

Comparative Review of Provincial Environmental Legislations

Inayat Ullah Khan*

Abstract

The Federal Government of Pakistan has legislated on the protection of environment in 1997. After Eighteenth Amendment to the Constitution of Islamic Republic of Pakistan, 1973, the subject of environment devolved to the Provinces, and thereafter, all the Provinces legislated on environmental protection. This article has reviewed through comparison the post Eighteenth Amendment provincial legislation on environment, and has identified strengths and weaknesses of each of such legislation. Mostly, the legislation is the reproduction of the Federal legislation on environmental protection. Comparatively, the Balochistan, the Khyber Pakhtunkhwa and Sindh environmental legislations have incorporated new environmental concepts, while the Punjab legislation is a complete reproduction of the Federal legislation in verbatim. The article has made recommendations related to uniform development of law on the protection of environment in light of the environmental conventions and national policies of the federal government.

Introduction

In 2010, the Eighteenth Amendment to the Constitution of Islamic Republic of Pakistan, 1973, (hereinafter the Constitution), brought major changes which included abolishment of the Concurrent Legislative List (hereinafter the List).¹ The List contained items for legislation by both the federal and the provincial governments, however, the federal legislation used to have precedence over the provincial laws in case of conflict. The said List including items on environment and ecology, on the touch stone of the Eighteenth Amendment, the aforementioned items transferred to the

* Associate Professor and Principal, Law College, University of Peshawar, Peshawar.

¹ Mahmood, M., The Constitution of Islamic Republic of Pakistan, 1973, Pakistan Law Research Academy, Lahore, 2014, pp 810 and 1877

provinces, as it is given in the Constitution that all residuary items will be the exclusive domain of the provinces.²

The Federal Government legislated on environment for the first time in 1983, however, the law was not implemented though it continued as legislative piece on legal texts.³ A new laws was legislated in 1997 by Federal Government which is called the Environmental Protection Act, 1997 (hereinafter the Federal Act, which repealed the previous law.⁴ The Federal Act is the main legislation on environmental protection in the country. Main provisions of the Federal Act are given in the following lines.

The Federal Act provided for the Pakistan Environmental Protection Council (hereinafter the Council), which is supreme executive body on environmental protection and is consisted of the Prime Minister, Minister of Environment of the Federal Government, Chief Ministers of the Provinces, Ministers of the Environment of the Provincial Governments etc.⁵ The Council approves environmental policies, supervise and enforce environmental law, review environmental reports and give directions related to environment.⁶ The composition of the Council is kept wide which is good in allowing a big number of people in decision making, however, a big number sometimes become a problem in prompt and timely decision.

The Federal Act has provisioned establishment of the Pakistan Environmental Protection Agency (hereinafter the Federal Agency), which is governed by a Director General, appointed by the Federal Government.⁷ Functions of the Federal Agency include preparation of environmental policies, adoption of measures for implementation of environmental law, publication of annual environmental report, coordination of environmental programs etc.⁸

The Federal Act has also instituted the Provincial Environmental Protection Agency (hereinafter the Provincial Agency) which work at provincial levels and will be headed by a Director General to be appointed by the respective Provincial Governments.⁹ Functions of the Provincial Agency are not enumerated in the Federal Act, 1997, however, the provincial government are given authority to assign any function to such Agency related to protection of environment.¹⁰

The Federal Act has prohibited discharges or emissions not falling with the allowed limits, initiation of developmental projects without subjecting

² Ibid, p 1821

³ Saddiqui, F. M., *The Scope of Environmental Law in Pakistan*, Asia Law House, Karachi, 2000, p 338

⁴ Ibid, p 380

⁵ Ibid, p 389

⁶ Ibid, p 390

⁷ Ibid, p 391

⁸ Ibid, p 392

⁹ Ibid, p 399

¹⁰ Ibid, p 399

such projects to environmental impact assessment, hazardous wastes disposal by non-licensed persons, etc.¹¹

The Federal Act has provided for Environmental Magistrates and Environmental Tribunals which shall be responsible to try environmental cases, and the aforesaid Tribunals will be competent to exercise appellate jurisdiction in certain environmental cases decided by the Environmental Magistrates.¹²

It is to mention that the Federal Act was to serve as an umbrella legislation encompassing all possible aspects which are important towards environmental protection, however, the said Act is limited to very few measures. It is silent on the value and protection of wetland, prevention of desertification, dangerous drugs and chemicals, protection of endangered animals and plants. It is also to bring in notice that Pakistan is duty bound under several international environmental conventions such as Biodiversity Convention, Climate Change Convention, Conventions on Desertification and Convention on Cultural and Natural Heritage, however, no operative provisions has been made for compliance of the said Conventions.

As mentioned above, the Eighteenth Amendment abolished the Concurrent Legislative List, and therefore, the Federal Government is no more competent to legislate on environment for application to the provinces, and the provinces alone are enabled under the Constitution to legislate on environmental and ecological matters. The Federal Government is thus unable to legislate on environment which is giving rise to the question as how such Government will fulfill its international obligations, particularly, when such obligations require legislation. The provincial legislations have been compared and analyzed in the following lines

The Khyber Pakhtunkhwa Environmental Protection Act, 2014

The Government of Khyber Pakhtunkhwa passed the Khyber Pakhtunkhwa Environmental Protection Act, 2014 (hereinafter the KP Act), and the Pakistan Environmental Protection Act, 1997, has been repealed in its application to the Province of Khyber Pakhtunkhwa.¹³

The KP Act is, to a great extent, the reproduction of the Federal Act, however, some new provisions are added which includes the following. The KP Act, added definitions of few words and phrases which were not there in the Federal Act, such as biosafety, electronic wastes, genetically modified organisms, locomotive, public compliant, radiation, strategic environmental

¹¹ Ibid, p, 20 to 34

¹² Ibid, pp 411 and 415

¹³ Gazette of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Environmental Protection Act, 2014, Act No. XXXVIII of 2014, p 457

assessment and reward.¹⁴ The powers and functions of the Environmental Protection Council, given in the KP Act, is more detail than the Federal Act. It has the power to initiate and implement projects for the protection and rehabilitation of environment, promotion of eco-tourism, establishment of botanical gardens, and land zonation to save agriculture and forest.¹⁵ The KP Act has empowered the Environmental Protection Council to provide for the constitution of a high level Commission to resolve long standing land ownership disputes between the Government and the local communities pending in courts for long time.¹⁶

The Strategic Environmental Assessment means complete participatory analyses to ensure sustainable development as basis and integrated in development plans, programs or policies.¹⁷ It is obligatory to carry Strategic Environmental Assessment of the following policies and projects.¹⁸

1. Industrial, socio economic, agricultural, urban and rural developments
2. Projects related to land use, water management, natural resource exploitation, and establishment of economic zones, and
3. Policies and projects related to transport, infrastructure, solid wastes, industrial and municipal wastes, tourism, water pollution prevention, and control of sanitation of water flow in rivers.

It is the responsibility of the Provincial Government to allow public participation while formulating Strategic Environmental Assessment related to any policy or project.¹⁹

The KP Act provided for the minimum limit of punishment offences which was not given in the Federal Act.²⁰

The KP Act has responded to the international environmental conventions, and included in the functions of the Khyber Pakhtunkhwa Environmental Protection Council to formulate mechanism for the implementation of such conventions which are signed by the Federal Government.²¹ It has been mentioned that the Provincial Government may make rules for the implementation of the international environmental agreements which are specified in the Schedule attached to the Act.²²

The KP Act has included in aforementioned Schedule the Law of the Sea Convention, though, KP is a land locked Provinces, and, therefore, said Convention is not relevant to it. Like the Federal Act, the KP Act is also not a detail law, and has failed to appreciate incorporation of environmental protection measures, such as polluter pays principle, protection of natural

¹⁴ Ibid, pp 432-437

¹⁵ Ibid, p 438

¹⁶ Ibid, p 438

¹⁷ Ibid, p 448

¹⁸ Ibid, p 448

¹⁹ Ibid, p 449

²⁰ Ibid, p 452

²¹ Ibid, p 439

²² Ibid, p 439

heritage, incentive or reward for individual efforts towards environmental protection. The KP Act is in complete isolation to the local government, and local government may play vital role in the protection of environment. The KP Act has not provided any provision involving the Federal Government in decision making while for development of uniform environmental protection such role should have been ensured in the law. The provincial governments, mentioned above are competent to legislate on environment, however, such governments have not role in relation to international environmental conventions.

The Punjab Environmental Protection Act, 1997

The Government of Punjab adopted the Federal Act in verbatim through the Punjab Environmental Protection (Amendment) Act, 2012.²³ The words Pakistan and Federal are replaced with the words Punjab and Provincial, and the provision relating to Provincial Environmental Protection Agency has been deleted.²⁴

The Balochistan Environmental Protection Act, 2012

The Balochistan Environmental Protection Act, 2012 (hereinafter the Balochistan Act), repealed the Federal Act.²⁵ The Balochistan Act is also to a great extent the reproduction of the Federal Act, however, it came with some new definitions and provisions which were not there in the Federal Act. The words and expressions which are defined in the Balochistan Act include alien species, Balochistan coastal line, coastal zone, electronic wastes, best practicable environmental options, clinical wastes, endemic and indigenous species, genetic resources etc.²⁶

Balochistan coastline or coastal zone means the territorial jurisdiction of the coastline of the Province of Balochistan.²⁷ It has been supplemented by another provision of the Balochistan Act which says that activities or concentration or level of discharges from ports and shipping, fisheries, ship dismantling, oil and gas exploration, coastal power plant, oil refineries and industries shall be strictly monitored to prevent pollution and degradation of environment.²⁸ It has specifically mentioned that ship breaking at Gaddani or

²³ Punjablaws.gov.pk/laws (Retrieved on 13/01/2017)

²⁴ Ibid

²⁵ <https://bhc.gov.pk/resources/liberary/law-amendments/balochistan> (Retrieved on 14/01/2017)

²⁶ Ibid

²⁷ Ibid

²⁸ ibid

elsewhere in the coastal zone shall be subject to relevant provisions of the Basel Convention, Rotterdam Convention and any other relevant Convention.²⁹ It has been declared to be an offense to discharge or dispose untreated sewage, domestic wastes and industrial effluents in the sea.³⁰

The Eighteenth Amendment has declared that natural resources found in the Provinces, adjacent to territorial waters, shall jointly and equally vest in that Province and the Federal Government.³¹ in the presence of this provision of the Constitution, the province are enabled to take measures related to protection of natural resources found in adjacent waters.

The Balochistan Act has required that every producer, distributor, collection center, recycler and dismantler shall not store electronic wastes for more than six months and shall maintain a record of collection, sale, transfer, storage and segregation of such wastes.³²

It has been laid in the Balochistan Act that the import of alien species and living modified organism is prohibited in Balochistan without a permit to be issued by the Government, and no such permit shall be issued unless there is reasonable certainty that no harm to indigenous natural resources or human health will result from the proposed introduction of such alien species and living modified organism.³³ It has mentioned that water resources are to be protected including associated ecosystem, biological diversity, ground water, wetlands and watersheds.

The Balochistan Act has empowered the Provincial Government to establish regional and District Environmental Protection Agency, and such agency shall have powers which may be given to them by such Provincial Government.³⁴ The Balochistan Act has failed to identify functions and powers of the respective Environmental Agency.

The Balochistan Act has mentioned a provision which deals with the resolution of disputes regarding environmental protection, as after Eighteenth Amendment there is likelihood of disputes between Provinces regarding certain issues. Section 11 of the said Act says that projects which fall within more than one Provincial geographical jurisdiction, the proponent of such project is required to submit the Initial Environmental Examination and the Environmental Impact Assessment to each of the Environmental Agencies of the concerned Provinces.³⁵ Disputes and concerns shall be addressed through mutual consultation between the Provinces, and such

²⁹ Ibid

³⁰ Ibid

³¹ Mahmood, M., *The Constitution of Islamic Republic of Pakistan, 1973*, Pakistan Law Research Academy, Lahore, 2015, p 851

³² <https://bhc.gov.pk/resources/liberary/law-amendments/balochistan> (Retrieved on 14/01/2017)

³³ Ibid

³⁴ Ibid

³⁵ <https://bhc.gov.pk/resources/liberary/law-amendments/balochistan> (Retrieved on 18/01/2017)

Provinces may constitute joint technical or review committee including a representative of the Federal Government dealing with environmental issues.³⁶ A matching provision is not found in any of the law on environment of the Provincial Governments, which deals with inter-Provincial environmental issues, not even the Federal Act has referred to the inter-provincial environmental issues and their resolution mechanism.

The Baluchistan Act is mindful of the international environmental agreements which are ratified by the Federal Government, and declares that such agreements will be observed as were observed before devolution through the Eighteenth Amendment.³⁷ Any international assistance with regard to international environmental agreements shall be proceeded in consultation recommendations from the Federal Government.³⁸ The KP Act has also referred to the implementation of the multi environmental agreements and has given authority to the KP Environmental Council the Power to formulate mechanism for the implementation of such multi environmental agreements which are ratified by the Federal Government,³⁹ however, none of these government have role to play in decision making process by the Federal Government in relation to implementation of international environmental conventions.

Like the KP Act the Balochistan Act has provided for the Strategic Environmental Assessment, and has it mandatory for all plans and programs to carry out environmental impacts of such plans and programs.⁴⁰

The Balochistan Act has given a detail provision which was never there in the Federal Act to deal with environmental matters identical to coastal zones. Section 23 has asked for monitoring activities onshore and offshore such as ports, shipping, fisheries, ship dismantling, oil and gas exploration, coastal power plants, oil refineries industries, and to prevent pollution from such activities and protect environment.⁴¹ Ship breaking at Gaddani or elsewhere in coastal belt or zone in the Province of Balochistan shall be subject to the obligations under the Basel Convention, Rotterdam Convention and other relevant international conventions and protocols.⁴² Ship breaking shall be carried in a manner as not to effect terrestrial and marine environment and such activities shall be strictly monitored.⁴³

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

³⁹ Gazette of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Environmental Protection Act, 2014, Act No. XXXVIII of 2014, p 439

⁴⁰ <https://bhc.gov.pk/resources/library/law-amendments/balochistan> (Retrieved on 17/02/2017)

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

Disposal of untreated water, domestic wastes and industrial effluents to sea is prohibited.⁴⁴

The Sindh Environmental Protection Act, 2014

The Sindh Environmental Protection Act, 2014 (hereinafter the Sindh Act), like the above referred Acts, is also to large extent the reproduction of the Federal Act. It has provided with institutions just as provided in KP and Balochistan Act with little modifications, but by and large, structures and powers of the institutions are the same. The new additions and provisions brought by the Sindh Act which are not mentioned by the above referred include the following.

Biosafety has been defined which means the mechanism developing through policy and procedure to ensure human health and the environmentally safe application of biotechnology.⁴⁵ Similar definition of biosafety has been mentioned in the KP Act,⁴⁶ however, there is no such definition in the Federal Act, the Punjab Act and the Balochistan Act as well. The Sindh Act defines environmental aspect as an organization's activities or services that can interact with the environment.⁴⁷ Environment audit has been included for the first time which means a systematic scrutiny of environmental performances of an organization, factory, company or manufacturing and production unit regarding its operations.⁴⁸ The definition of environmental management plan has been introduced which means a site or specific plan developed to ensure that all necessary measures are identified and implemented in order to protect the environment and comply with the environmental legislation.⁴⁹ Section 19 of the Sindh Act has provided that the Sindh Environmental Protection Agency shall arrange environmental monitoring of all projects for protection of environment in accordance with Environmental Quality Standards.⁵⁰ The Sindh Act has provided for environmental review which means a quantitative and qualitative assessment of documents submitted by proponent, comments from public and Government agencies or organization.⁵¹ Section 20 the Sindh Act has mentioned detail regarding environmental and audit and review.⁵² It has defined non degradable plastic products and Oxo-biodegradable plastic products. Non degradable plastic products means a

⁴⁴ Ibid

⁴⁵ www.sindhlaws.gov.pk (Retrieved on 23/02/2017)

⁴⁶ Gazette of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Environmental Protection Act, 2014, Act No. XXXVIII of 2014, p 433

⁴⁷ www.sindhlaws.gov.pk (Retrieved on 23/02/2017)

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

⁵² Ibid

plastic product which are made from the non-biodegradable substances, while Oxo-biodegradable products means a plastic product made of a polymer by adding a pro-degrading additives containing a transition metal salt, except cobalt.⁵³ The Sindh Act has given definition of schedule plastic products which means all types of flexible plastic packaging and disposable plastic products made of polythene, polypropylene, polystyrene and polyethylene terephthalate, used for food and non-food items, likes shopping bags, garbage bags, snacks packs, water and milk packaging, shrink wraps, bubble pellets wrap, films, liners, woven or non-woven bags and mulch films.⁵⁴

The Sindh Act, like the KP and Balochistan Act has also provided for Strategic Environmental Assessment. It is pertinent to mention that out of four Provinces, the legislation on environment of the three Provinces has given provision regarding Strategic Environmental Assessment, while the same has not yet been incorporated by the Federal Act or by the Punjab Environmental Protection Act.

The government of Punjab has actually done nothing and has only reproduced the Federal Act as their law except change of some names, and it shows the interest and seriousness of the said government towards protection of environment.

Overall, the Balochistan Act is more detail in comparison to the Federal and other Provincial Acts, and is the first provincial legislation on environment after Eighteenth Amendment. The Balochistan Act has for the first time introduced the procedure of Strategic Environmental Assessment in Pakistan, and has now been adopted by other Provinces in their respective legislation on environment.

Conclusion

The Federal Act, before the Eighteenth Amendment, was the only law regulating environmental issues across the country. The Federal Act has ignored some important areas to address such as the significance, importance, promotion, protection and improvement of forest, agriculture, wetland, water, urban and rural development in relation to environment.

As mentioned above, after Eighteenth Amendment the Provinces are given authority to make laws on environment and ecology. All the provinces have laws of their own on environmental protection, which are mentioned in the above lines, however, one of these provinces have any Constitutional role in decision making related to implementation of international

⁵³ Ibid

⁵⁴ Ibid

environmental conventions. The Provincial legislation, like the Federal Act, also failed to come up with umbrella legislation which could provide for protection of environment keeping all its important aspects in view. These Acts has not mentioned any provision on role and importance of forest, agriculture, land, water, energy, urban and rural development with environment.

Some of the environmental issues are of cross provincial nature, such as pollution of the air, water and land, which require cooperation of all Provinces, however, the laws has not given effective provision on such cooperation, which is essential for protection of environment at the country level.

All the Provinces are needed to legislate a comprehensive umbrella document on environment which could encompass all relevant sectors of environment such as industry, factories, technology, forest, agriculture, wildlife, water, wetland, desertification, glaciers, land use, population, urban and rural development, poverty, and environmental education. The details of the comprehensive environmental document should be reflected in the relevant sector of environment. All the provinces should make specific provisions regarding their own environmentally significant areas, as some of the provinces have some specific environmentally important matters. The province of Khyber Pakhtunkhwa should make special focus on the protection of endangered species, historical, cultural and natural monuments, indigenous populations, and glaciers. Sindh and Balochistan should be more cognizant of significance of pollution of the adjacent waters, and wetlands, due to port operations. The Punjab should be specially addressing environmental aspects of industry and agriculture.

Environment cannot be dealt in isolation, and, therefore, there is a need of some mechanism where a uniform and detail law across the country be developed and it is possible once such mechanism is provided in the Constitution. In this regard it is recommended that the Council of Common Interest be enabled to deal with matters of environment. In this way the Federal Government will be in a better position to address implementation of international environmental conventions which has been ratified where such implementation requires legislation.

Bibliography

- Mahmood, M., [2014]: *The Constitution of Islamic Republic of Pakistan*, 1973, Pakistan Law Research Academy, Lahore
- Saddiqui, F. M., [2000]: *The Scope of Environmental Law in Pakistan*, Asia Law House, Karachi
- Gazette of Khyber Pakhtunkhwa*. [2014]: The Khyber Pakhtunkhwa Environmental Protection Act, 2014, Act No. XXXVIII of 2014
- Punjablaws.gov.pk/laws (Retrieved on 13/01/2017)

<https://bhc.gov.pk/resources/library/law-amendments/balochistan>

(Retrieved on 14/01/2017)

<https://Kpcode.kp.gov.pk/homepage/law> (Retrieved on 18/01/2017)

www.sindhlaws.gov.pk (Retrieved on 23/02/2017)