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COMPARATIVE REVIEW OF KHYBER PAKHTUNKHWA AND
FEDERAL ENVIRONMENTAL PROTECTION LAWS IN PAKISTAN

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ABSTRACT

The Government of Pakistan has taken concrete step towards the protection of environment in shape of passing Pakistan Environmental Protection Act (PEPA), 1997. But after the passage of 18th constitutional amendment in 2010 which devolved the subject of environment from federal government to provincial government, the government of Khyber Pakhtunkhwa (KP) passed its own environmental protection law in shape of Khyber Pakhtunkhwa Environmental Protection Act (KPEPA), 2014. This paper is intended to comparatively review both environmental laws and also discuss whether KP government has passed a new law for the preservation of environment or has modified and amended the existing federal environmental law in this respect. Furthermore, this study is investigated to identify the strength and weakness of both environmental legislations.

INTRODUCTION

We are living in a world which was once abundant with enormous natural sights and landscape. But humans have brought many changes in it for their own need and requirement. Human beings replace the nature with artificial technology which adversely brought many terrifying pollutions. The fresh air is mixed with poisonous gases and the pure water with harmful chemicals. The standard of human right is raised but also presented them with bad health standard and

risking the life. Environmental issues are very serious legal problem which has to be addressed through a proper channel of policies and enacting legislation and their proper implementations (Sohail, Delin, Talib, & Akhtar, 2014). The importance of environmental preservation and controlling the pollution is the need of the time. According to Lahore High Court the problem of pollution is more catastrophic than the destruction cause by the Hydrogen bomb. It is high time to give due consideration to environmental laws by implementing it in letter and spirit across the board as the life of human is unique (Case, Anjun Irfan Versus Lahore Development Authority, 2002).

After establishment of United Nations, the main focus of international community was the protection of human rights and soon they also realized the protection of environment as well. The voice for the protection of environment started from Stockholm declaration of 1972 with subsequent international conferences and declarations. They came into the conclusion that ignoring the issue in short run would have long term harmful consequences on humanity and human rights violations (Pathak, 2014).

Pakistan, being much conscious about the grave issue, takes a solid step towards the preservation and protection of environment in guise of PEPA, 1997. It provided an organized structure for the protection of environment in the country. But after 18th constitutional amendment to Constitution of 1973 which brought significant changes including the abolishment of concurrent legislative list and among other things greater provincial autonomy and the devolution of environment and ecology subject to the provinces (Mahmood, 2014). The subject of environment and ecology now become the matter of provinces. The province got the exclusive power related environment. All the provincial governments then subsequently passed their own environmental protection laws and the government of KP was the last to legislate their own in the shape of KPEPA, 2014. It is almost an amended and modified act of PEPA, 1997 with certain changes keeping in view new experiences (Khan, 2015). From the very independence, the subject of environment and all the matters related with it were not clear and it never falls in the federal list. Similarly, the subject of environment was also not therein Government of India Act, 1935 and the subsequent constitutions of Pakistan such as 1956, 1962 and 1973. The provincial government also failed to legislate on the subject despite the fact that public health, sanitation, forest, protection of wild birds and animals fall under its domain. Anyhow, the enactment of Constitution, 1973 was a magnificent event in the constitutional history of Pakistan. Subsequently, the inclusion of term „environment“ was the reflection of change which was there in international stage. The global community becomes much more conscious about the environmental degradation after the United Nations Stockholm Conference of 1972 (Sohail, Delin, Talib, & Akhtar, 2014). Then in 1975, the establishment of environment ministry also paved the way for further environmental protection in the state. Such ministry made many struggles for the issue. Pakistan Environmental Protection Ordinance (PEPO), 1983 was the first solid step towards the protection of environment. PEPO, 1983 was made environmental protection council and environmental protection agency in 1984

(Banuri, 1993). The council was headed by President and other significant supportive staffs which were tasked to establish Environmental Protection Agency (EPA) at federal and provincial levels.

PEPO, 1983 took certain steps at least in theory for the preservation and protection of environment in the country by establishing different institutions and mechanism (Khawaja, 2013). However, the earth summit which was held in Rio in 1992 that was attended by different heads of the states along with Pakistan delegates further fuelled the legislation process in the country. Pakistan made National Conservation Strategy for the conservation of natural resources as well the protection of environment and making plans for next ten years in this respect. National Conservation Strategy (NCS) also provided National Environmental Quality Standards (NEQS) under PEPO, 1983 for industrial and municipal effluents and air emission. Finally, the enactment of PEPA, 1997 was another significant initiative towards protection of environment in Pakistan. It replaced the PEPO, 1983 and provided a comprehensive and detailed scheme for protection of environment in the country. PEPA, 1997 is provided considerable powers to executive and judiciary to implement and enforce the clauses of it (Sohail, Delin, Talib, & Akhtar, 2014).

Comparative Review Of PEPA, 1997 And KPEPA, 2014:

The sole purpose of environmental laws is to protect life and nature, international principle of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. It provides environmental justice which is enshrined in article 9 of the constitution that ensure right to a healthier and clean environment. Right to environment means a right that is not harmful to the health and well-being of the people and also includes protecting the people of present and future generation from such impacts (Case, Ali Steel Industry Versus Government of KP, 2015). Similarly, the Honorable Peshawar High Court (PHC) in another case clarified the main purpose of PEPA, 1997 that is to protect and restore environment, promote sustainable development and controlling different pollutions.

KPEPA, 2014 is not a new law or complete derivation from the provisions and concepts of PEPA, 1997. It is an amended and extended form of PEPA, 1997 and some new provisions and concepts has been included on the basis of experience and practical utility (Shah, 2019).

Preamble:

Preamble of the both PEPA, 1997 and KPEPA, 2014 provides the same concept that is the protection, conservation, rehabilitation, control of pollution and promotion of principle of sustainable development.

Definition Clause:

KPEPA, 2014 has provided almost all concepts of PEPA, 1997 in definition clause. But the following are the few concepts which were not there in PEPA, 1997.

KPEPA, 2014 has added the concept “flora and fauna” (Section 2(r) (iv) of KPEPA, 2014), while defining the concept of environment in the definition clause. The rest of definition of the environment is the same provided by PEPA, 1997.

The act also defines “administrative penalty” which means a penalty which has been imposed on a person for violating any provisions of this act (Section 2(a) of KPEPA, 2014). “Aggrieved person means a person whose legal right is violated by any act or omission or is directly and adversely affected by an order of any authority” (Section 2(d) of KPEPA, 2014).

KPEPA, 2014 has provided the concept of “adverse environmental effect” that comprehensively includes all those acts and activities that constitute pollution and as a source for causing adverse impacts on the environment.

Similarly, the act also includes “Bio-safety” which is environment friendly application of biotechnology that has been developed through policy and course of action that ensure human health (Section 2(i) of KPEPA, 2014).

The act has also included “Compliant” which is made under section 200 of Criminal Procedure Code, 1898. It is a claim which is made either in writing or orally to the magistrate for taking an action under Pakistan Criminal Procedure Code, 1898 that a person or persons have committed an offence. But it does not include the report of police officer (Section 2(j) of KPEPA, 2014).

KPEPA, 2014 also defines “climate change” which means any change in the climate that is due to human actions and activity that is occurred changes in the composition of global atmosphere and also includes natural climate variability observed over comparable time periods (Section 2(j) of KPEPA, 2014).

“Electronic Waste” means any waste that is caused through dismantle, repair or damage of electric equipment (Section 2(p) of KPEPA, 2014).

“Emission means the extent of pollutant’s discharges per unit time or the extent of pollutant per unit volume of gas, liquid or vapor emitted” (Section 2(q) of KPEPA, 2014).

“Public compliant” is a statement of accusation which is made against a person who creates pollution that has adverse effect on the environment (Section 2(vv) of KPEPA, 2014).

“Radiation means energy that is radiated or transmitted in the form of rays or waves” (Section 2(xx) of KPEPA, 2014).

“Respondent” is the alleged person against whom the Agency is taking action under the provisions of this act (Section 2(yy) of KPEPA, 2014).

“Reward” is compensation, financial offer or any gifts by the Government or the Agency to its members for the recognition of their special or extra ordinary services rendered by them and to realize the objectives of this act (Section 2(zz) of KPEPA, 2014).

“Strategic environmental assessment” is the systematic, comprehensive and participatory analysis to make it sure that sustainable development is the base and incorporated in the development of any policy, program or plan (Section 2(eee) of KPEPA, 2014).

Similarly, KPEPA, 2014 also provides the definitions of Fund, Government, Locomotive, SOPs and Schedule. While, the rest of terms and concepts are the same as provided in PEPA, 1997.

Environmental Protection Council:

Environmental Protection Council (EPC) is the highest statutory body which is provided by both PEPA, 1997 and KPEPA, 2014, headed by Prime Minister and Chief Minister respectively (Section 3 of PEPA, 1997 and KPEPA, 2014). Minister in charge of environment subject is the vice-chairman of the both acts. Similarly, both the acts have the members which are secretaries of different departments along with different supportive staffs.

The powers and functions of both the acts are also almost the same (Section 4 of PEPA, 1997 and KPEPA, 2014). The council has an important function of coordination, supervision and support (Section 4 (i) of KPEPA, 2014) for the implementation of the act. It has to approve environmental policies and its enforcement. Similarly, federal act has to approve National Environmental Quality Standard (NEQS) while, the KP act has to approve Khyber Pakhtunkhwa Environmental Quality Standards (KPEQS). KPEPA, 2014 in addition to provide advice and directions for the protection and conservation of specie, habitats, renewable and non-renewable resources and all general biodiversity, also to conserve solid waste management and water sanitation (Section 4 (vi) Of KPEPA, 2014). It has to harmonize the principle of sustainable development in all planes and projects at all levels. Most importantly, EPC may either take it itself or request any other person or government official to prepare or implement project for the protection and improvement of environment. KPEPA, 2014 further adds by to “promote Ecotourism initiatives, established and other type Botanical Gardens in suitable locations and develop a comprehensive Land donation strategy to save the agriculture and forest land; and (ii) Constitution of High Level Commission to resolve the issue of land

ownership disputes between the government and local communities pending in courts for decades” (Section 4 (3) (i,ii) of KPEPA, 2014).

Environmental Protection Agency (EPA):

Environmental Protection Agency (EPA) is provided by both PEPA, 1997 and KPEPA, 2014. The chief responsibility with respect to the administration and implementation of the provisions of the act lies with EPA (Section 6 of PEPA, 1997). Pakistan Environmental Protection Agency (PEPA) which was established under Pakistan Environmental Protection Ordinance, 1983 continued under PEPA, 1997. Similarly, Khyber Pakhtunkhwa Environmental Protection Agency (KPEPA) also continued to function under KPEPA, 2014. The structure, powers and functions of PEPA and KPEPA are almost the same and KPEPA, 2014 has incorporated all the powers and functions of PEPA, 1997. However, KPEPA, 2014 has introduced and added new provisions and powers to KPEPA, 2014 that were not present in PEPA, 1997.

It will carry out and conduct environmental audit of those industrial units which were established before the commencement of this act (Section 6 (xiii) of KPEPA, 2014). The agency will issue or refuse license to those who are delivering, handling, storing and disposing hazardous substances (Section 6 (xv) of KPEPA, 2014). The agency will give advice and technical help to federal and provincial government agencies who are dealing with the management of natural and environmental disasters (Section 6 (xviii) of KPEPA, 2014). KPEPA, 2014 has to establish an appropriate mechanism for spreading information regarding policies, plan and decision of government, council and agency with respect to the environment (Section 6(xxiv) of KPEPA, 2014). It has to evaluate and approve alleviation plan and give directions for, if necessary, for cleanup operations ordered under this Act (Section 6(xxvi) of KPEPA, 2014).

KPEPA, 2014 has comparatively more powers than PEPA. KPEPA, 2014 has given certain other powers which were not with the agency under PEPA, 1997. The agency has the power to enter any place if it has any reliable information that pollution offence has been or likely been committed in any site and collect the relevant evidence from such site (Section 7(ii) (iii) of KPEPA, 2014). Likewise, the agency also has the power to ask any information from the person who is required in an inquiry or investigation of pollution offence and for this purpose, it can conduct surprise visit of any private or public building or place (Section 7(iv) (v) of KPEPA, 2014). The agency also has the power to seal or seize anything who is involved in the commission of pollution offence and register a criminal case against those who are preventing or causing obstruction in the way the agency in their discharge of duties (Section 7(vi)(viii) of KPEPA, 2014). The agency also has been conferred the power to seek assistance from any department, including ministry, federal agency, local government, district administration and even police for the implementation of provisions of this act

and it will be the duty of these departments to render such assistance or information (Section 7(xvii) of KPEPA, 2014).

Sustainable Development Funds (Sdf):

Both acts provide sustainable development fund namely Provincial Sustainable Development Fund (PSDF) and Khyber Pakhtunkhwa Environmental Improvement Fund Board (KEIFB) under PEPA, 1997 and KPEPA, 2014 respectively. PSDF which was established under PEPA, 1997 become part of KEIFB. KPEPA, 2014 provides the same source of fund as provided by PEPA, 1997 with few new sources of additions. KPEPA, 2014 provides that the fee collected through review of Initial Environmental Examination (IEE) or Environmental Impact Assessment (EIA) and other Environmental approvals will also be part of this fund. Similarly, it provides that all fines, charges and recoveries made by the agency and fee collected through test in laborites will also part of this fund (Section 8(3) (iv,v,vi) of KPEPA, 2014).

KPEPA, 2014 has provided comparatively a broad area for the use of fund of the board. It provides that those members of agency who performed extraordinary duties, will be awarded financial assistance for their encouragement (Section 8(4) (ii) of KPEPA, 2014). Similarly, to utilized it on the expenses incurred on the review of IEE and EIA and on the uniform or other necessary things to equip the enforcement staff (Section 8 (4) (iii) of KPEPA, 2014). The board also has to pay it on the professional fee to technical and legal experts for their services in a particular task (Section 8 (4) (iv) of KPEPA, 2014). In addition to utilized it on the “regular trainings for job oriented professional enhancement and capacity building including educational improvement of members of the Agency (Section 8 (4) (v) of KPEPA 2014).

The board has the power under KPEPA, 2014 to authorize and support the financial assistance of projects and activities mentioned in section 8 subsections 3 of the act (Section 10 (i) of KPEPA, 2014). It can also invest in profit-bearing government bonds, savings schemes and securities. Lastly, to invest in profitable activity or project which in the opinion of the board would achieve objectives that are specified in the act (Section 10 (ii,iv) of KPEPA, 2014).

Strategic Environmental Assessment (Sea):

KPEPA, 2014 provides new concept of Strategic Environmental Assessment (SEA) which was not present in PEPA, 1997. Section 12 of KPEPA, 2014 provides the list of plans or policy on which the government may ask to carry out SEA. The list includes the following plans or policy; i) “Socio-economic development, industrial and agricultural development, urban and rural development; (ii) land use and water use management; (iii) the exploitation of natural resources;

(iv) economic zones or industrial parks and estates; (v) transport and infrastructure; (vi) solid, municipal and industrial waste; (vii) tourism; (viii) any

other plan or policy likely to have an adverse impact on environment; (ix) prevention of water pollution through improper sanitation and control flow of sanitation water into the rivers; and (x) separate zones shall be specified for poultry and cattle farming and slaughtering houses”.

The section further explains that Government agency or any relevant department may be asked to conduct SEA statement and submit it to the agency which must contain the aim, environmental characteristics or possible assessment of environmental impacts. Furthermore, the project may also be asked to describe the natural, socio-economic and environmental conditions or assessment that may likely to cause during its implementations.

Initial Environmental Examination (IEE) And Environmental Impact Assessment (EIA):

Both PEPA, 1997 and KPEPA, 2014 provides for IEE and EIA. IEA has to be filled before the start of construction and operations of a project while EIA has to be filled in those projects which are likely to cause adverse environmental impacts (Section 12 of PEPA, 1997 and Section 13 of KPEPA, 2014). KPEPA, 2014 has exactly incorporated the whole concept of PEPA, 1997 and has not brought any new concept or changes to the new act.

Similarly, KPEPA, 2014 has also provided the provisions of “Prohibition of import of hazardous waste, Handling of hazardous substances, Regulation of motor vehicles” with no changes in PEPA, 1997.

Environmental Protection Order (Epo):

Where the environmental agency is satisfied that a person or any activity is causing negative effects on the environment by any means and after giving an opportunity of being heard in person, may direct such pollutant person to take such measures as the agency may deem necessary for the protection of environment (Section 16 (i) of PEPA, 1997 and Section 17(i) of KPEPA, 2014). The main purpose of EPO is to protect the environment and human health (Case, Muhammad Ayaz Versus Government of Punjab through its Cheif Secretary, 2017).

KPEPA, 2014 has provided very strong measures as compare to PEPA, 1997 against the violator. It provides that if a person does not comply the order of the agency under sub-section (1) of section 17, then the agency has the power to enforce its order through district administration and police. Similarly, the agency may prosecute the violator before the environmental magistrate or environmental tribunal by lodging a complaint before it. Lastly, may also impose and recover administrative penalty or pollution charge (Section 17 (3) of KPEPA, 2014).

Penalties:

KPEPA, 2014 has provided both minimum and maximum level of penalties for the violator, while PEPA, 1997 provided only maximum level. KPEPA, 2014 provides a minimum fine of fifty thousand rupees for the violator which may be extended to five million rupees. The fine for the continuing offence is the same.

In the same way, those who violates section 14 or 15 of PEPA, 1997 will be punished with fine which may extend to one hundred thousand rupees, and in case of continuing, with an additional fine which extend to one thousand rupees for every day during which such contravention continues. While those who violates section 15 or 16 of KPEPA, 2014 will be punished with a minimum fine of two thousand rupees which may extend to one hundred thousand rupees, and in case of continuing, with an additional fine which may extend to one thousand rupees for every day during which such contravention continues. The rest of fine and penalties are the same with no changes.

Environmental Tribunals:

PEPA, 1997 and KPEPA, 2014 also provide environmental tribunals and magistrate for the enforcement of provisions of environmental laws. KPEPA, 2014 has included the whole concept of establishment, jurisdiction and powers, appeals, appeals from the order of environmental protection order, jurisdiction of environmental magistrate, appeal from the order of magistrate, of environmental tribunal of PEPA, 1997.

Correspondingly, the power of government to give directions to the agency with respect to the performance of its functions, the indemnity of government, the agency, the director general and its staff against any sort of suit or prosecution, dues recoverable as arrears of land revenue, the overriding effect of the act, making rules for the purpose of this act, making amendments to the schedule, are also the same with no changes brought by KPEPA, 2014.

Certain Other Changes:

KPEPA, 2014 at the end of the act has included certain provisions which were not present in PEPA, 1997. The government under the act has been empowered to make any such an order as it may appear to it to be necessary for the purpose of removing any difficulty for giving an effect to the provisions of this act (Section 33 of KPEPA, 2014).

The act has also provided dress or uniform along with accessories for the member of the agency (Section 34 of KPEPA, 2014). The act has also declared that those members of the agency who are dealing legal and enforcement affairs will be deemed as public prosecutors for the purpose of instituting or conducting any proceeding in the court (Section 35 of KPEPA, 2014). The offences

specified in sub-section (1) of section 18, of this Act shall be cognizable offences for the purpose of arrest and the officer of police station shall provide security and safety to the member of the agency (Section 38 of KPEPA, 2014). Administrative penalties or pollution charges or fine or fees or sums amount, recoverable under this Act, rules made there under shall be separately managed to be deposited in public accounts of the Government (Section 39 of KPEPA, 2014).

CONCLUSION

To conclude, one can say that environmental issue is the grave and emerging issue of the world and in this aspect, Pakistan has enacted its own law in shape of Pakistan Environmental Protection Act, in 1997. However, after the passage of 18th constitutional amendment made to the constitution in 2010 and the devolution of the environmental subject to the provinces. The Provinces enacted their own environmental laws. Khyber Pakhtunkhwa also enacted its own environmental law in shape of Khyber Pakhtunkhwa Environmental Protection Act (KPEPA) in 2014. It is not a new law but has mostly incorporated provisions of PEPA, 1997. One can say that KPEPA, 2014 is the modified and amended act of PEPA, 1997. KPEPA, 2014 has brought some changes in definition clause. The EPO of federal structure is replaced by provincial council. EPA has been given more powers for the purpose of execution of the provisions of the act. Similarly, the use of fund of sustainable development fund has also been broadening. It also provides SEA for the major projects which could have adverse environmental impacts. KPEPA, 2014 has also provided strong measures for environmental protection order against those who violates the provisions of the act. It has also provided maximum penalties for the violator. Finally, it has included few provisions at the end, which are further explaining the aim of the act.

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