

## Shehla Zia vs. WAPDA

PLD 1994 Supreme Court 693

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In 2022, floods caused by heavy monsoon rains killed almost two thousand people and directly affected an estimated 33 million people across Pakistan.<sup>1</sup> These isolated statistics alone highlight the urgency with which Pakistan must confront its environment-related issues. In this context, *Shehla Zia vs. WAPDA* is a landmark judgment that sought to transform the environmental law landscape in Pakistan.

The dispute arose when residents of Islamabad wrote to the Supreme Court of Pakistan (“Court”) and requested the Court to determine two legal issues. First, whether government agencies like the Water and Power Development Authority (“WAPDA”) could, by their actions, endanger citizens’ lives without the latter’s consent. Second, whether zoning laws conferred on citizens certain rights and whether those rights could be withdrawn or altered without their consent.<sup>2</sup> The Court adopted the precautionary principle and held that a balance be struck between securing the rights of citizens and moving ahead with plans for economic progress. Arguably, the most important aspect of this ruling was the Court’s interpretation of Article 9 of the Constitution of Islamic Republic of Pakistan (“Constitution”) which provides for the right to life. The judgment placed great emphasis on how the term “life” was to be interpreted and held that it must not be restricted to simply refer to a vegetative state or the time between conception and death. Instead, the Court conferred a much wider scope to the term and held that it included the quality of life a person was entitled to and deserved legal protection for.

As a result, the Court found that under Article 9 of the Constitution, a person was entitled to protection from potential hazards of electromagnetic fields resulting from projects or installations like the one WAPDA sought to develop. This meant that the right to a clean

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<sup>1</sup> ‘Hundreds killed as storms lash Pakistan and Afghanistan’ *Aljazeera* (Doha, 16 April 2024) <<https://www.aljazeera.com/news/2024/4/16/heavy-rains-kill-49-in-pakistan-state-of-emergency-declared>> accessed 29 September 2024.

<sup>2</sup> UNEP-LEAP, ‘Ms. Shehla Zia and others (Petitioners) v. WAPDA (Respondents)’ (*leap.unep.org*, 12 February 1994) <<https://leap.unep.org/en/countries/pk/national-case-law/ms-shehla-zia-and-others-petitioners-v-wapda-respondents>> accessed 13 September 2024.

environment was directly implied by Article 9. The Court held that Articles 9 and 14 of the Constitution were to be read together, and that the dignity guaranteed to citizens would be brought into question when the right to life is violated. In reaching its conclusion, the Court also considered Pakistan's social realities such as the lack of legal awareness and quality education.

*Shehla Zia* has had a great impact on environmental law jurisprudence in Pakistan, with scores of later judgements (dealing with environmental issues) citing it. However, while the judiciary's role in developing environmental law in Pakistan can be considered praiseworthy in many respects, it is also a great cause for concern as the fine line delineating the powers of the legislature and the judiciary gets blurred. In the present case, the Court exceeded its constitutional mandate by reading the right to a clean environment into Article 9—a right that originally did not exist under the Constitution. As such, the Court assumed legislative functions and curtailed the power of the legislature, violating the principle of separation of powers. Moreover, if the judiciary assumes the powers to determine the intricacies of the environment law regime, it may also stunt the executive's ability to develop, implement, and enforce environmental laws in the country.<sup>3</sup>

One such instance of this was the then-Chief Justice Saqib Nisar's decision to launch the Diamer Bhasha and Mohmand Dams Fund in 2018.<sup>4</sup> This initiative is also an example of the judiciary exceeding its constitutionally mandated role and stepping into other organs' domains under the guise of environmental action. On the other hand, given that it took nearly thirty years for the Parliament to recognize the importance of clean environment and make it a justiciable, fundamental right—in the form of Article 9-A introduced through the Twenty-Sixth Constitutional Amendment—makes for a compelling argument regarding Court's preemption in a setting where the legislature has been consistently failing to fulfill its duties.

At present, Pakistan is ranked as the country fifth most vulnerable to climate change despite the fact that its contributions to global warming are significantly lower than other nations.<sup>5</sup> While controversial, environmental activism by the judiciary has played a significant

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<sup>3</sup> Waqqas Ahmad Mir, 'From Shehla Zia to Asghar Leghari: Pronouncing Unwritten Rights Is More Complex Than a Celebratory Tale' in Jolene Lin and Douglas A Kysar (eds), *Climate Change Litigation in the Asia Pacific* (CUP 2020).

<sup>4</sup> Ministry of Foreign Affairs (Pakistan), 'Diamer Bhasha and Mohmand Dams' (*mofa.gov.pk*, 9 September 2018) <<https://mofa.gov.pk/diamer-bhasha-and-mohmand-dams>> accessed 29 September 2024.

<sup>5</sup> Ministry of Information and Broadcasting (Pakistan), 'Pakistan ranked 5th most vulnerable country to climate change.' (*pid.gov.pk*, 17 April 2024) <[https://pid.gov.pk/site/press\\_detail/25011](https://pid.gov.pk/site/press_detail/25011)> accessed 16 September 2024.

role in Pakistan's attempts to protect its environments. *Shehla Zia* represents the peak of the judiciary's environmental activism as it transformed the landscape for the law's relationship with the environment. It did so by establishing access to a clean and healthy environment as a fundamental, constitutionally-guaranteed right.<sup>6</sup> Hence, post-*Shehla Zia*, the judiciary was able to declare *ultra vires* the Constitution any laws or policies threatening environmental safety and falling foul of the precautionary principle. Besides, this case also set the precedent for allowing greater ease and access to superior courts in Pakistan to entertain public interest litigation for environmental protection.<sup>7</sup>

In conclusion, the judiciary is well within its constitutional jurisdiction to interpret existing laws and to consequently require the various stakeholders to comply with the same. However, we must remain wary of the judiciary exceeding this role—for however noble a purpose—and trespassing on the legislature's domain.

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<sup>6</sup> Qamar-uz-Zaman, 'Pakistan's judiciary weighs in on environmental challenges with some success' (*Dialogue Earth*, 24 February 2021) <<https://dialogue.earth/en/justice/pakistans-judiciary-weighs-in-on-environmental-challenge-with-some-success/>> accessed 16 September 2024.

<sup>7</sup> ESCR-Net, 'Ms. Shehla Zia v. WAPDA, PLD 1994 SC 693' (*escr-net.org*, 20 September 2015) <<https://www.escr-net.org/caselaw/2015/ms-shehla-zia-v-wapda-pld-1994-sc-693/>> accessed 3 September 2024.