

Encounter Efficacy & Gap Analysis Of The Pakistan Environmental Protection Act, 1997



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Abstract: Pakistan is the 5th populated country of the world in terms of rich in natural resources, diverse biosphere & ecosystem with high threats of global warming & climate change. Although environmental regulations are meant to sustainability of environmental growth and welfare yet need is felt for making it make comprehensive and prolific. Laws without apt application do not serve the tenacity. Keeping in view this notion, struggle has carried out to identify the short comings in The Act, 1997 with recommendations for making it practicable and free from barricades. Climate concerns i.e. water scarcity; deforestation, health issues, pollution and increasing risk factors to organisms along with their habitats are increasing day by day in Pakistan hence necessitated and demand the role of legislators to play for amending the Act, 1997. Law makers and Government are expected to adopt thoughtfulness approach to manage the available resources to be kept under proper preservation, salvation of bionetwork, provision of clean water and healthy milieu to its citizens by bringing reforms in environmental regulations. The apex court of Pakistan declared in the light of Article 9 of The Constitution of Pakistan, 1973 that right to clean environment is one of the basic right associated with right to life. Further life meant to citizens should be dignified and free from climatological intimidations.

Keywords: Environment, sustainability, climatological, bionetwork, reforms and legislators

Introduction

Biosphere actuality is necessary to transpire life on the mother earth. Environment is a key factor which serve as a conductor of various natural process important for biological growth and need of life on the planet. The concept of Profit over planet endangered the environment and exposes the universe with the threats of global warming. Uneven and rapid increase in population growth along with immense industrialization degraded the natural resources and proved fatal for humans. Lack of awareness and weak implementation of the environmental

regulations turns the planet into unfavorable for existence of life. Before turning it into inhabitable planet it is need of the time to preserve the ecosystem & atmosphere by legislating laws. Laws on environment are indispensable not only for protecting ecosystem and biodiversity it is of immense important for protection of the human rights. Environmental laws serve like tools by the state to impose sanction upon those who threatened the world peace, sustainability and climate on risk with harmful deeds. The human rights commandments were created earlier to

environmental protection became a matter and subject of apprehension. The Universal Declaration of Human Rights was the product of World War-II and dealt with the recognized injustices which occurred from the savageries of warfare, which is silent on the concerns of environmental protection. Later on the International Covenant on Economic, Social and Cultural Rights (1966) have some traces of environment protections ensured via the right to life and healthy life. No judicious mind can negate that the relationship between human rights and environmental rights (Picolotti & Taillant 2003). Human rights can take along with climate justice arena and contribute to tackling, thwarting and minimizing climate change's effects on humanity, our planet and humans. It is need of time and human sufferings to inculcate these injustices to legal realm (Aliozi 2020). Most of the countries of the world is facing unbalanced burden of dangers and vulnerable to the results postured by climate change by contributing only 0.90 metric tons of Carbon Dioxide (CO₂) per capita. Pakistan is coining environmental concerns arising out of unsustainable ecological use, degradation of natural resources, industrial revolution, pollution & mainly immense increase in birthrate. In 2016 yearly expense of Pakistan's air pollution was likely increased up to 6.5%. Issue of water sanitation and hygiene infrastructure was approximately 0.9 percent in metropolitan zones and 1.8 percent of the GDP in countryside extents. Keeping in consideration the assessment of these issues Pakistan environmental planning and sustainability demands focus and extreme attention of Government. The Constitutional approach on the protection of environment and its preservation in Pakistan is silent on the issue. Even a single article is not recognizing any environmental rights of citizen and does not obligate the state for preservation. The Apex court of Pakistan in several verdicts construed the right to clean and healthy environment under the right to life which is one of the basic fundamental rights guaranteed under the Constitution of Pakistan, 1973. Interpretation by The Supreme Court imposed obligation on the Government to provide the due rights keeping in

view the dignity of human beings with proper governance, clean and healthy environment. This interpretation paved a road map to the Government regarding obligation towards its citizens in terms of ensuring peaceful and standard life (PLD, 1994). The Constitutional provisions contained in Articles 141-144 of The Constitution, 1973 enumerates the legislative empowerments between governments i.e. federal and provincial both. The Constitution of Pakistan 1973 is crucial as far as it enumerates the Concurrent legislative List. Environmental issues like pollution, water scarcity and ecology utilization are cited in the Concurrent Legislative List, hence both federal and provincial Governments can makes laws governing and addressing issues of Climate change (Article 142). Under Articles 175 and 212 of the Constitution establishes the Supreme Court of Pakistan along with the provincial high courts and provided mechanism for operation of administrative tribunals for speedy justice in various causes. In recent decades Environment degradation is scorching concern and spotting the world various unprecedented problems. Need is felt for proper laws and implementation to mitigate the environmental disasters globally. International conventions are adopted and floated regional wise with proper implemented mechanisms which necessitates the law making on the preservation of healthy environment for the citizens (Constitution of Pakistan, 1973). Well-formed notion is that efficacy of law can be devised in rapports of output, outcome, and impact. Laws serve nothing in the absence of mechanisms for its effective strategy (Andresen, 2016).

RESEARCH QUESTIONS & OBJECTIVES

Research in hand has main focus on:

1. The critical analysis of The Pakistan Environmental Protection Act, 1997.
2. Identifying the technical gaps in The Pakistan Environmental Protection Act, 1997 with recommendations to make it make inclusive and operative.

Sturdy enforcement mechanisms are considered vital for true implementation of any Law. The Pakistan Protection Act, 1997 lacks the criteria

of effective enforcement owing to structural and operational flaws. The Act 1997 lacks the contemporary approach to grasp the imminent happenings and to cope with improvement and sustainability. In order to strengthen the functionality of The Act 1997 the flaws are emphasized & taken into account.

2. LITERATURE REVIEW

Pre independence laws were existed in subcontinent even before getting status of separate homeland relating to preservation of forest, natural resources and wild life but with less effectiveness and lacking the impact on environmental degradation. In Pakistan environment as separate subject got recognition in late 70s. Pakistan displayed its concern and due consideration by signing the Stockholm Declaration. Later on Ministry on Environment was accommodated for preservation of eco system. Under the Constitution of Pakistan 1973, President is empowered to make laws on matters of urgency (Article 89). In the light of this entrustment the President issued an Ordinance known as Pakistan Environmental Protection Ordinance 1983 (PEPO) as first codified legislation. This paved way for upcoming legislation on environment. Although laws under the said Ordinance were addressing the issues of climate and environment concerns but it lacks the implementation criteria and strict compliance methodologies.^{1st} ever federal institute with the name of Pakistan Environment Protection Council as a paramount founded body in 1984 for making policies and introducing the policies relating to climate change, disaster management and resilient policies. The composition of The Pakistan Environmental Protection Council (PEPC) was under the provisions of the Pakistan Environmental Protection Ordinance, 1983 with President of Pakistan as Chairman with 33 members including government officials, technical experts and some officials. In this context we can suggest that the historical aspect of Pakistan on legislating laws on environment is not that much comprehensive and having long history. The time frame ran between the years 1983 to 1997 in introducing environmental ministry, legislating laws and policies. The other

key law on environment is legislated in 1997 known as Pakistan Environmental Protection Act, 1997 (PEPA) as a revised and supplemented law to PEPO as consolidated law to address properly the negated areas i.e. ecology and implementation mechanisms. PEPA along with constitutional empowerment assigned task to the provinces to enact laws for the protection, conservation, rehabilitation and sustainability of environmental policies and preservation of natural resources. Under PEPO 1983 the Pakistan Environmental Protection Agency was constituted with the aim to keep check on the implementation of provisions but with limited powers. The Agency was abreast with enhanced range of empowerments and mechanism for taking actions under PEPA, 1997. The scope, power & function of the agency established the Ordinance, 1983 was revisited by Act, 1997 by empowering legal authority to agency. The National Conservation Strategy, 1992 is also one of the mile stone and guide line in enacting Act, 1997. One of the peculiar features of said strategy was that scope of its concerns are exhaustive, focus had been made on the control and reforming urbanization in the country (Ministry of Environment, 2000). The Environment and Urban Affairs Division of ministry of housing and works maintained the data on the effects of urbanization on environment and aided in reshaping the powers and functions of the Environmental protection Agency under PEPA, 1997 (Sohail, 2014). In late ninety i.e. in 1997 The Pakistan Environmental Protection Act was legislated as a legal frame work for devising the policies on environment, protection of threatened species, ensuring dignity of human rights to fresh air, right to clean water and taking steps for environmental sustainability. The PEPA, 1997 provided for regulatory mechanisms i.e. Environmental Tribunals, Environmental Magistrates, Initial Environmental Examination, Environmental Impact Assessment, Enforcement of National Environmental Quality Standards and deciding the fate of hazardous substances and Wastes. The Act, 1997 provided for Environmental Protection Agency with exclusive powers to inquire into the issues of environmental breaches. Powers of Civil and Criminal courts

are extended to the agency to implement the provisions of PEPA, 1997. Further in order to assess the peril factors and look into the affairs of sustainability of environment of various developmental projects need to be approved as Act 1997 provided for the establishment of Environmental Impact assessment unit. The Act 1997 is providing regulations for the auto motor and vehicles consumption under standard quality assessments, moreover clamatorial issues like hazardous waste, pollution and gaseous emissions, chemical assumptions are also addressed. Environmental judiciary as a legal entity is part of the Act, 1997 as it elaborates the composition, powers and function of the Environmental tribunals at federal & provincial levels. The Act 1997 provides vast powers entrusted to Environmental Magistrates to coup with the breaches of environmental issues with civil & criminal remedies. Environmental Protection Order is one of the vital feature of The Act 1997 whereby Government take notice of the any commotion effecting environment by issuing notice for clarification & extending reasons for action done or deems to be done. The preventive measure in form of Environmental Protection Order is to guard the atmosphere & promote the right of healthy life (Lahore H.C, 2017).

3. THE ENVIRONMENTAL PROTECTION ACT, 1997; GAPS & DEFIES IN ITS FUNCTIONALITY & STRUCTURAL APPROACHES:

The Act 1997 needs to be revisited by the legislators as after ample study it has been revealed that it has some flaws and short comings which effect its operation. Few of them are discussed with proper recommendations.

3.1. Inadequate Penalties:

The Act, 1997 provides for the penal actions. The penalties are endowed for violations made under provisions 11,12,13 and 16 of The Act,1997. The given penalties either imposing damages or imprisonment are inadequate to deter general public or establishments from engaging in environmentally detrimental happenings endangered the climatology and joining hands in degrading the well-being of

human life on the planet. (Section 17, EPA 1997). It is highly advocated that these penalties may be augmented and must be properly enforced via the provided environmental units and tribunals.

3.2. Privation of guidelines/laws concerning to E-waste:

Now the theoretical approach of Global village is realized in its practical shape with the help of advancement in technology. Technology is escalating like other litters; the discarded merchandises bent the waste into emitting more negative effects on humans, marine life and other species of living entities. The Act, 1997 is silent regarding these effects on planet caused due to disposal of electronic waste, not even a single provision dialogue about the E-waste and its remedial way out. It is suggested that The Act, 1997 should provide for the management of harm substance.

3.3. Bar to certain discharges or emission causes pollution:

While the Act, 1997 states that the pollution charge shall be calculated at such rate and collected in accordance with such procedure as may be prescribed (Section 11(2) of EPA, 1997) there's a lack of specificity or clarity in how these rates are determined and enforced which could lead to inconsistent application or inadequate deterrence among the violators. Clear guidelines or criteria shall be provide for setting pollution charge rates, ensuring they are enough to serve as a deterrent rather than a nominal fee. The procedures for collection should also be transparent and efficient, ensuring that charges are promptly and fairly applied. In context with provision (Section 11(3) of EPA, 1997) allows any person to avoid being charged with an offense of contravention or failure to comply with provisions of subsection (1) of section 11 by paying a pollution charge is a significant blemish. This could potentially create a situation where entities that can afford to pay the charge might view it as a cost of doing business rather than an incentive to comply with environmental standards. Principally, it could lead to a scenario where financial capacity determines an entity's ability

to pollute, undermining the principle of eco-friendly justice and potentially allowing ongoing environmental harm. This provision shall be reassessed that exempts entities from legal responsibility upon payment of a pollution charge. Instead, the legal framework could allow for financial penalties as part of the consequences for non-compliance but not as a substitute for legal accountability. This could include mechanisms for repeated violations to lead to escalating penalties, including stronger legal actions beyond financial charges. Additionally, reinvesting collected pollution charges into environmental restoration projects or community compensation could enhance the provision's effectiveness in promoting genuine environmental protection. The Act, 1997 coaches under provision (Section 11(4) that certain industries commencing Industrial activities are exempted from being charged with an offense after paying a pollution charge, thereby liberating them of any concern, obligation or castigation for actions that may harm the environment.

It is suggested that the applicability of Section 11 shall be amended to inclusively enumerate and specifically identify the industrial categories subject to its provisions, without exemption based solely on the operational commencement date. This amendment should ensure that all industrial entities, irrespective of their commencement date, are uniformly subject to the environmental accountability and legal obligations as stipulated within the Act, thereby eliminating any arbitrary exemptions and reinforcing the Act's intent of comprehensive environmental protection.

3.4. Environmental Impact Assessment Process strengthening the role of Act, 1997:

The Act, 1997 necessitates the submission of an Initial Environmental Examination (IEE) report before the commencement of any project, and, as deemed necessary by a federal agency, an Environmental Impact Assessment (EIA) report. However, the section does not stipulate who is responsible for the preparation of these critical reports, nor does it command whether these should be prepared by the proponents of the project or by an independent entity. To resolve

this vagueness and improve the veracity of the environmental review process, it is recommended that Section 12 be amended to clearly mandate that both IEE and EIA reports must be prepared under the guidance and oversight of an independent authority or a body specifically designated for this task under the Act. This suggestion is aimed at guaranteeing impartiality, reducing potential prejudices, and enhancing the transparency and trustworthiness of the report preparation process (Section 12, Act 1997)

3.5. Handling of hazardous substances:

The Act, 1997 keenly mention the handling of hazardous substances that it is necessary to obtain a license to handle such hazardous substances but the process for obtaining the license is not explicitly detailed neither the grounds are mentioned on the basis of which anyone could get the license, which can lead to potential arbitrariness and inconsistency in the issuance of licenses. To rectify this, clear guidelines and criteria for licensing, alongside a transparent application process, should be made more inclusive. Additionally, while the provision profound concedes the need of observing international environmental ethics & regulations as it does not specify the device for placement of stated standards into National legislations. An added regulated approach to incorporate international treaties and agreements into national law would certify steadiness and sustain Pakistan's international commitments (Section 14(a) (b).

3.6. Jurisdiction and powers of Environmental Tribunals:

The Act, 1997 stating that an Environmental Tribunal cannot take cognizance of an offense unless there's a written complaint from specific bodies such as the Federal Agency, any Government Agency, local council or an aggrieved person who has given notice of not less than thirty days to the Federal Agency or the Provincial Agency could delay the addressable of urgent environmental issues. This mechanism does not seem efficient for addressing environmental violations that require immediate action (Section 21 (3) (a) (b).

It is suggested that a provision shall be introduced in this Act for the Environmental Tribunal to take action on its own accord or immediate cognizance in cases of stark environmental harm or urgency, without waiting for the 30-day notice period, especially in situations posing immediate risks to public health or the environment.

The environmental tribunals and environmental magistrates can only consider offenses upon complaints from federal agencies, provincial agencies, local councils, or aggrieved individuals. To enhance inclusivity and promote the general welfare, it is necessary to introduce a third category of complainants who may not be directly aggrieved but are advocating for the broader public interest. This addition aims to ensure that complaints brought forth by individuals or groups acting in the interest of the community's well-being are duly recognized and addressed by the environmental authorities (Sections 21 & 24-Act, 1997)

3.7. Public Input and Access to environmental Facts:

The Act, 1997 potentially lacks public involvement and access to environmental information. While it establishes the foundation for environmental protection, it does not clearly dictate the involvement of communities and individuals in decision-making processes or guarantee their right to admittance environmental information held by public entities and private individuals. Strengthening the identified flaw could advance transparency, responsibility, and community engagement in environmental governance and would aid in improving civic sense.

3.8. COVERAGE OF CONTEMPORARY ENVIRONMENTAL ISSUES:

The Act, while ample at the time of being legislated by the Government but does not explicitly addresses numerous existing environmental issues in term of sustainability. This gap hinders the implementation of Act, 1997 as it is lacking efficacy to deal with issues with long term approach hence necessitating being updated & efficient to coup with current environmental issues with far reaching effects.

4. FUTURE READINESS & LEGAL REFORMS TO ENSURE EFFICIACY:

The Pakistan Environmental Protection Act, 1997 is a superlative law drafted for the safeguarding, maintenance, restoration and improvement of the environment along with the objective for ecological wellbeing and sustainable development. Although The Act, 1997 legislated as a tool for whittling the country natural resources, biotic benefits and conservation yet its insubstantial capacities didn't allow achieving its goal. Pakistan like other countries of the world are threat and navigated with the environmental degradation, loss of natural resources, global warming and climate change that is alarming and criteria of climate justice is seems to be failed. Generations are at risk for basic needs if the arrangements are not done for its proper implementation in the light of stated flaws. In order to improve its efficacy and due role legislators should inculcate comprehensive penalties that serve the purpose of deterrence among society and will proof more effective in violating the environmental laws. Role of public awareness and opinion has its vitality in policy making and carrying the implementation of said laws more elaborately, keenly and with civic sense. Laws are prolific and productive when implementation is carried in its spiritual level. All stake holders are expected to play their due role along with individual responsibility to joint hands with the Government.

5. CONCLUSION:

Existing environmental matters necessitate aptitude, civic attitudes and concerns of all stakeholders. International and National levels are desired to play its role with reference to legislating laws with underlying principles of governance and accountability. It is concluded that PEPA 1997 doesn't serve the purpose and access to environmental justice in true sense. The standing provisions of the Act 1997 do not enough to coup with current climatological situation and negations to human rights. The governance of Environmental Protection Agency is also weak along with weak litigation strategies. The quest for a sustainable environmental right can only possible through

laws having featured for strict compliance.

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