

Public Interest Litigation: Economic Implications

(A Critical Appraisal of *Reko DIQ* Case)

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Abstract

Public Interest Litigation (PIL), a discretionary constitutional jurisdiction is, indeed, a constitutional mandate for preserving socio-economic and legal justice in the Islamic Republic of Pakistan (Pakistan). Such PIL objectives are focused through the protection of fundamental rights of public importance under provisions of Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution, 1973). Though the Supreme Court of Pakistan (SC) has been vigilant while exercising judicial review powers as modus operandi for PIL, sometimes it is engaged, however, in the disguise of protection of fundamental rights, in the domain of other branches of the government. Even, such involvement has been extended to the matters of economic policies, which as a general principle of judicial review jurisprudence should be retrenched from judicial review jurisdiction. This trend has not only distorted the PIL objectives, it has influenced the socio-economic development which eventually affects the fundamental rights. Economic policies being of technical nature needs to be decided and supervised by the bodies concerned instead of the judicial intervention which is not appropriate. Judicial overlook of this fact may cause serious economic implications as it has occurred in the Reko Diq matter as decided in the case of Maulana v. Government (2013). The appraisal of exercising of PIL jurisdiction in this case demonstrates that 'judicial capital' is of no use, in the economic matters, and expanding its political capital in such matters eventually influences public interest. So, it is concluded that the matter relating to economic policies should be considered non-justiciable, and be denied from taking judicial cognizance.

Keywords: Constitution; Fundamental Rights; Public Interest Litigation; Socio-Economic Justice; Reko Diq

Introduction

Public Interest Litigation (PIL) is the constitutional adjudication for the enforcement of fundamental rights in Pakistan (Kong, 2009). PIL jurisdiction, however, is not explicit in provisions of the Constitution, 1973. It is rather implicit and discretionary jurisdiction based on certain constitutional parameters and developed through judicial jurisprudence. Such jurisdiction is indeed, exercised by SC in original its jurisdiction (Constitution, 1973, Article 184 (3)).

Though provisions of Article 184(3) of the Constitution, 1973, are in the adversarial context of the judicial system of the country, the SC has developed its inquisitorial version through the proactive interpretative approach. Historically, the SC expanded the scope of fundamental rights, and relaxed the procedures in *Benazir Bhutto* (1988) and thus developed the concept of PIL, and exercised the same for the enforcement of the fundamental rights in several cases including *Benazir Bhutto* since 1988.

PIL has rapidly emerged either in the form of Constitutional Petitions, *Suo Moto* notices, or Human Rights applications. Such jurisdiction, however, has been commonly exercised within the constitutional provisions of Article 184(3) of the Constitution, 1973. The constitutional petitions as a source for the PIL have emerged either through PIL petitions brought to the Supreme Court so far, or the petitions though not described as PIL, the judgments delivered therein have made them as PIL (Cheema & Gilani, 2015).

The PIL jurisdiction has been exercised as a tool for the objective of 'human welfare'. The judicial mind felt and realized this characteristic of the said provision, and asserted that "*the function*

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of the adjudication is not only to solve disputes but also ... considering the dispute settlement process as a method of resolving ... conflicts through the application of a system of flexible rules of law that should be meant to promote human welfare"(Haleem, 1986). Thus, the judiciary has recognized such scope of Article 184(3) of Constitution, 1973, and exercised the PIL jurisdiction in various cases involving the issues of protection of human, political, and socio-economic rights.

The SC in Pakistan has experienced an exceptional wave of judicial activism since 2006 (See, Cheema & Gilani, 2015). It has extended the scope of PIL and fundamental rights concerning business matters as well either directly or indirectly. So, it has heard several cases like the Bank v. Haris (2010); NICL, *Suo Moto* Case (2011); Levy of Carbon & General Sales Tax (Express Tribune; International Herald Tribune, June 21, 2013); Fuel, Gas, and Electricity, *Suo Moto* Notice (2013); Contracts awarded Capital Development Authority, *Suo Moto* No. 13,2009,(2011); Pakistan Steel Mills, *Wattan Party* Case (2006); Rental Power, Human Rights Case 2012 SCMR 773; Human Rights Case (2010); Petroleum Products (The Express; International Herald, June 14, 2013), and Maulana v. Government (2013). The proceedings and decisions in such matters would have binding effects for certain areas of law for which these judgments are delivered. Hence, these all cases involved significant matters having long-lasting impacts on the country both in national and international context.

So, the proactive role of the SC in economic issues has become a matter of interest both for the researchers and organizations equally. Though, in this context there is a huge number of cases arising out of PIL, focusing Maulana v. Government (2013) is because of its severe economic implications one of the major issues of national and international concern. So, this judgment is expounded and appraised critically for underlining the economic implications of PIL.

Reko Diq Project: Geo-Economic Perceptive

Reko Diq meant the 'Black Mountain' hordes world's fifth-largest deposit of Copper and Gold in the province of Balochistan, Pakistan. This region is a part of the Tethyan Magmatic Arc which is stretched from Pakistan passing through Iran and eventually entered in Turkey. The *Reko Diq* spreads out through Hungary, Romania, Bulgaria & Greece Turkey, Iran, and Pakistan through the Himalayan zone, and goes into Myanmar, Malaysia, Indonesia, and Papua New Guinea. This belt contains ample crystalline copper-gold ore deposits of different ranks. At District Chagai, Baluchistan this reserve of copper and gold is of an international standard. These reserves are estimated at 5.9 Billion tons of ore with approx 0.4% copper and 0.22 g/t of gold.

M/s Tethyan Copper Company Ltd., a joint venture of two world largest mining companies, Barrick Gold (Canada) and Antofagasta Minerals of Chile were the operator of this world class mine. The estimations by different companies mentioned of an un-mined and untouched reserve of delicate metallic minerals of \$250 to \$500 bn. *Reko Diq*, in all senses one may reasonably imagine, is an economically salivating panorama for global excavation goliaths.

Research Question

The SC while interpreting progressively, and relaxing the procedures in Maulana v. Government (2013), extended judicial protection for fundamental rights through PIL strategy. Such extended judicial protection in the form of PIL was derived from the constitutional jurisprudence of Article 184(3) of Constitution 1973. Here a question arises, "*whether the provisions of Article 184(3) has the scope and potential for PIL ensuring the enforcement of fundamental rights involving the issues of economic policy, and what may be the economic implications of exercising PIL jurisdiction in such type of cases?"*

Objective and Significance of the Study

This study is a critical appraisal of exercising PIL jurisdiction in cases where economic administrative policies are involved as in Maulana v. Government (2013) concerning the *Reko Diq* copper and goldmine exploration project. This study may contribute for understanding the relationship between municipal and international law in the context of national economy involving foreign direct investment. This study will supplement the existing knowledge on the subject as a guideline for policymakers, legislature, judiciary, lawyers, academicians and other concerned in the context of PIL.

Methodology of Research

This analytical study is based on the combination of qualitative and data. The judgment in Maulana v. Government (2013) is explained and evaluated critically, focusing economic implications of PIL. Here is the critical appraisal and discussion of this case wherein matters relating to the protection of

fundamental rights involving the issues of economic policies were adjudicated and decided in the perspective of PIL. In such context, the modality of examining this case is in qualitative viewpoint. Starting from the brief account for facts of the case including parties' contentions particularly concerning to the PIL related aspects, and finally, judgment is entered for the analysis on such issues.

Maulana Abdul Haque Baloch v. Government of Balochistan

(Reko Diq Matter): A Critical Appraisal

Narrating the Facts

In 1993 Balochistan Development Authority (BDA) entered into the Chagai Hills Exploration Joint Venture Agreement (CHEJVA) with 'Minerals Intermediate Exploration Inc.' (BHP) U.S.A, and engaged in exploring copper and gold in *Reko Diq* area of Chagai, Balochistan. A number of other companies were also engaged in one way or other in this project. These companies were, namely, Mincor NL, Western Australia; Tethyan Copper Company (TCC), Western Australia; Atacama, UK; Barrick Gold, Canada, Antofagasta, U K (FTSE-100) and Tethyan Copper Company Pakistan (TCCP).

The legality of CHEJVA; BMCR's relaxation, 1970 by Government of Balochistan and BHP's the failure to complete the exploration in reasonable time, were challenged in Quetta High Court. In this Constitution Petition No. 892 of 2006 allegation were leveled as illegal, *ultra vires*, unconstitutional and *malafide*. However, these constitutional petitions were dismissed. Against this dismissal, a Civil Petition for Leave to Appeal (Civil Petition No. 796 of 2007) was preferred under 185(3) of the Constitution, 1973, and subsequently, a constitution petition was directly filed in the SC under Article 184(3), alleging the legality of grant of licenses to TCC&BHP.

Petitioner's Version

The petition was directly filed in the SC, under Article 184(3), questioning the validity of the grant of licenses to BHP and TCC. Such validity was challenged (*Maulana v. Government* (2013) pp, 678,679, 681, 682) on the ground of non-transparency, unfair relaxation of rules, violation of laws, and a possible risk to the national interest of the country in granting of the mining lease to BHP and TCC.

Respondent's Version

On the part of the respondents, it was contested that all the transactions were legal and transparent. They contested that it is not the case of Article 184(3) of the Constitution, 1973 (*Maulana v. Government* (2013) pp, 766) because a judgment passed in their favour by the High Court of Balochistan (Constitution Petition No. 892 of 2006) barred such jurisdiction. Furthermore, having achieved the dominant object of this petition of "non-granting the Mining lease to TCC" (Order dated 14.11.2011 of Licensing Authority, and Order, dated 03.03.2012 in the Administrative Appeal), and the ongoing international arbitration proceedings under different laws (International Investment Disputes, Act, 2011, Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, and Fourth Schedule of Constitution 1973) give no justification for the maintainability of this petition. Hence, in the given circumstances non-infringement of any fundamental rights finds no *locus standi*, and as such the petition is not maintainable.

Judicial Verdict

Though the matter was of public nature as the mineral resources in *Reko Diq* being the public property of the country, the infringement of any fundamental right could not have been established. Furthermore, no specific fundamental right was alleged to be violated. So, it was not apparently a fit case of Article 184(3) of the Constitution, 1973. Moreover, the disputed matter has been previously adjudicated in Balochistan High Court (Constitution Petition No. 892 of 2006). Therefore the only remedy available against the said judgment was for leave to appeal. The exercising of the original jurisdiction under Article 184(3) with a view to interfere directly or indirectly with such a judgment was barred. Even then the Court intervened in the matter for the determination of the legality, validity, and constitutionality of the agreement executed on the project of *Reko Diq*.

The SC, indeed while taking the cognizance of the matter, exercised the judicial review jurisdiction in the context of the PIL (*Maulana v. Government* (2013) p, 767). The SC held that the governmental actions could not be immune from judicial scrutiny. Rather the Court called it constitutional obligation under the principle of the *trichotomy* of powers to interpret and apply the law, and adjudicate upon the disputes resulting from the breach of the fundamental rights. In this context, the S C held that it has vast powers in terms of original jurisdiction under Article 184(3) of

Constitution, 1973 for examining constitutionality of governmental actions (*Maulana v. Government* (2013) pp, 767,768).

The SC established the case of breach of fundamental rights involving the issue of public importance (*Maulana v. Government* (2013) pp, 767-768), and therefore, by assuming judicial review jurisdiction, examined out the legality and validity of the whole process of the project of *Reko Diq*. The SC found the extensive irregularities and corruptions in this project (*Maulana v. Government* (2013) pp, 767-768), and in consequences, held that the CHEJVA have been executed contrary to the provision of different laws and rules (Mineral Development Act, 1948, Mining Concession Rules, 1970, Transfer of Property Act, 1882 and Contract Act, 1872) relating to *Reko Diq* project, and it was even otherwise not legitimate (*Maulana v. Government* (2013) pp, 774,775). Therefore, CHEJVA was declared to be unlawful and *void* along with all other instruments, namely the Exploration License-5, Addendum No. 1 dated 04.03.2000, Option Agreement dated 28.04.2000, Alliance Agreement dated 03.04.2002 and Novation Agreement dated 01.04.2006 emanated from it, and having not conferred any right on any company, namely BHP, MINCOR, TCC, TCCP, Antofagasta or Barrick Gold, involved therein, relating to matters covered therein.

The fundamental issue as alleged in this case (*Maulana v. Government* (2013) p, 641) was the non-transparency in the process of executing a project regarding the transfer of the interest in *Reko Diq* to different companies. The grant of mining lease to BHP/TCC was “*alleged as possible risks to the vital interest of the Province of Balochistan and Pakistan*” (*Maulana v. Government* (2013) p, 678). The Government of Balochistan remained failed while determining the terms and conditions of CHEJVA for the best feasible deal in the public interest for utilizing copper and gold assets at *Reko Diq*. In this regard, the Court observed that not restoring to the public advertisement for obtaining the best viable consideration for using of public property was a denial of sharing with other investors of the field to the adverse of the national interest. The SC held that “*such handling of an issue of great public importance was against public policy as well because it certainly caused injury to the public good and, therefore, provides a basis for denying the legality of the transaction in question*” (*Maulana v. Government* (2013) p, 710).

The Arbitral Tribunal Award: Suspending the Proceedings

During the pendency of the proceedings before SC, TCC made two claims at two different forums. First, claim was of a Bilateral Investment Treaty, against the Government, before the ICSID. The other claim was contract based brought against the Government of Balochistan, before the International Court of Justice (ICC). TCC alleged that it was wrongfully refused a mining license after its submission of a feasibility report in 2011. It sought provisional measures against Government. Pakistan took the plea of *Res Sub-Judice*, and requested the ICC and ICSID, to stop the arbitration proceedings. The tribunals accepted Pakistan’s request, and TCC’s claim was missed for provisional measures. However, the tribunals assumed the jurisdiction, and directed the parties to provide regular reports about their activities.

The ICSID resumed the proceedings after the verdict of SC. Pakistan put the arguments that the CHEJVA was not made lawfully. So, any claim for damages by TCC had no legal consequences. Instead of such decision of SC, the ICSID ruled in favor of TCC by deciding the matter on its own merits. The ICSID held that Pakistan was liable for the breach of a bilateral agreement which resulted damages to the respondent companies (Siddiqui, 2017).

Critical Appraisal: Our Viewpoint

In this section, the discretionary jurisdiction of PIL as exercised in the case in hand is evaluated to determine whether such judicial functioning is within the constitutional scope of the Article 184(3), and constitutional limitations of the Constitution, 1973, as required for a judicious criterion of interpretation. For such analysis, the yardstick is the constitutional and judicial jurisprudence as embedded in the Constitution, 1973 and expounded in *Benazir Bhutto* (1988), the first PIL case, respectively. Since, this purpose is served through the deliberations of different aspects of the judgment, as below.

While examining the judicial powers as exercised by the learned judges of the Court in the instant case, we may have a different opinion from that of the Court. Since, we may find ourselves unable to agree with the judicial reasoning on some points in the context of the PIL. All this, nevertheless, is with great regard of the judges whose profound learning, we always ardently appreciate with optimum respect, both in academic and research viewpoint. Furthermore, this

analysis is not simply the critical evaluation of the judicial jurisprudence. Rather, it is definitely in the entirety of the academic context to develop a further refined and viable jurisprudence of PIL.

1. The Court, raised the questions as to the validity of the facts presumed legally, and engaged such matters for judicial review. The relaxation granted to the TCC was challenged, and it was required to be validated, which in fact being the official action was not under the obligation to be validated under the provisions of the *Qanoon-e-Shahadat Order*, 1984, and the same was argued in this case (*Maulana v. Government* (2013), p. 714,774). Since, the judicial intervention from the perspective of the constitutionality of the legality of facts presumed legally seems without jurisdiction.
2. The matters alleged were related to the governmental economic and administrative policies, and its functioning thereof. Furthermore, an alternative way was available for redressing the aggrieved. This case was not fit within the four corners of the law of judicial review. Since, taking the cognizance of such matters was, indeed, the judicial intervention into the domain of political branches of the government. Hence, this judgment suffers a counter-majoritarian difficulty distorting the principle of separation of powers.
The jurisdictional stance of examining administrative policies particularly of economic nature, as it has also happened in the case of *Wattan Party* (2006), could not gain the recognition in the legal circle. Such judicial trend has distorted the PIL objectives of protecting the underprivileged i.e., 'indigenous people' of Balochistan in the case in hand. Their right of economic development would have been advanced if this case was decided otherwise.
3. This case involved the matter of indigenous peoples' interest perspective as well. It is, in fact, international and constitutional obligation of the government of Pakistan to consider native peoples' interests available in their native locality. The fair reading of Articles 25 and 28 of the Constitution, 1973 along with Article 18 of the United Nations Declaration on the Rights of Indigenous People, establishes a sense that Baloch as 'indigenous people' deserve for socio-economic development as fundamental rights. These laws guarantee that the State shall ensure the protection of the rights over the natural resources of native population in their locality.
Since the stance of upholding the State's sovereignty, in total discount of people's right of economic development through foreign investment, seems improper. The constitutional system of Pakistan is structured on '*Social Contract*' postulate, and primarily has two main implications namely, the '*sovereign legitimacy*' and '*pledging of fundamental rights*'. Both of these features are interdependent, and need to be preserved simultaneously. But, how? Yes, the answer lies in exercising of judicious interpretative approach in such type of discretionary matters.
The sovereignty is not an arbitrary characteristic of statehood. Its legitimacy is subject to the protection of people's rights, and perhaps for this reason PIL strategy was developed in Benazir Bhutto case (1988). Being the signatory of the United Nations Conventions, Pakistan is under legal obligation, to pursue the relevant rules and procedures relating to the enforcement of international arbitral awards. These laws could not have been denied simply on the grounds of public policy. Such encoded approach did influence the economic concerns, discouraging the investment of millions dollars in country.
4. So, for the above reasons the SC being the delegatee of Sovereign should have adopted a novel approach different from the conventional adjudicative style. Since, instead of exclusive legalistic approach, and striking down CHEJVA and all other subsequent agreements as void *ab initio*, SC should have considered amicable settlement of issues. For dispute resolution methodology of mediation would have been the appropriate approach for native groups, like the Baloch, who already have been in practice for resolving their disputes through mediatory processes. Our viewpoint is endorsed by Siddiqui who commented that "*the ICSID is a private international law forum which is not bound by its decision, a different approach to resolving the dispute could have been adopted, and have foreseen that the respondent companies had invested around half a million US dollars into the project and the denial of the mining license would put them at a huge loss*" (Siddiqui, 2017, p. 203).

In this context, it would have been advisable to establish a specific commission for investigation, so as to sort out the particular reasons of the issue, and adopt corrective measures instead of terminating the contract. Such judicial strategy eventually would have led all the parties both to the respect for State's sovereignty and public interest particularly of the indigenous population, i.e., the Baloch.

5. In this case, assuming the jurisdiction under Article 184(3), the Constitution, 1973, appeared not less than the aspiration of judicialization and overreaching of judicial review powers. Such judicial mindset has not been endorsed by legal jurists. Though the issue of corruption and illegal functioning on the part of the public officials were material issue, the Islamic spirit of justice and equality, however, has not been considered and endorsed (The Constitution, 1973, Article 2-A). Since, we are of the view that the Court in such cases should follow the judicious approach of interpretation while resolving the issues particularly of economic nature. Our viewpoint is supported by Shemtob who suggests that "*When considering any nebulous constitutional proviso, courts should always rule in favor of legislature, executive, or other governmental agencies*" (Shemtob, (2012), p. 6). For his argument, he refers to Wilkinson's stance that "*the best judge knows never to push a particular social or economic agenda, when considering a measure's constitutionality, he or she grants legislative actors the benefit of the doubt*" (Shemtob, (2012), p. 6).
6. The government of Pakistan was engaged in a private international dispute where recourse to the ICSID was going to be invoked even without exhaustion of local remedies. The SC, however, could not comprehend properly the jurisdiction of international arbitral tribunals regarding the decisions taken by it. Since "*A thorough understanding of international law was crucial for settling the matter domestically, rather than providing an opportunity for the respondent companies to proceed with international arbitration*" (Siddiqui, 2017, p. 201). He further asserts that "*The SC should have considered that the respondents would invoke the arbitration clause for their foreign investment claims*" (Siddiqui, 2017, p. 201). While lacking peculiar expertise as appears in this case, the judicial restraint policy in economic matters possibly ought to have been a prudent approach for protecting the public interest. The principle of judicial restraint has been both supported and countered as well constantly. In this context Shemtob argues that "*the concept of judicial restraint continues to generate both fidelity and criticism*" (Shemtob, (2012), p. 1). The questions of expertise and other matters of like nature are suggested to be left to the concerned authorities to decide in pursuit of their relevant skills. Policy decisions are something akin to the governmental objectives and mandate which seem insecure for judicial review, and thus are recommended to be escaped from the 'judicial policing'. Thus, for such cases, the principle of self-restraint is endorsed by the legal scholarship. Justice Harlan Stone candidly asserted that "*While unconstitutional exercise of power by the executive and legislative branches of government, is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self-restraint*" (United v. Butler, 1936, pp. 1, 78, 79). The similar were the arguments of respondent who suggested the Court for pursuance of judicial restraint policy (Maulana v. Government, 2013, p. 641).
The common effect of judicial restraint is, indeed, to let the political organs of government relaxed in formulating the policies for which they have the public mandate in democratic governance, and the same should have been the judicial policy in the case in hand. Since, though the administrative measures are subject to the judicial review, the Court should have followed the judicial restraint policy. As, in a case of like nature the Court held that the petitioner has no *locus standi* to inquire into the functions of the statutory bodies (Khan v. District 1997).

Economic Implications

When TCC could not succeed in SC, it brought the matter to the World Bank's ICSID entirely in disregard of the legal system of Pakistan. A three- member arbitrator panel having no proficiency in Pakistani laws was constituted. This panel decided in favour of TTC. It held that damages for all future proceeds that it purportedly would have received, if the nonexistent project, based on an annulled agreement, had gone forward. A huge amount of \$5.9 billion was awarded against

government of Pakistan in favor of Antofagasta PLC of Chile and the Barrick Gold Corporation of Canada, the global mining companies.

This arbitration award was quite unpredictable. An illegal project, declared void *ab initio* by SC, and had never been carried out, was found by the arbitration panel of value more than \$4 billion to be paid to TCC. Whereas, this company, actually had paid only \$167 million in 2006. In addition, the tribunal affirmed that Pakistan have to compensate TCC in full, with back interest, and cover its legal fees, raising the bill to \$5.9 billion.

The compensation awarded was approximately 2% of the then GDP of Pakistan. These damages are more than twice entire public expenditures for health care in Pakistan. It demonstrates that the developed countries are establishing their economy at the cost of developing countries' poverty. Multinational companies are growing on unapproved and fictional economic projects which if regularized as per law of the country concerned, would have boosted up the economy.

The above deteriorating situation and its effects either direct or indirect on the economy of Pakistan, indeed, appeared because of judicial mindset of overreach in disguise of progressive judicial review approach which otherwise is prudent. This all happened at the cost of the poorest people, the indigenous population of Balochistan.

Conclusion

Article 184(3) was inserted in the Constitution, 1973 for the first time in constitutional history of Pakistan (*Chaudhry v. President* 2010, p 209). This type of provision which pertains to the original jurisdiction of the Court was mandated to ensure the enforcement of fundamental rights of public importance (*Sharif v. Federation*, 1993, p. 735). For such purpose Court's jurisdiction is invoked through the constitutional petition under adversarial context. However, in certain cases, this jurisdiction is assumed either through *Suo Moto* notices or Human Rights Applications. This provision, however, was put so open-ended (*Benazir v. Federation* 1988, p. 493) that a chance was let for exercising the judicial discretion while entertaining the constitutional petitions (*Benazir v. Federation*, 1988, p. 569). Exercising of such jurisdiction has developed the strategy of PIL which is, indeed the outcome of the '*judicial review based constitutional interpretation*' however subject to certain constitutional principles (*Haider v. Capital*, 2006; *Pakistan v. Federation*, 2007; *Muhammad v. Federation*, 1993; *Malik v. Federation*, 1998).

Such a judicial trend arguably influences the domain of other organs of the government, and contradicts the basic essence of 'separation of powers' including 'checks and balances', and as per view of Mahmood "*can be manipulated by extra-judicial factors which are inherent in the constitution of human mind*" (Mahmood, 2013). It causes the judicial decisions vulnerable; irrespective of the fact that these are the outcome either of activism or restraint. For such situation of activism reference may be made particularly to the judgments in the cases namely NRO case (*Dr. Mobashir v. Federation*, (2010); PSMs case (*Watan v. Federation*, (2006) and Reko Diq case (*Maulana v. Government* (2013) which are still waiting for their implementation. Whereas for the restraint, the judgment in the case of Tika v. General (2008) is the classical example of judicial self-restraint, which could not sustain, and was turned down in a case heard by 14-judge bench of the Court (*Sindh v. Federation* 2009; Khan, 2009). In both of these judicial trends the fundamental rights yet remained unenforced and become illusions.

In the case in hand the Court suffered the judicial overreach, with the following consequences:-

1. The aftermaths of striking down CHEJVA along with all other instruments including certain contracts emanated from it, earned nothing other than the inconvenience concerning foreign investment and utilization of natural. Such nuisance has eventually influenced the economy of the country. The same has been happened in PSMs case where from we learn nothing while dealing with the *Reko Diq* matter in this case.
2. The SC missed the chance of availing the mode of amicable settlement which was feasible and desirable in term of 'Mediation' both in the context of indigenous culture and legal setup of Municipal and International Law.
3. The SC did consume ample time in this matter. It would have used its potential for constitutional and other legal matters for expeditious delivery of justice if it had not been engaged in such complex and pure economic matter.

4. The above analysis demonstrates that PIL jurisdiction could not gained the recognition and appreciation from the legal scholarship (Tridimas, 2010; Vanberg, 1998; Schmidhauser, 1984; Khan, 2015; Siddique, 2015; Cheema and Gilani, 2015) because of the issues, confronting the PIL objectives.

Suggestions

1. It is right time that a thorough investigation concerning the improper process that encouraged this unbearable fiscal state of affairs for Pakistan, be conducted, and for the reversal of the award as passed against Pakistan should be challenged at proper forum.
2. Pakistan is the rising market inspiring foreign investment. Pakistan should resolve, its foreign investment related disputes internally through a multi-tier dispute resolution system. For this purpose, an effective dispute resolution system should be developed and implemented (Siddiqui, 2017, p. 205). Furthermore, the busted arbitration mechanism should be reviewed for the larger public interest of the international community as whole (Sachs, 2019).
3. For the future commercial transaction, legal expertise should be engaged while international commercial agreements are signed particularly with the foreign companies.
4. Judicial Training program, conferences, workshops on International Law jurisprudence, both of public and private nature and arbitration system should be conducted and both of these laws and arbitration related study be made the part of syllabus for legal education.
5. Our research finally suggests the exercising of judicious approach while interpreting the Constitution including law. The judicial review should be neither the 'hyper activism' (Khan, 2013) nor 'judicial chill' (Heba & SilkeNoa, 2019). Rather, it should be 'proper judicial activism' (Jones, 2001) preserving the 'structure of constitutional government' which includes separation of powers and check and balances.

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