

## **Legislation and the Practices of Environmental Governance for Sustainable Development in Pakistan: A Post 18th Amendment Assessment**

**Farzana Zaheer**

### **Abstract**

The rapid industrial technological advancement has created ecological challenges for human beings. The development concept used in a limited perspective with economic growth in practice but it is an incomplete conception without environmental sustainability for governance. The process requires legislation, and practices through environmental governance to manage the issues. The environment-related concerns of Climate change, pollution, and waste have destructive impacts on all species of this planet. The UN has emphasized on resolving the ecological issues for sustainable development. In Pakistan context, environmental governance for sustainable development remained distracted for many decades. The present research article aims to focus on legislation and practices of the environmental governance assessment in Pakistan after the 18th Amendment for sustainable development. It is find out that the provinces have not taken serious steps to deal with the environmental concerns through governance process for sustaining the development after the 18th Amendment. The article is exclusive with significance in the manner that it has assessed the pre and post 18th Amendment environmental governance performance in Pakistan for a sustainable development and recommended some suggestions on the basis of the findings for the implementation and foster the process.

**Keywords:** Environment, Sustainability, 18th Amendment, Governance, Pollution, Waste, Climate Change

### **Introduction**

The rapid technological advancement has badly affected the human lives. It has created ecological challenges with destructive impact on human environment. It has automatically created hurdles for human development .No development can be sustain without social, economic and environmental sustainability .It has grabbed the public attention after a published report Limits to Growth, by Club of Rome in 1972. The World Conservation Strategy has provided a way to international unanimity for conservation of nature with a unique partnership of the UNEP and the WWF .All these programs conducted to draft a sustainability agenda. It was paradigm shifts from economic development to extended concept of development .Since then the term sustainable development attain international public attention after a report “Our Common Future”, which is famous as the Brundtland Report (Council, 2006, p.1).

The report has pointed out the significance of justice between the generations by maintaining the apprehension of the poor and move from fiscal affairs to human wellbeing strategies action plans (Kemp et al., 2005). It was a notable shift for an improvement of an incomplete mod.

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\*Author is PhD Scholar, Department of Political Science, University of the Punjab, Lahore, Pakistan.

Environmental governance, a new connotation acknowledged by the UNEP and the World Bank in their governance improvement plans. It enables the governments to deal with the ecological problems raised soon after a technological advancement and industrialization in the world. Environmental governance is indistinguishable with obstruction aiming a change in environment-related, institutions, inducements, and decision making. It is a combination of regulatory processes, arrangements, and organizations in the course of which political performers control environment measures. The governance concept was misunderstood and mixed with the government in last few decades.

Environmental governance is considered a key instrument to get the sustainable development that requires full information, sound decision making procedure, implementation of rules and their execution according to the internationally accepted standards about environment.

The environmental degradation is now a global phenomenon, having a capacity of destruction and devastation of the planet and species based on it. All the countries need to maintain the environment at their country and regional level for the achievement of their set targets of a safe planet (Wachhaus, 2013) . The environmental governance can be seen mainly from the loss of biodiversity, climate change, land degradation and natural assets, a rapid increase in all type of pollution, emissions of gases and damaging the ozone layer. All these issues are seeking attention of all the nations for environment security to develop of humans and other species.

Pakistan is playing its part for environmental security through the implementation of adequate legal and institutional measures to contribute in the world environmental development agenda. The government in Pakistan has introduced several policies and plans made to secure the human environment (Pastakia, 2012).

The current Constitution of Pakistan has introduced few provisions about citizen's civil rights as the obligations of the state to sustain the environment. The two Articles nine and fourteen of the Constitution has introduced some provisions about the civil rights as key obligations of the state to sustain the environment. Both constitutional Articles offer the right to protective life and right to their self-respect. These provisions were used in a case presented in the supreme court of Pakistan named Shehla Zia against WAPDA (Hassan, 2003).The decision by the Court pointed out that the right to life of a citizen is to provide citizen a healthy environment free from pollution. This case was a foundation stone for environmental jurisprudence in the country.

The central government established few institutions for environmental safety and management. The Environmental Protection Ordinance constituted in 1983.It was a notable development towards action plans. It was promulgated with a responsibility to minimize the environmental problems protection in Pakistan. The policy-making

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institutions for environment in Pakistan, EPC and the EPAs were formulated for execution of laws in Pakistan. The PEPA (1997) enacted to grant the protection, maintenance, and enhancement of environment, for the control of pollution, and sustainable development (PEPA, 1997).

The new landmark changes in the governance under the 18th Amendment in the Constitution shifted the environment ministry to the provinces and authorized them to legislate and implement laws as per demands in their territories. The provinces in somehow introduced only few laws about environment. The largest province Punjab has introduced a model of the Pakistan Act. It constituted the tribunals under Section (20) of the Act. Furthermore, Sindh and Khyber Pakhtunkhwa also set up their separate laws for sustaining the environment (Pastakia, 2012).

The present research article aims to find out how effectively the federal government in Pakistan deal with the environmental issues for sustainable development before the 18th Constitutional Amendment and how effectively the provincial governments are dealing with the environmental issues for sustainable development after the 18th Constitutional Amendment? .

### **Sustainable Development, Environment and Governance: The Linkages**

The sustainability concept used with different manner in multiple disciplines by the scholars and researchers, but the most widely acceptable definition given by the Brundtland Commission, according to it the development can only be sustained when it full fill the demands of future generations in next decades. The commission gave a comprehensive definition and emphasized on keeping the present and future generation demands in plans for development and using the resources as we have borrowed resources from them finally hand it over to them without misusing

Sustainable development stands on, economic, environmental and social pillars. It can be attained only when all pillars equally treated and well maintained in a society. The development is incomplete without the fulfillment of these three aspects (Hempel, 1996). The concepts of government and governance are considered synonyms; both indicate the exercise of power in an organization and state (Heywood, 1997). Government is the name given to the body exercising that power. Power can most simply define as legitimate. To study government is the same as study the authority. Government is associated to politics. Politics is the art to govern, that practice its control in a society by making and implementation of shared decisions (Heywood, 1997). Government is one among those institutions in governance process.

The governance can be nothing without a supervisory body structure of a government (Heywood, 1997).Kaufman et al elaborated the governance as an authority that keeps control in a state through institutions and traditions. Governance Assessment Report (2005) described governance as the political, economic, and administrative power to manage all the state natural resources for all kind of development. It comprised of the

institutionalization of a structure in a society in which the state citizens, its institutions, organizations, and all groups coherent their benefits, use their rights, and manage all diversity for a collective good. Governments have a number of mechanisms for regulating the environmental behavior of companies and the public, such as:

- International conferences, protocols and treaties
- Legislation ,rule and regulations
- Policies and plans
- Permits and issuance of licenses
- Monitoring ,control and command
- Environmental Impact Assessments

The concept of development used for an economic growth with limited concept but now it is used with an expanded way and it has changed exclusive focus of the 1950s to the addition of targets to minimize poverty ratio and inequality. No economic growth can be sustained without social and environmental concerns. There is no dichotomy between people and nature, however, the environment security in itself is a pledge to care for generations yet unborn. They must be given a right to enjoy and care for the biodiversity, beauty and resources of the planet (World Bank, 2015).

The environmental movements at national and international platform started for good environmental governance that enable government to deal with issues as an utmost responsibility of public, private and civil society involvement. It has forced to redefine and reorganize the strategies and plans for citizen's wellbeing. The states are under regional and international pressure to establish new regulatory laws.

### **Environmental Governance for Sustainable Development: The Pakistan Context**

The environmental governance is considered a necessary part to achieve the sustainable development that requires sufficient information on the environment, consistent decision making procedure, implementation of laws and policies according to the internationally acceptable standards and norms.

The environmental protection is recognized as a very decisive International issue that has the capacity to devastate the whole world. The need for the environmental governance is not only limited to the international sphere but all the countries, at their individual levels, must also play their vibrant role in such collective effort to keep the environment clean and consequently, the world safe.

The need for environmental governance can be seen primarily from the loss of biodiversity, climate change, severe use of land and natural resources, increase in population and pollution, emissions of gases destroying the ozone layer, nuclear risks

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and socio-environmental conflicts (Kakakhel, 2011). Since these changes and risks involve every nation on this planet, therefore a collective effort must be done by every nation for preserving the environment.

Pakistan can also be seen to play its role in preserving its environment through adoption of various adequate legal and institutional measures in order to contribute in the global and regional environmental cooperation and development, and to implement the environmental objectives underlining this cause. In Pakistan, a sluggish but evident growth of environmental realization had been steadily developed.

The Constitution of Pakistan 1973 not contains of provisions regarding rights and commitment of a State with its citizens for providing secure environment. The Articles (9) and (14) in the Constitution promises citizen a secure life and dignity. The EPO, promulgated in 1983 as the first law in Pakistan made to defeat the environmental problems for environmental up gradation (Kakakhel, 2011). It was a government's assurance to environmental up gradation in Pakistan and the supreme environmental policy-making bodies, namely the PEPC and PEPA were established for the implementation of the provisions governing law in Pakistan.

### **Environmental Governance for Sustainable Development: Pre 18th Amendment Scenario**

The PEPA Act 1997 had introduced some legal plans containing provisions on environmental fortification. These legal plans were related to the water air noise, toxic and hazardous stuff, waste qualities. The effluents, oceanic, forest preservation, renewable energy, and community health concerns were also part of these laws. The introduced laws were not significant and destruction was meek and simple to prevent (Islam, 1957).

The laws like Pakistan Penal Code, 1860, Motor Vehicles Ordinance 1965, Motor Vehicles Rules 1969, Factories Act 1934, , Boilers Act 1923 (NEWS,2018).The Constitutions 1956, 1962 and 1973 in Pakistan have not a single policy objective that may specify the citizen's environmental rights. The environment was a part of Concurrent List on the Constitution. All governments at all level can address the environmental problematic concerns through lawmaking backing. The Article 142 has authorized the parliament and regional assemblies to legislate on the ecological concerns (Kakakhel, 2011). The laws were introduced by the government to handle the environmental issues.

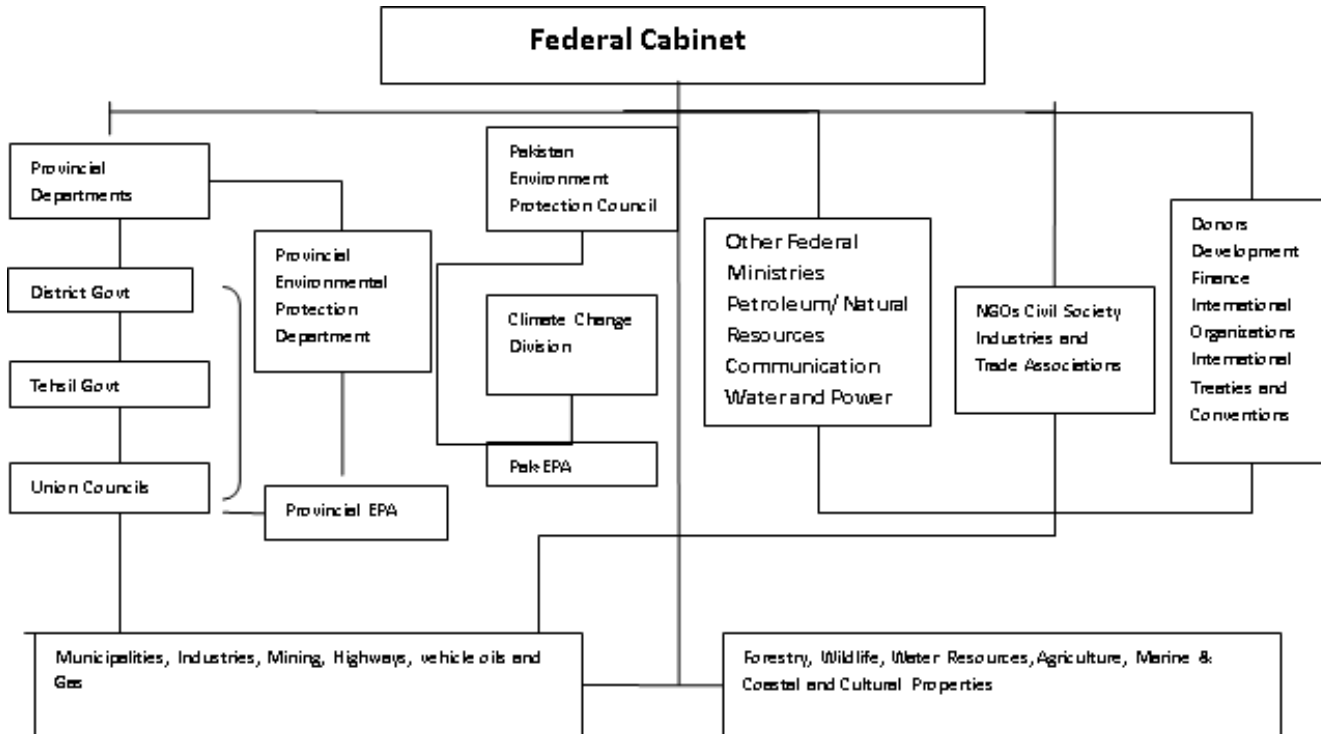
Many institutions established in Pakistan for the execution of these legal measures like the Environment ,agricultural, planning, development ,petroleum, defense ,water ,power food health, social welfare ministries Food; PEPC;PEPAs; provincial EPAs; Tribunals; WAPDA, National Council for Conservation of Wildlife (NEWS,2018).

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Pakistan became a party in many protocols, treaties and agreements at international and regional level. The environmental issues got minimal place in the 1st, 2nd, and 3rd five years Plans .The 4th five years plan dealt indirectly towards protection of the environment, but did not implemented due to some political change in the country. The fifth five year plan promised about housing and a strong living environment as basic human requirements would be improve in the environment.

The sixth five year plan visualized environmental protection, on the whole the retrieval of land through control of water logging, and the development of slums and unlawful resident resolutions. The seventh plan and the fifteen year perspective plan for the years of 1988-2003 were introduce to together and gave a prominent recognition to the relation between resources, population, and development. The eighth plan for the fiscal years of 1993-1998 added a full-length chapter on the environment in the plan. Pakistan introduced its development policies for the environment in NCS.

The NCS covered fourteen main areas that demanded help for changes .These core areas were, maintenance of soil in croplands, growing irrigation competency, caring watersheds, forestry development, reinstating rangelands, raising livestock, water body's safety, sustaining fisheries, protection of species, and energy competency (NEWS, 2018). At the Earth Summit Pakistan linked with many countries to join a global platform. The National Conservation Strategy was developed in Pakistan.



\*Author is PhD Scholar, Department of Political Science, University of the Punjab, Lahore, Pakistan.

Development and improve effectiveness in management and in the use of natural resources.

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The demand for greater provincial autonomy remained a major issue since the inception in Pakistan. The issues were inattentive and unresolved due to repeatedly dismissal of the democratic governments. During the exile, Benazir Bhutto from PPP and the Nawaz Sharif from PML-N, mutually agreed and signed the “Charter of Democracy in London” (2006). When PPP got majority in the Elections (2013), the former chairman and the president Zardari approved the bill of the Amendment in April, 2010 (Rabbani, 2011). It had reshaped and restructured the entire governance process in Pakistan. It had introduced significant changes in the constitution of 1973. The major demands by the provinces were fulfilled for example the CLL demolished and few subjects for example “environment” devolved to the provinces, now the subject is under the jurisdiction of the provinces to legislate, monitor and execute for their people by themselves.

The environment subject hand over to the provinces. A new ministry for disaster management was established in 2011. Later in 2012, it was renamed as the Climate change ministry (MoCC) that highlighted the Climate changing patterns as a major issue. In 2013, the MoCC demoted to cabinet division secretariat. The MoCC remained in the same status till 2015, when it promoted to a ministry level.

The Performance Index for environment (2018) ranked 180 countries on 24 set performance indicators covering environmental health and ecosystem strength, in which Pakistan stands on 172nd number and got 37.50 percent on environmental governance performance index (Rehman, 2018). The performance shows the poor management and lack of governance in the country.

In 2012, at federal and provincial level the ministry for disaster management renamed as the MoCC (see figure, 02). The cabinet approved the NCCP. Punjab and Balochistan also endorsed EPAs. The Green Benches in all courts established by the Chief Justice. The national disaster management strategy plans were accepted. It also facilitated in drafting a sustainable development strategy plan at national level.

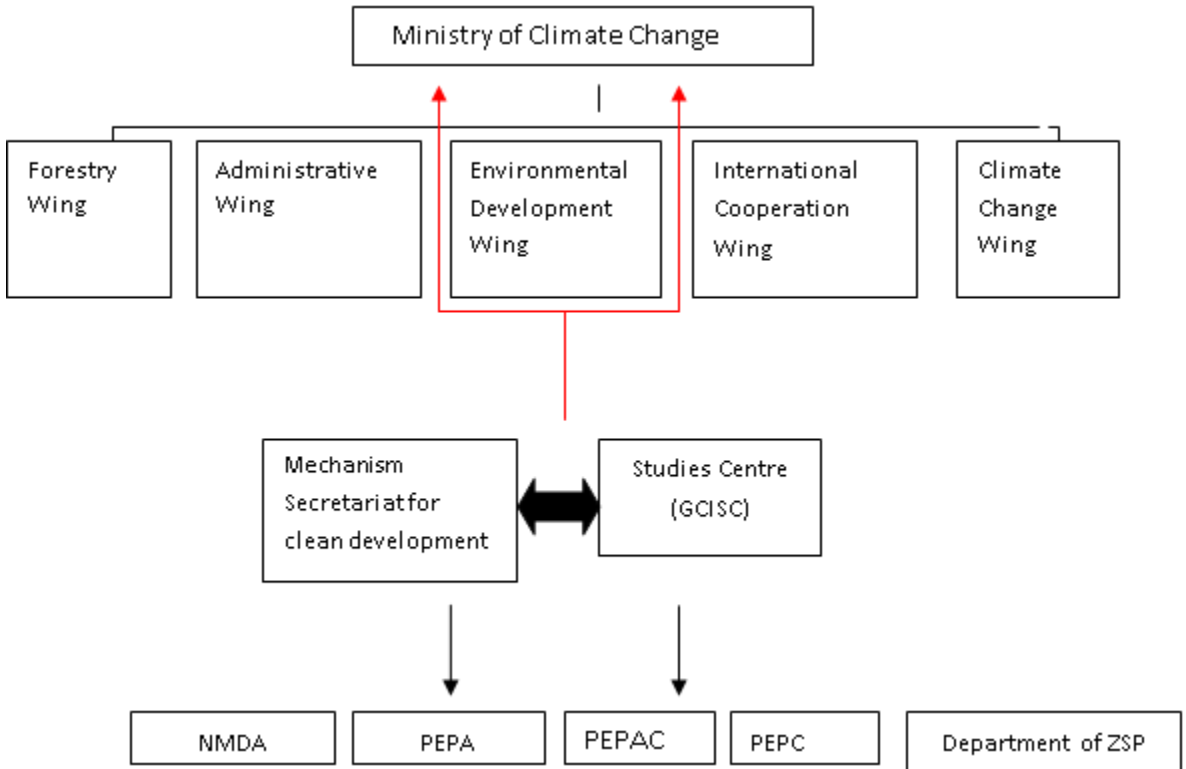
In the year 2013, the MoCC demote to division of Climate change and the global Climate change impact studies were given autonomous status (Nadeem, 2008). The Disaster Risk Reduction Policy for Pakistan was approved.



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**Fig 2**

*Federal & Provincial Environmental Protection Structure: Post 18th Amendment Scenario*



**Source:** *Organogram of MoCC, Pakistan.* [www.mocc.gov.pk](http://www.mocc.gov.pk)

In 2015, the division for Climate change added to the MoCC. For the execution of Climate change framework policy was also accepted in 2015 (Khawaja, 2013) .The Climate Change ministry drafted a bill on climate change and approved it from the federal cabinet in 2016.The Climate change Act went under the jurisdiction of Climate Change Council and prime minster nominated as its chairperson. It has empowered to endorse adaptation and mitigation plans, policies, and strategies guiding principle for safety of the biodiversity. It is to restate that the federal government has no power to legislate on environment or any of its constituent as the environment including climate change is the constitutional subject of the provincial right.

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After the 18th Amendment, provincial governments have individually legislated on the subject of environment. The government of Balochistan legislated on the environment in 2012; named the Environmental Act .It introduced some new provisions on the birds, animals, coastal zones, management of electronic wastes protection only in Balochistan. These provisions were unique and were not found in the PEPA -Act.

The Khyber Pakhtunkhwa and Sind provinces also legislated on the transferred subject of environment in 2014; but unfortunately it was a replica of the PEPA-1997 (Nadeem, 2008).

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**Country: Pakistan**

**Environmental Performance Index**

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<b>Year</b>	<b>Rank</b>	<b>Score</b>
2006(EPI-Pilot)	127	41.0
2008	124	48.0
2014	148	34.5
2017	144	51.42
2018	169	37.5

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**Source:** Retrieved on June12, 2018 from <http://archive.epi.yale.edu>

The largest province of Punjab established PEPA-2012 .It defined the responsibilities of the council, funding, monitoring, and implementation, publication of environmental standard for opinion and execution of air, water, waste, laboratory maintenance and pollution. It has empowered by an authority to issue summon and physical presence of the offender .it may bound any organization, factory or person to provide information or document on the demand of the authorities .It may conduct inquiry ,and inspect any area with an authority to search and issue warrant. The environmental tribunal and environmental magistrates were assigned the duties to look up the matters under their authority. They were empowered to collect samples of any substance or of the waste or air pollutants being discharged in air, water or land in the environment. Punjab set up committee for environmental coordination under a director- general. The director general was nominated as convener with few team members appointed by the government. The team was legally permitted to exercise powers delegated to the council by the provincial government to implementation the Act.

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The council also established a sustainable development fund (PSDF), for any fiscal transfer by the provincial or by the Federal government. The PSDF will use its power for financial support to designed projects for the ecological protection, , rehabilitation and development, the impediment and control of pollution, natural resources sustainability with advancement (Pastakia,2012).

The Sindh government constituted environmental tribunals in 2015 under the Section (25) of the SEPA-2014 after the shift of environment matters by the changes in the Constitution 18th Amendment. Prior to that federal government constituted a tribunal for Sindh under the PEPA, 1997, but it remained non-functional till July, 2012 due to unavailability of quorum. But after decentralization, the environment went under the authority of the provinces Justice Nasir (retired) selected as ET's first chairman.

The provincial governments, as above mentioned ,now can have legislate on environment after 18th Amendment, however, it is now observed that there is no specified mechanism constitutional within the state and provincial level that enable to build up uniformity in laws on environmental protection. It is also practiced that the provincial governments has not given role to local governments associated with the environmental management and policy making while local governments are the stakeholders. Some environmental issues are still not properly deal with by the provinces. Pakistan is gradually getting low ranks on environmental sustainability performance index.

### **Conclusion**

Pakistan is a signatory of multiple international protocols, treaties, and agreements (MEAs) but the Federal government is constitutionally bound not to draft legal structures related to environmental issues. The federal authority is dependent on the provinces for legislating and practices of those international measures set in environmental conventions and agreements as a signatory. There is a constitutional flaw about the execution of these international environmental conferences at national level in Pakistan. There is no constitutional mechanism that may interlink the federal and provincial governments at one platform. All the four provinces are capable to legislate on environmental security, but the legal instrument is not present to protect the environment. But we can see that Pakistan is gradually going down on the environmental performance index every year especially after 2010.The local governments' role to deal with the environmental issues at the local level is quite disappointing, as they are not the part of the decision making on environment-related issues.

The provincial legislation on limited issues and negligence of forest, irrigation, water uses land managing issues etc. Provinces are still not introduced any specific law on climate change and global warming. We need more constitutional amendments for accomplishment of international environmental rules, for this, the role of CCI, through

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should be enhanced. The CCI can better help to resolve the issues intra provinces and with the federal government. Each provincial authority is being recommended to draft new laws on ecological issues like global warming, waste, pollution climate change in their domains and at the local level the issues such as forest, water, factories, motor vehicles for environmental security for sustainable development. The 18th Amendment has provided a chance to the provinces at their own demands to govern own territory with dignity, so the provincial responsibilities for the citizens' safety are demanding to focus on the environmental issues through good environmental governance.

In 21st Century only those states can develop who have seriously taken the environment sustainability agenda with sound implementation as a necessary part of human development because no development can be made without the sustainable environment ,so the effective, good and accountable governance is the key to success at all local, national and international level.

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