

Signal Free Corridor: A Reflection on Inter-Governmental Power Struggle, Judicial Restraint and Regulatory Capture

Lahore Development Authority v Ms. Imrana Tiwana
2015 SCMR 1739

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Introduction

The Constitution of Pakistan 1973 ('Constitution') does not contain provisions on fundamental rights or principles of state policy explicitly targeting the protection of the environment.¹ Yet the Supreme Court of Pakistan ('SC') has traditionally found interesting and novel ways to extend constitutional protections to the environment. It thus came as a surprise that the recent judgment of the SC in the *Lahore Development Authority v Ms. Imrana Tiwana*² case, more popularly known as the Signal Free Corridor case, did not follow the same vein of constitutional creativity, and chose to defer to the rhetoric of development and economic progress when faced with a policy matter involving the environment. Nonetheless, the judgment broaches many important issues related to the structure and configuration of environmental laws in Pakistan and their enforcement in light of the Eighteenth Amendment, and merit analysis.

This case note will first introduce the facts and ruling issued by the Lahore High Court, followed by an account of how the SC overturned the decision. Next an analysis of three major issues covered by the SC judgment will be undertaken. The issues will mainly be analyzed in light of the ambiguities and gaps in legislation post the Eighteenth Amendment and how that has caused complications with respect to the implementation of environmental laws in Pakistan. Lastly, a conclusion will be formulated to sum up the implications of the SC judgment.

Facts and the Procedural History

The Signal Free Corridor Project, situated in Lahore, aimed to remodel and redesign roads starting from Qurtaba Chowk till the end of Liberty Market Main Chowk, stretching over a total of seven kilometers of the existing Jail Road and Main Boulevard. The object was to convert it into a signal free high-speed expressway at a cost of Rs. 1.5 billion.³ The remodeling would include the construction of two underpasses, seven U-turns and five overhead bridges on the Jail Road.⁴

The authority of the Provincial Government to undertake the project was challenged before the Lahore High Court in its writ jurisdiction under Article 199 of the Constitution.

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¹ Dr. Parvez Hassan, *Environmental Jurisprudence from Pakistan: Some Lessons for the SAARC Region* (1st edn, 2012) <http://www.iucn.org/sites/dev/files/import/downloads/pk_1_environmental_jurisprudence_from_pakistan_some_lessons_for_the_saarc_region_d.pdf> accessed 29 June 2016.

² 2015 SCMR 1739.

³ Ibid.

⁴ Ibid.

The petitioner challenged the project for the following reasons. Firstly, the petitioners contended that the Lahore Development Authority ('LDA') initiated the project without waiting for the approval of the Environmental Impact Assessment ('EIA') by the Provincial Environmental Protection Agency ('EPA'). This was a violation of Section 12(1) of the Punjab Environmental Protection Act 1997.⁵ Secondly, the petitioners questioned the dubious nature of the EPA as an autonomous institution. The EPA was functioning as an attached department of the government, which *prima facie* made the EPA open to interference with its duty to work for the welfare of the public from the government. Thirdly, the petitioners also contended that the LDA, being a provincial agency, had no constitutional authority to initiate this project in light of Article 140A of the Constitution of Pakistan.⁶ Lastly, the petitioners were not satisfied with the quality of the EIA submitted by the LDA.

The Lahore High Court granted restraining orders to stop work on the project and the EPA was directed to complete the EIA review process and present it to the Lahore High Court by 20 March 2015. The Lahore High Court refused to examine issues regarding the flaws or the rationale behind the project. Rather, the Lahore High Court was keen towards addressing the constitutional issues regarding the petition.

In the hearing on 20 March 2015, the Government of Punjab and the LDA insisted that since the project had been approved by the EPA, the restraining order should be vacated. The Lahore High Court, however, instructed the EPA to submit the entire record forming the basis of the EIA approval. The full bench of the Lahore High Court struck down Sections 6, 13, 13A, 14, 15, 16, 18, 20, 23, 24, 28, 34A, 34B, 35, 38 and 46 of the Lahore Development Authority Act 1975 ('LDA Act') as *ultra vires* the Objectives Resolution, Articles 2A, 4, 9, 14, 17 and 25 of the Constitution and as offensive to Articles 32, 37(i) and 140A of the Constitution.⁷ The project was stopped and the National Accountability Bureau ('NAB') was directed to initiate an inquiry against the Director General ('DG'), LDA and DG, EPA.

Supreme Court's Reasoning

An appeal was filed before the SC by the LDA based on the following reasons. The Appellants (LDA) argued that the Lahore High Court should not have interceded into the

⁵ Section 12(1): No proponent of a project shall commence construction or operation unless he has filed with the [Provincial Agency] an initial environmental examination or where the project is likely to cause an adverse environmental effect, an environmental impact assessment, and has obtained from the [Provincial Agency] approval in respect thereof.

⁶ Article 140A states that, 'Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments'.

⁷ *Ibid.* According to Article 2A, the provisions of the Objectives Resolution form a substantive part of the Constitution; Article 4 states that, every individual has the inalienable right to be treated in accordance with law and enjoy the protection of law; Article 9 states that, no person shall be deprived of life or liberty, save in accordance with law; Article 14 states that, the dignity of man and, subject to law, the privacy of home, shall be inviolable. No person shall be subjected to torture for the purpose of extracting evidence; Article 17 broadly states that, all citizens shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality; Article 25 broadly states that, all citizens are equal before the law and are entitled to equal protection of law; Article 32 states that, the State shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women; Article 37(i) broadly states that states that, the State shall, decentralize the Government administration to increase efficiency in business and meet the convenience and requirements of the public.

matter when there was an alternative remedy available to the petitioners. Secondly, the Lahore High Court under writ jurisdiction should have avoided striking down provisions of the LDA Act by exercising judicial restraint. Thirdly, the appellants contended that the Provincial Government cannot completely be denuded of its powers under Article 140A of the Constitution and still holds legislative and executive powers. Fourthly, the appellants believed that the EPA was wrongfully accused of being subject to regulatory capture. Lastly, the appellants argued that since the Local Government elections had not been held, the LDA had the rightful authority to initiate the project and fill the vacuum. The SC overturned the Lahore High Court judgment and allowed the construction of the project. There were several grounds on which the SC overruled the judgment of the Lahore High Court.

Firstly, the SC ruled that the Lahore High Court had erred in finding that certain provisions of the LDA Act were unconstitutional. The SC held that the Principles of Policy, the Objectives Resolution, and Article 2A of the Constitution, either on their own or read together, cannot be used to strike down laws.⁸ The SC was of the opinion that Articles 140A and 137 of the Constitution have to be construed harmoniously and neither can trump the other.⁹

On the issue of whether the Punjab Government still has the power to amend the law after it has devolved certain functions to the Local Government, the SC stated that it does and refused to accept the interpretation that devolution had caused the Provincial Government to lose its constitutional power to amend the law. It reasoned that Local Governments cannot work to the exclusion of the Provincial Government. It further clarified that the Provincial Government will be in contravention of Article 140A of the Constitution if it acted in a way that would curtail the powers given to the Local Government.¹⁰

The SC further stated that although the courts are defenders of the Constitution, the act of striking down laws has to be executed with a great deal of caution and a law must not be struck down unless no alternative interpretation is available that can harmonize the statute with the provisions of the Constitution in accordance with the principle of '*ut res magis valeat quam pereat*.'¹¹ No conscious effort was made by the Lahore High Court to put the provisions of the LDA Act next to the fundamental rights and see how and why the two cannot be read in harmony.¹² The judgment does not exactly clarify how Article 9 (Right to Life) and Article 14 (Dignity of Man) are being violated by the provisions of the LDA Act. Since this condition was not satisfied, the Lahore High Court erred in striking down the specific provisions of the LDA Act.

Simultaneously, the SC was mindful of the fact that Section 46 of the LDA Act gave an overriding effect to the functions of the Local Government stated in the Punjab Local

⁸ Ibid.

⁹ Ibid. Article 137 states that, subject to the Constitution, the executive authority of the Province shall extend to matters with respect to which the Provincial Assembly has power to make laws: Provided that, in any matter with respect to which both [Majlis-e-Shoora (Parliament)] and the Provincial Assembly of a Province shall be subject to, and limited by, the executive authority expressly conferred by the Constitution or by law made by [Majlis-e-Shoora (Parliament)] upon the federal government or authorities thereof.

¹⁰ (n 2).

¹¹ 'An interpretation that validates outweighs one that invalidates.' Ibid.

¹² Ibid 23.

Government Act 2013 ('PLGA').¹³ This would create an obstruction to the smooth running of Local Government functions. In order to tackle this issue, the SC stated that Section 46 of the LDA Act is an 'enabling provision' and will be used to assist and support the Local Government in carrying out its functions. The Provincial Government was also allowed to take the initiative when there was a question of public interest. It was thus decided that Section 46 of the LDA Act will only have overriding effects in case of a conflict between the LDA Act and the Local Government statute.

The SC also took cognizance of the vacuum created by the delay in elections of the Local Government and the role that the Provincial Government played at this time; an issue the Lahore High Court had failed to address. The SC pointed out that all duties and projects cannot be held at a standstill while waiting for the elections to take place, and thus the LDA was correct in assuming authority to carry out the project and filling the vacuum.

Lastly, the SC addressed the issue of regulatory capture and whether the Lahore High Court was right in deciding that the EPA is meant to function as an independent statutory regulator. The SC pointed out that merely because a government official was running the department did not indicate impartiality or negligence in executing its duties in conformity with the legislative intent. Furthermore, the person working for the department was in charge of introducing meaningful standards and structure for the execution of his duties to eliminate the possibility of corruption. According to the Lahore High Court, the Provincial Government was in violation of Section 5(6) of the Punjab Environmental Protection Act 1997.¹⁴ According to this section, an Advisory Committee comprising of eminent experts had to be made to assist the EPA in evaluating the environmental consequences of projects, a rule which had not been observed. The SC, unlike the Lahore High Court, did not strike down the EIA based on the violation of this statutory duty. The SC decided against it because the rules of the EPA explicitly stated that rebuilding and reconstruction of roads did not require an EIA. However, whether this project was just 'rebuilding or reconstruction' under the meaning of the EPA is debatable.

In light of these observations, the SC overturned the decision of the Lahore High Court and allowed the Punjab Government to continue the construction of the signal free corridor.

Analysis

This case note will now analyze three pertinent issues raised by the SC. The first issue deals with understanding the complex role of the Local Government and the Provincial Government under the Constitution. The second issue looks at the theory of judicial restraint, in light of which, the decision of the Lahore High Court to strike down provisions of the LDA Act will be examined. The final issue explicates upon the questionable nature of the

¹³ Section 46 of LDA Act 1975: [Act to prevail over other laws] – In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any other law, the provisions of this Act shall, to the extent of such conflict or inconsistency, prevail particularly in matters of master plan, land use and housing functions.

¹⁴ Section 5(6) of Punjab Environmental Protection Act 1997: For assisting the [Provincial Agency] in the discharge of its functions, the [Government] shall establish Advisory Committees for various sectors, and appoint as members thereof eminent representatives of the relevant sector, educational institutions, research institutes and non-governmental organizations.

EPA and whether it was the victim to regulatory capture, thus failing to carry out its duties honestly.

The first issue under analysis deals with the power struggle between the Local Government and a powerful development authority, and whether both these bodies can co-exist (if at all) under the Constitution. In the opinion of the Lahore High Court, the Provincial Government had usurped the role of the Local Government through the LDA Act, which is in contravention of Article 140A of the Constitution. The Lahore High Court was of the view that power sharing between the Provincial and the Local Governments was impermissible as it went against the essence of Article 140A of the Constitution.

Two important points need to be considered under this issue. Mr. Salman Akram Raja (Advocate Supreme Court) stated that it was impossible for one type of executive authority (LDA) to carry out functions of another authority just because there was a vacuum.¹⁵ The judgment of the Lahore High Court concurred with his statement. However, the SC opined that the 'law abhors a vacuum.'¹⁶ It further held that functions under the domain of the Local Government cannot be halted till the Local Government elections are held. This could be catastrophic for the successful execution of multiple affairs in the country. This rationale of the SC can also be seen in the current situation of the Employee Old Age Benefits institution ('EOBI') in the country. Post the Eighteenth Amendment, the EOBI has been a contentious issue. The power struggle here is between the Federal and the Provincial Governments, but the nature of the contention remains the same. After the Eighteenth Amendment, the Labour Ministry including the EOBI was devolved to the provinces. However, the EOBI worked under a central fund catering to pensions in all four provinces including those of migrant workers. The devolution led to complications, with provinces like Balochistan not having enough funds to cater to the pension holders. Questions began to arise regarding the sustainability of the EOBI. However, the matter is still pending before the SC and the EOBI continues to function under the federal control. Simultaneously, it is important that while the Local Government elections have not been held, the developmental works can be assumed by the LDA to ensure effective execution of the executive functions in the country. Alternatively, the SC should have emphasized on the importance of fast tracking the local body electoral process, making the above rationale an exception rather than the rule. The SC has previously done this in *Raja Rab Nawaz v The Federation of Pakistan*,¹⁷ where permission for delay in the Local Cantonment Board elections was requested. The SC, while allowing the delay, emphasized that it was imperative that the Provincial Governments and the administration of Islamabad make all necessary arrangements to hold the local body elections at their earliest in accordance with the law.

Moreover, the polarized approach of both the courts in addressing the issue at hand is noteworthy. The Lahore High Court took an approach that embodied a more formalist reading of the law and showed an inclination towards a specific kind of public policy. Justice Mansoor Ali Shah's court appeared more sympathetic to the environmental cause. Justice Shah has been a pioneer of environmental rights and has done considerable work on this cause in the past. Keeping in mind this sensitive approach to the environmental cause, Justice Shah's court adopted a literalist interpretation of the law. He concluded that the purpose

¹⁵ (n 2).

¹⁶ Ibid [83].

¹⁷ *Raja Rab Nawaz v The Federation of Pakistan*, 2014 SCMR 101.

behind the Eighteenth Amendment was to empower the Local Governments to cater to issues that are more likely to affect the local people. The intention behind this was that local people could partake in issues that affect them deeply and be a part of the process. At an early stage of the Eighteenth Amendment in sway, Justice Shah's court advocated in favour of the devolution process by disallowing the Provincial Government to play a part in the Local Government's matters. This was a significant step, whereby he set aside procedural complications to remain true to the essence of Article 140A of the Constitution.

However, the SC adopted a rather pragmatic approach in interpreting the Eighteenth Amendment. A pragmatic approach is geared at evaluating theories and notions on the basis of their successful practical application.¹⁸ Legal Pragmatism has been an essential part of the SC's jurisprudence in the United States and we see it playing an important role in our courts as well.¹⁹ The SC interpreted the law from a seemingly *ex ante* perspective, being more concerned with the implications of the judgment on future projects and ultimately the impact on the growth of Pakistan's development industry. Moreover, the SC noted that clearly outlining duties and functions for both the Local Government and the Provincial Government will freeze growth and slow down progress. This approach, however, failed to address ambiguities in the demarcation of duties between the Provincial Government and the Local Government as to how future disputes shall be sorted and the role of the legislature in addressing these concerns. An effective environmental protection law is dependent upon two cardinal factors: the comprehensiveness of the legislation that covers these laws, and the creation of a uniform protection regime for the entire country.²⁰ The SC observed that clearly demarcating the duties for both these institutions is an idea devoid of progression. Instead, environmental issues should be ascertained and dealt with on a case-by-case basis through constructive political dialogue between both the Provincial and the Local Governments. However, this can be problematic. A renowned columnist and environmental law activist, Ahmed Rafay Alam, aptly pointed out that '[g]rey areas in the law are never a good thing, unless you're a lawyer. Most environmental enforcement action winds up in court and, as a result, never really get resolved.'²¹ Hence, certainty is a precondition for an effective environmental protection law.

The next issue under consideration is whether the Lahore High Court was correct in striking down the provisions of the LDA Act. There is significant overlap between the functions of the Municipal Corporations of the LDA under the LDA Act and those outlined under Section 87 of the PLGA 2013. Section 46 of the LDA Act gives an overriding effect to the Local Government Authority under the PLGA 2013.²² Since this section could potentially disrupt the Local Government Authority functions, the Lahore High Court struck down

¹⁸ The Merriam-Webster dictionary defines pragmatism as 'a practical approach to problems and affairs.'

¹⁹ Mark S. Kende, 'Constitutional Pragmatism, the Supreme Court and Democratic Revolution' (2012) 84 *Denver University Law Review* 635.

²⁰ Firuza Pastakia, 'Environmental Protection and The Eighteenth Amendment' (National Impact Assessment Programme 2012) available at http://cmsdata.iucn.org/downloads/pk_niap_impact_of_18th_amd_final_draft_19_may_2012_formatted.pdf accessed 24 May 2017.

²¹ Ahmad Rafay Alam, 'Environment and the Eighteenth Amendment' *The Express Tribune* (23 March 2010).

²² Section 46 of the LDA Act 1975: In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any other law, the provisions of this Act shall, to the extent of such conflict or inconsistency, prevail particularly in matters of master plan, land use and housing functions.

Sections 6, 13, 13A, 14, 15, 16, 18, 20, 23, 24, 28, 34A, 34B, 35, 38 and 46 of the LDA Act in light of the fundamental rights enshrined in the Constitution and Article 140A.²³

The SC, in the judgment under consideration, decided that this measure was unnecessary on the part of the Lahore High Court as it goes against the doctrine of judicial restraint. Judicial restraint compels judges to limit the exercise of their power. The aim is for judges to exercise caution while striking down existing legislation and only strike down laws when a harmonious reading or interpretation of a statute is not possible. This point was emphasized in *Benazir Bhutto v Federation of Pakistan*,²⁴ in which it was held that if a statute was not *ex facie* repugnant to Fundamental Rights, it could not be struck down until and unless it was demonstrated that it was being administered in contravention of the law. However, this has not always been the case. In *OGRA through Secretary v Messrs Midway II, CNG Station and others* the SC decided that the courts should exercise judicial restraint in matters pertaining to government policy except when there is a question of public importance or violation of fundamental rights.²⁵ In *Ms. Shehla Zia v Wapda*,²⁶ the SC adopted an expansive interpretation of fundamental rights to declare the actions of a governmental body unconstitutional. The SC, in this landmark judgment, decided that actions of a governmental body that result in environmental degradation and affect the quality (and right) to life are unconstitutional. Thereby, exhibiting that the court does not necessarily exercise restraint when the question pertains to fundamental rights. The SC's judgment in *Shehla Zia* evolved the country's jurisprudence by broadly construing a citizen's right to life to include the right to a healthy environment. However, the SC's judgment in the Signal Free Corridor case is regressive insofar as it narrowly construes the right to life. Environmental concerns are being expressed throughout the world and are construed as an important element of the right to life. The SC's reasoning in this case is defying precedent set out in the past. In reference to this, the leading newspaper of Pakistan, the Friday Times, has also accused the SC of being politically motivated. Its editors argued that in strictly construing the application of fundamental rights, the SC seems to have based its reasoning on political considerations rather than on 'a bona fide and appropriate legal interpretation' of public importance and fundamental rights.²⁷

The last point under consideration deals with the issue of regulatory capture and the violation of Section 5(6) of the Pakistan Environmental Protection Act 1997. This section envisages the creation of an advisory body, comprising of eminent experts, to aid the provincial EPA in preparing the EIA. The Provincial Government, however, formed an obscure 'Review Committee' consisting of members of the government rather than appointing autonomous and independent members to the advisory committee. The government's action defeated the very purpose of the law, which is to devise an inclusive procedure for approval of the development projects, whereby independent experts may identify potential repercussions emanating from such projects. The SC, in dispensing with this requirement, sets a disconcerting precedent, whereby governments may flout the law and appoint their own members to bodies that rubber stamp all government actions, regardless of the irregularities therein.

²³ (n 2).

²⁴ 1991 MLD 2622 at 2638-39.

²⁵ 2014 SCMR 220.

²⁶ *Ms. Shehla Zia v WAPDA* PLD 1994 SC 693.

²⁷ Editors 'Legal Interpretation of Public And Fundamental Rights' *The Friday Times* (13 December 2013).

There have been many instances where the superior courts have appointed Commissions to report on the impact a project would have on the environment for honest discharge of the law. In *City District Government v Muhammad Yousaf*,²⁸ the Lahore High Court Division Bench created a Solid Waste Management Commission to look after solid waste disposal issues and to give recommendations regarding the appropriate method of disposal of solid waste in Lahore.²⁹ Here, the SC allowed the EIA even though an advisory committee had not been formed, which was a statutory violation. The decision of the SC seems unconvincing. It would have been appropriate for the SC to appoint a Judicial Commission to investigate and re-evaluate the transparency of the EIA review process and prove to the stakeholders and the general public that they made a valid decision. The essence of the democratic process is self-rule and greater participation of the people being ruled. The impugned judgment of the Lahore High Court reiterated that the spirit behind the devolution process under the Eighteenth Amendment was for greater participation of the people at grass root level. The judgment states, ‘The amendments represent measures for decentralization of power and greater participation of people in self-rule. It decentralizes decision-making power from top to bottom in order to strengthen democracy at the grass-root level.’³⁰ According to the rules of procedure after completion of the review of the EIA, it has to be open for public participation. All stakeholders can provide valuable comments regarding their satisfaction of the EIA conducted. However, as pointed out in the Lahore High Court judgment, the EIA did not incorporate any of the public concerns and the exercise was fraudulent in nature. While the Lahore High Court prudently addressed this issue, the SC seems to have overlooked it. It is unfortunate that the public voice has not been given importance here. The entire agenda behind the devolution process has been marred by ignoring the opinion of the public. It has destroyed the essence of democracy: public participation.

Moreover, all the functions of the EPA are wholly to be executed by the DG under Section 5(4) of the Act. The *Lahore Canal Bank Road case*³¹ is indicative of the fact that the DG is not enough to efficiently execute the duties that form part of the EPA. In this case, as the project was opposed by the green lobby, the SC while appointing Dr. Parvez Hassan as the mediator, also appointed a commission with a diverse pool of environmentalists, botanists, traffic engineers, city planners and parliamentarians to carefully look into the credentials of the project.³² The above-mentioned decision of the SC is illustrative of the honesty and prudence performed by it pertaining to environmental litigations. However, here the SC may have erred in defending the role of the DG as the sole representative of the EPA.

The SC’s decision to allow the project, when construed in light of the issue of regulatory capture, appears to have been politically motivated. The Lahore High Court clearly identified that the EIA was deficient and the provincial EPA failed to execute its duties because of regulatory capture. The SC defended the contention by stating that a government official running the agency is not reflective of the fact that the agency is biased in its workings. It further stated that government officials set standards to ensure they perform their duties properly. Conversely, this reasoning can also be viewed from a completely different perspective. The Lahore High Court outlined the rules providing that the DG is supposed to be the head of the agency. When correctly interpreted, it means that the

²⁸ I.C.A No. 798/2002 filed before the Lahore High Court.

²⁹ (n 1).

³⁰ *Ms. Imrana Tiwana v Province of Punjab and others*, PLD 2015 Lahore 522.

³¹ 2011 SCMR 1743.

³² (n 32).

agency needs to be composed of other members that the DG will supervise. Furthermore, the Lahore High Court judgment noted that the current DG is a civil servant and does not possess the qualifications required to fulfill his duties properly. Moreover, it is risky and ineffective for one man to run an entire institution. Without a team of experts to assist him, the DG could make incorrect and inefficient decisions. One man cannot be trusted to be true to his duties without any checks and balances on his power by other members who are independent of any association with the government.

Though the judgment is well thought out and comprehensive, the SC ought to have addressed the following points. Firstly, it should not have set aside the issue of regulatory capture, and ordered immediate reformation of the existing structure of the EPA. The agency should be composed of experts, who have diverse backgrounds, and are independent from the government. Secondly, the SC should have placed greater emphasis on the importance of the EIA review process. Although the LDA submitted the EIA for approval, it commenced work on the project before gaining approval, which downplays the importance of the EIA. The EIA is pivotal for two primary reasons. Firstly, the EIA will show a clear picture of the adverse effects of the project and will help in keeping up with the principle of sustainable development. The latter is necessary for the future generations of Pakistan and it cannot be ignored. Secondly, the EIA review process helps the public voice its concerns regarding projects.

Conclusion

The judgments of the Lahore High Court and the Supreme Court of Pakistan in *Lahore Development Authority v Ms. Imrana Tiwana*³³ are two exceedingly important judgments, which assess the interplay of the environment and its constitutionality in Pakistan. The judiciary is entrusted with the power to protect the interests of the people and uphold the law. The basic concept of the separation of powers is for the courts to keep a check on executive activities and disallow any action that is contrary to the provisions of the Constitution. In this case, it appears that the SC has gone the extra mile to justify the project. A disconcerting aspect of the judgment was the setting aside of the EIA. The latter, as declared in the Rio Summit, is one of the most important aspects of any construction project. The SC justified setting aside the EIA on the rationale that it was not important in view of the particulars of the project. This can have extremely dangerous implications in future. In order to uphold the concept of sustainable development and safeguard the future generations of this country, it is imperative to realize and understand the importance of the EIA. It is the courts which should reinforce such measures, and while the Lahore High Court made an honest effort to do so, the SC ignored it.

Furthermore, it can be inferred from the SC judgment that the Provincial Government can always find some reason to interfere with the working of the Local Government. While the SC has made an outstanding effort to clarify that the Provincial Government only exists to aid the Local Government and not usurp its role, the ground realities can be very different in the future. The judgment leaves loopholes giving the Provincial Government the right to intervene. While intervention is only for the purposes of empowering the Local Government, this power can now be easily overstepped and legitimized by the Provincial Authorities. The Lahore High Court prudently demarcated the roles of the Provincial and the Local

³³ (n 2).

Governments so that no reason would be available to the Provincial Government to take over in any circumstance. However, after the SC ruling, the Provincial Government can step in for reasons such as lack of funds or capacity, and take over the Local Government's role, which defeats the entire purpose of the devolution process.