

Environmental Rights and Case of Climate Justice in Pakistan

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Abstract

Pakistan's efforts for environmental protection and climate justice offers a striking story. Pakistan not only proved to be an astral leader as Chair of G77 at the Earth Summit in Rio de Janeiro, Brazil in 1992, but its judiciary has also been playing a critical role in providing direction for dispensation of climate justice with the help of innovative interpretation of fundamental rights in country's constitution. In this context, the case of Leghari v. Federation of Pakistan was a step in the right direction for climate justice in Pakistan since it argued that the government's inability to take timely actions affected the petitioner's fundamental rights. The decree, too, is a cardinal achievement in the domain of climate justice and climate change litigation process. This paper presents the ground analysis of this case law by combining the previous studies on the subject and overwhelming implication of climate change on human rights. Moreover, it attempts to discuss the cases, which were recently resolved and some of the pending ones which through logical reasoning address climate injustice.

Keywords: Climate Change Litigation, Climate Justice, Human Rights, Leghari Case, Environmental Adaptation, Environmental Rights.

Introduction

Honorable Judge Syed Mansoor Ali Shah of the Lahore High Court (LHC) left a mark on global Climate Change (CC) regime with first of its kind verdict: the Government of Pakistan has actually violated its citizen's basic human rights with its callous attitude in actualising climate policy

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framework in the country.¹ A couple of months sooner, Netherlands' Hague District Court (HDC) had given a decision in "Urgenda v. The State of the Netherlands,"² wherein the HDC requested the Dutch Government to initiate rigorous actions for controlling Green House Gases (GHG) emission in accordance with internationally recognised best practices.³ In the critique which followed the "Urgenda" verdict, much was put forth for utilising a tortious reason to consider a government responsible for its deficient climate action.⁴ In contrast, the Leghari case constructs its verdict in light of the rupture of basic HRs, the HDC did not discover an infringement of Human Rights (HRs) in "Urgenda" case. In any case, it displayed holistic thought to the contentions in view of HRs and utilised HRs as an interpretive instrument while investigating the subject.⁵

To address the impacts of CC on HRs is not a new phenomenon for judiciary,⁶ however; achievement in HRs-based CC assertions has slightly

¹"Ashgar Leghari v. Federation of Pakistan (W.P. No. 25501/2015), Lahore High Court Green Bench," *Environmental Law Alliance Worldwide*, Orders of 4 Sept. and 14 Sept. 2015, https://elaw.org/PK_AshgarLeghari_v_Pakistan_2015

² Arthur Neslen, "Dutch Government Ordered to Cut Emissions in Landmark Ruling," *Guardian*, June 24, 2015, <https://www.theguardian.com/environment/2015/jun/24/dutch-government-ordered-cut-carbon-emissions-landmark-ruling>, May 28, 2018 ; Don Anton, "A Dutch Blueprint for Climate Litigation," *Sydney Morning Herald*, July 2, 2015, <http://www.smh.com.au/comment/a-dutch-blueprint-for-climatelitigation-20150702-gi3d5d.html>, and John Schwartz, "Ruling Says Netherlands Must Reduce Greenhouse Gas Emissions", *The New York Times*, June 24, 2015, http://www.nytimes.com/2015/06/25/science/ruling-says-netherlands-must-reduce-greenhouse-gas-emissions.html?_r=0, accessed on May 28, 2018.

³ "Stitching Urgenda v. Government of the Netherlands (Ministry of Infrastructure and the Environment)," *Centre for Environmental Rights*, June 24, 2015, available at <https://cer.org.za/virtual-library/judgments/urgenda-foundation-v-the-state-of-the-netherlands-ministry-of-infrastructure-and-the-environment>,

⁴ K. Graaf & J. Jans, "The Urgenda Decision: Netherlands Liable for Role in Causing Dangerous Global Climate Change," *Journal of Environmental Law* 27, no. 3 (2015): P. 517–27 and R. Cox, "A Climate Change Litigation Precedent: Urgenda Foundation v. The State of the Netherlands," *Centre for International Governance Innovation (CIGI) Papers Series*, no. 79 (Nov 2015), https://www.cigionline.org/sites/default/files/cigi_paper_79.pdf,

⁵ "Stitching Urgenda v. Government of the Netherlands (Ministry of Infrastructure and the Environment)," Para, 4.52.

⁶ "Inuit Circumpolar Council Canada, Inuit Petition Inter-American Commission on Human Rights to Oppose Climate Change Caused by the United States of America,"

been more subtle. Nonetheless, the outcome in the “Leghari” case, combined with on-going cases that raise HRs contentions proposes that these circumstances might be changing.⁷ Notwithstanding the Urgenda case, the Philippines,⁸ the US,⁹ Austria,¹⁰ and South Africa¹¹ have also brought about CC and HRs related cases. Till now, the countries with the most number of CC cases are the US and Australia but they have included statutory law instead of CC contemplations.¹² The most prominent CC case in the US — “Massachusetts v. Environmental Protection Agency”(EPA),¹³ concentrated on statutory law: “whether the US EPA had mishandled its discretion through the way in which it declined to control GHG emanations under the Clean Air Act.”¹⁴ However, CC claims in light of the HRs

December 7, 2005, http://www.inuitcircumpolar.com/uploads/3/0/5/4/30542564/06-07_annual_report_english.pdf,

⁷ M.B. Gerrard, “Climate Litigation Scores Successes in the Netherlands and Pakistan,” *Trends: American Bar Association Section of Environment, Energy, and Resources Newsletter* 47, no. 5 (2016),

https://www.americanbar.org/publications/trends/2015-2016/may-june-2016/climate_litigation_scores_successes.html

⁸ Greenpeace, “Petition Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations resulting from the Impacts of Climate Change,”

http://www.greenpeace.org/seasia/ph/PageFiles/735291/CC%20HR%20Petition_public%20version.pdf,

⁹ “Juliana v. United States, No. 6:15-cv-01517,” November 10, 2016,

<https://static1.squarespace.com/static/571d109b04426270152febe0/t/5824e85e6a49638292ddd1c9/1478813795912/Order+MTD.Aiken.pdf>

¹⁰ “Third Runway at Vienna International Airport case, Case No.W109 2000179-1/291E, Federal Administrative Court, Austria,” February 2, 2017,

<https://systemchange-not-climatechange.at/wp-content/uploads/2017/03/unofficial-translation.pdf>

¹¹ “Earth Life Africa Johannesburg v. Minister for Environmental Affairs & Others, Case No. 65662/16, Judgment of High Court of South Africa, Gauteng Division, Pretoria (South Africa),” March 8, 2017,

<http://www.saflii.org/za/cases/ZAGPPHC/2017/58.html>,

¹² M. Nachmany et al., “Global Trends in Climate Change Legislation and Litigation, 2017 Update,” *Grantham Research Institute on Climate Change and the Environment* (May 2017): 13–8.

¹³ Michael Sugar, “Massachusetts v. Environmental Protection Agency,” *Harvard Environmental Law Review* 31 (2007): 531-544.

¹⁴ “Clean Air Act,” *USLEAGAL*, <https://environmentallaw.uslegal.com/federal-laws/clean-air-act/>

violations cases speak against the traditional methods of litigation.¹⁵ Additionally, HRs arguments in CC suits try to guide political consideration regarding impeding HRs contentions which might be convincing in inspiring action to address the issue.

In the above-mentioned context, this article asserts that rising litigations pertaining to CC and Climate Justice (CJ), for example, the “Leghari” and “Urgenda” verdicts delineate a pattern towards welcoming trend of utilising HRs guarantees in CC cases. Such a scenario is probably going to empower comparable cases in different jurisdictions which could encourage a more prominent turn towards CJ in CC prosecution around the globe. In addition, declining impacts from CC that influence human groups¹⁶ are going to facilitate cases on this premise. While it is vital not to exaggerate the degree of this change, this rising law speaks to an imperative development for rights contentions in the environmental change setting.

Nexus between Human Rights and Climate Change

“Global warming should be seen not as an environmental crisis but as a human rights issue that risks the lives, livelihoods and homes of millions of people.” Former Maldives President, Mohamed Nasheed Progression of CC-related catastrophes appear in the form of Superstorm Sandy, Typhoon Haiyan, Cyclone Pam, devastating floods in Pakistan, Ethiopia’s dry season and Europe’s heat waves. These phenomenon display the increasing impacts of CC¹⁷ on destruction of property and, in a few examples, loss of life in developing countries.¹⁸ The loss of life from outrageous climate fiascos is happening more in less developed countries where extreme weather events are resulting in debilitating “food supplies and access to

¹⁵ E. Fisher, “Climate Change Litigation, Obsession and Expertise: Reflecting on the Scholarly Response to *Massachusetts v. EPA*,” *Law and Policy* 35, no. 3 (2013): P. 236-60.

¹⁶ G.L. Neuman, “Human Rights and Constitutional Rights: Harmony and Dissonance,” *Stanford Law Review* 55 (2003): 1863–900.

¹⁷ Centre for Research on the Epidemiology of Disasters, “The Human Cost of Natural Disasters 2015: A Global Perspective,” *EM-DAT*, 2015, https://www.unisdr.org/files/46796_cop21weatherdisastersreport2015.pdf

¹⁸ Munich Re, *Severe Weather in North America: Perils, Risks, Insurance* (Munich Re, 2012).

clean water and deny individuals of their livelihoods.”¹⁹ These CC-related calamities — anticipated to become more continuous and serious with atmosphere change — have clear ramifications for the protection and attainment of basic HRs.²⁰

The developing international consensus on HRs-CC nexus in the United Nations (UN) Human Rights framework as well as in the global CC governance is reviewed in this section. In any case, early claims that considered public and private actors responsible for HRs infringement in light of CC-related issues have confronted various obstacles which involve further endeavours at HRs-based CC suits.

Realisation of the HRs-CC Nexus

The nexus between CC and HRs has acquired a pivotal space in the field of international relations and policy making.²¹ The issue came first to the attention of United Nations Human Rights Council (UNHRC) in 2008.²² According to UNHRC’s Resolution 7/23, CC is an existential threat to human race. Therefore, special focus should be given to the fulfilment of basic HRs.²³ In the meantime, the Office of the United Nations High Commissioner for Human Rights (OHCHR) was given the task of examining impacts of CC on HRs.

According to OHCHR report, CC has dire ramifications for realisation of HRs.²⁴ Despite the fact that the report perceived and acknowledged relationship between CC and HRs, two major HRs arrangements, including

¹⁹ Centre for Research on the Epidemiology of Disasters, 7.

²⁰ E.M. Fischer and R. Knutti, “Anthropogenic Contribution to Global Occurrence of Heavy-Precipitation and High-Temperature Extremes,” *Nature Climate Change* 5 (2015): P. 560-4.

²¹ M. J. Hall and D.C. Weiss, “Avoiding Adaptation Apartheid: Climate Change Adaptation and Human Rights Law,” *Yale Journal of International Law* 37, no. 2(2012): 310.

²² J.H. Knox, “Linking Human Rights and Climate Change at the United Nations,” *Harvard Environmental Law Review* 33, no. 2 (2009): 477-98.

²³ “UN HRC Resolution A/HRC/7/78, 14 July 2008, on the Report of the Human Rights Council on its Seventh Session,” Preamble, 65.

²⁴ OHCHR, “Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights,” *UN Doc. A/HRC/10/61*, January 15, 2009, <http://www.ohchr.org/Documents/Press/AnalyticalStudy.pdf>

International Covenant on Civil and Political Rights (ICCPR)²⁵ and International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁶ failed to include the right of sustainable environment which is a basic human right, are going to be severely affected by CC.²⁷ Other than the sustainable environment, basic HRs include one's right to: life,²⁸ health,²⁹ food,³⁰ water,³¹ satisfactory housing³² and collective right of self-determination.³³ Other "rights concerning access to data and investment in basic decision-making viewing ecological risks" are also a part of basic human rights.³⁴ Moreover, CC-induced extreme weather events affect HRs broadly, for instance:

"by giving rise to deaths, disease or malnutrition (right to life, right to health), threatening food security or livelihoods (right to food), impacting upon water supplies and compromising access to safe drinking water (right to water), destroying coastal settlements through storm surge (right to adequate housing) and in some cases forcing relocation as traditional territories become uninhabitable (right to self-determination)."³⁵

²⁵ "International Covenant on Civil and Political Rights," *OHCHR*, December 16, 1966, in force March 23, 1976,

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

²⁶ "International Covenant on Economic, Social and Cultural Rights," *OHCHR*, December 16, 1966, in force Jan 3, 1976,

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, accessed on May 19, 2018

²⁷ "Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights," para. 18.

²⁸ "International Covenant on Civil and Political Rights," Article 6.

²⁹ "International Covenant on Economic, Social and Cultural Rights," Article 12.

³⁰ *Ibid.*, Article 11.

³¹ *Ibid.*, Article 11 and 12.

³² *Ibid.*, Article 11.

³³ "International Covenant on Civil and Political Rights," Article 1 and "International Covenant on Economic, Social and Cultural Rights," Article 1.

³⁴ "Report of the Independent Expert on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, J.H. Knox, Mapping Report, UN Doc. A/HRC/25/53," *OHCHR*, December 30, 2013, Para 29-43,

<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx>, accessed on

³⁵ "Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights," Paras. 20-41.

The investigation also featured a nexus between CC and its dangers to global security.³⁶ The issue has also been under consideration at international and regional levels in recent years.³⁷ Notwithstanding ramifications of CC for HRs, OHCHR noticed that the effects are not uniform. Subsequently, CC impacts are probably going to be felt most intensely and affect those fragments of the populace the most which are living in helpless circumstances.³⁸ As per the findings of HRC Resolution 10/4 (2009) as well as 2015 HRC Resolution on Human Rights and Climate Change, women, children and indigenous peoples are more vulnerable in those countries that have a feeble capacity to adjust to CC.³⁹

The issue of CC impacts on the HRs received more attention under the UN Framework Convention on Climate Change (UNFCCC) in addition to improvements in the UN HRs frameworks. For instance, in 2010, the 16th UNFCCC's Conference of Parties (COP) in Cancún (Mexico) observed "HRC Resolution 10/4" which recognises that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability.⁴⁰

Similarly, Cancún Agreements avowed significance of addressing CC adaptation "with the same priority as mitigation,"⁴¹ and perceived the need to reinforce universal collaboration and ability to comprehend. The agreement pressed upon decreasing misfortune and harm related with the

³⁷ J. Barnett & N. Adger, "Climate Change, Human Security and Violent Conflict," *Political Geography* 26, no. 6(2007): 639-55.

³⁸ "Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights," Para. 42.

³⁹ "UN HRC Res. 29, 'Human Rights and Climate Change', UN Doc. A/HRC/29/L.21," *UN HRC*, June 30, 2015, Para 1, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ResDecStat.aspx>,

⁴⁰ "UNFCCC Secretariat, Decision 1/CP.16, The Cancún Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention, UN Doc. FCCC/CP/2010/7/Add.1," *UNFCCC Secretariat*, March 15, 2011, Preamble, <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>, accessed on May 23, 2018.

⁴¹ *Ibid.*, Para. 2(b).

antagonistic impacts of CC, including implications identified with outrageous climate occasions.⁴²

Another issue under consideration by the global CC governance is ‘Adaptation.’ It can be defined as a “procedure of acclimation to real or expected atmosphere and its effects.”⁴³ Moreover, ‘Damage and Loss’ are basically those CC-induced impacts which cannot be tackled through adaptation measure.⁴⁴ Resultantly, the later approach has been adding more importance to the HRs of those who are influenced by CC.⁴⁵ Subsequently, this accentuation has brought CC regime into an arrangement with global endeavours on “Sustainable Development, Disaster Management and Human Rights Protection.”⁴⁶ Similarly, CC-HRs nexus also came under discussion in UNFCCC’s Paris negotiation in 2015 with help offered by the UN OHCHR and the Special Rapporteur on Human Rights and the Environment, John Knox.⁴⁷ Though a special reference is not added in the final provisions of the ‘Paris Agreement,’ it incorporated a special reference in its preamble:

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people invulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.⁴⁸

⁴² Ibid., Para. 25.

⁴³ V.R. Barros & C.B. Field ed., *Climate Change 2014: Impacts, Adaptation, and Vulnerability, Vol. II: Regional Aspects, Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2015), Annex II, P. 1758.

⁴⁴ “Loss and Damage: When Adaptation Is Not Enough,” *UNEP*, April 2014, http://na.unep.net/geas/getUNEPPageWithArticleIDScript.php?article_id=111,

⁴⁵ Ibid.,902.

⁴⁶ UN Office for Disaster Risk Reduction, “Sendai Framework for Disaster Risk Reduction, 2015–2030, UNGA Res. 69/283,” *UNISDR*, June 23, 2015, Para.19(c) (guiding principle), <http://www.unisdr.org/we/coordinate/sendai-framework>, accessed on May 24, 2018.

⁴⁷ “Human Rights Must Be Part of any Climate Change Agreement in Paris,” *OHCHR*, Nov 27, 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/COP21.aspx>, accessed on May 23, 2018.

⁴⁸ B. Mayer, “Human Rights in the Paris Agreement,” *Climate Law*6, no. 1-2 (2016): 109-17.

CC adaptation is one of the main aims of the Paris Agreement.⁴⁹ It aims at keeping the rise of global temperature ‘well below’ 2°C and “pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels — goals which themselves acknowledge the importance of significantly reducing the risks and impacts of climate change.”⁵⁰ The Paris Agreement also supports the need to defend the most vulnerable sections of a society from CC impacts and adds CC-HRs nexus in global struggle regarding CC. According to Knox, “the Paris Agreement signifies the recognition by the international community that climate change poses unacceptable threats to the full enjoyment of human rights and those actions to address climate change must comply with human rights obligations.”⁵¹

Early HRs-Based CC Litigations

Increasing acknowledgment of the fact that CC affects HRs has been critical “because it provides a tangible legal frame work for analysing the state actions that lead to climate change”⁵² as well as help in confining techniques to tackle harm done to humans and reactions to CC-related debacles.⁵³ However, the question remains whether the impacts of CC on HRs give confirmation of HRs breach.⁵⁴ According to OHCHR report, the petitioners in HRs-based CC suits confront few obstacles such as setting up causal connections between a nation’s GHG emanations or disappointments in adjustment strategies and certain CC impacts, which influence HRs, particularly where CC causes other HRs-related issues including “social, financial and political sorts of damages.”⁵⁵

Early HRs-based climate litigation such as “Leghari case” battled with such obstructions. A decent delineation is furnished by the 2005 appeal by the inter-American Commission on Human Rights (IACHR) for the indigenous people of Inuit descent in the US and Canada. It was the

⁴⁹ “Paris Agreement,” Articles 7 and 8.

⁵⁰ *Ibid.*, Article 2.

⁵¹ “Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, UN Doc. A/HRC/31/52,” Para. 22.

⁵² Hall & Weiss, P. 311.

⁵³ *Ibid.*

⁵⁴ Knox, P. 165.

⁵⁵ S. McInerney-Lankford, “Climate Change and Human Rights: An Introduction to Legal Issues,” *Harvard Environmental Law Review* 33, no. 2 (2009): 433.

principal endeavour to outline a claim for review for CC impacts on HRs.⁵⁶ The “Inuit” petition showed how CC is meddling with the Inuit’s HRs. Under the “American Declaration on the Rights and Duties of Man,”⁵⁷ the appeal drew on the HRs securities and other global frameworks, including “rights to life, wellbeing, property, cultural identity and self-determination.”⁵⁸

With the Inuit’s appeal, it was claimed that the US — as the biggest culprit of worldwide GHG discharges at the time, with the confined endeavours to decrease emanations under President George W. Bush — was liable of HRs infringement brought about by CC in the Arctic region. According to the petitioners, the US government acknowledged the relationship between rising global temperature and GHG emissions.⁵⁹ Still, the US refused to endorse the Kyoto Protocol⁶⁰ while it stands as the biggest emitter of GHGs.⁶¹ It also did not take appropriate measures to control rising GHGs emissions⁶² and continued to emit the large quantity of GHGs despite its devastating effects on the environmental conditions and survival of the Artic.⁶³ Therefore, the appeal asked IACHR to take required steps to restrict GHG emanations.⁶⁴

IACHR discovered that it was impractical to litigate the charge and argued that “the information provided does not enable us to determine whether the alleged facts would tend to characterise a violation of the

⁵⁶ H.M. Osofsky, “Complexities of Addressing the Impacts of Climate Change on Indigenous Peoples through International Law Petitions: A Case Study of the Inuit Petition to the Inter-American Commission on Human Rights,” In R.S. Abate & E.A. Kronk, *Climate Change and Indigenous Peoples: The Search for Legal Remedies* (Edward Elgar, 2013), 313–38.

⁵⁷ “American Declaration of the Rights and Duties of Man,” *Inter-American Commission on Human Rights*, <http://www.cidh.oas.org/basicos/english/basic2.american%20declaration.htm>,

⁵⁸ *Ibid.*

⁵⁹ “Inuit petition,” Part IV.B.

⁶⁰ “Kyoto Protocol,” *UN*, December 11, 1997, in force Feb 16, 2005, http://unfccc.int/kyoto_protocol/items/2830.php, accessed on May 14, 2018.

⁶¹ *Ibid.*, Part IV.D.

⁶² “Inuit petition,” Part V.D.

⁶³ *Ibid.*

⁶⁴ *Ibid.*, Part IX.

rights protected by the American Declaration.”⁶⁵ As the litigation was intended to secure the Inuit’s HRs and produce effective climate action, the IACHR request fizzled out. Nevertheless, it had extensive effect. The Commission consented to hold a consequent hearing on the associations between CC and HRs, “which has been recognised as a factor that put the issue on the plan of UN human rights bodies.”⁶⁶ The case also got attention that attracted attention regarding the issues looked by the Inuit as well.⁶⁷

In spite of the meagre success in HRs-based CC cases, the growing international attention towards HRs-CC nexus together with the development of laws on the ramifications of CC on HRs has empowered continued focus in the possibilities for HRs-based cases in CC litigation.⁶⁸ The following section looks at the “Leghari” and “Urgenda” cases and their judgments in 2015, resulting in jurisprudential procedure on CC-HRs case to step forward.

HRs-Based CC Litigation and CJ in Pakistan

Climate change is a defining challenge of our time and has led to dramatic alterations in our planet’s climate system. For Pakistan, these climatic variations have primarily resulted in heavy floods and droughts, raising serious concerns regarding water and food security. From legal and constitutional perspective, this is clarion call [sic] for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court. *Leghari v. Federation of Pakistan*, Order of 4 Sept. 2015, Lahore High Court, Judge Syed Mansoor Ali Shah.⁶⁹

⁶⁵ Quoted in H.M. Osofsky, “The Inuit Petition as a Bridge? Beyond Dialectics of Climate Change and Indigenous Peoples’ Rights,” *American Indian Law Review* 31, no. 2 (2007): 676.

⁶⁶ M. Limon, “Human Rights and Climate Change: Constructing a Case for Political Action,” *Harvard Environmental Law Review* 33, no. 2 (2009): 439-76.

⁶⁷ R. Black, “Inuit Sue US Over Climate Policy,” *BBC News*, December 8, 2005, <http://news.bbc.co.uk/2/hi/science/nature/4511556.stm>,

⁶⁸ L. Rajamani, “The Increasing Currency and Relevance of Rights-Based Perspectives in the International Negotiations on Climate Change,” *Journal of Environmental Law* 22, no. 3 (2010): 391–429.

⁶⁹ “Ashgar Leghari v. Federation of Pakistan (W.P. No. 25501/2015), Lahore High Court Green Bench.”

Aftermath of Paris negotiations saw the rise of CC cases wherein solicitors supported their cases in ‘Rights’ terms. These cases represent the opportunity for the prosecutors to endeavour human rights contentions in climate context as well as developing receptivity of courts to this approach. The accompanying areas look at the rights-based contentions progressed in the Urgenda and Leghari verdicts, and additionally those in later cases in different regions. These cases recommend new approach for HRs-based cases to challenge governments on the basis of HRs infringements. While these verdicts should be surveyed with specific “socio-legal” settings in which they emerge, they, however, indicate the way how HRs-based CC suits might feature the methodologies that may be adopted to overcome obstacles brought up in earlier cases.

Leghari v. Pakistan

The LHC verdict of ‘Leghari Case’ did not do much to the cause of CC.⁷⁰ Decision of LHC, nonetheless, is very transformative. The Leghari case is a proof of effective utilisation of rights contentions for the establishment of a legal CC suit. In addition, it also establishes a link between a government’s lack of climate action with a special reference to the HRs. Building adaptability and lowering exposure to CC is viewed as government’s obligation. The highlights of the case set a precedent for future CC-HRs based legal cases.⁷¹

Ashgar Leghari was an “Agriculturalist” whose survival depended upon farming.⁷² In his suit, Leghari utilised “public interest litigation. It is a concept which is well-established in Pakistani jurisprudence and provides an exception to common law *locus standi* rules in order to allow the enforcement of the fundamental rights protected under Pakistan’s Constitution with respect to a group or a class of people, such as the poor or

⁷⁰ J. Wentz, “Lahore High Court Orders Pakistan to Act on Climate Change,” *Climate Law Blog, Sabin Center for Climate Change Law*, Sept 26, 2015, <http://blogs.law.columbia.edu/climatechange/2015/09/26/lahore-high-court-orders-pakistan-to-act-on-climate-change>, accessed on May 25, 2018.

⁷¹ M. Lau, “Islam and Judicial Activism: Public Interest Litigation and Environmental Protection in Pakistan,” In A. Boyle & M. Anderson ed., *Human Rights Approaches to Environmental Protection* (Oxford University Press, 1996): 285-302.

⁷² “Ashgar Leghari v. Federation of Pakistan (W.P. No. 25501/2015), Lahore High Court Green Bench,” Para. 1.

other vulnerable groups.”⁷³ Leghari argued that CC is seriously threatening human security in Pakistan by jeopardising water, food and energy security in the country. As a result, it endangers basic HRs of Pakistanis enshrined in the Constitution of Pakistan, including “the right to life (Article 9), the right to dignity of person and privacy of home (Article 14), and the right to property (Article 23).”⁷⁴

Leghari complained that the government has failed to effectively implement “Pakistan’s National Climate Change Policy (NCCP) 2012”⁷⁵ and “Framework for Implementation of Climate Change Policy (2014-2030),” which were essential for climate action in Pakistan.⁷⁶ With Pakistan’s high vulnerability to CC impacts — as confirmed by staggering floods of 2010 and 2011 — the key purpose of NCCP and ‘Framework for Implementation’ is adaptation towards increasing CC-induced vulnerabilities in the country.⁷⁷ The Framework for Implementation “categorises and prioritises proposed adaptation measures to be taken by federal government departments and provincial and local authorities, with the most urgent items designated as ‘priority actions’ to be delivered ‘within 2 years’ (by 2016).”⁷⁸ However, as per the acknowledgements of the Joint Secretary of Ministry of Climate Change (MoCC), in spite of different suggestions to government offices to provide details regarding their achievements in actualising adaptation measures, the response was not

⁷³ F. Hussain, “Public Interest Litigation,” *Sustainable Development Policy Institute, Working Paper Series* 5, 1993, <https://www.sdpi.org/publications/files/W5-Public%20Interest%20Litigation.pdf>, accessed on May 25, 2018.

⁷⁴ M.A. Munir, “Public Interest Litigation in Supreme Court of Pakistan,” *SSRN*, August 4, 2007, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1984583, accessed on May 24, 2018.

⁷⁵ Government of Pakistan, “National Climate Change Policy,” *UNDP*, September 12, 2012, http://www.pk.undp.org/content/pakistan/en/home/library/hiv_aids/publication_1.html

⁷⁶ Government of Pakistan, Climate Change Division, “Framework for Implementation of Climate Change Policy (2014–2030),” *UNDP*, Nov 2013, <http://www.pk.undp.org/content/dam/pakistan/docs/Environment%20&%20Climate%20Change/Framework%20for%20Implmentation%20of%20CC%20Policy.pdf>

⁷⁷ Government of Pakistan, “National Climate Change Policy,” *UNDP*, September 12, 2012, http://www.pk.undp.org/content/pakistan/en/home/library/hiv_aids/publication_1.html,

⁷⁸ “Framework for Implementation of Climate Change Policy (2014–2030),” Schedule.

encouraging and demonstrated an absence of sensitiveness to the issue.⁷⁹ The representatives of services sectors “couldn’t palatably demonstrate that adaptation measures as recorded in the Framework were truly afoot.”⁸⁰

As opposed to callous behaviour of state organisations to CC, the LHC in its decree of September 4, 2015 saw CC as “a characterising challenge” and a “clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court.”⁸¹ According to the Court, “the failure of Pakistani governmental authorities to implement the national climate policy framework in a timely fashion offends the fundamental rights of the citizens which need to be safeguarded.”⁸² It recognised, “[f]undamental rights, like the right to life (Article 9) which includes the right to a healthy and clean environment and right to human dignity (Article 14);” and “[c]onstitutional principles of democracy, equality, social, economic and political justice that included within their ambit and commitment the international environmental principles of sustainable development, the precautionary principle, environmental impact assessment, inter- and intra-generational equity and the public trust doctrine.”⁸³ The Court additionally recognised a standard of CJ. Past CJ practices which were “largely localised.”⁸⁴ The Court saw HRS as lying “at the foundation of these two overlapping justice systems.”⁸⁵

Adopting a proactive strategy which has turned into a component of numerous legal provisions in Pakistan and neighbouring India,⁸⁶ LHC not only discovered ruptures of legal provisions in regards to key rights but also went ahead to fill those gaps through judicial oversight.⁸⁷ It held that:

⁷⁹ “Ashgar Leghari v. Federation of Pakistan (W.P. No. 25501/2015), Lahore High Court Green Bench,” Para. 3.

⁸⁰ Ibid., Para. 5.

⁸¹ Ibid., Paras 6 and 8.

⁸² Ibid., Para. 8.

⁸³ Ibid., Para. 7.

⁸⁴ Ibid., Para. 7.

⁸⁵ Ibid., Para. 7.

⁸⁶ L. Rajamani & S. Ghosh, “India,” In *R. Lord et al. ed., Climate Change Liability: Transnational Law and Practice* (Cambridge University Press, 2012), 147-56.

⁸⁷ E.L. Rubin & M. Feeley, “Judicial Policy Making and Litigation against the Government,” *University of Pennsylvania Journal of Constitutional Law* 5, no. 3 (2003), P. 617-64.

[the r]ight to life, right to human dignity, right to property and right to information under articles 9, 14, 23 and 19A of the Constitution, read with the constitutional values of political, economic and social justice, provide the necessary judicial toolkit to address and monitor the Government’s response to climate change.⁸⁸

The Court’s September 4, 2015 decree coordinated pertinent offices to assign a “climate focal person” to communicate with MoCC for the implementation of the Framework.⁸⁹ Furthermore, it was also ordered to establish a special CC commission in order to expedite work on the Framework.⁹⁰ On September 14, 2015, Judge Syed Mansoor Ali Shah of LHC had before him 18 representatives from government and experts and a list of their assigned “focal persons” for contact with the MoCC. This decree emphasised that “climate change is no longer a distant threat” for Pakistan,⁹¹ yet the judge was of the opinion that “no material exercise has been done on the ground to implement the Framework.”⁹² The Court chose to set up a CC Commission to “expedite the matter and effectively implement the fundamental rights of the people of Punjab.”⁹³ The purpose of the Commission was to devise and implement suitable adaptation measures to protect HRs of the people of Pakistan from the effects of CC.⁹⁴

Conclusion and Recommendations

“We are standing for what is necessary to do. Ten years ago we would not have tried this but I think things are changing ... it’s more clear to a broad group we are heading to a catastrophe.”*Marjan Minnesma, CEO,*

⁸⁸ “Ashgar Leghari v. Federation of Pakistan (W.P. No. 25501/2015), Lahore High Court Green Bench,” Para. 7.

⁸⁹ Ibid., Para. 8.

⁹⁰ Ibid., Para. 8iii.

⁹¹ Ibid., Para. 3.

⁹² World Wildlife Fund (WWF)-Pakistan and LUMS, “Climate Change Adaptation in the Indus Ecoregion: A Micro-Econometric Study of the Determinants, Impact and Cost Effectiveness of Adaptation Strategies,” *WWF-PAK*, Apr 15, 2015, http://www.wwfpak.org/newsroom/150415_lums.php#sthash.yllmCCRv.dpuf

⁹³ A. Riaz, “LHC Forms Climate Change Commission,” *The News*, Sept 17, 2015, available at <https://www.thenews.com.pk/print/62925-lhcforms-climate-change-commission>, accessed on May 28, 2018.

⁹⁴ A.R. Alam, “Pakistan Court Orders Government to Enforce Climate Law”, *thethirdpole.net*, Sept 25, 2015, available at <https://www.thethirdpole.net/2015/09/24/pakistan-court-orders-government-toenforce-climate-law>, accessed on May 28, 2018.

*Urgenda*⁹⁵ The verdicts studied in the last section give indication of the efficacy of HRs contentions in CC cases in a period where HRs-CC nexus is progressively perceived internationally.

For an effective HRs-CC suit, it is not adequate enough to mention the existence of safe climate only for one's constitutional rights.⁹⁶ Different variables which are important to the achievement of such arguments, may incorporate the presence of enactment or techniques that encourage the bringing of rights claims.⁹⁷ Moreover, a 2014 report of the Environmental Law Alliance (ELA) distinguished "India, Brazil, Colombia, Ecuador, Kenya and Mexico as among potential hotspots for constitutional rights-based cases for environmental damages."⁹⁸ Furthermore, the states like Pakistan, India and the Philippines have also set up track record of legal activism in the CC cases that could facilitate liberal elucidations of established rights assurances (as happened in 'Leghari').⁹⁹

For serious prosecutors considering such claim, utilisation of established HRs security in CC setting is probably going to address legislative disappointments as for adaptation. Such was the scenario in "Leghari," where "inadequate action" to pre-empt CC impacts prompted a situation that was discovered specifically to influence the rights. The HRs claims concentrated on adaptation have preferred that the causal connection between legislative activity (or inaction). Furthermore, the CC impacts on citizens that "embroil their rights is easier to establish than in cases including inability to mitigate."

On the contrary, the constitutional HRs-based CC claims conveyed so far to address mitigation failures, for example, the Austrian Third

⁹⁵ J. Queally, "'Lawsuit Out of Love' as Unprecedented Legal Action Accuses Dutch Government of Failing on Climate," *Common Dreams*, Apr 14, 2015, available at <http://www.commondreams.org/news/2015/04/14/lawsuit-out-love-unprecedented-legal-action-accuses-dutch-government-failing-climate>, accessed on May 29, 2018.

⁹⁶ R. O'Gorman, "Environmental Constitutionalism: A Comparative Study," *Transnational Environmental Law* 6, no. 3 (2017): P. 435-62.

⁹⁷ *Ibid.*

⁹⁸ "Holding Corporations Accountable for Damaging the Climate," *Environmental Law Alliance Worldwide*, 2014, available at <https://www.elaw.org/system/files/elaw.climate.litigation.report.pdf>, accessed on May 24, 2018.

⁹⁹ E.B. Ristroph, "The Role of Philippine Courts in Establishing the Environmental Rule of Law," *Environmental Law Reporter* 42, no. 9(2012): P. 10866-87.

Runway case, the Earth life Africa case, the Philippines appeal to and the Juliana case — represent the difficulties for activities to develop a HRs argument in these kind of cases.¹⁰⁰ Here, the courts may likewise need to weigh contending contentions about the monetary advantages of GHG-emissions (for instance, for financial growth) and global CC regime. In these conditions, utilisation of the rights contentions as a supplementary instrument to brace other legal cases might be a more effective strategy.

The cases made before regional HRs councils are another avenue to secure CJ, also used by “Inuit” in CC verdict to “IACHR.” The Arctic Athabaskan Peoples have since recorded another appeal with the IACHR, claiming HRs infringement because of Black Carbon emissions by Canada.¹⁰¹ Among the regional HRs councils, the European Court of Human Rights (ECtHR) has more extensive jurisprudence on CC-HRs nexus. In spite of the fact that the ECtHR does not openly support a right of healthy environment,¹⁰² it has also discovered that CC can undermine other HRs.¹⁰³ In the “case of Budayeva v. Russia,” the ECtHR found that “Russia had abused its commitment to secure the right to life under the European Convention on Human Rights (ECHR) by neglecting to mitigate the effects of climate change induced mudslides.” Future climate cases may apply this statute to the situation of predictable climate related dangers and damage, contending a failure with respect to states to take sufficient adaptation measures.

The regional HRs “frameworks in the Americas and Africa offer the potential for climate litigation alleging climate injustice.”¹⁰⁴ Article 11 of the San Salvador Protocol to the American Convention on Human Rights pronounces, “the right to live in a healthy environment and to have access to

¹⁰⁰ Ibid.

¹⁰¹ “Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting Caused By Emissions Of Black Carbon By Canada,” http://earthjustice.org/sites/default/files/AAC_PETITION_13-04-23a.pdf

¹⁰² “Kyratos v. Greece, App. No. 41666/98,” *ECtHR*, May 22, 2003, Para. 52.

¹⁰³ V. Jaimes, “Climate Change and Human Rights Litigation in Europe and the Americas,” *Seattle Journal of Environmental Law* 5, no. 1 (2015):P. 188-9.

¹⁰⁴ M. Chapman, “Climate Change and the Regional Human Rights Systems,” *Sustainable Development Law & Policy* (2010) (Spring Issue): 37-8, 60-1, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1031&context=sdlp>

basic public services.”¹⁰⁵ Similarly, “the African Charter on Human and Peoples’ Rights” incorporates the privilege of people groups “to a general satisfactory environment favourable to their development.”¹⁰⁶

In this context, the article has considered rising CC-HRs cases as a sign that demonstrates an expanded utilisation HRs based contentions by defendants and receptivity of courts towards HRs-based argumentation in CC cases. These endeavours which were meant to bring rights contentions up in CC cases correspond with a time of expanded global attention regarding HRs– CC nexus, incorporating “preambular reference in the Paris Agreement”. A single nation’s efforts towards CJ may cause a rise in global response towards CC.

Pakistan’s story has been remarkable in climate protection. Besides providing leadership as Chair of G77 at the Earth Summit in Rio de Janeiro, Brazil in 1992, its Constitution includes a whole catalogue of “Fundamental Rights”. The Pakistani judiciary has developed a dense jurisprudence of public interest environmental litigation (PIEL) to enforce the constitutionally protected Fundamental Rights of the public in the last 25 years through various cases such as: ‘The Asphalt Plants Case 1991,’ ‘The Shehla Zia Case 1994,’ ‘The Salt Miners Case 1994,’ ‘The Solid Waste Management Commission 2003,’ ‘The Lahore Clean Air Commission 2003,’ ‘The Lahore Canal Road Mediation Committee 2011,’ ‘Islamabad Environmental Commission 2015,’ ‘Climate Change Commission 2015-2018,’ ‘Houbara Bustard Commission 2017-2018,’ ‘Smog Commission’ and ‘Child Care Commission.’ In this vein, it would not be wrong to assert that court-appointed Commissions have been successful in resolving complex climate related issues. Nevertheless, there is a need of social and policy change regarding CC.

¹⁰⁵ “Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador),” *Organization of American States (OAS)*, November 17, 1988, in force 16 Nov. 1999, <http://www.oas.org/juridico/english/treaties/a-52.html>

¹⁰⁶ “African Charter on Human and Peoples’ Rights,” *Organization of African Unity (OAU)*, June 27, 1981, in force 21 October 1986, CAB/LEG/67/3 rev. 5, Article 24, <http://www.achpr.org/instruments/achpr/#a24>