

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

MR. JUSTICE TASSADUQ HUSSAIN JILLANI
MR. JUSTICE MIAN SAQIB NISAR

Suo Moto Case No. 25 of 2009

(Cutting of Trees for Canal Widening Project Lahore).

In Attendance:

Ms. Imrana Tiwana, Convener LBT (Lahore
Bachao Tehrik / Save Lahore Movement)
Ms. Iram Aftab, LBT
Ms. Ayesha Batool

Mr. Ali Hassan for WWF, Pakistan.

Ms. Naumana Amjad, Assistant Professor of
Psychology, Punjab University.

Mr. Kamil Khan Mumtaz, (Architect).
Ms. Saima Ameen Khawaja

Lt. Col. (R) Ijaz Nazim. NGO Shajardost.
Mr. Alexander Uvidine

For Govt of Punjab: Ch. Hanif Khatana, Addl.A.G. Pb.
Mr. Jawwad Hassan, Addl. A.G. Pb.
Mr. Salman Aslam Butt, ASC
Nasim ur Rehman, Dy: Director, Environmental
Protection Authority

Court Mediator: Dr. Parvaiz Hassan, Sr. ASC

Date of Hearing: 15.08.2011.

JUDGMENT

Tassaduq Hussain Jillani, J. *-Any city gets what it admires and what it pays for and ultimately deserves. And we will probably be judged not for the monuments we build but the monuments we destroy. Echoing the spirit behind this powerful quote (by Ada Louise Hustable, Pulitzer Prize Winning Architecture Critic), the petitioner Lahore Bachao Tehrik ('LBT') has challenged the project of*

Government of Punjab for widening of the 14 Km long Canal Bank Road (“Canal Road”) Section falling between Dharampura Underpass and Thokar Niaz Baig in Lahore (“Canal Road Project”) which, according to it, would not only destroy the green belt/park on both sides of the Bambawali-Ravi-Bedian (BRB) Canal, but also fail to solve the problem of traffic congestion at Canal Road for which the Canal Road Project has purportedly been designed. It is contended by the petitioner that the issues of traffic congestion can be resolved by complying with Urban Town Planning and sustainable urban transport which include alternatives based on public transportation instead of private transportation. The petitioner has also prayed that the Canal Park/Green Belt along the Canal Road be notified as a heritage site. The petition reflects a strong passion for issues of environmental and ecological concern.

2. Petitioner is statedly an umbrella organization consisting of members from other organizations such as Institute of Architects Pakistan, Pakistan Council of Architects and Town Planners, the World Wide Fund for Nature-Pakistan, the Pakistan Medical Association, the Pakistan Environmental Lawyers Association, Simorgh, Shirkatgah, Shehri-CBE, the Lahore Conservation Society, Shajar Dost, Subh-e-Nau, Lahore Chitrkar, the Office of Conservation and Community Outreach, the Punjab Urban Resource Center, other NGOs, professionals, architects, town planners, environmentalists, doctors, lawyers, historians, economists, the academics and students of schools, universities, colleges as well as the citizens of Lahore. It was formed in 2006 with the object to protest against the proposal framed by the Traffic Engineering and Planning Agency (“TEPA”) to widen the Canal Road.

3. Initially this petition was a letter from LBT addressed to the Honorable Chief Justice of Pakistan in which LBT claimed that the Canal Road Project was a violation of fundamental right of life guaranteed under the

Constitution. The Hon'ble Chief Justice converted it into a petition and issued a *suo moto* notice under Article 184(3) of the Constitution to the respondent-authorities. In compliance of the *suo moto* notice, the Government of Punjab filed its comments/written statement.

4. In support of this petition, it was submitted and argued by the petitioners as follows:-

- (i) that the declared objectives of the Canal Road Project i.e. (i) the facilitation of fast and efficient traffic movement; (ii) overcoming traffic congestion and bottlenecks, and (iii) to provide easy traveling conditions between the northern and southern parts of the city of Lahore would not be achieved by widening of the road.
- (ii) that Environmental Impact Assessment carried out and the report (EIA Report) so submitted approving the Canal Road Project is flawed because it does not consider the following alternatives to alleviate traffic congestion which are (i) investment in public transport including taxi services; (ii) rationalization of parking fees, (iii) congestion charging; (iv) soft traffic management; (v) demand management; (vi) better use of existing facilities; (viii) avoiding VIP traffic congestion and (ix) enforcement and implementation of traffic regulations.
- (iii) that the three traffic bottlenecks along the Canal Road which have been cited as justification for widening the said road are not caused by the width of the road but by the fact that traffic must "crisscross" on account of underpasses' position on alternate sides of the road. The EIA Report failed to point out that this cause of traffic disruption would be further

confounded by widening of the road and allowing more traffic unto it.

- (iv) that both the EIA Report and the TEPA have not considered the impact of Lahore Ring Road Project as well as of proposed public transport initiative of the Government of Punjab i.e. Lahore Rapid Mass Transit Project and the Lahore Bus Company Project which have taken place after the grant of environmental approval. The Precautionary Principle in environmental regulations warrants that a separate EIA of Canal Road Project should include consideration of the afore-referred new developments.
- (v) that according to the Precautionary Principle of environmental regulations, enshrined in our jurisprudence by the Shehla Zia Case (PLD 1994 SC 693), it is imperative *“to first consider the welfare and safety of the human beings and the environment and then to pick up a policy and execute the plan which is more suited to obviate the possible dangers or make such alternate precautionary measures which may ensure safety”*, it is argued that the Government of Punjab should adhere to the Precautionary Principle and have EIAs conducted of Canal Road Project. The Precautionary Principles enjoins decision makers to err on the side of caution when it comes to project likely to cause an adverse environmental effect.
- (vi) that the environmental approval granted to the Canal Road Project is illegal, void and of no legal effect because the Environmental Protection Agency, Punjab (“EPA-Punjab”) unlike the Pakistan Environment Protection Agency (the “Pak-

EPA”) set up under section 5 of the Pakistan Environmental Protection Act, 1997 (“PEPA”), is not an independent agency. The EPA-Punjab is very much part of the Government of Punjab and, to date, no clear demarcation has been made of between its functions and the functions of the Environment Protection Department of the Government of Punjab. As such, it is a violation of the principles of natural justice that EPA-Punjab presided over the determination/consideration of the Canal Road Project when the main financier of the said project was the Government of Punjab. In the afore-referred circumstances, it was contended that EIA of the TEPA Project ought to have been carried out by the Pak-EPA, which is the only unbiased institution within the scope of PEPA that can conduct reviews of EIAs submitted by Provincial or Federal Government agencies.

- (vii) that the environmental impact of the Canal Road Project should be taken into account before commencing it.
- (viii) that the World Wide Fund for Nature-Pakistan conducted an ecological assessment of flora, fauna and wildlife along the Canal Road. This area has immense ecological importance with a lot of wild life specie of birds, trees and small animals. With the proposed widening of the road, the centuries old ecological linkages would be broken resulting in habitat destruction for birds and small animals.
- (ix) that the habitat of Lahore Canal Bank has different types of trees and shrubs. As per WWF-Pakistan 2008 Report, there are 14,873 trees and 6,557 shrubs in the area. Major trees include

Eucalyptus, Poplar, Jaman, Mango, Banyan, Pipal, Amaltas and Bottle Brush etc. All these trees and shrubs were thoroughly identified and counted.

- (x) that the trees and plants contribute significantly towards purification. They make their own food from Carbon Dioxide and release Oxygen for us to breath. They also help to settle out, trap and hold particulate pollutant (dust, ash, pollen and smoke) that can damage human lungs. Particulates are trapped and filtered by leaves, stems and twigs, and washed to the ground on rainfall. The loss of trees in our urban areas not only intensifies the urban heat-island effect from the loss of shade and evaporation but we lose a principal absorber of carbon dioxide and the trappers of air pollutants as well. A single tree can absorb as much as 330 lbs of carbon dioxide, 4 lbs of ground level ozone and 3 lbs of particulate matter.
- (xi) that the Lahore Canal through its distributaries has played a pivotal role in nurturing the city landscape in the growth of gardens and other green areas.
- (xii) that the canal with the passage of time, however, has lost its original role of supplying water to the city but has assumed a new role as a roadway and a continuous belt of green space that stretches from one end of the city to the other. The widening of the road project is likely to adversely affect the said green belt/park.
- (xiii) that the well known "Doctrine of Public Trust" as recognized and reiterated in various judgments of the High Court and of this Court enjoins city fathers to maintain guardianship and

stewardship of the people's priceless and historic natural resources as they transform their utility, over the course of time, to meet the needs of people of a city.

5. In the concise statement submitted by the Government of Punjab, it has been averred as follows:-

- (i) that the Canal Road Project was designed and approved in public interest and with a view to improve the drastically deteriorating traffic conditions on the Canal Road. The total cost of Canal Road Project is Rs.800 Million. 
- (ii) that the Canal Road Project contemplates addition of 18 feet wide lane to the already existing two lane Canal Road along with earthen shoulder of 6 feet on both sides of the canal as well as bus bays and shelters, traffic control and service level improvements, development of green areas along the Canal Road and plantation of trees thereon.
- (iii) Explaining the background and justification of the project, it was further averred that according to Economic Survey of Pakistan for the year 2008-09 conducted by the Ministry of Finance, Government of Pakistan, the current population of Pakistan is 163.76 Million which is estimated to grow to 197 Million by the end of 2020 and 55% of the population lives in the Province of Punjab.
- (iv) that Lahore besides being the socio-economic and cultural capital of the Province of Punjab is the second largest city in Pakistan and its current population is estimated to be in excess of 9 Million. In addition thereto, the city accommodates an

additional one million visitors from the adjoining areas/districts as well as from across Pakistan.

- (v) that on account of the population explosion and demographic changes in the city of Lahore, following factors have led to increase in volume of traffic in general and on the Canal Road in particular: -

- (a) In order to accommodate the ever growing population of Lahore, after 1978, a number of housing schemes like Awan Town, Campus Colony, Canal View Cooperative Housing Society, Hamid Park Housing Scheme (HS), Rehmanabad, Township etc. got approval from the Government of Punjab. As the demand for housing further increased at an exponential rate, there was a boom of housing schemes in Lahore from early 1990's onwards. The major schemes developed in this period were West Wood Colony, Ittefaq Town, Campus View Town, Tech Society, Pakistan International Airline (PIA) Housing Scheme Phase I & II, Ghousia Town, Pakistan Council of Scientific and Industrial Research (PCSIR) Cooperative Housing Society Phase I & II, National Fertilizer Corporation Housing Scheme, Punjab Govt. Employees Housing Scheme Phase-II, WAPDA Town, Beharia Town, Eden Housing Scheme to name but a few (collectively the Southern Residential Areas) wherein reside hundreds of thousands of people from all socio-economic backgrounds. It may be noted that most, if not all, of these housing schemes are situated south/south-west of Lahore and are

- accessible from various points within the city mainly via the Canal Road.
- (b) Lahore also witnesses rapid industrialization due to the phenomenal success of the textile industry in Pakistan. As a consequence whereof, at present there are currently hundreds of industrial units operating on the southern/south-western side of Lahore, particularly along the Multan Road and Raiwind Road which employ hundreds of thousands of people from Lahore. In this regard, it is pertinent to point out here that both Multan Road and the Raiwind Road are accessible from various points within the city mainly via the Canal Road.
- (c) The Multan Road, being situated at the tip of the southern-most section of the Canal Road, also serves as Lahore's main entry/exit point for millions of people annually.
- (d) The Canal Road is the main artery and the spine of Lahore. It is also the longest double road connecting areas lying to the north of the City (for example Dharampura, the Mall Road etc) to those in the south (for example the southern residential areas, the Multan Road and Raiwind Road). In addition thereto, as the Canal Road cuts across the city, it also serves as the main feeder/link road to all the major inner-city roads such as the Link Road, Ferozepur Road, Jail Road, the Mall Road etc.
- (e) The traffic conditions on the Canal Road have been gradually deteriorating over the past many years on account of the fact that over the past two decades (1981-

2000) the number of vehicles in the city have increased from 13 vehicles per 1000 inhabitants to 35 vehicles per 1000 inhabitants and are likely to grow even further in the coming years. Furthermore, in the years leading up to 2006, traffic volumes on the Canal Road have grown to more than twice the existing road capacity of approximately 100,000 vehicles per day, making it one of the busiest roads in Lahore.

- (vi) that on account of immense increase in volume of traffic, the successive Provincial Governments have been taking steps to improve the traffic conditions in Lahore especially along the Canal Road which included construction of nine underpasses and inter-sections at major junctions along the Canal Road. There has also been widening of other roads along the length of underpasses/inter-sections to a certain extent i.e. several roads including Jail Road, Ferozpur Road, Wahdat Road and Bund Road were widened.
- (vii) that the Provincial Government also took steps to promote public transport by setting up Lahore Transport Company, acquisition of more than 2000 environmental friendly CNG busses, phasing out of existing diesel busses, conversion of existing diesel busses to CNG buses, phasing out of pollution causing two stroke auto rickshaws and replacing it with environmental friendly four stroke CNG rickshaws in the city and the rickshaws drivers have been given loans on easy installments to purchase the afore-referred four stroke CNG

rickshaws. Besides the above, the Government has also decided to introduce Rapid Mass Transit System in the city.

(viii) that despite the measures taken by the Provincial Governments from time to time to which reference has been made above, traffic load on the Canal Road has been ever increasing and many traffic related problems/issues necessitated the need for widening Canal Road. Some of these issues are as follows:-

(ix) that before commencement of the project, it was deemed imperative to conduct Environmental Impact Assessment (EIA) for approval of the Punjab Environmental Protection Agency in terms of section 12(1) of PEPA read with Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000 ("Review of IEE and EIA Regulations"). For the said purpose a public notice was given through English Daily 'Pakistan Times' and Urdu Daily 'Nawa-e-Waqt' and tenders were called from reputable companies having requisite skill and experience to carry out the EIA of the Canal Road Project. Two consulting firms applied and ultimately National Engineering Services of Pakistan ("NESPAK") was chosen as consultants for carrying out the EIA of the Canal Road Project.

(x) that EIA of the Canal Road Project was duly prepared by the NESPAK in January 2007 in accordance with PEPA, the Review of IEE and EIA Regulations as well as the Guidelines for Preparation of and Review of Environmental Report.

(xi) that EIA Report explained in depth the rationale of the Canal Road Project, its benefits and also cautioned against its negative impact as it required cutting down of trees growing

along the right of way of the Canal Road. It also conducted a tree count along the Canal Road in order to determine type and number of trees required to be removed. For the said purpose, the Canal Bank is divided into three sections. According to the said report, approximately 60% of trees on the road are eucalyptus (Sufaida) which according to it is not a native tree of the country and is rather hazardous because it consumes much quantity of water and thereby lowering the water table; it causes soil erosion of the adjoining areas; the oil released from the roots of the eucalyptus plant is known to contaminate underground water reservoirs; it does not have any significant impact in removing air pollution. It does not support nestling for local as well as migratory birds and because of its negative environmental impact, the Government of Punjab had banned its plantation except in water-logged areas. The EIA Report concludes that cutting of eucalyptus trees would in fact have positive impact on environment. Nevertheless, cutting of trees in general was found to have overall adverse effects on environment and the EIA Report recommended certain mitigation measures during the construction phase as well as the operation phase of the Canal Road Project. Among other measures, it suggested that TEPA in coordination with the Punjab Parks and Horticulture Authority should initiate a program for plantation of four type of indigenous tree specie along the Canal Road for every tree felled/removed. EIA concluded that new plantation of indigenous tree species would not only improve the ecological habitat of the Canal Road, but

would also minimize excess noise, vehicular and dust pollution. This suggestion qua tree plantation, according to EIA, is being implemented forthwith.

- (xii) that EIA Report was duly submitted by TEPA to the EPA-Punjab for approval pursuant to S.R.O. 1251(1)/98 dated 27.10.1998 of the Ministry of Environment, Local Government and Rural Development, Government of Pakistan. Prior to its approval in terms of Regulation 10 of Regulations read with section 12(3) of PEPA, a public hearing was done through public notice appearing in two daily newspapers. The public hearing took place and various objections and suggestions were considered. Some of the objections raised concern that the number of trees to be cut down would be approximately 30,000; that the project would entail conversion of 50 acres of green belt/park running along the Canal Road and thereby resulting in change of land use; that since both EPA and respondent No.1 are under control of Government of Punjab, the EIA should have been submitted to Federal Environmental Protection Agency and that NESPAK was not competent to undertake EIA of the project. Respondent made the afore-referred objections by filing a detailed statement before the Environmental Protection Agency and among other things, it was pointed out that the number of trees to be cut down would not be 30,000 but only 1850 and that the apprehended adverse effects on environment resulting from the project after removal of trees stand negated by complying with the Environment Mitigation Plan recommended in the EIA by NESPAK.

(xiii) that the EPA-Punjab after receipt of written reply from TEPA constituted a Committee of experts in terms of Regulation 11 of the IEE and EIA Regulations with a view to assist it in assessing the environmental impact of the Canal Road Project. The recommendations of said Committee of Experts were considered by EPA-Punjab whereafter it approved the Canal Road Project vide approval bearing No. DDEIA/F-22/Cir/EIA/3725 dated 19.7.2007 (Environmental Approval). The said Environmental Approval laid down stringent conditions for TEPA in undertaking the construction phase of the Canal Road Project wherein some of the measures which were directed to be undertaken are as follows:-

- (a) strict adherence to the Environmental Management Plan in order to minimize any negative impacts on soil, ground water, air and biological resources of the project area;
 - (b) strict compliance with the National Environmental Quality Standards;
 - (c) the carrying out of extensive tree plantation, especially indigenous species in and around the project area in consultation with the PHA and to make all arrangements for the transplantation of existing trees; and
 - (d) the plantation of four (4) trees having 6-7 feet height for every single uprooted tree.
- (xiv) that on account of delay in its implementation, the cost of the Canal Road Project has increased significantly, the traffic

conditions on the said road have been worsening/deteriorating in line with the traffic forecast of EIA Report submitted by NESPAK and the Government of Punjab has to inject an additional sum of Rs.2.00 billion for initiation/completion of the Canal Road Project.

6. On 14.2.2011, a Bench of this Court headed by the Hon'ble Chief Justice of Pakistan Mr. Justice Iftikhar Muhammad Chaudhry with the consent of the convener of LBT Ms. Imrana Tawana and respondent-Provincial Government nominated Dr. Pervez Hassan (who has an expertise in environmental law and has illustrious background of public service in the said field both at international and domestic levels) as a mediator. The order further stipulated that he may associate any other person or expert or official of the Government of Punjab for the purpose of such mediation and for finding suitable resolution of the matter.

7. Dr. Pervez Hassan submitted a detailed report to the Court on 14th of May, 2011 which indicates that he in consultation with learned counsel for the petitioner Mr. Ahmer Bilal Soofi and counsel for the Provincial Government Mr. Salman Butt formed a Committee of eight members having illustrious background of public service in various fields. The members of Committee were:-

- (i) Syed Babar Ali, former President, WWF International and WWF Pakistan.
- (ii) Mr. Sartaj Aziz, Vice Chancellor, Beaconhouse National University.
- (iii) Sardar Ayaz Sadiq, Member, National Assembly.
- (iv) Mr. Javed Jabbar, Vice President, IUCN.
- (v) Mr. Arif Hassan, urbanist and planner.
- (vi) Dr. Abid Qaiyum Suleri, Executive Director, Sustainable Development Policy Institute Islamabad.
- (vii) Mr. Nadeem Hassan Asif, Commissioner Lahore.
- (viii) Dr. Mira Phailbus, former Principal, Kinnaird College for Women.

8. One of the petitioners namely Mr. Ahmad Rafay Alam was appointed as Secretary of the Committee. The committee held several meetings, made visits of the Canal Road, solicited the opinions of experts, carried out public hearings, considered the stand of LBT and also of the Government of Punjab and barring one exception (Dr. Arif Hassan) made recommendations with consensus which are as follows: -

Consensus of the Committee

Based on the information presented to it, the Committee notes the rapid increase in the number of automobiles registered in Lahore from 702,734 in 2004 to 1,747,600 in 2011. This rate of increase in the number of automobiles registered in Lahore is greater than the rate of population increase, which is a fact that points to the widening social and income disparities. The Committee also noted that, at the current rate, the number of automobiles registered in the city of Lahore could double every six (6) to seven (7) years.

The mushroom increase in automobiles has also led to an increase in automobile emissions (which are greenhouse gases that contribute to climate change) and to a detrimental effect on the quality of air in Lahore. The Committee noted with some concern that the recorded air quality in Lahore was in excess of National Ambient Air Quality Standards and was classified as unhealthy in some areas.

The urbanization of Lahore has also been unprecedented. The population of the city was less than 900,000 at the time of Partition and has since grown to about 10 million today. Future demographic projections estimate that, by 2020, the city will have a population of 15 million. This increase in population has placed – and will continue to place – considerable stress on available housing stock, the sewage and sanitation infrastructure, healthcare facilities, education institutions and recreational spaces. The Committee noted with concern that the rapid growth of the city has not been helped by the unplanned mushrooming of private housing societies, industrial units and hospitals.

The Committee is of the view that societies that do not anchor their growth on long term plans are afflicted with the on-going urban issues the city of Lahore is currently facing. The Committee examined the salient features of the Master Plan for Greater Lahore, 1966, the Master Plan of Greater Lahore 1980, the Comprehensive Study on Transportation System in Lahore prepared by the Japan International Cooperation Agency (“JICA”) in 1991 and the integrated Master Plan for Lahore 2021 prepared by the NESPAK and approved by the

Lahore Zila Council in 2004 (for a detailed analysis of these previous plans, reference may be had to presentation by Mr. Umar Farooq attached as Annexure D/10 and for a quick reference to the 1991 JICA Plan and Lahore Mass Transit Project, reference may be had to Annexure G. The Committee was also informed of the Lahore Rapid Mass Transit Project and the ongoing Lahore Urban Transport Master Plan study being jointly conducted by the Transport Department of the Government of Punjab and JICA. It was also informed of the various road engineering projects underway and planned by the Government of Punjab.

The Committee is of the view that the cumulative effect of the forces affecting the city of Lahore has been to remove and exclude its residents, especially the common man, from the growth and development of their city. The Committee recognizes that every citizen of the city has, at some level, a right to the city and that this right, in its essence, is one of meaningful participation in the growth and development of the city. The Committee is of the opinion that its proceedings are atleast one example of the exercise of such a right and has proceeded with the intent and purpose of giving the city of Lahore back to the people. It appears imperative to move towards public transportation and mandatory school/college bus transportation to achieve these goals of social equity and thereby reducing traffic congestion.

G. Recommendations

There was a general consensus at the hearings that the present design and engineering of the Canal Road has serious flaws that contribute in no small measure not only to traffic congestion but also to road safety hazards.

Even if one were inclined to support the plea of the Punjab Government for the widening of the road on the ground of increasing traffic congestion, the most revealing admission before the Committee was that this widening would, in the absence of other required mitigating measures, serve the traffic needs only for the next 4-5 years. In effect, we would need more lanes in the future. This way, most of the green belt of the Canal Bank Corridor, a valuable part of Lahore's legacy and heritage, could be lost for future generations. The Committee cannot, in all good conscience, be a party to the disappearance of the Canal and its green belt.

Based on the opinions and weighty engineering data provided by experts, the Committee makes the following recommendations:

1. Declare the Lahore Canal Area to be a Heritage Urban Park

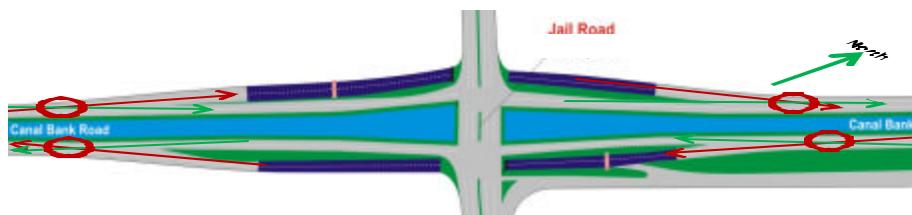
The green belt along the Lahore Canal and on either side of the Lahore Canal Road, from where it begins near (Jallo) the BRB-

Link Canal till Thokar Niaz Beg should be declared a heritage urban park under special legislation drafted specifically for this purpose. Declaring the Canal Road area a heritage urban park would be to protect its ecosystem from further degradation, make it accessible to the public and common man as well as for the purposes of controlling traffic along the Canal Road and for taking measures to clean the water that flows in the Lahore Canal. A proposed draft of the Lahore Canal (Heritage Urban Park) Act, 2011 is attached as Annexure H. The Government of the Punjab is requested to initiate the implementation of this recommendation.

2. Correct the “Incorrect Underpasses” on the Canal Road

During the proceedings of the Committee, it became clear that the design of the underpasses at Jail Road and Ferozepur Road (the “Incorrect Underpasses”), the first two underpasses built in Lahore and designed by NESPAK, were not in accordance with appropriate traffic engineering solutions and that these Incorrect Underpasses constitute a serious traffic safety hazard.

The Incorrect Underpasses are incorrectly situated in the slower/left lanes. International design standards and conventions stipulate that underpasses are to be located in the fast lane. Due to this flaw, the through traffic movement towards the Incorrect Underpasses is suddenly diverted to the left lane instead of flowing straight in the right lane as is the case with all the other underpasses later correctly constructed along the Lahore Canal Road. A diagrammatic representation of the design flaw in the Incorrect Underpasses is given below:



It can be seen that for the through traffic moving in the right/fast lane, electing to use an underpass (red lines) requires an abrupt change in lanes and a move to the slower/left lanes. This “weaving” creates a direct conflict with the traffic moving in the slow lane, which is forced to dangerously traverse on to the right lane towards the at-grade-junction/intersection.

Fast-moving traffic moving through and out of the Incorrect Underpasses also meets with slower vehicular movement coming from the at-grade-junction / intersection (green line). Resultantly, the fast-moving traffic going through and coming out of the Incorrect Underpasses criss-crosses with slow

moving traffic and creates direct conflict points (red circles) instead of smooth weaving and merging. This raises serious road/traffic safety issues and destructs the smooth flow of traffic. As Mr. Karamat Ullah Chaudhry, former Managing Director, NESPAK, explained, in an email to the Committee dated 3 May 2011:

The reason I said the design was wrong was based on the fact that in these two underpasses at Jail and Ferozepur Road, the traffic from the slow lane not wishing to enter the underpass has to cross the fast lane if it wants to exit. Secondly, on the other side the traffic entering the main flow coming out of the underpass enters the fast lane. ... [I]f the vehicle is a rickshaw how it can manage this.... Traffic wishing to leave or enter a main flow should always do so from/to slow lane, or the lane on the left. If traffic enters the fast lane, it is downright dangerous.

The Incorrect Underpasses, therefore, need to be re-aligned and reconstructed in accordance with internationally accepted design standards and parameters.

Similarly, the Committee noted that the bypasses at the Jinnah and Doctor's Hospital intersections required geometric improvements as the fast and slow-moving traffic do not smoothly weave and merge. This causes traffic conflict points and creates traffic safety hazards. A representation of the problem is given below:



3. Re-engineer the Junctions along the Canal Road

There are, broadly, two (2) categories of intersections along the Canal. These are:

(1) Roads traversing through the Canal Road

With respect to these types of intersections, the Committee noted the fact that, in all, there were twelve (12) such intersections over the Lahore Canal and that several of these intersections carried significantly higher traffic volumes across the Canal Road than the traffic that flowed on the Canal Road.

The straight and turning traffic movement along the Canal Road that does not go through the underpasses also uses these intersections. It was observed by the Committee that the designed capacity of these intersections is not sufficient to accommodate the large traffic volumes and that as a result, there are bottlenecks on these intersections. It is recommended that these intersections are re-modelled after a traffic capacity analysis and designed in accordance with standard geometric design. This will help to have a smooth flow of traffic at these intersections and will reduce congestion. In addition, signals along the corridor and at intersections over the Canal Road should be gully actuated and traffic signage should be of international standard.

(2) Roads and streets connecting to the Canal Road

These roads and streets connect the Canal Road and predominantly emanate from housing schemes and individual houses. The Committee noted that these were unplanned access routes built for a variety of reasons, which provide connectivity to the housing schemes or private residences along the Canal Road. The traffic entering and exiting from these intersections slows traffic movement along the Canal Road. This leads to undue stoppages and causes congestion.

The Committee is of the opinion that there should not be direct connections of the Canal Road to housing schemes and private residences. Traffic generated and attracted by these housing schemes and residences requires the construction of a network of service roads, preferably in a one-way loop system, with proper geometrics to enable smooth weaving and merging of traffic from and onto the Canal Road.

Also, bus bays constructed along the length of the Canal Road require redesigning in order to facilitate the smooth entry and exit of vehicles and to minimize traffic turbulence.

4. Construct Service Roads along Certain Parts of the Canal Road

The Committee specially notes that here is no service road along the stretch of the Lahore Canal from the Doctor's Hospital intersection to Thokar Niaz Beg. The absence of a service road along this stretch of the Canal road corridor has resulted in numerous direct access roads, connecting the various housing schemes and private residences. The direct traffic entry and exit from these developments on to the Canal Road results in traffic conflict points, disrupts smooth flow of traffic and causes congestion, delays and accidents.

The Committee is of the opinion that there is an immediate requirement to provide a one-way loop service road system along the entire length of the Canal Road (except the Punjab University premises between the Campus underpass and the

Jinnah Hospital underpass) with appropriately designed smooth entry and exit points to avoid traffic turbulence and congestion. In addition, the Committee recommends that housing schemes and academic institutions that have absorbed service lanes within their boundaries or in violation of zoning laws should be approached to rectify this mistake. However, the Committee also noted that some of these measures are already being undertaken by the Punjab Government.

The service lanes can also serve as an alternative route for emergency vehicles during traffic congestion as pointed out by Dr. Rizwan Naseer (Annexure D/8).

5. Implement Traffic Management Programs

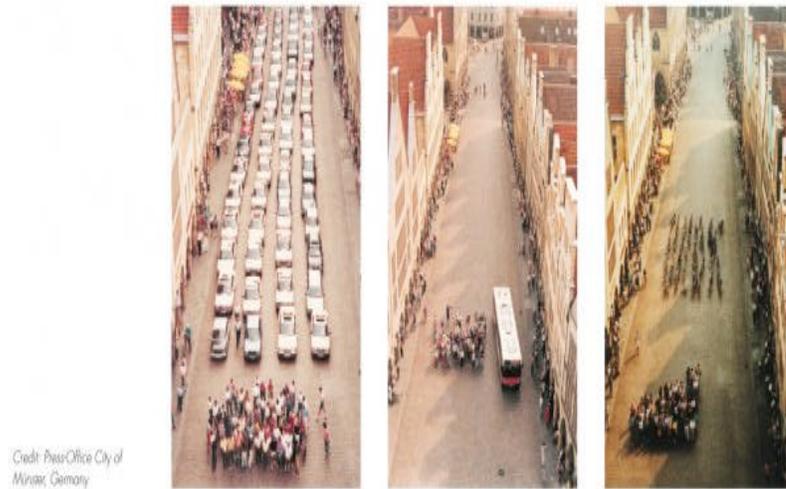
The Committee noted with some concern that the TEPA, LDA and Government of Punjab had no medium term traffic management programs for the city of Lahore. Such programs, which are in contrast to the road development and infrastructure projects being pursued elsewhere in the city, are for the management of traffic. Such programs treat the existing road network as a resource and generate management plans geared to maximizing the usage of the resource. Management proposals could include restricting the usage along certain parts of the Canal Road to certain categories of vehicles. For example, goods vehicles should be required to use the Ring Road to access the M2 or N5, private vehicles can be discouraged at certain times and along certain places and so on. Incentives/disincentives can be created to influence traffic frequency on the Canal Bank Road. These can, inter alia, be congestion charges during certain hours, staggering the school hours of educational institutions, requiring minimum number of passengers in a car at peak hours to encourage pooling arrangements.

6. Public Transportation

The Punjab Government has announced a dedicated commitment to public transport. In the first phase, it plans to put 400 new buses on the road by December 2011. This number should be increased. Apart from increasing the number of buses, the Punjab Government should require all major educational school and college systems to provide mandatory bus services for all their students and staff. This would drastically reduce congestion of cars on the Canal Bank Road and other roads. Public transportation systems should be supported by state of the art maintenance and servicing facilities.

There is need for a rapid mass transit system. This would be planning in the right direction for a major urban metropolis. A pictorial representation of the effect of potential public transport on reduction of traffic congestion is given below:

Figure 2.6 Amount of space required to transport the same number of passengers by car, bus or bicycle. (Poster in city of Muenster Planning Office, August 2001)

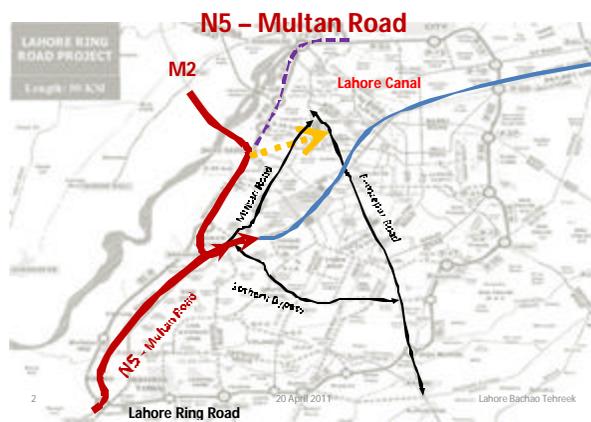


7. Divert the Through-Traffic on the Canal Road onto New Traffic Corridors

The Committee noted that the main entry and exit traffic hub for the city of Lahore was towards its northern side from Shahdara along the G.T. Road (N-5). This is due to the up and down country traffic movement and the heavy influx from nearby Gujranwala and Sheikhpura cities.

The traffic congestion on the Canal Bank Road is already being relieved by recent completion/construction/planning of the Northern Loop of the Ring Road and Multan Road. It is imperative that the Southern Bypass connecting Ferozpur Road be completed soonest.

A pictorial representation of the diversion to other/new traffic corridors is given below:



A detailed description of the broad overall planning guidelines for the city of Lahore can be seen in Mr. Umar Farooq’s presentation (Annexure D/10) and to a summary of the same provided for in Annexure G.

8. Declare the Punjab University New Campus area as a “Go-Slow” Area

The Committee noted the fact that the present site of the New Campus of the Punjab University was selected, befitting an educational institution, because of its tranquil and serene nature removed from the bustle of the city and perfect for academic reflection. The unplanned growth of the city, however, has placed the New Campus in the middle of the city and along an increasingly congested and noisy Canal Road. The Committee is of the view that the length of the Lahore Canal through the New Campus of the Punjab University is of a particularly significant nature and that efforts to reduce traffic congestion along this length of the Canal Road was most important. Accordingly, given the status of the educational institution, the Committee recommends that the length of the Lahore Canal and Canal Road along and through the New Campus of the Punjab University should be declared a special traffic calming zone where a much lower speed limit, coupled with speed breakers and other traffic calming devices, should be enforced.

9. Treat the Lahore Canal in a Holistic Manner

The Committee was mindful that its terms of reference extended along the Lahore Canal only from the Dharampura underpass to the Thokar Niaz Beg overpass. However, the Committee was of the opinion that the traffic management and urban planning issues of Lahore were such that the Canal Road should be considered in its entirety from where it begins near the BRB-Link Canal through the Thokar Niaz Beg overpass. A holistic view of the city was necessary and this could only be done if the Lahore Canal is perceived within the overall comprehensive future of Lahore and its surroundings.

10. Noise Pollution

The Committee also recognized that the increasing traffic on the Lahore Canal Road would create huge noise and air pollution in the years to come. The present noise levels already require some mitigation measures such as the use of noise pads for adjoining residential colonies, hospitals, and schools. But the trend to keep adding more traffic lanes to meet increasing traffic over years would reduce the Lahore Canal corridor to an unacceptable noisy and polluted part of Lahore. The Committee's recommendations are shaped by this vision of the future.

11. Ecosystem Preservation

In his presentation, *Study of Some Tree Species in Canal Bank Area – The Long Green Corridor of Lahore (Annexure D/5)*, Dr. Khalid Hamid Sheikh concluded, on a study of twenty four (24) species of randomly selected trees, that the trees along the Canal were “well developed”.

The WWF-Pakistan, in its Study of Ecology and Ecological Linkages of Lahore Canal Bank from Mustafabad Bridge to Thokar Niaz Beg found that there were some 21,430 trees and shrubs along the Canal and some forty-four (44) bird species were identified. The study also found that birds were ecologically linked to the tree species growing along the Canal. Also, cavity nesters such as rose-ringed parakeets, common mynas, spotted owl and coppersmith barbets were observed nesting in the poplar, eucalyptus and pipal trees along the Canal. A copy of the WWF-Pakistan ecological survey is attached as Annexure I.

The Committee was of the opinion that the ecological heritage represented by the Canal should be preserved for future generations of Lahoris to enjoy.

12. Cleaning and Improving Water Quality of Canal

The sources of effluent, sewage and waste into the Lahore Canal should be identified. Civil society as well as government agencies should team up to clean the Lahore Canal so that exposure to its water is not harmful or dangerous to health and with an aim of bringing the quality of the water of the Lahore Canal to the minimum guidelines determined by the World Health Organization for recreational water use. The Committee was inspired by the examples of civil society and government initiatives in cleaning up the Boston Harbour in the USA and the Cheonggyecheon Stream in Seoul, South Korea.



The Cheonggyecheon Stream before and after its greening

13. People-Centric Planning

The Committee noted that the urban planning agenda currently in place is heavily in favour of automobile induced urban sprawl. Sprawl is resource inefficient and takes away from what the Committee believes should be the inspiration for urban planning and development: the people of the city. The Committee would like to recommend a change in the urban agenda to include a more people-friendly and people-centric development. Pedestrians and

cyclists are routinely ignored in road planning. This orientation needs to be balanced.

14. Restoring Communal Life on Canal

With reference to Recommendation 13 above, the Committee appreciated the efforts of Mr. Abdul Jabbar Shaheen in creating people-friendly environments along the Canal Road particularly near Dharampura. The sight of the common man enjoying recreational facilities, so ably put in place by Mr. Jabbar, is a great example of how small efforts can restore communal life in our cities. The Committee recommends the addition of such recreation spots along the entire length of the Canal so as to promote and protect democratic social interaction. In addition, and in furtherance of Recommendations 12 and 13, the Committee recommends the introduction and implementation of a monthly “car free day” along the Canal Road. Such an event can be organized in selected sectors of the Canal Bank Road, on a rotational basis, with the assistance of the local administration and would involve declaring the Lahore Canal a “car free” pedestrian zone between given times of the day, promoting various sports and recreational activities along the Canal and encouraging residents and citizens to participate. This needs to be planned around available parking facilities. The cleaner waters of the Canal would be reclaimed as the largest urban swimming pool and a monthly Lahore Canal “Carnival”/Meena Bazaar developed around the “car free day” would soon develop into the city’s most used park.



Example of the PHA’s work along the Canal Road near Dharampura/Shalimar Underpasses

15. Public Participation in Lahore Canal Governance

The Committee is of the view that active communities and civil society are necessary conditions for good governance and that, the commitment of the members of the LBT in campaigning for the preservation of the Lahore Canal displays an enormous goodwill. The Committee is of the view that this enormous goodwill should be harnessed for the greater good of this and future generations of Lahoris and that, to this end, an Advisory Committee should be established for the purposes of implementing and overseeing the

recommendations of the Committee. This is included in Chapter III of the proposed Lahore Canal (Heritage Urban Park) Act, 2011 (Annexure H).

16. Ambulance/Medical Emergencies

The officials of Rescue 1122 emergency services repeatedly stressed the importance of removing encroachments along the Canal Road and ensuring a smooth flow of traffic at all times for the purpose of facilitating emergency vehicles taking patients to hospitals. The officials were of the view that while it was acceptable that alternative routes to hospital and healthcare facilities should be identified and developed in the long term, there was a strong need for a short term solution to the congestion along the Canal Road such as selected widening of the Road.

17. Limited Widening of Road

The total distance on one side of the Canal Road from Dharampura to Thokar Niaz Beg is 14.5 KM. Out of these different sections, 6.59 KM road has already been widened before the reference of this matter to mediation.

The congestion on the remaining about 8 KM is particularly acute in certain locations, leading not only to prolonged delays but also causing safety hazards because ambulances and rescue vehicles are caught up in traffic and unable to move swiftly.

The Committee, after a detailed site visit to these stretches of the Canal Road and discussion with the concerned officials, recommends that this short-term congestion can be relieved to some extent if the third lane is allowed to be added at the following locations on both sides of the Canal:

?	Mall Road to Jail Road ...	525 M	(Eastern)
		460 M	(Western)
?	Jail Road to F.C. College...	550 M	(Eastern)
...		550 M	(Western)
?	University Campus to Jinnah Hospital...	1,700 M	(Eastern)
...		1,700 M	(Western)
?	Jinnah Hospital to Doctors Hospital...	700 M	(Eastern)
...		750 M	(Western)

These stretches totalling a maximum of 3.525 KM on each side, as shown in Annexure J/1 to J/4, have 642 trees. And 60% (about 385) of these trees are of eucalyptus specie. Every effort should be made to build the third lane in these stretches on the edges of the existing road to reduce to a minimum the area taken from the green belt on both sides of the Canal Road.

The last stretch from Doctors Hospital to Thokar Niaz Beg (2.6 KM) is getting increasingly congested because of the volume of traffic generated from housing colonies like M.A. Johar Town and

a large number of other colonies beyond Thokar Niaz Beg and areas on and around Raiwind Road. However, with the construction of service roads, as per Recommendation No. 4, the flow on the Canal Road can be reduced. In addition, some improvement can be achieved without encroaching on the green belt, if the trees on the edges of the road causing bottlenecks (about 460 trees including about 310 eucalyptus) (Annexure K), are removed to improve earthen shoulders and bus bays are provided at suitable points. The Committee does not recommend the widening of the Canal Road through a third lane in this stretch.

For each tree felled in any sector of the Lahore Canal Road, the Punjab Government will plant at least a hundred (100) mature trees in replacement.

18. Sector-Specific Recommendations

Although the mandate of the Committee from the Supreme Court was only for the Canal Bank Road from Dharampura to Thokar Niaz Beg, our recommendations cover, because of the interdependence of urban planning issues, the area upstream of Dharampura as well as downstream from Thokar Niaz Beg in the following, sector-specific recommendations:

(1) Jallo Mor to Dharampura Underpass

The Committee recommends a moratorium on all new commercial activity and draws attention to the ongoing unplanned development and encroachment (of green belt) activity in this sector. Service roads in this sector deserve special attention.

The Punjab Government has no proposal for the Canal Bank Road or an underpass in this sector but its future planning should be guided by the Recommendations of the Committee.

(2) Dharampura Underpass to Mall Road Underpass

The Committee is of the opinion that this sector is working well but indicates that the encroachments and restrictions along the service road should be removed in order to facilitate a smooth flow of traffic.

The Punjab Government has no proposal for the Canal Bank Road or an underpass in this sector but its future planning should be guided by the Recommendations of the Committee.

(3) Mall Road Underpass to Jail Road Underpass

The Committee is of the opinion that entry and exit points along this sector may be streamlined to promote smooth entry and exit from the Canal Road and to minimize traffic turbulence.

(4) Jail Road Underpass to F.C. College Underpass

In addition to its Recommendation No. 2 above, the Committee recommends the enforcement of land-use and zoning laws in the areas adjacent to the Lahore Canal in this sector.

(5) Campus Underpass to Jinnah Underpass

As per the recommendation of the Committee, this sector of the Canal will be subject to traffic diversions to Multan Road on the north of the Canal and Usmani Road on the South of Canal. Appropriate signage will also be necessary to announce these diversions. These diversions will also benefit from the signal free corridor being constructed at Kalma Chowk for traffic flowing from Garden Town to Liberty Market.

(6) Jinnah Underpass to Thokar Niaz Beg

The Committee reiterates its Recommendation No. 7 above, namely that traffic to the Old CBD and New CBD should be diverted from the Canal Road and onto the Multan Road and the Southern Bypass respectively. The Committee also recommends the construction of radial/arterial roads along a northwest-southeast axis as proposed by the 1991 JICA Lahore Urban Transport Master Plan. These radial/arterial roads will also assist in diverting traffic from the Canal Road as envisaged in Recommendation No. 4 above.

The Committee is also of the view that the results of the current Lahore Urban Transport Master Plan study being conducted by the Transport Department of the Government of the Punjab will be instructive in this regard.

(7) Beyond Thokar Niaz Beg

The Committee recommends a moratorium on new commercial development as well a check on unplanned development along this sector of the Lahore Canal just as it recommended in No. (1) above.

H. Conclusions

In conclusion, the Committee points out that its Recommendations form a complete package with each component interlinked and complementing each another. The Committee is of the opinion that the strength and weight of its recommendations will be diluted if there is any "cherry picking" of its recommendations. The implementation of the Recommendations should be owned by the Government of the Punjab at the outset so that these recommendations are implemented holistically both in letter and spirit, through a detailed and co-ordinated work

plan, as a “compact” of the Government of the Punjab with the city of Lahore.”

9. Copies of the Mediation Committee Report were given to the petitioner and all concerned. Petitioners mostly agreed with the recommendations but have raised written objections mainly qua clause 17. Some of the objections related to the procedure adopted by the Committee and some related to inclusion of three members who according to petitioner, have political affiliations with the Provincial Government and which may have affected their neutrality. It was averred that out of eight committee members only two professional experts were included. During course of arguments, on Court query, the Convener of the LBT, Ms. Imrana Tiawana however, candidly stated that she agreed with 95% of the recommendations made by Mediation Committee but took serious exception to Clause 17 of the recommendations wherein the widening of road has been increased from initial 1.5 KM to 3.5 KM without any reason. This widening was opposed by the petitioner as according to her, after adoption of the proposed Heritage Park Act and the recommended policy for the Canal Road as suggested by the Mediation Committee, there would be no need for widening of the road because the alternate measures proposed by the Mediation Committee would solve the traffic congestion and other related issues. The recommended measures include improvement of junctions, better traffic management systems, better utilization of service roads, completion of other traffic related projects such as the ring road and southern bypass, and the improvement of public urban transport, creation of “go slow” areas and the improvement of the secondary and tertiary road network etc will obviate the need of widening the Canal Road.

10. Mr. Arif Hassan who represented the petitioners in the Mediation Committee also objected only to the proposed widening. He was of the view as follows:-

“I fully endorse the conceptual framework of mediation report and recommendations 1 to 16. However, I do not endorse recommendation 17 and feel the recommendations in item 18 should be subservient to concept of not widening any length of Canal Bank Corridor.....

The loss of 3.525 kilometers of exceptionally beautiful landscape and flora should, in my opinion, not be permitted simply because of automobile pressure. I would go a step further and say that the some of the areas lost to automobile along the Canal Bank can be reclaimed without increasing traffic congestion.”

11. Having considered the submissions made by petitioners, learned counsel for the parties, the report submitted by the Mediation Committee and the precedent case law relied upon, the issues which crop up for consideration broadly speaking are as follows:-

- i) Whether the Canal Road Project is violative of the Pakistan Environmental Protection Act (PEPA) and the regulations framed thereunder?
- ii) Whether the approval granted by the Environmental Protection Authority-Punjab (EPA-Punjab) was mechanical at the asking of the Government of Punjab and does not reflect conscious application of mind?
- iii) Whether the Canal Road Project is in consonance with the concept of sustainable urban development?
- iv) Whether the precautionary principles of ecological protection as reiterated in Shehla Zia’s case have been ignored in designing and approving the Canal Road Project?
- v) Whether having consented to the referral of the matter to the mediation, can the petitioners join issue with the recommendations made by the Mediation Committee?

- vi) Whether the policy making domain in which the Canal Road Project falls, is the exclusive preserve of Executive Authority and can this Court, in these proceedings, interfere in the said domain?
- vii) Whether the project entailing widening of the road on both sides of the Canal, which would have the effect of reducing the area of green belt, is violative of the Doctrine of Public Trust? and
- viii) Whether the Canal Road Project, if implemented, is likely to cause environmental degradation and thereby would be violative of the fundamental rights of Right to life (Article 9 of the Constitution) and Right to human dignity (Article 14 of the Constitution)?

Issues No. (i)

Whether the Canal Road Project is violative of the Pakistan Environmental Protection Act (PEPA) and the regulations framed thereunder?

12. Before dilating on the legality of the Canal Road Project, it would be in order to refer to some of the relevant provisions under which it was examined and approved. Section 12 of the PEPA mandates that initial environmental examination and EIA would be carried out by concerned government agency which in the instant case is Provincial Government of Punjab.

Section 12 reads as follows:-

“12. Initial environmental examination and environmental impact assessment.--(1) No proponent of a project shall commence construction or operation unless he has filed with the Federal 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 Federal Agency approval in respect thereof.

(2) The Government Agency shall subject to standards fixed by the Federal Environmental Protection Agency---

(a)

(b) review the environmental impact assessment and accord its approval subject to such conditions as it may deem fit to impose, require that the environmental impact assessment be re-submitted after such modifications as may be

stipulated or reject the project as being contrary to environmental objectives.

(3) Every review of an environmental impact assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to--

(i)

(ii)

(iii)

(4) The Federal Agency shall communicate its approval or otherwise within a period of four months from the date the initial environmental examination or environmental impact assessment is filed complete in all respects in accordance with the prescribed procedure, failing which the initial environmental examination or, as the case may be, the environmental impact assessment shall be deemed to have been approved, to the extent to which it does not contravene the provisions of this Act and the rules and regulations made thereunder.

26. Power to delegate. --**(1)** *The Federal Government may, by notification in the official Gazette, delegate any of its or of the Federal Agency's powers and functions under this Act and the rules and regulations made thereunder to any;*

Provincial Government any Government Agency, local council or local authority.

(2) The Provincial Government may, by notification in the official Gazette, delegate any of its or of the Provincial Agency's powers or functions under this Act and the rules and regulations made thereunder to any Government Agency of such Provincial Government or any local council or local authority in the Province."

13. The powers of the Federal Government to carry out the EIA under the law were delegated to the Provincial Government under the afore-referred provision vide Notification No. SRO.1251(I)/98 dated 27.10.1998 which reads as follows:-

“S.R.O. 1251 (I)/98.---*In exercise of the powers conferred by sub-section (1) of section 26 of the Pakistan Environmental Protection Act, 1997 (XXXIV of 1997), the Federal Government is pleased to delegate to the Provincial Government, Province of the Punjab, the powers*

and functions of the Pakistan Environmental Protection Agency under the provisions of the said Act specified in column (2) of the table below subject to the conditions and limitations specified in column (3) of that table.”

14. To give effect to PEPA, the Federal Government issued the Review of IEE and EIA Regulations. A reference to some of these regulations would be in order:-

“3. Projects requiring an IEE. A proponent of a project falling in any category listed in Schedule I shall file an IEE with the Federal Agency, and the provisions of section 12 shall apply to such project.

4. Projects requiring an EIA. A proponent of a project falling in any category listed in Schedule II shall file an EIA with the Federal Agency, and the provisions of section 12 shall apply to such project.

8. Filing of IEE and EIA. (1) Ten paper copies and two electronic copies of an IEE or EIA shall be filed with the Federal Agency.

(2) Every IEE and EIA shall be accompanied by---

(a) an application, in the form prescribed in Schedule IV; and

(b) copy of receipt showing payment of the Review Fee.

10. Public participation---(1) In the case of an EIA, the Federal Agency shall, simultaneously with issue of confirmation of completeness under clause (a) of sub-regulation (1) of Regulation 9, cause to be published in any English or Urdu national newspaper and in a local newspaper of general circulation in the area affected by the project, a public notice mentioning the type of project, its exact location, the name and address of the proponent and the places at which the EIA of the project can, subject to the restrictions in sub-section (3) of section 12, be accessed.

(2) The notice issued under sub-regulation (1) shall fix a date, time and place for public hearing of any comments on the project or its EIA.

(5) All comments received by the Federal Agency from the public or any Government Agency shall be collated, tabulated and duly considered by it before decision on the EIA.

11. Review

(1) The Federal Agency shall make every effort to carry out its review of the IEE within 45 days, and of the EIA

within 90 days, of issue of confirmation of completeness under Regulation 9.

- (2) In reviewing the IEE or EIA, the Federal Agency shall consult such Committee of Experts as may be constituted for the purpose by the Director-General, and may also solicit views of the sectoral Advisory Committee, if any, constituted by the Federal Government under subsection (6) of section 5.*
- (3) The Director-General may, where he considers it necessary, constitute a committee to inspect the site of the project and submit its report on such matters as may be specified.*
- (4) The review of the IEE or EIA by the Federal Agency shall be based on quantitative and qualitative assessment of the documents and data furnished by the proponent, comments from the public and Government Agencies received under Regulation 10, and views of the committees mentioned in sub-regulations (2) and (3) above.*

12. Decision

On completion of the review, the decision of the Federal Agency shall be communicated to the proponent in the form prescribed in Schedule V in the case of an IEE, and in the form prescribed in Schedule VI in the case of an EIA.

13. Conditions of approval

(1) Every approval of an IEE or EIA shall, in addition to such conditions as may be imposed by the Federal Agency, be subject to the condition that the project shall be designed and constructed, and mitigatory and other measures adopted, strictly in accordance with the IEE/EIA, unless any variation thereto have been specified in the approval by the Federal Agency.

(2) Where the Federal Agency accords its approval subject to certain conditions, the proponent shall –

(a) before commencing construction of the project, acknowledge acceptance of the stipulated conditions by executing an undertaking in the form prescribed in Schedule VII;

(b) before commencing operation of the project, obtain from the Federal Agency written confirmation that the conditions of approval, and the requirements in the IEE/EIA relating to design and construction, adoption of mitigatory and other measures and other relevant matters, have been duly complied with.”

15. An examination of the material placed before this Court reveals that the afore-referred provisions of the Act and the Regulations framed thereunder were strictly complied with. Admittedly, the project designed by TEPA was initially approved by the Provincial Government and then was referred to EPA-Punjab which in terms of Sub-section (3) of Section 12 read with Rule 4 of the Regulations carried out public hearing. It also constituted a committee consisting of ten experts in terms of Regulation No. 11 (2) of Review of IEE and EIA Regulations who were consulted before the grant of approval and in terms of Rule 13. The EPA-Punjab also laid down stringent conditions/precautionary measures as also ameliorative steps to minimize the effect of cutting of some trees and damage to the green belt on both sides of the road. In the light of the afore-referred facts, we find that the approval was granted by strictly complying with PEPA and the regulations framed thereunder and there was no illegality whatsoever.

Issues No. (ii), (iv) & (viii)

(ii) Whether the approval granted by the Environmental Protection Authority-Punjab (EPA-Punjab) was mechanical at the asking of the Government of Punjab and does not reflect conscious application of mind?

*(iv) Whether the precautionary principles of ecological protection as reiterated in Shehla Zia's case have been ignored in designing and approving the Canal Road Project? **and***

(viii) Whether the Project, if implemented, is likely to cause environmental degradation and thereby would be violative of the fundamental rights of Right to life (Article 9 of the Constitution) and Right to human dignity (Article 14 of the Constitution)?

16. This Court took suo moto notice of the letter addressed to the Hon'ble Chief Justice of Pakistan because it was canvassed that the project under challenge would result in de-forestation and depletion of the green belt; would give fatal blow to the Flora and Fauna on both sides of the Canal Road and

thereby lead to an ecological and environmental disaster. This fallout, it was contended, would be violative of the Fundamental Right to Life (Article 9 of the Constitution) and may also have the effect of degrading human existence (violation of Article 14 of the Constitution). The Courts in almost all liberal democracies have given an expanded meaning to the Fundamental Right to Life in the wake of growing urbanization and the environmental changes that it brings. Dilating on the ambit of fundamental right of right to life, this Court in Shehla Zia v. WAPDA (PLD 1994 SC 693) held as follows:-

“Article 9 of the Constitution provides that 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. The word ‘life’ has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country, is entitled to enjoy with dignity, legally and constitutionally. For the purposes of present controversy suffice to say that a person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. Under the common law a person whose right of easement, property or health is adversely affected by any act or omission or commission of a third person in the neighborhood or at a far off place, is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be residing near, under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the, possibility of danger come forward and this has happened so in the present case. According to Oxford dictionary, ‘life’ meant state of all functional activity and continual change peculiar to organized matter and specially to the portion of it

constituting an animal or plant before death and animate existence."

In Black's Law Dictionary, 'life' means "that state of animals, humans, and plants or of an organized being, in which its natural functions and motions are performed, or in which its organs are capable of performing their functions. The interval between birth and death. The sum of the forces by which death is resisted....."Life" protected by the Federal Constitution includes all personal rights and their enjoyment of the faculties, acquiring useful knowledge, the right to marry, establish a home and bring up children, freedom of worship, conscience; contract, occupation, speech, assembly and press".

The Constitutional Law in America provides an extensive and wide meaning to the word 'life' which includes all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law. In the present case this is the complaint the petitioners have made. In our view the word 'life' constitutionally is so wide that the danger and encroachment complained of would impinge fundamental right of a citizen. In this view of the matter the petition is maintainable."

17. The Canal Road Project is neither a plant omitting hazardous gases nor releasing pollutants in the canal water. It aims at widening the road on both sides of the Canal Bank which of necessity would cause some damage to the green belt and thereby affect environment. The apprehended change or damage which has neither been quantified nor ascertained *per se* may not be violative of Fundamental Right of Right to Life (Article 9 of the Constitution) unless it is shown by placing incontrovertible material before this Court that it would lead to hazardous effects on environment and ecology to an extent; that it would seriously affect human living. A close perusal of Canal Road Project indicates that before its approval, TEPA referred the matter to NESPAK which carried out the requisite studies and after detailed analysis came to the conclusion that the Canal Road

Project is environmentally viable; that only 1800 trees would be cut as against the apprehension that it would lead to cutting of 33000 trees; that 60% of the trees which are likely to be affected are eucalyptus which are even otherwise not beneficial to the soil and environment. The EIA Report also reflects that feasibility of other alternative solutions suggested to combat traffic congestion were considered by it and it was found that the project prepared by TEPA was most feasible. It also suggested mitigative measures and precautions to ensure that there was minimum damage to ecology and environment of the area. The argument that the widening of roads on both side of the Canal would be devastating and would have irreparable effects on ecology has been attended to, both while granting environmental clearance by the competent authority and also by the report of the Mediation Committee. Every project of this kind would have some adverse impact on environment but that would be negligible as compared to the ameliorative effects it is expected to have on traffic congestion and convenience of commuters and on improvement in traffic safety levels. When challenge is thrown to such projects, the Courts have to take into consideration the issues and problems that would remain unresolved and the resultant hardship of the people if the road is not widened and project is stayed. The ecological and environmental concerns, on the one hand, and hardship of the city commuters, on the other, faced with traffic congestions pose a dilemma. A balance needs to be struck between these two competing issues. The Courts may not be ideally suited for striking such a balance because such an exercise would entail factual enquiry, research work and expert knowledge of specialists in the relevant field. The Court noted that when NESPAK carried out the requisite EIA, it held public hearing, considered the objections of the petitioners, examined the alternative solutions suggested and found that the project in hand was preferable to all other solutions suggested. The report submitted by NESPAK in turn was placed before the EPA-

Punjab, which granted approval and environmental clearance to the Canal Road Project. This approval was neither mechanical nor without conscious application of mind, rather the precautionary principles of environmental regulations reiterated by this Court in *Shehla Zia (Supra)* were fully kept in view.

18. Conscious of some change which may be caused in environment, some of the measures/conditions recommended by EPA-Punjab while granting environment clearance are as follows:-

- (a) strict adherence to the Environmental Management Plan in order to minimize any negative impacts on soil, ground water, air and biological resources of the project area;
- (b) strict compliance with the National Environmental Quality Standards;
- (c) the carrying out of extensive tree plantation, especially indigenous species in and around the project area in consultation with the PHA and to make all arrangement for the transplantation of existing trees; and
- (d) the plantation of four (4) trees having 6-7 feet height for every single uprooted tree.

19. In the afore-referred circumstances, in our judgment, the approval of the Canal Road Project was granted with conscious application of mind considering all relevant material and the attending circumstances. The Canal Road Project neither contravenes Fundamental Right of Right to Life (Article 9) nor the Right to Human Dignity (Article 14).

Issue No. (vii)

(vii) Whether the project entailing widening of the road on both sides of the Canal, which would have the effect of reducing the area of green belt, is violative of the Doctrine of Public Trust?

20. The concept of Public Trust is as old as the organized human living and the advent of State. This concept appeared in codified law for the first

time during the Roman Empire. Roman Emperor Justinian codified the law in *Corpus Juris Civilis* about 1500 years ago. The genesis of this concept was laid by Justinian in 529 BC in a section of the said Code in these words: “*By the law of nature these things are common to all mankind, the air, running water, the sea and consequently the shores of the sea*”. Much after the fall of the Roman Empire, the *Corpus Juris Civilis* was rediscovered in Pisa and the concept spread throughout Europe. In England this concept was codified in the Magna Carta and in 1225 King John was forced to revoke his cronies’ exclusive fishing and hunting rights, because this violated the public’s right to access these common resources. Thereafter, it became a part of the Common Law and traveled to U.S. during its founding years. As part of the Common Law tradition, it became a concept of judicial comment for the first time in 1821 in U.S. in the case of *Arnold v. Mandy* (6N.J.L.1, 53 (1821) wherein it is held:-

“.....the government could not, “consistently with the principles of the law of nature and the constitution of a well ordered society, make a direct and absolute grant of the waters of the state, divesting all the citizens of their common right.”

21. This was followed by another case *Illinois Central Railroad v. Illinois* (146 U.S. 387 (1892) wherein the Supreme Court thwarted the attempt of the executive to give the entire lakeshore to a private railroad. The Supreme Court held that:

“.....a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties.”

22. According to Professor David Takacs (“The Public Trust Doctrine, Environmental Human Rights, and the Future of Private Property” (<http://www.ielrc.org/content/a0804.pdf>), the afore-referred case is seminal as it

played a pivotal role in the evolution of Public Trust Doctrine in American jurisprudence and its three elements are: (i) the sovereign holds certain resources in trust for the common good; (ii) the public has some kind of right to protection of these resources; and (iii) while democracy may seem subverted when a court overrules the acts of elected officials, such judicial acts in fact serve democracy by preserving rights invested in all the people.

23. The academic debate on this concept was laid by Professor Joseph Sax and according to one estimation, it was he who revived a dormant area of law which now continues to be relied upon by the courts in several jurisdictions. Over the years it has come to serve two purposes: first, it mandates affirmative State action for the effective management of natural resources, and, second, it enables the citizen to question the decision making in the management of those resources. It guarantees public access to public trust resources and also adds an element of accountability in how the State treats these resources.

24. The concept of public trust has given birth to new area of jurisprudence i.e. to treat environmental rights as Fundamental Human Rights. Professor Joseph L. Sax in his Article titled as "*The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*" (<http://www.uvm.edu/~gflomenh/PA395-CMN-ASSTS/articles/sax.pdf>) justified the doctrine by holding that, "*some public interests in the environment are intrinsically important, the gifts of nature's bounty ought not be constrained for private use, and some uses of nature are intrinsically inappropriate*". The advocates of environmental human rights canvass that clean water or clean air or functioning ecosystems are rights because human life cannot exist without them; these gifts of nature's bounty ought not be traded away for the use of private entities at the expense of what is essential to every single human's life.

25. Courts in many jurisdictions have sanctified the environmental human rights by raising environmental concerns and by equating them with other Fundamental Rights. The innovative approach gave an extended meaning to the Fundamental Right of Right to Life. For instance, in India the Fundamental Right of Right to Life (Article 21 of the Indian constitution) which declares that no person shall be deprived of his life or personal liberty except according to procedure established by law was interpreted to include the right to healthy environment and ecosystem as they ultimately effect to the Right to Life. In Rural Litig. & Entitlement Kendra v. State of Uttar Pradesh (AIR 1985 SC 652, 656), the Supreme Court of India stopped unauthorized mining causing environmental damage by observing that said order was imperative for protecting and safeguarding the rights of the people to live in a healthy environment with minimal disturbance of ecological balance.

26. In Charan Lal Sahu v. Union of India (Bhopal Disaster case) (AIR 1990 SC 1480), this view was reiterated. In M.C. Mehta v. Kamal Nath (1997 1 S.C.C. 388), the Court stopped a developer to build a motel at the mouth of a river by propounding the public trust doctrine and held that:-

“[t]he notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land.”

27. In M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu (1999 S.C.C. 464), the Supreme Court of Indian for the first time hitched the Public Trust Doctrine to the constitutionally guaranteed right to life.

28. In Th. Majra Singh v. Indian Oil Co. (AIR 1999 J&K 81), the Court granted a manufacturing plant to be constructed conditionally only if the Government observed its Public Trust Doctrine duties to ensure that all possible pollution safeguards were implemented.

29. In Pakistan, the Supreme Court as early as 1994 in *Shehla Zia's* case (PLD 1994 SC 693), interfered with the construction of an electricity grid station where it was apprehended that it would cause damage to the safety of human beings and to the environment by extending the meaning of Fundamental Right of Right to Life.

30. In Moulvi Iqbal Haider v. Capital Development Authority (PLD 2006 SC 394), the Supreme Court stopped the conversion of a public park into a commercial project (Mini Golf Course) by giving an extended meaning to yet another Fundamental Right i.e. the right to have access to public places without discrimination under Article 26 of the Constitution. Speaking for the Court, Mr. Justice Iftikhar Muhammad Chaudhry, Hon'ble Chief Justice of Pakistan observed as under:-

“Now we will examine whether in view of the given facts and circumstance of the case, any of the fundamental rights guaranteed to the citizens of Pakistan have been denied. Islamabad, being a capital city, attracts representation from all over Pakistan in different capacities. Thus it is their right to enjoy access to the places of entertainment like the Jubilee Park, etc. under Article 26 of the Constitution. The same is the position of the inhabitants of the area where the Park is situated. As it has been stated herein above that necessary documents have been withheld by the C.D.A. from the Court for which, observation have been smade herein above. Thus, it is held that Jubilee Park was earmarked in the original scheme of Sector F-7, as it was meant for low income group, who are deprived of the benefits of having their own private gardens, comparing to higher income groups, therefore, converting such Parks for commercial activity with the collaboration of multinational companies, would deny the rights guaranteed to them.”

31. South Africa is one of those few centuries where the Environmental Rights have been protected as Fundamental Human Rights in the Constitution. In terms of section 24 of the Bill of Rights, it has been unequivocally declared that *everyone has the right: a) to an environment that is not harmful to their health or well-being; and b) to have the environment*

protected, for the benefit of present and future generations, through reasonable legislative and other measures that: i) prevent pollution and ecological degradation; ii) promote conservation; and iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

32. The afore-referred survey of the academic, judicial pronouncements and Constitutional provisions indicate that the concept of Public Trust Doctrine is increasingly becoming part of the jurisprudence in several jurisdictions and Environmental Human Rights are being classified as Fundamental Human Rights. But what are the parameters of this concept? How far the public or private project can be stalled by invoking this concept and to what extent the public use of a trust resource can be converted to private use or for a different public purpose? This aspect has also been a subject of academic comment. Prof. Serena A. Williams in his article titled as "*Sustaining Urban Green Spaces: Can Public Parks be Protected under the Public Trust Doctrine?*" (http://works.bepress.com/serena_williams/2/) lays down two broad approaches: the legislative approach which prohibits the alienation or diversion of resource without plain and explicit legislation to that end and second the substantive test approach. The latter approach consists of five factors to be considered by a Court while determining whether diversion or alienation of public trust property violates the said test. These factors are as follows:-

"(1) that public bodies would control use of the area in question; (2) that the area would be devoted to public purposes and open to the public; (3) the diminution of the area of original use would be small compared with the entire area; (4) that none of the public uses of the original area would be destroyed or greatly impaired; and (5) that the disappointment of those wanting to use the area of new use for former purposes was negligible when compared to the greater convenience to be afforded those members of the public using the new facility."

33. According to Professor Williams if alienation of a parkland is allowed, courts must rigorously scrutinize the alienation from public use to a private entity to ensure that the transfer continues to serve a public use and is carried out with minimum possible harm to the remaining parkland. He further observed that:

“Diversions in the use of public trust land should be approved only when three factors are met: (1) the area would continue to be devoted to a broad public purpose which is either consistent with the public uses of the original area or is one that outweighs the public use of the area as a park; (2) a public body would retain control over the use of the area in question; and (3) the diverted use would be one open to the public. These three factors are the crux of the five-criteria balancing approach. If the park use must succumb to a new public use that is determined to be paramount to the park use, the public must maintain control over the new use and continue to have easy access to it for a general public purpose.”

34. He adds that *“Courts generally find such a change in purpose valid when the diversion is from one broad public purpose to another, particularly when the area diverted is relatively small compared to park area preserved. For example, a road widening project that would require the diversion of one half acre of park space was upheld under the public trust doctrine as ‘merely a diversion of a minimal quantum of public land from one public purpose to another public purpose.’ (Emphasis is supplied).*

35. The case in hand, if examined, in the light of the Doctrine of Public Trust as explained by the academics and construed by the Courts including the Pakistan Supreme Court leads to an inescapable conclusion that the green belt around both sides of the Canal is a Public Trust resource; that it cannot be converted into private use or any other use other than a public purpose; that widening of the road as proposed is a public purpose; that a minimum area is being affected and the remaining green belt/public park is much larger; that the same has been recommended by the Mediation Committee to be declared as

Heritage Park and the recommendations of the said Committee have been accepted by the Province of Punjab in totality. In these circumstances, the Doctrine of Public Trust cannot be said to have been compromised.

Issue No. (iii)

(iii) Whether the Canal Road Project is in consonance with the concept of sustainable urban development?

36. The concept of “Sustainable Development” was given recognition for the first time in Stockholm Declaration of 1972 and its definition given in the Brundtland report was accepted i.e. ‘*development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.*’ In Pakistan this concept though referred to in some of the earlier judgments of this Court (Shehla Zia *Supra*) was defined for the first time in section 2 of PEPA which is as under:-

“(2)(xlii) ‘sustainable development’ means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs.”

37. This is an evolving concept and the definition given in section 2(xlii) above appears to have been inspired by the Stockholm Declaration 1972. In the preparatory meeting for the URBAN21 Conference (Berlin July 2000) a more comprehensive definition of sustainable urban development was adopted which lays down as under:-

“Improving the quality of life in a city, including ecological, cultural, political, institutional, social and economic components without leaving a burden on the future generations. A burden which is the result of a reduced natural capital and an excessive local debt. Our aim is that the flow principle, that is based on an equilibrium of material and energy and also financial input/output, plays a crucial role in all future decisions upon the development of urban areas.”

38. Yet another definition focuses more on communities, on human spirit, on goals and visions of sustainable development and participatory dimension of social, economic and ecological development of a society. According to the Institute for Sustainable Communities (<http://www.iscvt.org/FAQscdef.html>) , sustainable communities are defined as under:-

“Sustainable communities are defined as towns and cities that have taken steps to remain healthy over the long term. Sustainable communities have a strong sense of place. They have a vision that is embraced and actively promoted by all of the key sectors of society, including businesses, disadvantaged groups, environmentalists, civic associations, government agencies, and religious organizations. They are places that build on their assets and dare to be innovative. These communities value healthy ecosystems, use resources efficiently, and actively seek to retain and enhance a locally based economy. There is a pervasive volunteer spirit that is rewarded by concrete results. Partnerships between and among government, the business sector, and nonprofit organizations are common. Public debate in these communities is engaging, inclusive, and constructive. Unlike traditional community development approaches, sustainability strategies emphasize: the whole community (instead of just disadvantaged neighborhoods); ecosystem protection; meaningful and broad-based citizen participation; and economic self-reliance.”

39. Examining the project under challenge, in the light of concept of sustainable development, as defined in section 2(xlii) of the Act, we note that given the resource constraint, the values of sustainable development were kept in view while designing and approving the Canal Road Project which is evident, *inter alia*, from the following measures. It has been assured to this Court:

- (a) that the green belt on both sides of the Canal Road would be retained and the entire area would be declared/notified as Heritage Park, through an Act of the Legislature;

- (b) that minimum possible area from the green belt be affected on account of the widening of the Canal Road;
- (c) that the widening of the road was necessitated to cater to the needs of the current and future generations;
- (d) that the existing traffic flow and the likely increase in the volume of traffic on the road was kept in view while designing the project;
- (e) that stringent conditions were attached by the EPA-Punjab while granting environmental approval to the project which included strict adherence to the Environmental Management Plan in order to minimize any negative impacts on soil, ground water, air and biological resources of the project area;
- (f) that strict compliance with the National Environmental Quality Standards would be observed;
- (g) that carrying out of extensive tree plantation, especially indigenous species in and around the project area in consultation with the PHA (Parks and Horticulture Authority) and to make all arrangement for the transplantation of existing trees; and
- (h) that the plantation of four (4) trees having 6-7 feet height for every single uprooted tree.

40. In the afore-referred circumstances, the contention that the Canal Road Project approval is violative of the concept of sustainable development would not be tenable.

Issue No. (v)

Whether having consented to the referral of the matter to the mediation, can the petitioners join issue with the recommendations made by the Mediation Committee?

41. The matter was referred for mediation in terms of this Court's order dated 14.2.2011 which reads as follows:-

“Mr. Salman Butt, learned ASC stated that the case required to be disposed of expeditiously in view of the rush of traffic on the Canal Road as due to pendency of matter the project has already been delayed. On the other hand Ms. Imrana Tawana stated that there are so many other alternate options available to the Punjab Government to manage the traffic flow instead of cutting off the trees on the Canal Road, Lahore. Dr. Parvez Hassan who was appearing in another case admittedly enjoys the expertise in law and has vast experience in the field of environmental management, offered to intervene between the petitioner i.e. Lahore Conservation Society and the Government of Punjab for finding a viable solution for the critical issue herein raised. Accordingly, both the parties agreed to the mediation of Dr. Parvez Hassan who is thus nominated as the mediator and submit a report on the next date of hearing. Adjourned to a date in office after one month. Dr. Parvez Hassan may associate any other persons or experts or officials of the Government of Punjab for the purpose of such medication and for finding suitable resolution of the matter.”

42. Although Dr. Parvez Hassan was the sole Mediator appointed to mediate with agreement of both the parties, however, it was stipulated in the order that he could *“associate any other persons or experts or officials of the Government of Punjab for the purpose of such mediation and for finding suitable resolution of the matter”*. In accord with canons of propriety and to keep the petitioners on board at each stage, he constituted a Committee of eight members to be called the Mediation Committee in consultation with learned counsel for the petitioners Mr. Ahmer Bilal Soofi and respondents' counsel Mr. Suleman Butt. One of the petitioners namely Mr. Ahmad Rafay Alam who has the reputation of being a dedicated environmentalist was made Secretary of the Committee. The

Mediation Committee comprised of people of eminence from various fields and they arrived at a consensus barring one dissent in terms of which the report was submitted which has been reproduced in Para-11 above. The only dissenting report opinion is of Dr. Arif Hassan whose note of dissent was placed on record along with the report which has been reproduced in para 10 above.

43. As noted earlier, in the written objections to the report of the Mediation Committee, the petitioner did not join issue with most of the recommendations made except clause 17 of the report i.e. widening of road on both sides of canal. On Court query, Miss Imrana Tiwana candidly conceded that she agrees with 95% of the report submitted by the Mediation Committee but reiterated that arguments/suggestions given by her would effectively tackle the issue of traffic congestion and the widening of road besides being hazardous to environment is unnecessary. This Court in detail has considered the report of the NESPAK with reference to alternate suggestions as also the approval report of the EPA-Punjab and finds that the exercise carried out by the concerned agency and authority under the law is well reasoned and do not call for review in these proceedings. Even otherwise, in absence of any cogent material, it would not be possible for this Court in these proceedings to hold that the alternative solutions suggested by the petitioners should be preferred to the project designed by competent authorities under the law.

44. In a case decided by the International Court of Justice in not distant past (The Gabcikovo-Nagymaros Project dispute between Hungary and Slovakia decided on 25.9.1997), the construction of a barrage system at Danube River was challenged and Hungary contended that it was violative of a treaty to which both Hungary and Slovakia were party and that it would adversely affect the rights of the former as it would divert the waters of Danube thereby causing loss and damage to the country and its nationals. Despite taking note of the

environmental concerns of Hungary with regard to apprehended loss to the nationals and damage to environment, the Court restrained itself from interfering in the ongoing project and advised the parties to settle the dispute through mutual negotiations. The Court did not interfere, *inter alia*, for the reason that the issue mooted entailed factual enquiry and left the matter to be resolved through negotiation in the spirit of mediation. The Court observed as follows:-

“The Court is mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind –for present and future generations - of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

For the purposes of the present case, this means that the Parties together should look afresh at the effects on the environment of the operation of the GabCikovo power plant. In particular they must find a satisfactory solution for the volume of water to be released into the old bed of the Danube and into the side-arms on both sides of the river. It is not for the Court to determine what shall be the final result of these negotiations to be conducted by the Parties. It is for the Parties themselves to find an agreed solution that takes account of the objectives of the Treaty, which must be pursued in a joint and integrated way, as well as the norms of international environmental law and the principles of the law of international watercourses. The Court will recall in this context that, as it said in the North Sea Continental Shelfcases:

"[the Parties] are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it" (I.C.J. Reports 1969, p. 47, para. 85).

45. In the instant case as well, the Court referred the matter for mediation on similar considerations and with consent of both the parties. Petitioner's attempt to resile from the said mode of resolution may not warrant a flattering comment. Because the Mediation Committee was constituted in consultation with petitioner's learned counsel, Mr. Ahmer Bilal Soofi and the allegation that two members of the Committee had affiliation with the Provincial Government is too general and vague to shake their credibility. In S.E. Makudam Mohammad v. T.V. Mahommad Sheik Abdul Kadir (1936 Madras 856), a party agreed for decision of the matter in the light of the report to be submitted by the Commission, subsequently when the report was submitted, the party wanted to resile but the Court relying on an earlier judgment of Privy Council Burgess v. Morton (1896) A.C.136, held as follows:-

“When a party invites the Court to adopt a procedure which is not contemplated by the Civil P.C., and is in fact a procedure extra cursum curiae, he cannot turn around and say that the Court is to blame for adopting the very procedure which he invited the Court to follow. There is such a thing as estoppel apart from the question of adjustment and the doctrine of estoppel would apply to a party who attempts to blow hot and cold in this fashion. As was held in (1896) AC 136(1), where with the acquiescence of the parties the Judge departed from the ordinary course of procedure and decided upon a question of fact, it was incompetent for the parties afterwards to contend that they have an alternative mode of proceeding with the trial as if it had been heard in due course. Lord Watson observed in that case that there were several decisions of the House of Lords which affirmed that the judgment of the Court below pronounced extra cursum curiae, is in the nature of an arbiter's award and that as a general rule at least no appeal from it will lie.”

46. The maxim *extra cursum curiae* which underpins the afore-referred judgment was reiterated by this Court in Mst. Sharif Bibi v. Muhammad Nawaz Shah (2008 SCMR 1702) wherein the judgment of the learned High Court was upheld and appeal dismissed.

47. For afore-referred reasons, it would not be open for the petitioner to challenge Mediation Committee's report, particularly when they have agreed to 95% of the recommendations made by the said Committee.

Issue No. (vi)

Whether the policy making domain in which the Canal Road project falls, is the exclusive preserve of Executive Authority and can this Court, in these proceedings, interfere in the said domain?

48. One of the foundational values enshrined in the Constitution of Islamic Republic of Pakistan is principle of trichotomy of powers i.e. the Legislature would legislate, the Executive would administer law and Judiciary would interpret the law. In Sindh High Court Bar Association v. Federation of Pakistan (PLD 2009 SC 879), this Court highlighted the principle of trichotomy of powers as follows:-

"167. At this stage, it is necessary to elucidate through our own jurisprudence and that of other jurisdictions the principle of trichotomy of powers and the power of judicial review vested in the superior Courts. Case-law from the Indian jurisdiction is particularly instructive on account of common origins of constitutionalism springing from the Government of India Act, 1935 read with the Indian Independence Act, 1947. The Supreme Court of India, in the case of Minerva Mills Ltd v. Union of India (AIR 1980 SC 1789) held that the judiciary was the interpreter of the Constitution and was assigned the delicate task of determining the extent of the power conferred on each branch of the government, its limits and whether any action of that branch transgressed such limits."

49. By according an expanded meaning to the Fundamental Rights provisions of the Constitution, the Courts under Article 199 and 184(3) of the Constitution have taken notice of public interest issues which has led to the development of public interest litigation. The public interest litigation was given new dimension by successive Chief Justices of this country by developing the Human Rights cases jurisprudence whereunder petitions filed by less privileged class of society on issues of public concern have been entertained and decided

where contravention of fundamental rights was proved. Mr. Suleman Butt, ASC placed on record an article by Dr. Parvez Hassan titled as “*Role of Commissions in Public Interest Environmental Litigation in Pakistan*” wherein he referred to a judgment (2000 CLC 471 Lahore) authored by one of us (Tassaduq Hussain Jilani, J.) where the genesis of public interest litigation in the developing world has been commented upon. It was observed:-

“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 inefficacy and corruption at various levels. In such a socio-economic and political milieu, the non-intervention by Court in complaints of matters of public concern will amount to abdication of judicial authority.”

50. This Court does not interfere in every issue of public concern under Article 184(3) of the Constitution but only where the action/order of the executive authority raises the question of enforcement of a Fundamental Right. In Pakistan Tobacco Company Ltd. v. Federation of Pakistan (1999 SCMR 382), this Court candidly held as follows:-

“maintainability of a petition under Article 184(3) of the Constitution is to be examined not on the basis as to who has filed the same but if the controversy involves question of public importance with reference to enforcement of any of the fundamental right, petition will be sustainable.”

51. Again in Javed Ibrahim Paracha v. Federation of Pakistan (PLD 2004 SC 482), this view was reiterated as follows:-

“a person can invoke the Constitutional jurisdiction of the superior Courts as pro bono publico but while exercising this jurisdiction, he has to show that he is litigating, firstly, in the public interest and, secondly, for the public good or for the welfare of the general public. The word ‘pro bono publico’ as defined in Black Law Dictionary, Chambers Dictionary and Oxford Dictionary generally means ‘for the public good’ or ‘for welfare of the whole’ being or involving uncompensated legal services performed especially for the public good. ‘Public interest’ in the Black Law Dictionary,

has been defined as the general welfare of the public that warrants recognition and protection. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation. It thus signifies that in case of public interest litigation, one can agitate the relief on his own behalf and also on behalf of the general public against various public functionaries, where they have failed to perform their duties relating to the welfare of public at large which they are bound to provide under the relevant laws. Viewing the bona fide of petitioner in the above contest, we are of the opinion that the petitioner has not been able to show that he was aggrieved person within the meaning of Article 199 of the Constitution and can agitate his grievance as `pro bono publico."

52. Explaining the ambit of Article 199 of the Constitution, this Court in Muhammad Bashir v. Abdul Karim (PLD 2004 SC 271), laid down as follows:-

"This power is conferred on the High Court under the Constitution and is to be exercised subject to Constitutional limitations. The Article is intended to enable the High Court to control executive action so as to bring it in conformity with the law. Whenever the executive acts in violation of the law, an appropriate order can be granted which will relieve the citizen of the effects of illegal action. It is an omnibus Article under which relief can be granted to the citizens of the country against infringement of any provision of law or of the Constitution. If the citizens of this country are deprived of the guarantee given to them under the Constitution, illegally or, not in accordance with law, then Article 199 can always be invoked for redress". (Ghulam Mustafa Khar v. Pakistan and others PLD 1988 Lah. 49, Muhammad Hussain Khan v. Federation of Pakistan PLD 1956 Kar. 538(FB), S.M. Yousuf v. Collector of Customs PLD 1968 Kar.599 (FB). It is to be noted that "paramount consideration in exercise of Constitutional jurisdiction is to foster justice and right a wrong". (Rehmatullah v. Hameeda Begum 1986 SCMR 1561, Raunaq Ali v. Chief Settlement Commissioner PLD 1973 SC 236). There is no cavil with the proposition that "so long as statutory bodies and executive authorities act without fraud and bona fide within the powers conferred on them by the Statute the judiciary cannot interfere with them. There is ample power vested in the High Court to issue directions to an executive authority when such an authority is not exercising its power bona fide for the purpose contemplated by the law or is influenced by extraneous and irrelevant considerations. Where a statutory functionary acts mala fide or in a partial, unjust and oppressive manner, the High Court in the exercise of its writ jurisdiction has ample power to grant relief to the aggrieved party". (East and West Steamship Co. v. Pakistan PLD 1958 SC (Pak.) 41). In our considered view,

technicalities cannot prevent High Court from exercising its Constitutional jurisdiction and affording relief which otherwise respondent is found entitled to receive.”

53. Many a time, policies/actions of executive authorities are challenged and issues are brought before the Court which have socio-political or economic dimensions; issues of lopsided policies being pursued, issues which have polarized the nation, issues which have bled & divided the nation and issues which reflect immoral or unwise use of public funds. Judges are humans. It is painful to sit back and watch the successive marches of folly. However, the Constitutional constraint reflected in the trichotomy of powers obliges the Court to observe judicial restraint. It intervenes only when the policy/action of the State authority reflects violation of any law or a Constitutional provision or when it relates to the enforcement of a Fundamental Right which *inter alia* includes Environmental Human Rights. The people/Constitution makers did not vest this Court to sit over judgment on a purely policy decision taken by the competent executive authority unless of course it violates the law of the land. In the U.S. Constitution as well, the principle of separation of powers is one of the foundational values. In deference to the Constitutional Scheme, the U.S. Supreme Court observes self-restraint in such matters. In Trop vs. Dulles (356 U.S. 86, 120 (1958), this approach is candidly reflected where the Court held as follows: -

“It is not easy to stand aloof and allow want of wisdom to prevail, to disregard one’s own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court’s giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do.”

54. When an order of governmental authority is challenged before the Court raising an environmental issue, the Court would examine as to whether the

authority which passed the order was conscious of the relevant considerations; whether it deliberated over those and whether it took the decision after having the expert opinion and complying with the mandate of law? The issues which underpin the project under challenge related to traffic congestion, the widening of the Canal Road and the apprehended damage to ecology and environment. The Court would have intervened if the issues of rising traffic flow and congestion had not necessitated remedial measures; if feasibility of other alternative proposals had not been examined by the concerned department; if it had not got conducted Environmental Impact Assessment from a consultant and if the Environmental Protection Authority had not given environmental clearance after taking into consideration the relevant factors; if the doctrine of Public Trust or of Precautionary Principle for environmental protection was being violated or if the respondent-Provincial government had not whole heartedly accepted the Mediation Committee's report which *inter alia* recommend declaring the greenbelt on both sides of the Canal as Heritage Park and had recommended only a partial widening of the road in question. These concerns, in our view, have been adequately addressed by the competent bodies under the law. It is for the concerned department of the government to examine how best to meet traffic congestion and in this exercise it can solicit consultation from another agency or a body of experts to study the feasibility which in the instant case was initially carried out by NESPAK and thereafter the matter was placed before the EPA-Punjab which again having solicited the opinion of experts granted approval with certain conditions. In such cases the Court may not have the requisite expertise to adjudicate. This is why the Court seeks the assistance of experts or experts' committee. The advantage of the experts' committees is that it enables the Court to receive technical expertise while the Judges are left to decide questions of law. Such committees reduce the chances of judicial arbitrariness and adds legitimacy

to the judgments. The only aspect the Court would examine is whether the policy/act under challenge is violative of any provision of the law or the Constitution or any of the Fundamental Rights guaranteed under the Constitution and as interpreted by the Courts from time to time. In Narmada Bachao Andolan v. Union of India (AIR 2000 SC 3751), the Indian Supreme Court came to a similar conclusion when it observed as follows:-

“Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy making process and the Courts are ill equipped to adjudicate on a policy decision so undertaken. The Court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people’s fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means over run in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of latches if the petitioner had the knowledge of such a decision and could have approached the Court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Latches is one of them. Public Interest Litigation (PIL) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time, the PIL jurisdiction has been ballooning so as to encompass within its ambit subjects such as probity in public life, granting of largess in the form of licences, protecting environment and the like. But the balloon should not be inflated so much that it bursts. Public Interest Litigation should not be allowed to degenerate to becoming Publicity Interest Litigation or ‘Private Inquisitiveness Litigation’.”

55. Respectfully reiterating the earlier view taken by this Court in the precedent case law to which reference has been made above and in view of the report of the Mediation Committee which has been accepted in entirety by the Provincial Government, we are of the view that no intervention is called for.

56. In passing the Court may add that it is conscious of the historic and emotional appeal of the Canal which was built initially by the last Muslim

Ruling Dynasty, the Mughals and extended in 1861 by the British. It is indeed an environmental asset. The greenery around it adds beauty and romance to the city. In times gone by there must have been flourishing fields, meadows and green valleys. Much later when the road on both sides of the Canal was metalled, there would hardly have been a few residential colonies. But slowly and gradually, as the population increased, residential colonies were built to cater to the needs of the populace. The mushroom growth of residential colonies is a post independence phenomenon. It assumed a greater momentum in the last 3/4 decades. This caused massive damage to the flourishing fields, the orchards and to the habitats. The ill-conceived commercialization of residential areas had its toll as well. Industrialization on the outskirts of the city further confounded the situation and this resulted in traffic flow to multiply manifolds. The loss of those green valleys evokes a natural lament and nostalgia. But this is what happens to environment and ecology when human needs increase and the cities expand bringing in their wake pains, issues & Thomas Hardy's "Madding Crowd". The famous German Philosopher Frederick Engels (1820-1895) who belonged to the same period when the canal was built, was alluding to this paradox when he said:-

"Let us not, however, flatter ourselves overmuch on account of our human victories over nature. For each such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different, unforeseen effects which only too often cancel the first. The people who, in Mesopotamia, Greece, Asia Minor and elsewhere, destroyed the forests to obtain cultivable land, never dreamed that by removing along with the forests the collecting centres and reservoirs of moisture they were laying the basis for the present forlorn state of those countries. When the Italians of the Alps used up the pine forests on the southern slopes, so carefully cherished on the northern slopes, they had no inkling that by doing so they were cutting at the roots of the dairy industry in their region; they had still less inkling that they were thereby depriving their mountain springs of water for the greater part of the year, and making it possible for them to pour still more furious torrents on the plains during the rainy seasons. Those who spread the potato in Europe were not

aware that with these farinaceous tubers they were at the same time spreading scrofula.”

(The Part Played by Labour in the Transition From Ape to Man)

57. This however, is the flip side of human saga. It has a positive dimension too. If humans had shunned reason and the civilizational impact or had taken their love of nature too far, they would still have been living in caves, eating insects and raw meat and mating like animals. The discovery and development of the bounties and beauties of nature are partly attributable to human perception, ingenuity, struggle and its harnessing. John Keats, the poet of nature and beauty was referring to these human virtues, when he said: -

Who, of men, can tell
That flowers would bloom, or that green fruit would swell
To melting pulp, that fish would have bright mail,
The earth its dower of river, wood, and vale,
The meadows runnels, runnels pebble-stones,
The seed its harvest, or the lute its tones,
Tones ravishment, or ravishment its sweet
If human souls did never kiss and greet?

Endymion, bk.i, I. 835

58. The beauty of the canal and of the greenbelt on both sides of the Canal Road lie partly in beholder's eye i.e. human aesthetics, imagination, design and engineering. It is the human needs which require widening of the road.

59. Before parting with this judgment, we would like to acknowledge the admirable spirit demonstrated by petitioners' organization, by those individuals, architects, urban planners, academics and students for protection of city's ecological and environmental horizons. During hearing of this case, the Court was touched by the rainbow of idealism, of intellect, of architectural ability,

of urban development and mental health expertise of graces and youthful exuberance. This was a living testimony to a vibrant civil society. This vibrance, vigilance and zeal must have acted as a watchdog for those entrusted with design and planning of the Canal Road Project and those who accorded environmental clearance. The widening of the road which is now confined to only a part of the Canal Road and the conditional approval granted by EPA, Punjab attaching stringent conditions to allay the environmental concerns is a vindication of the object for which the petitioners brought this issue before this Court. As long as this spirit is alive, we are sanguine, the authorities and the leadership would continue to be guided by the values of sustainable human and urban development. We would also place on record our deep appreciation for the Mediation Committee in general and for Dr. Parvez Hassan in particular for developing a broad consensus reflected in the report of the Mediation Committee. For Mr. Babar Ali (who has the distinction of succeeding the Duke of Edinburgh as President of World Wide Fund for Nature) one of the eminent city fathers, who responding to the ecological and environmental concerns, made his valuable contribution as Member of the Mediation Committee. The able assistance rendered by Mr. Suleman Butt also deserves a word of commendation.

60. In view of what has been discussed above and keeping in view the stance of the Government of Punjab that they have accepted the report of the Mediation Committee in entirety, we hold and direct as under:-

- (i) The Bambawali-Ravi-Bedian (BRB) Canal and the green belt on both sides of the Canal Road (from Jallo Park till Thokar Niaz Beg) is a Public Trust. It shall be treated as Heritage Urban Park forthwith and declared so by an Act to be passed

by the Assembly as undertaken by the respondent-Provincial Government;

- (ii) Widening of the road on both sides of the Canal Bank shall be in accord with the report submitted by the Mediation Committee;
- (iii) Necessary corrections/modification of some of the underpasses on the Canal Road shall be carried out as suggested in the report of the Mediation Committee;
- (iv) Proper Traffic Management Program shall be made and given effect to;
- (v) Further improvement in public transport system shall be ensured;
- (vi) Where needed and as recommended by the Committee, re-engineering of the junctions along the Canal Bank would be undertaken;
- (vii) The service roads along certain parts of the Canal Road shall be constructed/improved;
- (viii) Report of the Mediation Committee shall be implemented as agreed by the respondent-Provincial Government in letter and spirit;
- (ix) Respondent-Provincial Government and TEPA shall ensure that minimum damage is caused to green belt and every tree cut would be replaced by four trees of the height of 6/7 feet and this replacement when commenced and completed shall be notified through press releases for information of general public, copies of which would be sent to the Registrar of this Court for our perusal; and

- (x) Elaborate measures / steps be taken to ensure that the Canal is kept clean and free of pollution. The steps should *inter alia* include throwing of liter and discharge of any pollutant in the Canal a penal offence. The Chief Secretary, Government of Punjab shall ensure that a comprehensive action plan is prepared in this regard by the concerned department and report is submitted to the Registrar of this Court within six weeks of the receipt of this judgment.

61. For what has been discussed above, since most of the prayers and concerns have been taken care of in the Mediation Committee Report, the petition to the extent of those prayers is disposed of as having fructified and the petition is allowed in terms of the Report of the Mediation Committee which stands accepted even by the respondent Provincial Government. The petition in so far as it challenged the Project of widening of road is dismissed.

JUDGE

JUDGE

Announced in Open Court at Islamabad on 15.9.2011

JUDGE

Khurram Anees
APPROVED FOR REPORTING