

Legal Dimensions of Climate Change and Human Rights in Pakistan

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Abstract

Climate change was considered an environmental concern for a long time. However, recent studies and dynamics have changed this conception and now environmental issue has also been considered a human crisis. It also shifts the responsibility of being a scientific matter to the political and directly linked with human rights. Accordingly, international laws, domestic laws and jurisprudence adopted by the courts and tribunals require focus on protection of human rights due to climate change rather than protection of environment only. Recent concepts have been changed and now effects of climate change are also being considered threat to human rights by the courts, tribunals and other bodies. This change has brought serious impact on the jurisprudence of law and courts. However, lack of comprehensive legal framework for these courts and tribunals is the main hurdle in dealing with climate change and protection of human rights. For the said purpose, a robust international law framework containing guidelines for domestic climate

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protection bodies, courts and tribunals must be developed to protect the human rights of individuals as the existing legal regime seems ineffective to cater the same. This study shall examine the existing jurisprudence of courts, tribunals and climate protection bodies, and challenges faced by them. It shall endeavor to suggest basic guidelines for formulating a uniform legal system inclusive to address both issues of climate change and human rights protection for every nation in the world.

Keywords: Climate change, justice, environment, human rights, courts, tribunals.

Introduction

Although international laws have been developed to some extent to protect the environment and climate change, they do not deal with each issue of the climate justice. Courts in Pakistan and abroad have adopted a jurisprudence to protect environment directly affecting human life, giving rise to climate justice. Top of the list are the USA and Australia and they have also included it in their statutory law instead of climate change contemplations.³ So far focus of the international community is on the enjoyment of human rights at individual level and collective harm of climate change has not been paid much attention. The United Nations Office of the High Commissioner for Human Rights in 2009 also concluded that enjoyment of various human rights has been threatened by climate change though they might not be specifically violated.⁴ For the first time, reference to human rights regarding climate change was referred in Paris Agreement in 2015.⁵ Focus on protecting human

³ Adeel Mukhtar Mirza, 'Environmental Rights and Case of Climate Justice in Pakistan' *Strategic Studies* 47.

⁴ Sam Adelman, 'Human Rights in Pursuit of Climate Justice' 38(2) *Wisconsin International Law Journal* 172.

⁵ *ibid* 182.

rights in respect of climate change is also important because courts are more prone to accept rights-based approaches rather than indulging into complex issues of jurisdiction, sovereignty and immunity.⁶ Climate change litigation is also necessary as climate regime cannot provide a solid framework of adaptation, mitigation and compensation to the loss and damage sustained by various segments due to climate change.⁷

One of the major problems with climate change is that the primary responsibility of climate change is difficult to determine, so many cases go unattended. Moreover, it also happens that a country causing climate change is not affected and another country bears more effects though it might be least contributor to climate change. It has also been noticed that normally low income countries and populations are affected by climate change than the strong one.⁸ For instance, Pakistan is one of the least contributors to climate change but one of the most affected countries by it.⁹ The judiciary in Pakistan has developed a robust jurisprudence over the last three decades regarding protection of human rights especially relating to climate change and other environmental issues.¹⁰ However, courts and tribunals work without defined jurisprudence or concrete codified law. There is a need to develop a separate jurisprudence and legal system for protection of human rights due to climate change. The cases developed on climate change and climate justice shall be discussed in details in proceeding sections.

⁶ *ibid* 184.

⁷ *ibid* 188.

⁸ Audrey R. Chapman and A. Karim Ahmed, 'Climate Justice, Humans Rights, and the Case for Reparations' (2021) 23(2) *Health and Human Rights Journal* 82.

⁹ Mian Ahmad Naeem Salik and Mir Sher Baz Khetran, 'Pakistan's Push for Climate Change' (2022) Issue Brief Institute of Strategic Studies Islamabad 1.

¹⁰ Parvez Hassan, 'Judicial Commissions and Climate Justice in Pakistan' (2018) Paper presented in Asia Pacific Judicial Colloquium on Climate Change, Lahore (Pakistan) 1.

Significance

Climate change and human rights are linked in many ways but most importantly, climate change has serious implications for the satisfaction of human rights especially for the vulnerable people. Failure to consider human rights into climate action would adversely affect the status of human life and undermine their social status and life. Moreover, integrating human rights into climate change would change the status of human standards and benefit humanity and the entire planet.¹¹ However, the need is to develop a mechanism to address all these issues efficiently. The United Nations has repeatedly warned that climate change would bring serious repercussions for our future if the issue is not dealt with at this stage.¹² Therefore, issue of climate change should be addressed on urgent basis as future of our generations depends on it.

Methodology

This study requires a twofold research method to reach out desired results. On the one hand, doctrinal research methodology would help in analysis of international law instruments, domestic laws of Pakistan and various other countries and cases decided by domestic and international courts and tribunals by identifying the lacunas in protection of human rights relating to climate change. The study shall suggest viable solutions for protection of human rights due to climate change for enactment of robust international legal framework and uniform jurisprudence for domestic courts and tribunals.

Current Situation on Climate Change

The world is going through a climate emergency. Cities and towns are being adversely affected by climate change. The world also feels

¹¹ Zoi Aliozi, 'Climate Justice and Human Rights, in a World in Climate Emergency' (2021) Policy Briefs, Global Campus Europe 7.

¹² *ibid* 8.

incapacitated to deal with the issue of climate change by adopting sustainable steps and adaptation for climate change on the basis of lack of capacity to develop required projects. Development of required projects for zero emission technology, sustainable adaptation and climate resilient environment depends on financial and technical capacity, which most countries do not achieve. Internationally, many bodies are also striving to assist weak governments to achieve these goals by creating a special fund. Top of it are Transformative Actions Program, the European Investment Bank and World Bank.¹³ However, many countries still face challenges in combating climate change based on lack of resources as well as financial and technical support.

Pakistan is one of the least contributing countries to Greenhouse Gases (GHGs) emissions but one of the most affected countries by climate change. Unfortunately, Pakistan is also within the list of countries facing challenges due to climate change. Pakistan has witnessed severe weather conditions, droughts, floods, shortage of water reservoirs, shortage of agricultural production and vulnerability of biodiversity. Mitigation and adaptation are the two main tools to combat climate change. The world is pressing for mitigation to combat the current challenges. On the same analogy, Pakistan also needs steps taken for mitigation particularly in agriculture, forestry, transport and energy to cope up its vulnerability towards climate change.¹⁴ Pakistan is also facing challenges of drought seasons, unexpected variable shortfalls and these events make the country more vulnerable because major portion of agricultural land depends on monsoon season. Melting glaciers also contribute adversely towards water reservoirs and it is also a threat for future crisis on water and energy. Keeping in view

¹³ ICLEI, Local Governments for Sustainability, *Daring Cities: Compendium of Good Practices* (Bonn, 2023), 8-9.

¹⁴ CLIMATE CHANGE, available at https://www.finance.gov.pk/survey/chapters_23/17_Climate_Change.pdf, last accessed on 24.05.2024.

the same, Pakistan adopted and implemented National Climate Change Policy (NCCP) in 2012. The main focus of this policy was on climate resilient development and adaptation and a ‘National Adaptation Plan’ was implemented to achieve these goals. However, Paris Agreement was executed in 2015 and after becoming party to it, Pakistan has also committed to contribute towards worldwide efforts on global emissions reduction. Thereafter, Pakistan updated its policy and a new policy was formulated in 2021 that included adaptation as well as mitigation focusing on nature based solutions to combat climate change. NCCP of 2021 included several initiatives including that of “Ten Billion Tree Tsunami Programme, which was introduced in addition to the Prime Minister’s ‘Urban Forest Project’, Clean Green Pakistan Movement and Protected Areas and National Park Initiatives”. The policy primarily focuses on expanding protected areas and restoring the eco system. The target was to expand 15% area of the country as protected area. For restoration of eco system ‘Eco system Restoration Initiative (ESRI)’ was introduced to make the country climate resilient based on adaptation and mitigation.¹⁵

As already discussed, Pakistan is though lowest contributor to GHG but the most vulnerable country by climate change. Pakistan, a developing country, also lacks technical and financial capacity to cope with climate change. Therefore, the main focus was on adaptation and preferably through nature-based solutions to meet food, energy and water crises. Pakistan also needs to implement a comprehensive, robust and conducive strategy to save the country from disasters of drought, floods and severe weather conditions as

¹⁵ Government of Pakistan: Ministry of Climate Change, National Climate Change Policy, 2021, 3-4, available at <https://mocc.gov.pk/SiteImage/Policy/NCCP%20Report.pdf>, last accessed on 24.05.2024.

these are closely and directly linked with human life, health, security and economy.¹⁶

Applicable Legal Regime

Primarily, there are two sets of legislations applicable in the context i.e. international legislation and domestic legislation of each country including Pakistan. International legal regime on climate change is a product of international law developed over time, but most importantly after the establishment of the United Nations Organization (UNO). Thereafter, many bilateral, regional and multilateral treaties were concluded. The United Nations Conference on the Human Environment, adopted in Stockholm, Sweden, in 1972 was reaffirmed by the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, Brazil. The later stressed upon creation of new levels of cooperation between the states, different bodies and organizations and people. The Declaration proclaims that human beings are the main concern of human development and are entitled to healthy and productive life in a natural environment. To achieve these goals ‘the UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol’ are the main treaties concluded at international level. UNFCCC was adopted in 1992 primarily protecting climate from dangerous human interference. Whereas, Kyoto Protocol was enforced on 16 February 2005 for the first time. UNFCCC provides only a general framework to combat climate change. The main objective of the Convention has been provided in its Article of 2 which provides that:

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with

¹⁶ Government of Pakistan: Ministry of Climate Change, National Climate Change Policy, 2021, 3-4, available at <https://mocc.gov.pk/SiteImage/Policy/NCCP%20Report.pdf>, last accessed on 24.05.2024.

the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.¹⁷

In accordance with this objective, the UNFCCC focuses two main areas to address the issue of climate change i.e. mitigation and integration. Conference of Parties (COP) is a body established under UNFCCC to ensure the implementation of the main objectives of the Convention by further amending it or Kyoto Protocol or by adopting any other instrument which either supplements or replaces Kyoto Protocol. After enforcement of Kyoto Protocol, the Bali Road Map emerged in consequence of Bali Climate Change Conference of 2007 (COP 13) which included Bali Action Plan based on which “comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action” was launched. Number of other decisions and resolutions were also adopted. After that, Copenhagen Accord was also reached through decisions made during the UNFCCC Conference of the Parties, in Copenhagen on 18 December 2009 (COP 15). Further, during the United Nations Climate Change Conference held in Cancun, Mexico in 2010 (COP 16), number of other agreements were also adopted based on Bali Road Map and Copenhagen Accord.¹⁸

¹⁷ Article 2 of UNFCCC.

¹⁸ Oliver C. Ruppel, “Intersections of Law and Cooperative Global Climate Governance— Challenges in the Anthropocene”, available at https://www.nomos-elibrary.de/10.5771/9783845242781_27.pdf?download_full_pdf=1, last accessed on 18.05.2024.

Climate change has been considered a threat to human life. In this regard, ‘Inter Governmental Panel on Climate Change (IPCC)’ published its report in 2023, highlighting the emergency for a response to climate change, emphasizing an international climate action. It also stated that being a threat to human life and planetary natural environment, appropriate action is needed. All the steps taken in this decade would have consequences for thousands of years. It was also reiterated that previous policy would not suffice to save the human life and planet of earth from the climate change disaster. The Supreme Court of Hawaii adopted the same concept in 2023 by declaring that “yesterday’s good enough has become today’s unacceptable”.¹⁹

Various international legal instruments deal with the issue of climate change. Some have been signed and ratified by the parties and others have not. Moreover, a few have been signed and ratified, but all the provisions contained in those might not be binding. However, every provision and direction or recommendation contained in these instruments is of immense value in one way or the other. For instance, the Paris Agreement has been signed by the parties to it, but there is limited number of legally binding obligations. On the other hand, that does not mean that these obligations are of no value or should not be included in it, rather obligations that are not otherwise binding also hold importance. Some of these obligations might attain the status of preemptory norms at some point of time. As the Agreement contains obligations with regard to exercise of due diligence to maintain and enhance climate goals as well as to cooperate at international level in meaningful and transparent manner, therefore these are the obligations that can be connected

¹⁹ Marcel BRUS, André DE HOOGH, Panos MERKOURIS, The Normative Status of Climate Change Obligations under International Law, Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies, 2023, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/749395/IPOL_STU\(2023\)749395_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/749395/IPOL_STU(2023)749395_EN.pdf), last accessed 20.05.2024.

with the obligations of general international law binding to protect human life and environment or to cooperate at international level. Some other obligations, though not binding in a strict sense, but are important to achieve the desired goals. For instance, requirement under the Paris Agreement to maintain the temperature at certain level is not a legally binding obligation, but is essential for compliance of other obligations for climate protection.²⁰

Besides the existing international legal framework of UNFCCC and Paris Agreement, Conference of the Parties is held on regular basis to discuss the main issues of climate change. In 2010, the United Nations Climate Change Conference (COP 16) was held in Cancun, Mexico and among others. Key issues discussed in COP 16 resulted into Cancun Agreements one executed under Kyoto Protocol Track and the other one under Ad Hoc Working Group on Long-term Cooperative Action Track (LCA). The agreements emphasized over addressing the key issues of climate change on the basis of hybrid model at international and domestic levels. The agreements also considered developing countries' issues such as climate change while simultaneously pursuing sustainable development goals.²¹

Thereafter, the Kyoto Protocol in Doha was amended, bringing two significant changes in the earlier commitments. Firstly, it set new quantified emission limitation or reduction targets for the parties listed in Annex B and the former Annex B was replaced accordingly. Secondly, the new commitment period was settled from 1st of January 2013 and ending in the year 2020. The parties agreed over reduction of GHG emissions at least by 18% below 1990 levels

²⁰ Marcel BRUS, André DE HOOGH, Panos MERKOURIS, *The Normative Status of Climate Change Obligations under International Law*, Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, 2023, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/749395/IPOL_S_TU\(2023\)749395_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/749395/IPOL_S_TU(2023)749395_EN.pdf), last accessed 20.05.2024.

²¹ Asian Development Bank, *Climate Change, Coming Soon to a Court Near you International Climate Change Legal Framework* (Manila: Asian Development Bank, 2010), 22.

during the second commitment period. Doha Amendment also amended Annex A by adding Nitrogen trifluoride in the list of GHGs.²²

In COP 21, an Agreement within the framework of UNFCCC was negotiated and adopted on 12 December 2015 and came into force on 4 November 2016. The Agreement was widely appreciated and adopted; currently there are 195 parties to this Agreement out of 198 to the Convention.²³ For entry into force of this Agreement, two main conditions were prescribed: “(i) at least 55 parties had deposited their instruments of ratification, acceptance, approval or accession; and (ii) these parties accounted in total for at least an estimated 55% of the total global GHG emissions”. Both these conditions were met within one year of the date fixed and acceptance of this Agreement by developing and developed countries is a commended action showing commitment of the parties towards climate action. The Agreement does not permit any reservation towards the obligations contained in it both that are binding or not binding.²⁴

Judicial Response

Judicial response concerning climate change always remained crucial. Although jurisprudence on climate justice is primarily developed internationally, but contributions of national courts towards implementation of international obligations is also equally important. Several countries have given judicial response towards implementation of international obligations. For instance, in ‘*Urgenda v. The State of the Netherlands*’, Hague District Court

²² Asian Development Bank, *Climate Change, Coming Soon to a Court Near you International Climate Change Legal Framework* (Manila: Asian Development Bank, 2010), 26.

²³ Available at <https://unfccc.int/process/the-paris-agreement/status-of-ratification>, last accessed on 23.05.2024.

²⁴ Asian Development Bank, *Climate Change, Coming Soon to a Court Near you International Climate Change Legal Framework* (Manila: Asian Development Bank, 2010), 27.

requested the Dutch Government to take concrete and rigorous steps to implement international obligations.²⁵ However, the Court did not base its decision on protection of human rights of its citizens rather the main focus was on the obligations outlined in international conventions and treaties. Another famous case of USA jurisdiction is the case of ‘*Massachusetts v. Environmental Protection Agency*’. In this case, the petitioners required Environment Protection Agency (EPA) to regulate emissions of GHGs. It was held by the court that “given EPA’s failure to dispute the existence of a causal connection between manmade greenhouse gas emissions and global warming, its refusal to regulate such emissions, at a minimum, “contributes” to Massachusetts’ injuries”.²⁶ Whereas, in some other cases, courts have been proven to be putting constraints on the powers of implementing bodies on climate change issues. For instance, in ‘*West Virginia v. Environmental Protection Agency (EPA)*’, the US Supreme Court ruled by majority of 6:3 that the project of Clean Power Plan, introduced in the tenure of Barak Obama was beyond the mandate of EPA.²⁷ Many other cases have also been reported worldwide on climate change and mostly from the jurisdictions of USA and Australia, but currently both countries have resorted to statutory law instead of judicial decisions.

Coming to Pakistan, for the first time in its history, issue of environment was dealt with and was interpreted while linking the same with human rights in *Shehla Zia v WAPDA*. In this case, the petitioners challenged the construction of a grid station due to its hazardous effects on the people of locality. The Court did not give any definite ruling on the pending construction of the grid station, but directed to formulate a clear policy for establishing new grid stations considering the environmental aspects.

²⁵ *Stitching Urgenda v. Government of the Netherlands (Ministry of Infrastructure and the Environment)*, HDC, Para, 4.52.

²⁶ *Massachusetts v. Environmental Protection Agency (EPA)*, 549 U.S. 497 (2007).

²⁷ *West Virginia v. Environmental Protection Agency*, 597 U.S. 697 (2022).

Furthermore, the Court interpreted the right to a healthy environment included in the right to life and right to dignity as contained in Article 9 and 14 of the Constitution of Pakistan (Constitution) respectively.²⁸

In another important case, Supreme Court of Pakistan upheld the notification barring installation of new cement plants in fragile areas which the court termed as ‘negative areas’. The petitioner challenged the said notification of the government because the same was arbitrary in nature and violated the right to free trade and business as contemplated under Article 18 of the Constitution. Upon a report, the Court rejected the claims that any further installation of plants would cause depletion of groundwater and damage the natural environment. The Court also observed that “[m]an and his environment each need to compromise for the better of both and this peaceful co-existence requires that the law treats environmental objects as holders of legal rights”. The court while appreciating the step taken by the government observed that “[o]nly by devising and implementing appropriate adaptation measures will it be possible to ensure water, food and energy security for the country . . . The Notification, in the current facts of the case, is a climate resilient measure and in step with the National Climate Change Policy and the Constitution”.²⁹

For the first time, Lahore High Court dealt with climate change in *Asghar Leghari v Federation of Pakistan, etc.*³⁰ In this case, the petitioner, through public interest litigation, challenged the recklessness of the Federal Government to take necessary steps regarding ‘National Climate Change Policy, 2012 and the Framework for Implementation of Climate Change Policy (2014-2030)’. The petitioner further urged that climate change is a threat to water, energy and security of Pakistan and violates fundamental

²⁸ *Shehla Zia v WAPDA*, PLD 1994 SC 693.

²⁹ *D. G. Khan Cement Company v. Government of Punjab*, 2021 SCMR 834.

³⁰ *Asghar Leghari v Federation of Pakistan etc.*, 2018 CLD 424.

rights and particularly right to life as contained in Article 9 of the Constitution of Pakistan. The Court held that lethargic attitude and failure of the government to implement above-mentioned policy and framework is violation of fundamental rights guaranteed under the constitution of Pakistan. The Court further held that these rights included in the right to clean and healthy environment. The Court viewed “the delay and lethargy of the State in implementing the Framework offend the fundamental rights of the citizens”. The Court further observed that despite introducing National Climate Change Policy and Framework for Implementation of Climate Change Policy, no serious steps have been taken to implement the same. The Court in this regard constituted a Commission to oversee the progress of the Government. In the report submitted by the Commission, the Court observed that during the period between September 2015 to January 2017, 66% of the action plan items were implemented. In order to look for continuous compliance, the Court constituted a standing committee to report the progress of the action plan and create a bridge between the executive and judiciary. Another important aspect observed by the Court was that it made a distinction between environmental justice and climate justice and concluded that environmental justice deals with the enforcement of national laws in line with international principles, but climate justice is concerned with humanity and every issue of climate is seen in connection with human rights.³¹

In another case before Lahore High Court, the petitioners, being members of civil society approached the Court seeking issuance of writ of mandamus against the government of Punjab to implement the Forest Act, 1927 and the Punjab Plantation and Maintenance of Trees Act, 1974 alleging failure of the provincial government to do so. The petitioners further sought plantation of trees in urban cities citing failure on the part of government to do so in violation of the right to life as contained in Article 9 of the Constitution, right to

³¹ Ibid.

dignity as contained in Article 14, right to access to public places of entertainment as mentioned in Article 26 and right to leisure places under Article 38 of the Constitution of Pakistan. The Court allowed the petition and issued the writ directing the provincial government to plant, manage and protect trees and forests in consonance with relevant laws and policies and to enforce the penalties upon deforestation and depletion of natural forests and environment.³²

In another case, a coalition of women filed a case against the government because failure and inaction of the government to provide clean and healthy environment violated their fundamental rights including equality before the law and principle of non-discrimination. They further alleged that various rights including the right to life were being violated and government also failed to take necessary steps for alternate renewable energy resources. It was further urged that this kind of failure by the government also violates the Paris Agreement and the government must be directed to enforce and implement the same in letter and spirit. In its initial order, the Court observed that apart from adaptation measures contemplated in UNFCCC, mitigation should also be adopted in compliance with the Paris Agreement provisions.³³ However, the final decision of the case is still awaited.

In another case, a seven years old young girl Rabab Ali filed a petition before the Apex Court of Pakistan through her father seeking enforcement of fundamental rights particularly due to issues arising in the province of Sindh. The petitioner has challenged many actions and inactions of the government, particularly regarding the coal industry, contending that the same is a threat for the life and liberty of people and those working in the industry specifically. She also contended that alternate renewable energy measures should be utilized and if the government fails to do so, the same amounts to the violation of obligations contained in the UNFCCC and Paris

³² Sheikh Asim Farooq v. Federation of Pakistan, W.P. No. 192069 of 2018.

³³ Maria Khan v Federation of Pakistan (W.P. No. 8960 of 2019).

Agreement. Final verdict in the case is still awaited that could bring some serious consequences regarding climate justice.³⁴

In a case before the Supreme Court of Pakistan, urban planning and its consequent effects on climate change were discussed. The matter arose from the fact that Capital Development Authority, Islamabad, a body authorized for development and maintenance of capital of Pakistan, rescinded its earlier decision regarding conversion of certain residential properties into commercial stating that the same would violate master plan of Islamabad Capital Territory (ICT). The matter initially came before Islamabad High Court where certain individuals challenged the said decision of CDA, but could not succeed and their petitions were dismissed. The petitioners then approached Supreme Court of Pakistan challenging the decision of Islamabad High Court. The Supreme Court, while upholding the decision of High Court, held that conversion of these properties was not only against the provisions of master plan of ICT rather urbanization has a great impact on climate change and all these considerations should be kept in mind while formulating any such policy. The court further held that “it is doubtful that our early town planners were driven by climate considerations. However, climate must form a basic determinant of urban planning and design in the wake of climate change. Climate-resilient development in cities of all sizes is crucial for improving people's well-being and increasing future generations' life opportunities. Any change in the Master Plan to an urban scheme without taking account of the climate factor would be detrimental”. It was further observed by the Court that adverse impact of climate change violates fundamental rights particularly Articles 9, 14, 18 and 23 of the Constitution of Pakistan and “the CDA shall ensure to factor in adaptation, climate resiliency and sustainability into their plans, policies and decisions in order to protect constitutional rights”.³⁵

³⁴ Rabab Ali v Federation of Pakistan & Another (SC 2016).

³⁵ Raja Zahoor Ahmed v. Capital Development Authority, 2022 SCMR 1411.

All these decisions reflect that the courts, in response to climate change, have resorted to fundamental rights as contained in the Constitution. Although initially Environmental Protection Act, 1997 was implemented in Pakistan and Environmental Protection Agencies were also established under the Act, but later the subject was given to provinces and now legislation has been made at provincial levels. However, above mentioned cases do not make a significant reference to these laws and primarily the Constitution has been focused in all these cases. Thus, it is apparent that we lack a robust legal system at domestic level to ensure climate justice. Pakistan is also a signatory to major international conventions and treaties on climate change and being a Muslim country, since protection of environment has been made mandatory under the commands of Islamic law, Pakistan is also bound by it. It is therefore, imperative that a comprehensive legal framework should be adopted keeping in mind the international obligations contained in UNFCCC, Kyoto Protocol, Paris Agreement, all subsequent agreements and above all, teachings of Islam so that climate justice should prevail in transparent, efficient, effective and conducive environment for the protection of life, liberty and health of public.

Conclusion

While concluding the discussion, we can say that the current jurisprudence and understanding of climate change has significantly improved. Previously, the world has focused on environmental justice keeping in view the enforcement of national and international laws pertaining to climate change. However, recently international bodies, courts and tribunals have adopted a robust approach primarily aiming to protect human rights connected with the issue of climate change. In this regard, many international and national cases have been seen where in a matter of climate change, human rights have not only been discussed rather base of climate action has been made on the basis of human rights. International legal framework for climate change is in field and almost all the countries

have adopted the same, but there are certain issues with regard to implementation of obligations contained in these international instruments including UNFCCC and Paris Agreement. Pakistan has also adopted this approach and Supreme Court of Pakistan, Lahore High Court and Islamabad High Court have resorted to climate justice while dealing with climate change cases. However, despite of availability of national laws, National Climate Change Policy and Framework for Implementation of Climate Change Policy, desired objectives could not be achieved. The main reason appears to be that the main focus was on adaptation, not mitigation. Adaptation and mitigation though require financial and technical resources for their effective implementation and developing countries like Pakistan are behind in generating these resources, but there appears no other room except to adopt these internationally recognized measures. Teachings of Islam would also play a significant role in adaptation and mitigation. Therefore, apart from adaptation, there is a need to implement the policies on the basis of mitigation keeping in view international obligations. Since Islam also protects environment and addresses all the issues of climate, therefore, a separate study could be conducted on Islamic concept on climate change for acceptance in the society and effective enforcement.