constitution.

6. Mr. Sher Zaman Khan, Deputy Attorney-General for Pakistan submits that the Pakistan Environmental Protection .Act, 1997 established the Pakistan Environmental Protection Council (PEPC) as an apex and supreme environmental policy-making body in

the country and the Environmental Protection Agencies (EPAs) both at the Federal and Provincial levels to administer and implement the provision of the Act. The Act itself has empowered Federal and Provincial EPAs, and provide a legal framework, to control pollution caused by motor vehicles, industries and control water, soil and noise pollution etc. The Ministry of Environment, Local Government and Rural Development to further strengthen the powers of the Provincial Governments, has already delegated most of its and Federal EPA's powers, functions and responsibilities to the Provincial Governments vide Notification dated 27-10-1997, therefore, writ petition is liable to be dismissed as the competent body framed the law, therefore, writ petition has become infructuous by efflux of time.

7. Mr. Muhammad Hanif Khatana, Additional Advocate-General, Punjab, submits that power is vested with Punjab Environmental Protection Department in view of section 15(1) of the Pakistan Environmental Protection Act, 1997, the competent Authority did not frame the rules, regulation and procedure under section 31 of the aforesaid Act, therefore, respondent No. 12, Punjab Environmental Protection Department is not in a position to implement provisions of section 15(1) of the Act. He further submits that competent Authority has delegated powers to Environment Protection Agency, Punjab in view of section 26 of the aforesaid Act. The agency is fully functional. He further submits that competent Authority has not framed regulations under sections 14 and 15 of the aforesaid Act, therefore, Environmental Magistrate under section 24(2) read with section 17(2) and (4) are not notified by the Federal Government. He further submits that Environmental Protection Agency, Punjab is already functioning in view of provision of section 16 of the Act. Since the enforcement of the aforesaid Act, Punjab Environmental Protection Agency has referred 50' cases to Environmental Tribunal for initiating proceedings under section 17 of the Act. 30 Radio talks have been arrived on the subject of environment protection and 15 T.V. interviews have been telecast to throw light on the subject of protection of environment to enlighten general public. More than 60 lectures have been delivered in different educational institutions on the subject. He further submits that respondent No-10 Secretary Housing and Physical Planning Government of the -Punjab has been performing his duties successfully in accordance with Pakistan Environmental Protection Act, 1997. Vehicular Smoke Emitting Control Advisory Cell has been established in organizational set up of Environmental Protection Department at Lahore to control vehicular pollution. A separate campaign has been launched in different times.

8. Kh. Muhammad Atzal, Legal Advisor of respondent No.2 has also adopted the arguments of learned Deputy Attorney-General for Pakistan and learned Additional Advocate-General, Punjab. . Mian Muzaftar Hussain, Legal Advisor, I\_DA also adopted the arguments of the learned Law Officer Mr. Jawad Hassan, Advocate prepared a short note/summary of the report and parawise comments filed by the respondents under the direction of this Court.

9. I have given my anxious consideration to the contentions of the learned counsel of the parties and perused the record myself.

10. It is better and appropriate to reproduce the statement of Dr. Mumtaz Ali, Professor King Edward Medical College, Lahore dated 1-11-1997:--

"I have been shown copy of the writ petition and I agree with the contents of the writ petition as it very vividly highlights the major cause of pollution which in my humble opinion are as follows:--

- (i) Pollution of Air,
- (ii) Pollution of Noise.
- (iii) Pollution of Water, and
- (iv) Pollution of Food.

The problems are intimately related to each other and have attained a magnitude which have become of national importance and is affecting every individual ranging from low to top man.

I have taken problems Nos. 1 and 2 together, i.e. pollution of Air, Land. Pollution of Noise because the original and propagation of possible solution go together. The basic source of air and noise pollution are (i) Transport, (ii) Industrial areas. There is transport which affect the masses, Vehicles, over the years, have increased at a tremendous pace and the net result of all this is combustion of carbon producing carbon-dioxide and very large number of outer chemicals which are detrimental to the health of masses. Their number needs to be cut down intelligently, in a way so as not to affect the life of a common man. For example large buses should replace some mini-buses and even cars so that instead of 50 cars or ten mini-buses, one big large bus carries out the job and in this way, pollution through buses and noise will be cut down by fifty times.

Pollution from water has attained hazardous levels and diseases like Jaundice, typhoid, dysentery and food poisoning are affecting every one. Unfortunately, water and sewerage lines run together. It may not be feasible to keep national standards of distance of 30 feet between water and sewerage line due to economic constraints but to get rid of the water pollution, education to the masses to use boiled water is the possible solution which would need minimum cost but with major benefit against diseases spread by this channel. Food pollution is also affecting the masses. It cannot be rectified over night but one thing which can tremendously decrease the incidence of diseases carried through food, is mass education, which can be carried out practically at no cost basis so that masses take only boiled milk. wash their hands after going to wash room and do not take food served at roadside. Electronic and print media can also lay tremendous role to prevent rural pollution.

Mass education can lead to beneficial result as would lead to disposal of wastage and purification of water. It will be a good example to quote that a cake of soap is far better than buying antibiotic or vaccines which may cost hundreds of rupees. It is important to

control pollution so as to safeguard the masses from diseases and it would lead to better productivity and cut down the amount spent on medicines which is a very big burden not only on an individual but national exchequer.

11. Dr. A. Basit, Advocate, learned amicus curiae suggested that respondent No.3 be directed to provide the statistics with respect to the challans of the vehicles emitting smoke and also the details of the vehicles impounded so far if any. Respondent No.3 submitted report on 1-12-1997 qua the challans submitted by the office of respondent No.3 from 1-1-1997 to 31-10-1997 and total challans are 392078 and the offenders were fined and the amount of fine is Rs.2,64,41,286.

12. Before proceeding further, I would like to mention provisions of Pakistan Penal Code, Criminal Procedure Code and Civil Procedure Code, The Factories Acts and Easements Act to resolve the present controversy. The First Law Commission of India headed by Lord Macaulay (who drafted the Indian Penal Code) included Chapter 14 consisting of 28 sections (sections 268 to 294-A) dealing with 'Public Nuisance' in the Penal Code as long ago as 1860. The sole object of including Chapter 14 is to safeguard the public health, safety, convenience by causing those acts which make environmental polluted threatening the life of the people punishable. In the other words, all those acts which endanger public health directly or indirectly have been brought under the purview of the Penal Code. It is pertinent to mention here that the Penal Code in Chapter 14 consisting of aforesaid sections deals with public nuisance, i.e. the offences relating to public health, safety convenience, decency and morals. It is settled principle of law that criminal liability of companies in Pakistan is quite clear. The company is not exempted from criminal liability merely because it is a juristic person and not a natural person. Section 11 of P.P.C. includes any company or association or body of persons whether incorporated or not into the word person. The provisions relating to the prohibition of pollution of water do not require any particular mens rea. It is negligent because every one has a duty of care based on common sense not to pollute river water which is used for drinking by men and other animals. The spoliation of water and air may take place due to the activities either of private person or corporation or public authorities. A public spring like a well are reservoir like a Municipal Water Tank is dealt with section 277 of P.P.C. Corruption of fouling of the water of any public spring or the reservoir so as to render it less fit for the purpose for which it is ordinarily used, is punishable under this section. Section 7(f) of the Easements Act, 1882 every riparian owner has a right to the use of the water of a natural stream in its natural condition without any obstruction or pollution of that water. Section 14 of the Factories Act, 1934 requires every factory to make an effective arrangement for the disposal of waste and effluents in accordance with the rules framed under the said Act. Such rules usually require the effluents to be connected to the public drainage system with the prior approval of the Health Authorities. Otherwise the direct discharge of effluents by the factories into the rivers and seas would be actionable at the instance of those who are aggrieved by the pollution caused by such discharged.

13. Under section 91(I), C.P.C. in the case of public nuisance as a tort either the Advocate-General or two or more persons having obtained the consent in writing of the Advocate-General may institute a suit for declaration and injunction against such

nuisance but section 91(2), C.P.C. makes it clear that this section shall not be deemed to limit or otherwise affect any right of a suit which may exist independently of its provision. The judicial approach adopted by the Magistrate invoking the powers under section 133, Cr.P.C. in the interest of the society in the preservation and improvement of environment was upheld by the Indian Supreme Court in the case of Municipal Council, Ratlam v. Vardhichand and others (AIR 1980 SC 1622), the relevant observation is as follows;--

"Before us the major endeavour of the municipal council was to persuade us to be pragmatic and not to force impracticable orders on it since it had no where withal to execute the order. Of course, we agree that law is realistic and not idealistic and what cannot be performed under given circumstances cannot be prescribed as a norm to be carried out. From that angle it may well be that while upholding the order of the Magistrate, we may be inclined to tailor the direction to make it workable. But first things first and we cannot consent to a value judgment where people's health is a low priority. Nevertheless, we are willing to revise the order into a workable formula the implementation of which would be watch dogged by the Court."

In the United States of America even without such express declaration of values in the Constitution, the Judges have given standing to the consumers and citizens to come to the Court for the protection and improvement of environment and observed "a river is more than a amenity, it is treasury", in *New Jersey v. New York* (28 US 342 (1931)).

14. In the presence of the aforesaid laws which are not sufficient to control the pollution in the air and water, therefore, the competent body framed the Pakistan Environmental Protection Act, 1997. Mr Jawad Hassan, Advocate, highlighted the history of the aforesaid legislation in his articles under the heading "Environmental Law of Pakistan" reported in PLJ'2001 Magazine 198 and PLJ 2002 Magazine 71. It will also be advantageous to examine some treatise and case-law for better comprehension of the functions and duties of the public functionaries to control the pollution in the air, water and smoke. American Jurisprudence, 2nd Edition, Volume 61, Section 8, Role of Court.

Thus, an action at law or in equity may in some circumstances be an effective remedy for relief from pollution, and the Courts are the appropriate forum to compel administrative agencies to act with respect to pollution control, and to review their actions.

### Section 19 (Generally)

Air pollution is for the most part a phenomenon of urban living that occurs when the capacity of the air to dilute pollutants is overburdened. Although it has become an urgent modern problem, due to a rapidly increasing urban population and increasing industrialization, it is not a recently discovered phenomenon. Originally, the public equated air pollution with coal smoke, and pollution control measures were directed to the control of smoke, dust and fumes. The experiences of two communities are held to

have focused national attention on the growing problems of air pollution and to have paved the way for the creation of the federal air pollution programme.

#### Section 21 (Generally)

Air pollution may take the form of smokes, fumes, dust, mist, gas, or vapors, and odours. Several common air pollutants are described individually in the following sections, but it should be noted that pollutants normally act in concert, rather than individually, and that harmful effects are created by additive or synergistic effects among air' pollutant compounds.

#### Section 28 (Generally)

Air pollutants have been shown to be injurious to health and to injure animals, vegetation, and property. Air pollution also dims visibility, obscures city skylines and scenic beauty, interferes with the safe operation of aircraft and automobiles and disrupts transportation schedules.

#### Section 30 (On animals, vegetation and property)

Extensive agriculture losses result from damages by air pollutants to livestock crops, plants and trees.

#### Section 34 (Implementation plans and enforcement of standards)

Enforcement of air quality standards for pollutants rests with the States, including emission standards for hazardous pollutants. However, provision is also made for enforcement by the Administrator of the Environmental Protection Agency,

#### Section 53 (Generally)

Man cannot exist without water. It is, essential to plant life and is necessary for a number of vital body functions in all animals., including man. Procuring an unpolluted supply of water to sustain life has become a State and national problem. Formerly pollution was considered the price of progress, and people in the United States have acted, until recently, as though their streams, rivers and lakes had an infinite capacity to absorb wastes. We have for years been heading for a water crisis, which in many localities is already here. Water quality problems caused by pollution are prevalent in every region of the country. The two regions where water quality, and uses have been most seriously damaged are in the North Eastern States and in the area of the Great Lakes. Animal wastes from feedlots, or run off from irrigated and fertilized fields and areas where pesticides are used, is an increasing cause of pollution, particularly in the Midwest and the South West.

#### Section 59 (Effect of water pollution)

Water pollution affects human health in a variety of ways, and is the cause of a number of diseases. It also hampers recreational activities, such as boating and skimming swimming and sport fishing depletes natural fresh-water fisheries, and interferes with commercial fishing it adversely affects agriculture, and natural streams and other watering places have increasingly become too polluted to adequately serve livestock watering, and it may destroy the esthetic qualities of water. Pollution also increases the cost of treating water in order to make it suitable for industrial and municipal uses.

#### Section 74 (Generally)

Raw or inadequately treated sewage from millions of people still flows into our streams and waters. It is better to mention here that the net result on the basis of aforesaid discussion is that pollution would create dangerous germs etc. which are not good for the health of human beings, animals, birds and plants.

It is better to mention here that the net result on the basis of aforesaid discussion is that pollution would create dangerous gasses etc. which are not good for health of human being; animals, birds and plants.

It is pertinent to mention here that as a result of the industrial revolution the issue of population has become more serious:- They were crowded into cities and supplied with many more products and services. This led to a great increase in the problem of pollution. It is better and appropriate to mention here that Carbon mono-oxide is a deadly poison. It damages red blood cells of living beings. Oxygen is carried to all parts of the body by normal red blood cells: Carbon mono-oxide changes the red blood cells so that they cannot carry as much oxygen. Other cells in the body cannot produce the energy as they do not have enough oxygen. Some of the cells may die. If there is enough carbon mono-oxide in the air, it can make people dizzy, or unconscious, or it can kill them. Carbon mono-oxide is one of the most dangerous air pollutants. Industrial development on account of chemicals reactions, may change part of the fuel into tars and other kinds of chemicals. By passage of time, it is not known to every one that every moving part of the car slowly wears out. Iron, nickel, chromium and vanadium are among the air pollutants formed in this way. As the car moves along it rubs away part of the pavement. This sends asphalt and concrete into atmosphere as fine dust. Moving automobiles grind-up pieces of paper, wood, cloth and other rubbish. These all become dust. By development of science, we came to know that large quantities of poisonous solvents are used in factories where other chemicals are made. Poisonous solvent vapors get into the air from all these sources. Similarly copper burns when electric switches are opened or closed. Some metal, such as iron must be heated to a very high temperature to melt them when they are framed into castings. Part of the metals burns and goes into the air as pollutants. Consequently, the tiny particles of asbestos can float in the air for many days. Anyone breathing air that has asbestos it gets some of the particles into his lungs. The development in the Nuclear Science tells us that nuclear power plants might also add radioactive pollutants to the air if there were an accident at the plant. Such nuclear power plants are usually built to generate electricity. Great care is taken to prevent any accidents. In addition, the wastes from nuclear power plants are carefully handled to

avoid radioactive pollution. The chimneys and automobiles exhaust/send thousands of tons of carbon mono oxide into the air each day. The factory waste water does more than kill wafer organisms. It also makes rivers and lakes ugly. It spoils them for swimming and fishing. The water of the rivers or lakes may become poisonous to drink.

The Hon'ble Supreme Court has considered the problem of pollution in, case of Ms. Shehla Zia and others v. WAPDA (PLD 1994 SC 693). The relevant observation is as under:--

"Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word 'life' is very significant as it covers all facts of human existence. 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 born in a free country is entitled to enjoy with dignity, legally and constitutionally. For the purposes of 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 any grid station, any factory, power station or such-like installations. Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in .the neighbourhood or at a far off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information arid education and also because such sufferance is silent and fatal and most of the people who would be residing near under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward and this has happened so in the present case.

The word 'life' in the Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but, to enjoy it under our Constitution Article 14 provides that the dignity of man and subject to law the privacy of home shall be inviolable. The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be found only in few Constitutions of the world. The Constitution guarantees dignity of man and also right of 'life' under Article 9 and if both are read together question will arise whether a person can be said to have dignity of man if his right to life is below bare necessity like without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment. Such questions will arise for consideration which can be dilated upon' in more detail in a proper proceeding involving such specific questions.



These judgments go a long way to show that in cases where life of citizens is 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) of the Constitution may grant relief to the extent of stopping the functioning of factories which create pollution and environmental degradation. "

The Hon'ble Supreme Court also passed, the interim order in such circumstances in re: "Pollution of Environment caused by smoke, Emitting Vehicles, Traffic Muddle (1996 SCMR 543) in the following terms:--

In order to streamline the process of checking as a first step in eliminating the pollution caused by the smoke emitting vehicles the following interim order is passed:

(a) A minimum of two mobile checkings per week per district for at least 2-1/2 hours duration should be arranged in terms of the earlier order which is being practised. It may, however, be added that henceforth the Honorary Magistrate appointed by the Provincial Government with the approval of the Hon'ble Chief Justice, High Court of Sindh, be associated with the checking team and if S.T.Ms. are not available, the Honorary Magistrate shall try and dispose of summary cases at the time of checking.

(b) The monthly schedule of the mobile checking shall be issued by the S.T.M. or any person authorised by the Commissioner without mentioning the checking locations which shall be decided by the checking team at the time of starting the checking on that day.

(c) A weekly report of such checking shall be submitted by the S.T.M./Honorary Magistrate to the C.P.L.C. Central Reporting Cell which shall compile the same and submit a consolidated report with comments and suggestions to the Assistant Registrar, Supreme Court, Karachi after every three months.

(d) It has been revealed from a report that K.T.C Government vehicles including police vehicles and certain "marked" private transport vehicles are not challaned. This discrimination should end and all vehicles irrespective of their owners/drivers should be brought to book in case they violate the law. On query what is meant by transport private vehicles it was disclosed that these vehicles bear a particular mark, inscription, insignia or certain words which are understood by certain persons involved with the traffic checking and they just allow them to pass without checking saying that they belong to influential persons. This is a deplorable attitude. The authorities concerned are directed to check vehicles irrespective whether they are marked or not, but if this policy of not challaning marked vehicles persists, the representative of C.P.L.C. associated with the checking team should note down the number of such vehicles and report it to the C.P.L.C. Reporting Centre which shall forward it to the Assistant Registrar, Supreme Court, Karachi.

(e) Motor vehicle inspection procedure should be totally overhauled and every week D.I.T.,- T & T, shall obtain the particulars of such vehicles to which fitness certificates have been issued by M.V.Is, according to the rules and forward them to C.P.L.C. Central reporting Cell which shall submit with comments to the Assistant Registrar, Supreme Court, Karachi alongwith the quarterly Assistant Registrar, Supreme Court, Karachi alongwith the quarterly reports.

As regards noise pollution the following interim order is passed: --

(i) As required by the Motor Vehicles Ordinance the concerned authorities should ensure that the motorcycle rickshaws are not allowed to ply without silencers. It has been pointed out that there has been a practice in Karachi that the silencers are not fitted in the motorcycle rickshaws. Such practice, however, cannot override the provisions of law, particularly rules 155 and 158 of the Motor Vehicles Rules, 1969. In the existing circumstances, all the persons owning or plying motorcycle rickshaws should be given one month's time to get the silencers fitted in their motorcycle rickshaws. A wide publicity should be made through press, radio and television. Such notices should also be displayed at public place. After expiry of one month action shall be taken against motorcycle rickshaws plying without silencers.

(ii) Many vehicles are found fitted with pressure horns or multi-tone horns giving unduly harsh shrill loud or alarming voice. Rule 154 of the Motor Vehicles Rules, 1969 prohibits fitting of such horns. The practice seems to be that such vehicles are challaned and pressure horns are disconnected or seized by the police. However, in order to make it more effective whenever any authority seizes such horns, it should deposit it with Central Nizarat situated opposite Civic Centre, Karachi."

The Hon'ble Supreme Court has also considered the aforesaid problem of pollution in case "S. Jagannath v. Union of India and others (AIR 1997 SC 811). The relevant observation is as under:--

"We are of the view that before any shrimp -industry or shrimp pond is permitted to be installed in the ecology Fragile coastal area it must pass through a strict environmental test. There had to be a high powered 'Authority' under the Act to scrutinize each and every- case from the environmental point of view. There must be an environmental impact assessment before permission is granted to install commercial shrimp farms. The conceptual framework of the assessment must be broad-based primarily concerning environmental degradation linked with shrimp framing. The assessment must also include the social impact on different population strata in the area. The quality of the assessment must be analytically based on superior technology. It must take into consideration the inter-generational equity and the compensation for those who, are affected end prejudiced. "

15. This judgment cannot be completed without having Glimpse of tenets of Islam qua the pollution. The Islam Religion of. Humanity by Fazal Ahmad Kuraishi in 1 956

Edition in Chapter 26 under the heading of cleanliness mentioned that qur'anic Verses "Bring out from the depths of Darkness into light".

[Qur'an XXXIII, Ahzab 43]

"O thou wrapped up in a mantle (Muhammad)! Arise and deliver thy warning! And magnify thy Lord! And keep thy garments free from stain and shun all abomination. "

Qur'an LXXIV. Muddaththir 1-5."

16. Ch. Nazar Muhammad highlighted the same in the chapter of Pakeezgi, in his book (Ahkamul Quran), pages, 721 to 722 which is reproduced as follows:

17. Mr. Shafi Haider Danish in his book Qur'an and Maholiat:

"Who has quoted verse after verse in support of his arguments and has after discussing them into different sets, placed them in the following 12 Chapters:--

- (1) Innocent planet of Mortal System.
- (2) Under the Trees and Vegetative cover.
- (3) Deafening Noise.
- (4) Sunshine, Solar Energy and The Advancing Shadow.
- (5) Pursuit of Nutritive Morsel.
- (6) The begging Bowl of Animal Kingdom.
- (7) Nothing outside Aquatic Environment
- (8) Impending Disasters of Air Polluting
- (9) Miracles of the water for animal life.
- (10) Leaping flames.
- (11) Environmental disbalance and loss of Biodiversity.
- (12) Benevolence of Rahman, ungrateful mankind and disobedient Satan.

Dr. Mirza Arshad Ali Beg, Director-General, PCSIR had written review on the said book of Shafi Haider Danish and observed as under:--

"The disarray in the Pakistan social system is mainly due to failure of the system responsible for management of resources and is largely asocial maladjustment due to prevalence of the negative forces. The latter does not recognize the inappropriate processes that have become part of lifestyle and are causing damages to the social environment. Pakistanis are suffering from another syndrome, the one related to Management Crisis. No one will disagree with Danish that many of the degradation processes confronting the aesthetics of the physical environment are due to bad management and thus the making of mankind itself. This has been discussed by him in the Chapters 'Sunshine, Solar Energy and the Advancing Shadows' and 'Pursuit of a Nutritive Morsel'.

Environment describes the interaction of the living species, including man and animals, with water, air, soil and sunshine. Mankind has tried to modify the living environment to enjoy a quality of life that is better than the immediate past. In doing so, he has used up the natural resources extensively to the stage of reaching the critical limits and degrading the environmental conditions. Pakistanis have modified the environment in their own way by adopting short-cut-to-success methods to achieve the same goals which the industrialized countries attained through hard work, patience and of course with the motives to attain superiority in war and peace i.e. in weapons and trade and industry.

The air pollution is largely the result of continuous input of toxic pollutants, discharged by an increasing number of vehicles. The pollutants include lead and unburnt hydrocarbons, 2,4, benzopyrene, carbon mono-oxide, nitrogen oxide from the combustion of petrol and cadmium from the wearing of tyres. A cloud of smoke builds up towards the evening over all crossings in the city centres all over the country. With traffic jams becoming common now; the carbon mono-oxide level reaches alarming proposition of 40 to 80 pin continuously for almost 1 to 1.5. minutes in the micro environment of all the traffic congestion points, specially at the middle of the roads. Diesel oil, furnace oil and coal, used for energy production contain large quantities of sulphur than desired. The stroke nuisance has been vehemently protested in most American cities and there has, accordingly been a shift towards elimination of the smoke nuisance by substituting less smoky fuel and by enforced employment of combustion practices designed to eliminate smoke.

The Qur'anic instructions with regard to maintenance of water balance demand that the quality and quantity of water should be conserved at all cost. In order to maintain the quality, it becomes mandatory not to allow water to mix in with any material that is not permitted. If we had followed this Qur'anic injunction, no pollutant would have entered our water bodies, our soil may not have been salinized or intoxicated, our sea beaches may not have become unsafe for picnickers. We the believers in cleanliness being next to godliness, would have been the most environment friendly and socially very highly placed people and not the dirtiest and the most corrupt of the lot.

The natural balance has again been emphasised in verse 15:2,1, And there is not a thing but with us are the stores thereof. And we send it down only in appointed measure. The methodology adopted by Allah to maintain the balance is described in verse 15:22, and

we end the winds fertilizing and cause water to descend from the sky, and give it to you for drinking. It is not you who are the holders of the stores thereof in the form of waterfalls, rivers, lakes and canals. "The way the life processes are governed is described in verse 15:23, "We it is who govern the life processes and their termination resulting in death".

Irreversible damage has been done to the soil by excessive use of water and other inputs for which the Government has been providing subsidy. Much against the concept of sustainable agriculture, and conservation of resources as against overexploitation, restrained by the Holy Qur'an, there has been a loss of soil as well as its productivity. It is, therefore, imperative that structural imbalances that have occurred through the past neglect of important sectors of water and soil management and plant protection are rectified. For this purpose sustainable crop production will have to be introduced and locally available resources viz. organic manure, plants, trees, animals, natural biocides, and traditional cropping skills will have to be employed.

18. The General Conclusions that can be drawn from this book is that the degradation of physical as well-social environment is increasing at a rapid rate at the hands of mankind. That the humans will introduce negative forces and degrade the ecosystem was already known to Allah when-He, as the know-all, according to verse 7:11, created mankind from putrefied clay, then fashioned, and then told the angels: Fall prostrate before Adam! The obedient angles fell prostrate; but not Satan. I had suggested that human behaviour and physico-chemical laws are inter-related. I would like to apply here the arguments put forward in the book. It was suggested that the use of negative forces is related to disorderliness or entropy of a system and degradation of the ecosystem is a indication of rise in entropy.

The relevant passages of said Book are reproduced hereunder:

The contention of learned Addl. A.-G. that Provincial Environment Department cannot take action on account of non-framing their rules and regulations by the competent authority under the provisions of the Pakistan Environment Protection Act, 1997 has no force in view of the law laid down by the Honourable Supreme Court in the following judgments:--

(1) M.A.U. Khan v. Rana M. Sultan (PLD 1974 SC 228).

(2) Jahangir Mirza v. Government of Pakistan (PLD 1990 SC 1013).

By virtue of Article 5(2) of the Constitution it is the mandate of the Constitution to obey the command of the Constitution and nobody is above the Constitution. Even the Chief Executive-has to work within the command of the Constitution as per principle laid down by the Honourable Supreme Court in Chaudhry Zahoor Elahi's case (PLD 1975 SC 383).

The Constitution of the country is a kind of social contract which binds in people, society and a' State. The Honourable Supreme Court has interpreted Articles 9 and 14 of the

Constitution in Shehla. Zia's case (supra) (PLD 1994 ' SC 693) and had given wide meaning to life.

It is also settled principle of law that judgment of the Honourable Supreme Court is binding on each and every organ of the State by virtue of Articles 189 and 190 of the Constitution. The above mentioned judgments reveal that the Honourable Supreme' Court has laid down guidelines but the respondents failed to implement the same till date. Non-observance by the functionaries of the dictum laid down by the Honourable Supreme Court of Pakistan is violation of Article 189 of the Constitution. If all the prevailing circumstances i.e, judgments of the Supreme Court, action of the authorities and attitude of the public representatives or legislative bodies are put in juxtaposition, then it becomes crystal clear that legislators and executive have refused to give due respect to the dictum of Supreme Court. As mentioned above relevant provisions had been inserted in Pakistan Penal Code since 1860. It is also settled principle that law always gives guidance to only law abiding citizens. The competent body had subsequently framed the specific law to cover the subject in question under the name and style "Pakistan Environment Protection Act, 1997". The aforesaid provisions of law cannot. be enforced without the involvement of the public and its active participation in the implementation of environmental programme as the same is must for the success of the pollution control. It is the duty and obligation of the media to provide sufficient material with regard to the awareness of environmental programmes initiated by the Government or non-Government Organizations to the people of Pakistan. The aggrieved person has two remedies; criminal as well as to file a suit for damages against the offenders. It is the duty of the Members of the Bar Associations and Bar Councils to educate the people and to file suits for damages against the offenders apart from the criminal proceedings against the offenders. In fact as mentioned above awareness has been given to the world 1400 years ago by Almighty Allah in the Holy Book of Qur'an in "Sura Rehman" warned the Human being not to disturb; balance in any sphere otherwise destruction is must. The relevant verses are mentioned above. The Muslim Scientists had worked very hard to provide facilities to the people for the betterment of the human being. After the downfall of the Muslims the western countries had taken over, the field of science. It is proper to' mention here that the developed countries had made a mark in the modern field of science. The developed countries had divided the water of sea into two categories i.e. the high sea and the territorial water. The developed countries have made various experiments in the high sea which not only destroyed the fishes etc. in the sea but also polluted the water. With the passage of time polluted water touched the boundaries of the territorial water which created pollution in the developed countries: Due to this fact they have passed the relevant laws. No doubt development of science has provided many facilities to the people but at the same time created lot of problems to the people on account of that development because the same has crossed -the natural sphere and entered into the artificial sphere due to which pollution automatically entered in every sphere of the world including air, water etc. Now I intend to discuss the role of bureaucracy in the light of historical background of creation of Pakistan. It will be germane to have a bird's eye view of the genesis of the bureaucracy. The machinery of Bureaucratic set-up in the form of a civil service was created and, designed for perpetuating foreign imperial power and not to cater the needs and value of the people of

this sub-continent. In view of this, the Civil Services acted only for the benefit of the imperial power in an imperial manner as if they re the direct representatives' of the rulers. This approach was not democratic approach to meet the legitimate needs of the people, At that time it also suited the imperial power. Gradually bureaucracy came under the influence of politicians (as was taken note of by this Court in 1999. PCr.LJ 1357 Abdul Latif's case) which is not congenial and conducive for the existence of the country, to run the State smoothly, mutual cooperation, respect and understanding. This situation will create chaos. Mere framing of law does not provide good results unless the law is strictly implemented by the respondents in letter and spirit without fear, favour and nepotism. Islam tells us that there shall not be any pollution in any manner even in. the actions and speeches. The Founder of Pakistan has achieved the goal only on the ground that even the enemy of Founder of Pakistan have mentioned in various books that Founder of Pakistan is not only honest but he is intellectually honest. It is imperative to put the nation on right path and, therefore, follow the basic character of the Founder of Pakistan for the purpose of strengthening the country and to remove all types of pollution. It is the duty of people of Pakistan that they must be intellectually honest to the cause then it is possible to save the country from all kinds of problems like pollution. The persons who are in authority must have to obey the law. The Head Constable should obey the law and take action against driver of flagged car who violates the traffic signal or causes air pollution. The Head Constable should not be sacked for obeying the law but be rewarded. It is pertinent to mention here one incident before the independence. A Civil Judge 3rd class had decided a case against the Government. The Chief Secretary of the Province advised the Governor that Government should not implement the order of the Civil Judge 3rd Class. The Governor asked the Chief Secretary about the stamp on the order of Civil Judge 3rd Class. He replied that stamp is of Crown. He directed the Chief Secretary to obey the order of the learned Civil Judge and thereafter to avail appropriate remedy before the higher Court. In nutshell it is the duty and obligation of each and every citizen including the public functionaries to act in accordance with law.

## ***Suggestions***

Before parting with this judgment, the following suggestions are given to the respondents for formulating the policy and relevant rules and law:--

- (i) The newly-established industries are advised/compelled by .the respondents to install devices exhaustive and its success depends on the implementations and enforcement machinery provided under the provisions of Pakistan Environmental Protection Act, 1997.
- (ii) Public transport should be effective so that people may prefer to travel by the public transport instead of private vehicle/car.
- (iii) Efforts should be made for utilization of solar energy which is in abundance in our country.

(iv) Electric rail cars system should be introduced even in urban areas and also for long distances. Time schedule must be observed. Muchless pollution results when people do not use their own vehicles/cars but travel on trains and airplanes which is known as Mass transportation. One bus that carries at last forty people does not produce much more pollution than a vehicle/car with one person. Electric trains can be even cleaner, since trains also carry many more people than private small vehicles.

(v) Trees plantation should be patronized by the Government. For this purpose system of check and balance be introduced in Forest Department as well. Every year Forest Department announces that thousands of trees are planted. Due to lack of accountability the ground realities are entirely different.

(vi) Media should play its role to educate people of Pakistan to think and work for the nation and sacrifice its personal interest on the well known maxim that national interest is supreme qua individual.

(vii) Implement the law of the land without fear, favour and nepotism without any discrimination.

(viii) At the time of granting permission for installation of new industry or licence or local permit of new vehicle, there must be coordination between all the functionaries under all the laws so that all the requirements under the law should be completed with at initial stages. There must be one window operation so that people should not suffer on account of inaction of public functionaries.

(ix) There should be quarterly one meeting of all the public, functionaries, of all the concerned departments for the purpose of review of ground realities so, that future steps be taken on the basis of prevailing circumstances and also suggest qua amendment in rules, regulations and law to the competent authority/body. The annual report should be published for information of the people and copy of the same be sent to Deputy Registrar (Judl.) of this Court.

(x) The problem of pollution is more dangerous as compared to destruction by Hydrogen Bomb. It is proper and high time to implement the law in letter and spirit without discrimination as the life of human being is more precious. In fact, every one is not saved from the attack of pollution, in this view of the matter each and every citizen, public functionary, authority and body must discharge its responsibility to reduce this problem at any rate at any cost.

(xi) Let us try to speak truth to save the country from attack of all types of pollution so that food chain be maintained.

In view of what has been discussed above the respondents are directed to implement the provisions of Pakistan Environment Protection, Act, 1997 in letter and spirit and frame necessary rules and regulations and issue necessary, Notifications under the provisions of the aforesaid Act preferably within six months. Let a copy of this judgment be sent to '



respondents who are directed to implement the provisions of aforesaid Act in letter and spirit preferably within six months. They are directed to submit report to Deputy Registrar (Judl.) of this Court within the stipulated period. Let copy of this judgment be also sent to the following authorities for necessary action and compliance:--

- (1) Chief Secretaries/Inspectors-General of Police of all the Provinces
- (2) Secretary Transport.
- (3) Secretaries to the Chief Executives of all the Provinces.
- (4) Principal Secretary to the Chief Executive of the country

Before parting with the judgment I would record word of thanks for Dr.A. Basit, Advocate, Dr. Parvez Hassan, Advocate, Sardar Shahid Iqbal, Advocate and Sheikh Asad Ullah, Advocate amicus curiae, who rendered valuable assistance in resolving this important issue besides Mr. Sher Zaman Khan, Deputy Attorney-General, Mr. Muhammad Hanif Khattana, Addl. A.G., Mian Muzaffar Hussain, Advocate, Kh. Muhammad Afzal, Advocate, Dr. Mumtaz Ali and Mr. Jawad Hassan, Advocate.

M.B.A./A-578/L

Order accordingly