

Address to the AJK Environmental Lawyers Forum, on 15th May, 2014

Mr. Justice Mohammad Azam Khan, Chief Justice Azad Jammu & Kashmir

My brother Judges of the Supreme Court of Azad Jammu & Kashmir,
Learned Judges of the Azad Jammu & Kashmir High Court,
Learned Judges and Qazis of the lower judiciary,
Respected President, Mr. Raza Ali Khan Advocate,
General Secretary, Mr. Khalid Yousaf Advocate,
Office Bearers of the Azad Jammu and Kashmir Environmental Lawyers
Forum,
Office Bearers and members of the AJK Supreme Court Bar Association,
Office Bearers and members of the Central Bar Association, Muzaffarbad,
Secretary and the Director General and Officers of the Azad Jammu & Kashmir
Environmental Protection Agency,
Ladies and Gentlemen.

Aslaam o Alaikum!

It remains, always, a pleasure and an honour for me to have a formal opportunity of being with the members of the legal fraternity. It is also an honour for me to address this gathering on the occasion of the oath taking ceremony of the First batch of the representatives of AJK Environmental Lawyers Forum. I am grateful to all of you and particularly the president and the office bearers of the Environmental Lawyers Forum for inviting and providing me an opportunity to be here with the lawyers, and other concerned. It is also worthwhile for me to share my thoughts with all of you on the issue of environment and its importance in the present world, particularly in the region we all live in.

First of all, I would like to appreciate the efforts of the Azad Jammu and Kashmir Environmental Protection Agency for fulfilling its official responsibilities in creating awareness among the different segments of the society about the importance of the environment. The establishment of the Green Schools, Environmental Journalists Forums, Environmental Lawyers Forums and such other forums for creating awareness among the public about the importance of environment and its protection, though reflect the

preliminary efforts of the AJK EPA but are commendable considering financial and other governance issues. Along with this, the strict adherence and enforcement of the laws should be the actual goal of all of us, certainly of the EPA and the Government. To my knowledge, with the collaboration of the then Bar representatives, Mr. Khalid Yousaf, was the president of Bar, the AJK EPA established first Environmental Lawyers Forum in District Bar Association Mirpur on 09-10-2009, and also established a Green Corner in the Bar Library. Though, this kind of forum or such like others should have been established in the Capital much earlier, as this area of our state is more vulnerable to the environmental hazards, even then it is appreciable that the importance of the environment, its protection and enforcement of laws have been realised by establishing the Environmental Lawyers Forum on the whole state level.

Pakistan is a Muslim Country, about 100% population of Azad Jammu and Kashmir is also Muslim. Article 2 of the Constitution of Pakistan, 1973 and section 3 of the AJK Interim Constitution Act, 1974 ,lay down that the Islam shall be the state religion. Sub section 3 of Section 31 of the Act, 1974 prescribes that " No law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah and all existing laws shall be brought in conformity with the Holy Quran and Sunnah."

Allah has bestowed only the humans the power of consciousness which distinguish them from all other creatures. This has made them enable to have command on the affairs of the earth and skies for making their living within their own control.

It has been prescribed in the Holy Quran, Sura Al-Ahraf, verse no.10, that ***"And we have given you [humans] mastery over the earth and appointed for you therein livelihood..."***

The environmental consciousness and importance has been imbedded in Holy Quran. Allah commands in Sura Al-Inam, verse 38 that, ***"There is no creatures crawling on the earth or flying creature-flying on its wings, who are not communities just like yourselves..."***

Allah, the Creator of the universe has precisely balanced the systems in His creation and has established equilibrium between them and such equilibrium must not be disturbed. It has been reminded in Sura Al-Rum, verse no.41, that ***"Mischief has appeared in the land and sea for that men's own hands have earned, that Allah may let them taste some part of what they have done, so that they may return to their senses."***

It has been declared by the Holy Prophet that , ***"Cleanliness is half of Faith."***

Environment is relatively a new branch of law which requires its maximum and strict enforcement for protection of human health and sustenance of all forms of life on earth. The environmental laws guarantee the sustainable usage of natural resources. The geographical areas such as ours, which have abundance of natural resources of every kind on the ground and as well under the ground, are more vulnerable due to different factors. The more we are bestowed by nature, the more we are accountable to, punished by and face the wrath of the nature. The nature responds the desecration in its own way.

The practice of international environmental declarations and action plans started in 1972, when a landmark Stockholm Declaration was issued. This Declaration declared the "Environmental Protection" as the "Common Concern" of the entire mankind.

In 1992, the Earth Summit was held in Rio De Janeiro of Brazil. This was arranged to "awaken the consciousness of national leaders, politician and the policy-makers to act believing in environmentalism."

The Earth Summit has led the countries of the world to use all capacities to work for the protection of the environment of the world and sustainable development. Pakistan was also participant and signatory of the Earth Summit, Rio Declaration. In environmental context, Pakistan has ratified and signed 24 different types of International Conventions, and is bound to harmonize her national laws with them.

There is no direct provision in the 1973 Constitution of Pakistan or AJK Interim Constitution Act 1974 with respect to environmental protection and sustainable development. Section 4 deals with the fundamental rights which can be enforced in High Court through the writ Jurisdiction of the High court.

Section-4 (4) (1) of AJK and Article 9 of Pakistan's constitution prescribes the Rights

- Security of Person. No person shall be deprived of life or liberty save in accordance with law.
- The word *life* is very significant as it covers all facts of human existence.
- It has been held in Shela Zia case that life does not mean like, or restricted to vegetative or animal life or mere existence

from conception to death, rather life should be given the wide meaning covering all factors and aspects of life¹

- In Suo Motu case regarding development of the land in sector E 11 of Islamabad, it was observed that right to life implies the right to food, water, decent environment, education, medical care and shelter, which cannot be snatched away or waived off pursuant to any agreement.²
- Life includes all such amenities and facilities, which a person is entitled to enjoy with dignity under natural law, general laws and the constitution of the country.
- The Holy Prophet (pbuh) declared at the time of Hujatul widah, that your blood and your property is forbidden for you

Article 14 of the Constitution of Pakistan, declares that the dignity of man subject to the law the privacy of home shall be inviolable.

Unlike the constitution, importance of environment, public health and safety has been appreciated in different statutes.

1. The Pakistan Penal code 1860(Offences affecting the Public Health, Safety, Convenience under sections 268, 269, 270, 272, 273,277, 278,284,285, 286,288, 290,291)
2. The Pakistan Criminal Procedure Code, 1898 (Conditional order for removal of Public Nuisance section-133, and absolute order absolute at once in urgent cases of nuisance and apprehended danger under section-144)
3. The Pakistan Health(Emergency Provisions) Ordinance
4. The West Pakistan Epidemic Diseases act 1958
5. Factories Act, 1934
6. The West Pakistan Factories Canteen Rules,1959
7. The AJK Local government Act
8. Ancient Monuments Preservation Act 1904
9. Canals and Drainage Act 1873
10. Carriers Act 1965
11. Cattle Trespass Act, 1871

¹ Shela Zia V WAPDA (PLD 1994 SC 693)

² PLD 2011 SC 619

12. Destructive Insects and Pests Act, 1914
13. Explosives Act 1884
14. Explosive Substance Act, 1908
15. Government Management of Private Estate Act, 1892
16. Prevention of Cruelty to Animals Act, 1890
17. Punjab Land Preservation(Chos)Act, 1900
18. West Pakistan Epidemic Diseases Act 1958
19. The Pakistan Nuclear Safety and Radiation Protection Ordinance, 1984
20. The Baitulmal Trees Protection Act, 1949
21. The AJK Protection of Forests and Distribution of Timber Act, 1985
22. AJK Building Control Act, 1985
23. The Antiquities Act, 1986
24. AJK Wildlife Act 2012
25. The West Paksitan Pure Food (Adaptation)Act, 1987
26. Forests Act, 1927

In Pakistan, Pakistan Environmental Protection Act, 1997 has been promulgated in furtherance of harmonising her laws with the International Conventions and adhering to her International obligations. Following the footsteps of Centre and other Provinces of Pakistan, there has been promulgated Environmental Protection Act 2000(EPA) in AJK. The main objects of the Act are to provide for protection, conservation, rehabilitation and improvement of the environment. Further, this is for prevention and control of pollution and promotion of somehow new concept, "sustainable development" in our state.

Under Sec-2(x) of AJK Environmental Protection Act, 200 "Environment" means ,

- a) air, water, and land;
- b) all layers of the atmosphere;
- c) all organic and inorganic matters and living organisms;
- d) the ecosystems and ecological relationships;
- f) buildings, structures, roads, facilities and works;

- g) all social and economic conditions affecting community life;
- h) the inter-relationships between any of the factors in sub-clauses (a) to (f)

I would like to draw your attention in context of clause (g) and (h) , which includes, all social and economic conditions affecting community life, in the definition of the environment. If this definition of environment is applied while making kinds of policies and executive decision in context of our environment whether living or built , nothing remains out of the ambit of the provisions of the Environmental Protection Act. It give an overriding and inclusive effect on all our everyday life and responsibilities of individuals and state functionaries.

Under clause (xi) of Sec-2 the "sustainable development" has been defined as, "Development that meets the needs of the present generation without compromising the ability of the future generations to meet their needs."

If we observe the life planning of all of us, each of us strive to save whatever we have earned or got , for rainy season , coming days and our siblings and coming generations. Have we ever thought, would not it be the environmental injustice if we apart this world after consuming all the natural resources of earth and leaving nothing or unsustainable for our future generations. I think no one among us will like so for our coming generations

There would not be any other, more than judiciary and the legal fraternity to have firm belief, that the law is a binding force to keep society civilized and disciplined, rather to maintain geographically intact a territory as a state. The laws are made to be get enforced and implemented not merely to be printed, shelved in the cabinets and for mere academic discussions. Their efficacy and benefits should be not only seemed to be driven but in reality be driven

The apex judiciaries of the SAARC Countries held a Environmental Conference Although, we have witnessed some progress, recently, other than the initiatives already mentioned, in enforcement of Environmental Protection Act, 2000, such as establishment of Environmental Protection Agency, designation of the powers of Environmental Magistrates to the Senior Civil Judges, notifying of AJK Environmental Council and establishment of the Environmental Tribunal. But a lot is still required to be achieved on all the fronts for better environmental governance and sustainable development.

There is yet to be established Sustainable Development Fund, and Board under section 8 and 9. This is barring to get financial aid, assistance, grants, donations and other non-obligatory funds from foreign governments. Whereas, billions of dollars are distributed among the environmental regulatory bodies of the poor and developing countries each year by the International Donors and the Developed countries which seek international environmental protection.

The land, area and other natural resources of our state are limited but we are using all these drastically and relentlessly. The Forests have great influence on everyday life of the inhabitants of our small state. The whole ecology depends upon forests. Forests are means of food, water, shelter, medicinal plants. The life of humans and animals both have much reliance upon trees. We have deforested our lands and mountains since last more than sixty years. Which have started adversely affecting our eco-system.

I believe that we need to set ecological limits to the extraction, use and development of natural and physical resources of AJK, and should strive to maintain ecological balance in our state. Otherwise, the development we are trying to achieve shall turn into unsustainable and self-destructive one. There is much need of formulating a "Land Use Policy" on state level, and usage of the private and the state land should be restrictive and strictly regulated.

In the end, before parting with, I would like to quote the famous English literary personality, William Shakespeare

"You take my life, when you do take the means whereby I live."

William Shakespeare, The Merchant of Venice, IV: 1