

Understanding the Human Dignity Component of a Right to Clean Air: Lahore, Pakistan and the Growing Air Pollution Problem

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“Human dignity, as the integrity of personality, means along with human life the essence of man. Dignity is the elevating quality of our human existence and value: it is worthy of an unconditional respect, the honour of our human essence. It is a priori value in the same way that life is, and it expresses the human dimension of life. Being a human and human dignity are inseparable from one another.”¹

Introduction

The Universal Declaration of Human Rights (UDHR), recognizes that human dignity is a fundamental, inalienable right inherent to all members of the human community.² The UDHR has been a model for the protection of fundamental human rights. Before its ratification in 1948 a mere five countries expressly listed a right to dignity in their constitutions, by 2012 that number rose to more than 160.³ From a legal standpoint the UDHR is not a treaty and therefore is not legally binding on the countries that ratified the document. However, many of these countries have cited to the UDHR, in varying contexts, in the adjudication of human rights violations,

¹ [Hungarian Constitutional Court] October 31, 1990, 23/1990 (Hung.)

² Universal Declaration of Human Rights, 10 December 1948, Preamble.

³ Doron Shultziner & Guy E. Carmi, Human Dignity in National Constitutions: Functions, Promises and Dangers, 62 The American Journal of Comparative Law 461, (2014).

countries such as India⁴, Sri Lanka⁵, and the United States.⁶ Given the frequency in which the UDHR has been cited as a means to advance fundamental rights in international case law, it could be argued that the UDHR has become binding as international customary law.⁷ Some States have affirmed their willingness to accept the UDHR through provisions in their country's constitution. For example, the Preamble of Mali's constitution states, "[t]he sovereign people of Mali ... subscribe to the Universal Declaration of Human Rights of December 10, 1948 and to the African Charter on Human and Peoples' Rights of June 27, 1981."⁸ The Moldova constitution reads, "[c]onstitutional provisions on human rights and freedoms shall be interpreted and enforced in accordance with the Universal Declaration of Human Rights, other conventions and treaties to which the Republic of Moldova is a party."⁹ Also, the Afghanistan constitution says, "[t]he state shall observe the ... Universal Declaration of Human Rights.¹⁰ These practices, in the international community, present an unique opportunity for the courts of Pakistan to utilize the dignity provision in their constitution and the UDHR to ensure the right of clean air and to encourage those with legal responsibility to take action to combat the problem of air pollution.

This paper will first, briefly explain the history and growing problem of air pollution in the city of Lahore, Pakistan and how this problem plays a major role in inhibiting the dignity of

⁴ Kishore Chand v. State of Himachal Pradesh, [1991] 1 S.C.C. 286. ("At the same time the liberty of a citizen is a precious one guaranteed by Art. 3 of Universal Declaration of Human Rights and also Art. 21 of the Constitution of India and its deprivation shall be only in accordance with law.")

⁵ Mahenthiran v. Attorney-General, Supreme Court, [1980] Sri Lanka Law Reports (1980). ("Article 11 of our Constitution is however an exact reproduction of Article 5 of the Universal Declaration of Human Rights, 1948.")

⁶ Kathryn Burke et al., Application of International Human Rights Law in State and Federal Courts, 18 Tex. Int'l L. J. 291, 323 (1983). (citing Sterling v. Cupp, 625 P.2d 123, (Or. 1981), the court "used the Charter of the United Nations, the Universal Declaration, and the ICCPR as examples of principles governing the treatment of prisoners.")

⁷ Filartiga v. Pena-Irala, 630 F.2d 876 (2nd Cir. 1980) ("Thus, a Declaration creates an expectation of adherence, and insofar as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon the States. Indeed, several commentators have concluded that the Universal Declaration has become, in toto, a part of binding, customary international law.")

⁸ Constitution of Mali, 12 January 1992, Preamble.

⁹ Constitution of the Republic of Moldova, 27 August 1994, Article 4(1).

¹⁰ Constitution of Afghanistan, 3 January 2004, Article 7.

those most vulnerable to its effects. Next, I will give a brief introduction to the Pakistani legal framework that currently exists and how the branches of government who are legally responsible for combatting air pollution problems in Lahore. Also, I will address the actions that have or have not been taken by the government to combat the issue of air pollution. Lastly, this paper will present how the courts of Pakistan are currently using their power to ensure a right to a clean environment and the right to dignity; presented in four subsections: (1) providing citizens with a legal cause of action to bring suit directly to the High Court; (2) Government liability to ensure a clean environment; (3) the court systems duty to hold the government accountable and ensure they are fully executing their legal duties to the citizens of Pakistan; and (4) showing human dignity as an individual substantive right and how there is a direct connection between the right to dignity and the right to a clean, healthy environment.

Lahore, Pakistan and the Problem with Air Pollution

Lahore, the second largest city in Pakistan is considered to be one of the most cultural provinces in the region. Known as the City of Gardens, it houses some of the most beautiful parks and aesthetically magnificent Mosques in the country. The city has embraced an urban, modernized society while maintaining its most historic structures. However, with all its rich diversity and thriving economy, Lahore is crippled in increasing numbers every year from the growing problem concerning air pollution.

The current population in Lahore is slightly over eleven and a half million, since 2015 the population continues to grow at an annual rate of 4.22%.¹¹ At this rate, according to the UN's World Urbanization Prospects, predictions are that Lahore will become the world's largest city;

¹¹ World Population Review (Jun. 29, 2018), worldpopulationreview.com/world-cities/lahore-population/.

with a population of 42.46 million people by 2050.¹² This rapid growth in population has led to more automobiles on the roads, increased deforestation, hasty development of the area and the persistent growth of pollution causing industries; coupled with increased temperatures, these factors have resulted in Lahore being considered the most polluted city in Pakistan.¹³ The culmination of these factors appear visually every year during what is known as “smog season.” During smog season, as termed by Pakistani environmentalists, the city is blanketed with a thick smoke like cloud of pollutants. This visual reminder of how dire the pollution situation has become is the result of November’s cold weather, crop burning, and increased emissions.¹⁴ The health damaging cause of air pollution is the presence of fine air particles (smog) that are trapped in the atmosphere by a phenomenon known as temperature inversion. Normally, a layer of warm air sits below a layer of cold air allowing these fine air particles to escape and evaporate into the atmosphere. When temperature inverse occurs, colder air sits below a layer of warm air and traps those smog producing fine air particles.

At the heart of the issue with air pollution is the adverse effects that it has on the health of citizens. The international community has long acknowledged the link between a polluted environment and damaging health effects, The 1972 United Nations Conference on the Human Environment (Stockholm Declaration) expressed its growing concern “of man-made harm in many regions of the earth: dangerous levels of pollution in water, air earth and living beings; major and undesirable disturbances . . . destruction and depletion of irreplaceable resources; and gross deficiencies harmful to the physical, mental and social health of man.”¹⁵ The World Health

¹² Hasaan Khawar, Lahore – World’s Largest City in 2050 (Sep. 6, 2017), <https://tribune.com.pk/story/1498663/lahore-worlds-largest-city-2050/>.

¹³ Ramsha Riaz & Khizar Hamid, Existing Smog in Lahore, Pakistan: An Alarming Public Health, *Cureus*, 1 (2018).

¹⁴ Mahreen Zahra-Malik, In Lahore, Pakistan, Smog has Become a Fifth Season (Nov. 10, 2017), <https://www.nytimes.com/2017/11/10/world/asia/lahore-smog-pakistan.html>

¹⁵ Dinah Shelton, Human Rights, Health and Environmental Protection: Linkages in Law and Practice, 1 *Hum. Rts. & Int’l Legal Discourse* 9, 6 (2007).

Organization (WHO) estimates that worldwide air pollution accounts for two million deaths annually, people in developing countries contribute to a majority portion of this number.¹⁶ Health issues from air pollution presents in varying forms that range from asthma, allergies, cardiac disease, respiratory disease and premature deaths, one demographic particularly susceptible are children. A cross sectional studied conducted on school aged children living in areas with high levels of air pollution showed that these children had a significantly higher blood pressure than children in areas with low air pollution.¹⁷ These effects can lead to heart failure, strokes, and kidney disease when these children entered into adulthood; all of the aforementioned conditions also result in decrease life expectancy.

How Air Pollution Inhibits Dignity

There are not many studies conducted to examine the concept of human dignity. However, it has been well established that all humans are entitled to dignity, this is evident in international case law. For example, in *Law v. Canada*¹⁸ the Supreme Court of Canada unanimously held that:

[h]uman dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits. It is enhanced by laws which are sensitive to the needs, capacities, and merits of different individuals, taking into account the

¹⁶ Muhammad Sughis et al., Blood Pressure and Particulate Air Pollution in Schoolchildren of Lahore, Pakistan, *BMC Public Health*, 2 (2012).

¹⁷ Muhammad Sughis et al., Blood Pressure and Particulate Air Pollution in Schoolchildren of Lahore, Pakistan, *BMC Public Health*, 1 (2012).

¹⁸ *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497

context underlying their differences. Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups...¹⁹

In *Tyrer v. UK*²⁰, the European Court of Human Rights (ECtHR) held that the main purpose of Article 3 of the European Convention on Human Rights was human dignity and personal integrity. In international adjudication, human dignity continues to be used as the basic foundation for securing fundamental human rights.

The link between dignity and health has also been established through international binding and customary law. Article 25 of the UDHR states that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family . . . and the right to security in the event of... sickness [or] disability...or other lack of livelihood in circumstances beyond his control."²¹ The dissenting opinion delivered by Judge Tanaka in the *South West Africa Cases*²² stated that "all human beings are equal before the law . . . [a]s persons they have the dignity to be treated as such. This is the principle of equality which constitutes one of the fundamental human rights and freedoms which are universal to all mankind."²³ Also, it was said that the case should consider whether treating individuals differently, in the eyes of the law, will or will not "harm the sense of dignity of individual persons."²⁴ Researchers have found that there is a connection between good health²⁵ and dignity, and that violations of a person's dignity

¹⁹ *Id.*

²⁰ *Tyrer v. The United Kingdom*, 5856/72, Council of Europe: European Court of Human Rights, 15 March 1978 (Case concerning corporal punishment administered as part of a judicial sentence.)

²¹ Universal Declaration of Human Rights, 10 December 1948, Article 25(1).

²² *Ethiopia v. South Africa; Liberia v. South Africa*, Judgment of 18 July 1966, [1966] ICJ Rep 6, at 308, 312. (Case concerning equal rights.)

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

can have damaging effects on physical and psychological well-being.²⁶ One study conducted to measure dignity levels found that the subjects who perceived that they had a chronic or acute illness had significantly lower dignity scores than those who did not.²⁷

The right to dignity is an integral part of ensuring all human rights. German philosopher Jürgen Habermas argues that violations to human dignity is a trigger for human rights and those experiences are what define human dignity.²⁸ This reasoning of showing that human rights stem of violations of human dignity is displayed in the South West Africa Cases. Referring back to the dissenting opinion, Judge Tanaka points out that enduring violations of human rights (in this context, equal protection) should not be a sacrifice of the people at the hands of the state when that sacrifice is dignity of the person.²⁹ Thus, it follows, that if human rights are not to be abridged, human dignity should not be abridged. In *Villagran-Morales et al. v. Guatemala*³⁰, the court held that “the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence.”³¹ While the concept of dignity in jurisprudence has no universally accepted understanding upon which to judge claims of dignity violations and those claims should be adjudicated on an individual basis, however, according to McCrudden, there is a minimum core or minimum understanding of what human dignity entails.³² Human dignity at the minimum core, McCrudden argues, includes three

²⁶ Jonathan Mann, *Dignity and Health: The UDHR’s Revolutionary First Article*, *Health and Human Rights*, 35 (1998).

²⁷ K. Wiegman, *The Development and Psychometric Testing of the Dignity Instrument*, Columbia: University of Missouri Press (2003).

²⁸ Dina L. Townsend, *The Place of Human Dignity in Environmental Adjudication*, *Oslo Law Review* 27, 38 (2016).

²⁹ *Id.*

³⁰ *Villagran-Morales v. Guatemala*, Judgment of Nov. 1999 (Merits), at para. 144

³¹ *Id.*

³² Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*. *European Journal of International Law*, (2008).

elements: (1) intrinsic worth of all humans; (2) recognition and respect for that intrinsic worth and; (3) a duty by the state to protect human rights.³³ The link between human dignity and human rights continues to be made in international customary law and through academic research on how courts are using dignity in cases involving violations of human rights.

Since the concept of dignity was first introduced into the adjudication of human rights claims worldwide, it has been used to ensure the right to property, the right against cruel and unusual punishment, and the right to private life. However, it is difficult to fit the right to a clean environment into the parameters of those previously listed, therefore, it is a right that needs to be secured individually. More than 100 constitutions around the world guarantee the right to a clean environment and place a duty on the state to abate environmental harm,³⁴ examples include Angola³⁵, Argentina³⁶, Azerbaijan³⁷, and Brazil³⁸. In addition to constitutional provision, specific human rights treaties have identified a right to a clean environment. Article 24 of The African Charter on Human and Peoples Rights grants all people the right to a satisfactory environment conducive to their development. Courts have also recognized a right to a clean environment. For example, the Supreme Court of India held that Article 21 of their constitution included a right to a wholesome environment³⁹ and the right to the enjoyment of a pollution free water and air.⁴⁰

³³ Márcio R. Staffen & Mher Arshakyan, *The Legal Development of the Notion of Human Dignity in the Constitutional Jurisprudence*, 12 *Revista Brasileira de Direito* 108, (2016).

³⁴ Dinah Shelton, *Human Rights, Health and Environmental Protection: Linkages in Law and Practice*, 1 *Hum. Rts. & Int'l Legal Discourse* 9, 26 (2007).

³⁵ Angola Constitution, 21 January 2010, Art. 24(1), "all citizens shall have the right to live in a healthy and unpolluted environment."

³⁶ Argentina Constitution, 1994, Art. 41, "All residents enjoy the right to a healthy, balanced environment which is fit for human development"

³⁷ The Constitution of Azerbaijan, 12 November 1995, Art. 39, "Everyone has the right to live in a healthy environment."

³⁸ Constitution of the Federative Republic of Brazil, 2010, Art 225, "Everyone has the right to an ecologically balanced environment, which is a public good for the peoples use and is essential for a healthy life."

³⁹ Charan Lal Sahu v. Union of India, AIR 1990 SC 1480 (1991).

⁴⁰ Subhash Kumar v. State of Bihar, AIR 1991 SC 420, (1991).

It is not difficult to make the connection between the right to life and how living in a environment riddled with air pollution can infringe upon that right, but what about a direct link to the right of dignity to living in an unclean environment? The residents of Lahore are at increasing levels being exposed to air pollution that the Pakistani government considers to be 30 times that of healthy parameters; residents are experiencing debilitating illnesses and decreased life expectancies. In 2015, the WHO estimated nearly 600,000 Pakistanis lost their lives due to the high level of fine particle air pollutants they are exposed to. We know that courts have determined that all humans have a right to dignity and that there is a link between the perceived dignity of the individual and ill health. The right to dignity includes the right to a clean environment and when that right is infringed upon, citizen must be granted a legal cause of action to redress their grievances.

Current Legal Framework in Pakistan

Among those responsible for the monitoring and maintaining healthy levels of fine air particulates are the Pakistan Environmental Protection Agency (EPA) and the Ministry of National Health Services. The EPA is a department of the Ministry of Climate Change and is tasked with implementing the Pakistan Environmental Protection Act of 1997.⁴¹ The Ministry of National Health Services' stated mission is a commitment to maintain and improve the health of the people of Pakistan.⁴²

The current environmental law in Pakistan is governed by the Pakistan Environment

⁴¹Pakistan Environmental Protection Agency (2018), <http://www.environment.gov.pk/>

⁴² Ministry of National Health Services, Regulations and Coordination, Government of Pakistan (2018), http://www.nhsrcc.gov.pk/messageDetailed4f.html?message_id=1

Protection Act of 1997.⁴³ This Act establishes the Pakistan Environmental Protection Council, Pakistan Environmental Protection Agency, and Provincial Environmental Protection Agencies. The Act also allocated funds to assist in projects aimed at protecting the environment. Besides the establishment of environmental tribunals, the Act sets out the duties of all agencies created under this act, violation of the laws for individuals and corporations, and list all requirements that business must make before commencement of any construction project is approved.

The next major piece of legislation concerning harms to the environment was the Punjab Environment Protection Act 1997. This is similar to the Pakistan Environment Protection Act, with the purpose to have more oversight over issues at the provincial level in the Punjab region. Thirteen Amendments were made in 2012 to fill gaps in the current legislative framework and to enable the Act to be carried out more effectively.⁴⁴ Some of the amendments included, a more expedient appeals process, clarification in the definitions of terms used, expanding the number of judges with the ability to hear environmental complaints, a clear outline of what constitutes a major or minor offense, and a better way to recover fines imposed on offenders.⁴⁵

In March 2012, Pakistan hosted the South Asia Conference on environmental justice. Senior members of the judiciary from several countries⁴⁶ came together with the common objective to combat environmental issues and strengthen compliance with current environmental laws in the region; the outcome of this conference resulted in the 2012 Bhurban Declaration.⁴⁷

⁴³ The Pakistan Environmental Protection Act (1997),

http://www.who.int/fctc/reporting/Pakistan_annex2_environmental_protection_act1997.pdf

⁴⁴ The Newspaper's Staff Reporter, Environment Act to Have Teeth After Changes, (May 23, 2012),

<https://www.dawn.com/news/720596>.

⁴⁵ Id.

⁴⁶ Asian Development Bank, South Asia Conference on Environmental Justice, (Oct. 2013),

<https://www.adb.org/publications/south-asia-conference-environmental-justice> (included countries:

Afghanistan, Bangladesh, Brazil, India, Jordan, Nepal, Pakistan, Sri Lanka and Indonesia, Bhutan, and Maldives.)

⁴⁷ Bhurban Declaration 2012: A common Vision on Environment for the South Asian Judiciaries, (Mar. 25, 2012)

https://www.iucn.org/sites/dev/files/import/downloads/pk_bhurban_declaration_2012__20120410_.pdf.

Members of the conference unanimously agreed, among other things, that the courts would play a major role in dealing with environmental issues. Most importantly, the conference established Green Benches in High Courts to adjudicate environmental interest litigation and secure a right to a clean environment as a Constitutional protected fundamental right. Since its inception the Lahore High Court Green Bench has heard various cases on the subject of climate change, land use, and water pollution.

The Pakistani government has been criticized on several occasions for their failure to take active measures to control air pollution and enforce judicial orders by the High Courts. In November 2016, Chief Minister (CM) of Punjab (Pakistan) Mian Muhammad Shahbaz Sharif, assembled a committee of twenty experts⁴⁸ to “examine the prevailing weather condition of dense smog in the cities and plains of Punjab, which has inherent health hazards like breathing ailments and eye infections.”⁴⁹ This shows that the government has been aware of the growing pollution problems in Lahore and cities across Pakistan for some time now. Despite recommendations made by several department leaders, the government has still fallen short of making any meaningful impact to control air pollution. After forming another smog committee in September of 2018, the current CM of Punjab, Sardar Usman Buzdar observed that smog is a disruption to normal daily life and that a sustainable policy to prevent it needs to be implemented.⁵⁰ CM Buzdar directed that air quality monitoring systems located in Lahore and other cities in Pakistan be made functional immediately.⁵¹ In 2017, the Lahore High Court issued an order to

⁴⁸ Daily Pakistan Global, CM Punjab Constitutes Committee of Experts to Battle Smog, <https://en.dailypakistan.com.pk/pakistan/cm-punjab-constitutes-committee-of-experts-to-battle-smog/>. (Committee members included: Advisor to the Chief Minister on Health, Minister for Environment, Chief Secretary, Secretary of the Environment Protect Department, School Education Department, Transportation Department and others.)

⁴⁹ Id.

⁵⁰ Staff Reporter, Govt to Set Up Punjab Clean Air Commission to Control Pollution, (Sep. 22, 2018), <https://www.pakistantoday.com.pk/2018/09/22/govt-to-set-up-punjab-clean-air-commission-to-control-pollution-smog/>

⁵¹ Id.

directly address these government agencies. In it, the High Court admonish governmental agencies for their lack of response in taking steps to abate pollution problems, calling the inaction by those held responsible for the health of citizens “disconcerting and disappointing.”⁵² During this meeting orders were given by department heads to close brick kilns from October to December and placed a ban on burning crops during the month of October.

Dignity Rights in Pakistani Jurisprudence

Cause of Action

Pakistani citizens have started to turn to the High Court to seek remedies for growing health concerns due to environment degradation. The High Court has already made clear that the right to a clean environment is a fundamental right under the right to life and right to dignity provisions of their constitution.⁵³ In the case of a violation of a fundamental right the High Court has the power to exercise its original jurisdiction under Article 184(3) of the Constitution of Pakistan.⁵⁴ In *Ms. Shehla Zia v. WAPDA*, citizens brought a public interest suit to voice concerns about the construction of a grid station that produce an electromagnetic field in a residential area.⁵⁵ Petitioners, arguing a violation to a fundament right under Article 9 and Article 14, sought to have the court address two questions, the relevant one being whether any government agency has the right to endanger the life of citizens without the citizens consent.⁵⁶ Respondents argued that the facts of the case do not warrant the court to exercise its original jurisdiction because all requirements were met before construction was authorized and that the construction posed no

⁵² Walid Iqbal v. Federation of Pakistan (2016) 34789 (SC) (Pak.).

⁵³ Pakistan Const. Art. 9: “No person shall be deprived of life or liberty save in accordance with law;” Art. 14(1): The dignity of man and, subject to law, the privacy of home, shall be inviolable.

⁵⁴ Walid Iqbal v. Federation of Pakistan (2016) 34789 (SC) (Pak.). (“Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved have the power to make an order of the nature mentioned in the said Article.”)

⁵⁵ *Ms. Shehla Zia v. WAPDA* (1994) 693 PLD (SC) (Pak.).

⁵⁶ *Id.*

health hazards.⁵⁷ The court found that although studies about electromagnetic fields are inconclusive, a showing that the possibility of people working or living near structures that produce electromagnetic field were at an increased risk of cancer and would cause adverse effects to the environment was enough to exercise original jurisdiction.⁵⁸ The court reasoned that:

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 units which create pollution and environmental degradation.⁵⁹

The ability to present a direct cause of action to the Supreme Court decreases the time and expense to citizens when bringing a claim to secure a fundamental right to dignity.

Government Liability

The government's liability to ensure a clean environment is primarily derived under the Environmental Protection Act of 1997. Provision 19 holds the government and government agencies liable, enables a claim to be brought, and penalties imposed for negligent acts that violate any section of the act.⁶⁰ The duty of the government to protect the environment⁶¹ and the ability to hold those in charge accountable for minimizing health hazards was illustrated in *Anjun Irfan v. Lahore Development Authority*. In this case, petitioner sought to enforce the government's legal

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Pakistan Environmental Protection Act of 1997. ("Where any contravention of this Act has been committed by any Government Agency, local authority or local council, and it is proved that such contravention has been committed with the consent or connivance of, or is attributable to any negligence on the part of the Head or any other officer of the Government Agency, local authority or local council, such Head or other officer shall also be deemed guilty of such contravention along with the Government Agency, local authority or local council and shall be liable to be proceeded against and punished accordingly.")

⁶¹ *Anjun Irfan v. Lahore Development Authority*, (2002) 555 PLD (Pak.) ("Enforcement of air quality standards for pollutants rests with the States, including emission standards for hazardous pollutants.")

obligation to take action in accordance with the recommendations issued by the High Court to aid in the elimination of air pollution. Petitioner argues that the government is in violation of law by not executing their duties and obligations and the inaction has made the air pollution problem worse.⁶² Among other things, the government was found to be in violation of an order issued to perform checks on smoke emitting government vehicles. When it was discovered that those responsible for performing the vehicle checks were exempting government and police cars with a certain marking under the idea that these cars belonged to influential persons, the court described this reasoning as a “deplorable attitude”⁶³ to have. Further stating that everyone is bound to obey the laws of the Constitution⁶⁴ and that judgements issued by the Supreme Court are binding on all members of the state.⁶⁵

It is well settled that the government and government agencies have a duty to protect citizens from the harmful effects of air pollution; this is a duty that cannot be exercised arbitrarily or without given full concern to those that have been entrusted with this duty.

Courts’ Duty

Courts also owe a duty to citizens to ensure that those most susceptible to the effects of an unclean environment have an avenue to voice their concerns. The High Court has acknowledged its duty to protect the fundamental rights of the people of Pakistan.⁶⁶ This protection of fundamental rights is accomplished through public interest litigation. In *Dr. Amjad*

⁶² Id.

⁶³ Id.

⁶⁴ Id. (“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.”)

⁶⁵ Id. (“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.”)

⁶⁶ *Walid Iqbal v. Federation of Pakistan* (2016) 34789 (SC) (Pak.). (This Court is bound to protect the fundamental rights of the people, therefore, relying on Article 9 of the Constitution, i.e., right to life, read with the internationally recognized precautionary principle, till such time that the Government proposes a detailed action plan, keeping in view the emergent nature of the current crises, the following plan shall be put in place.”)

H. Bokhari v. Federation of Pakistan, litigation followed when an oil tanker ran aground, spilling 26,000 tonnes (one ton equals 2,205 pounds) of crude oil on the Karachi shoreline.⁶⁷ This accident is considered to be the worst environmental disaster in Pakistan history.⁶⁸ An environmental assessment conducted after the disaster showed, among other things, that the pollution could lead to respiratory problems in those exposed to the petroleum carbon.⁶⁹ The court recognized that “widespread poverty, illiteracy and institutional fragility make public interest litigation a necessity in this region.”⁷⁰ Citizens obtain standing to bring public interest litigation claims when a class of people have a fundamental right violated and cannot otherwise seek redress.⁷¹ Pakistan Superior Courts have adjudicated over and ordered remedies in a wide variety of public interest cases that include issuing guidelines “to be observed by the authorities to check environmental pollution caused by fumes of motor vehicles, deforestation, open sewerages, dumping of nuclear waste.”⁷² This case adopted the test used in *M.C. Mehta vs. Union of India*, to reinforce the Supreme Court’s power to award compensation in public interest litigation:

If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such and it would have

⁶⁷ Dr. Amjad H. Bokhari v. Federation of Pakistan, Amicus Curiae by Dr. Parvez Hassan (2003).

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id. (citing State v M.D. WASA 2000 CLC 471 “The rationale behind public interest litigation in developing countries like Pakistan and India is the social and educational backwardness of its people, the dwarfed development of law of tort, lack of developed institutions to attend to the matters of public concern, the general inefficiency and corruption at various levels. In such a socio-economic and political milieu, the non-intervention by Courts in complaints of matters of public concern will amount to abdication of judicial authority.”)

⁷¹ Id. (Citing Benazir Bhutto v Federation of Pakistan, PLD 1988 SC 416 (“Rules of locus standi can be dispensed with in case of violation of fundamental rights of a class of persons who are unable to seek redress through the traditional means.”))

⁷² Id.

been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil Court for claiming compensation.⁷³

In *Walid Iqbal v. Federation of Pakistan*, a public interest suit was brought against multiple government departments to address the inaction of those departments in tackling air pollution and smog.⁷⁴ Petitioners asked the court to order respondents (government) to show what they have done to alleviate the smog problem that has become a serious health risk; and they stated that the governments inaction was a violation of Article 9 of the Pakistan Constitution.⁷⁵ For evidence to show what the government had done thus far to combat smog in the city, the government submitted to the court that they developed a “Policy and Action Plan for Control, Mitigation, Advisory and Protective Measures in Extreme Weather Conditions had acquired six air pollution monitoring stations to be placed in Lahore as well as other cities around Pakistan.⁷⁶ After observing that the government had failed to abide by its own smog policy by not alerting the public when smog levels reached hazardous levels, the court stated the government had “no desire, capacity or mutual coordination to deal with the smog emergency in the city.”⁷⁷ After this, they reaffirmed the duty of the court to protect fundamental rights.⁷⁸

Right to Dignity

The idea of human dignity is not a novel concept, it has been the subject of legal and philosophical thought since 1st century BC. Although it was a minority view at the time, Roman philosopher Cicero opined that all persons, by virtue of their existence, are gifted with *dignitas*,⁷⁹

⁷³ Id. (Citing M.C. Mehta vs. Union of India, AIR 1987 SC 1086).

⁷⁴ *Walid Iqbal v. Federation of Pakistan* (2016) 34789 (SC) (Pak.).

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ (*Dignitas* is a Latin word referring to a unique, intangible, and culturally subjective social concept in the ancient Roman mindset.) <https://www.definitions.net/definition/dignitas>.

worthy of respect. There are varying thoughts on what dignity means, at a minimum it means “respect for the intrinsic worth of every person, which entails that individuals are not to be perceived or treated merely as . . . objects of the will of others.”⁸⁰ Modern views on the concept of human dignity are that there is a connection between it and personal autonomy, a connection that proves dignity is not a abstract concept but a substantive right with dedicated case law.⁸¹ Dignity is derived from a sense of well-being, that a person is living with full autonomy and with the ability to make decisions of their choosing; this is what makes the difference between a right to life and a right to dignity.

The right to life and the right to dignity must be seen as two different fundamental rights that citizens should be able to seek legal recourse for. While it is not true in the case of air pollution (seeing that there is a direct link between a threat to life and poor air quality) there are violations to human dignity that do not pose a threat to life. This is why it is so important to see dignity as a separate individual right apart from the right to life. In *Ashgar Leghari v. Federation of Pakistan*, the petitioner, a Pakistani citizen, brought a public interest suit in the Lahore High Court to address inaction of the Punjab government to implore measures to “address the challenges and to meet the vulnerabilities associated with climate change.”⁸² The court observed that climate change caused profound adjustments to the environment and calls on the government to take an active approach to protect, “in particular, the vulnerable and weak segments of the society.”⁸³ This case was major step forward in observing that the right to

⁸⁰ Rex Glensy, *The Right to Dignity*, 43 Colum. Hum. Rts. L. Rev. 65 (2011)

⁸¹ *Id.*

⁸² *Ashgar Leghari v. Federation of Pakistan* (Lahore High Court, WP No 25501/2015, 18 January 2016).

⁸³ *Id.*

dignity should be viewed separately from the right to life and shows that an unclean environment is in violation of both of these constitutional protected rights.⁸⁴

Most public interest litigation in Pakistan observes the right to dignity in the context of a clean environment. *Ms. Shehla Zia v. WAPDA*, “Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally.”⁸⁵ The court also noted in that case that “The Constitution guarantees dignity of man and also right to 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.”⁸⁶ In *Navid Hussain v. City District Government, Karachi*, arguments were presented to the court that

proposed construction the original low density residential character of the neighbourhood would be completely destroyed resulting in violation of civil, statutory and the constitutional rights of the Plaintiffs to life as envisaged in Articles 9, 14, 23 and 25 of the Constitution as the quality of life of the Plaintiff as also of the other inhabitants of the area would become progressively worse.⁸⁷

The principle of human dignity as a fundamental right was also illustrated In *West Pakistan Salt Miners Labor Union v. Industries and Mineral Development*,

Under our Constitution, Article 14 provides that the dignity of man and subject to law the

⁸⁴ Id. (“Fundamental 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) read with constitutional principles of democracy, equality, social, economic and political justice include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. Environment and its protection has taken a center stage in the scheme of our constitutional rights.”)

⁸⁵ *Ms. Shehla Zia v. WAPDA* (1994) 693 PLD (SC) (Pak.).

⁸⁶ Id.

⁸⁷ *Navid Hussain and Ors v. City District Government, Karachi and Ors.* 2007 CLC 912 (Pak.).

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 to '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 line without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment.⁸⁸

From what has been discussed, the courts in Pakistan appear to be on board with the contention that the right to a clean environment is guaranteed through the constitutional provisions of a right to live and a right to dignity. Also, that living in a clean environment is constitutionally protected under Article 9 of the Constitution of Islamic Republic of Pakistan. Now that the courts have made the link between poor health and the right to dignity, what more can be done to hold the government accountable and direct them take substantial steps to combat air pollution?

Conclusion

Pakistan's Constitution guarantees the right to a clean environment under the right to life and right to dignity provisions, but how is this right to dignity guarded when children fail to receive a proper education because the air quality is so poor, schools must be closed? When parents cannot simply play outside with their children for fear that their current health issues will be further exacerbated or that new ones will develop? U.S. Supreme Court Justice Oliver Wendell Holmes Jr. famously said, "if my fellow citizens want to go to hell, I will help them, it's my job." In context, he meant, that it is not the job of the judiciary to protect citizens from the

⁸⁸ General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Jhelum v. The Director, Industries and Mineral Development, Punjab, Lahore, 1994 SCMR 2061 (Pak.).

consequences of their political decision. In this case, I disagree. When the legislature fails to abate national health risk and violations to human dignity, it is the court's job to hold them accountable, to step in and protect those most susceptible to the dignity violations and adverse health effects of poor air quality; current Pakistani and international jurisprudence aligns with this philosophy. The philosophy is that the right to human dignity is not only a fundamental right but is a substantive right that guarantees a cause of action for those to redress grievances. There is still much work to be done by the Pakistani government to completely tackle the issue of air pollution and the best way to ensure that the task is accomplished in the most expedient manner is to continue use of the courts to guarantee a fundamental right to dignity.