

## Shedding Light on Khyber Pakhtunkhwa Environmental Protection Tribunal

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**Abstract:** *This paper investigates the Khyber Pakhtunkhwa province of Pakistan Environmental Protection Tribunal under the provisions of "Khyber Pakhtunkhwa Environmental Protection Act, 2014", its judicial implementation and effective working in the province. The study also focusses on the newly established Khyber Pakhtunkhwa Environmental Protection Tribunal. Humans have a very close relation with nature and environment around them. Minute changes in the environment lead towards different diseases. Environmental pollution is of many kinds and includes all those things which become a factor in disturbing the original state of nature. The study found the factors affecting nature in the province and reasons behind continuous violations of environmental laws in the light of previous judgments and case laws of Khyber Pakhtunkhwa Environmental Protection Tribunal. It further came to the conclusion that the efforts of provincial government in the field of environmental protection and at the end recommendations and suggestions to improve the system.*

**Key Words:** Khyber Pakhtunkhwa, Tribunal, Environmental Protection, Peshawar, Provision.

### Introduction

Environmental protection is a hot global issue and all the civilized countries and nations around the globe have taken initiatives to protect environment for the better future of mankind. Environmental pollution includes air pollution which is related to air and can cause dangerous lung diseases to the people breathing in the polluted air, Noise pollution which can cause psychological disorders in the personality of the citizens, water pollution which today in Pakistan is the most dangerous kind of pollution which can lead towards drought and shrinkage of pure drinking water for humans. Disturbance in the nature is something which cannot be reversed totally to its original form but still it can be stopped and a few steps towards healing nature can be taken. Pakistan has taken strong steps to counter violations related to environment on country level but due to the load of hundreds of complaints on the federal environmental protection tribunal the government of Khyber Pakhtunkhwa decided to make this a provincial subject reason there by to take quick and effective steps against violations of environmental laws and enacted "Environmental Protection Act, 2014" under which Environmental Protection Tribunal is established for legislative implementation.

### Rationale of Research

Human life is dependent on the environment and surroundings. A give and take system seem to be present between humans and nature in order to keep things going properly. Here I would give an example of plants which produce oxygen which is inhaled by us and in return we exhale carbon dioxide which is then used by the plants. We use natural resources and in return cause damage to them which is leading towards shrinkage of natural resources and rapid change in climate. Therefore, we need to be more precise in policy making by studying the lacunas in different parts of the world.

Khyber Pakhtunkhwa is a province rich in natural beauty including rivers, forests, hill stations and lakes. Many organizations and individuals have already put marks in the study of environment and its protection but this time I have focused on the environmental protection in Khyber Pakhtunkhwa and the effectiveness of laws framed for dealing with violations of environmental protection. It would help to better understand the progress of government and authorities in past years, increase or decrease in the number of violations and will highlight the loopholes in the implementation of the "Khyber Pakhtunkhwa Environmental Protection Act, 2014" followed by guidelines and suggestions to improve the work mechanism.

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Almighty has created this universe for the welfare of man and almost every creation of ALLAH provides benefits to mankind but humans have dealt with cruelty with nature due to lack of knowledge and awareness. Human activities in daily life have a negative impact on Earth. Natural resources which the planet is offering us are shrinking due to the misuse and destruction of natural resources.

### **Statement of Problem**

Environmental Protection was previously dealt under the "Pakistan Environmental Protection Act 1997" regarding environmental issues and the tribunal was situated at the centre. The purpose of making it a provincial subject by 18<sup>th</sup> amendment was to cover environmental violations taking place in the province more effectively. Law is available but its implementation is still a question for the developing country, violations of the Environmental Protection Act 2014 are reported on daily basis but here role of Khyber Pakhtunkhwa Environmental Tribunal is not effective. Therefore, in this study judicial implementation of the Environmental Protection Act, 2014 in the province will be focused and highlighted and a comprehensive detail will be given on deficiencies of environmental tribunal under Environmental Protection Act 2014.

### **Geographical Importance of Khyber Pakhtunkhwa**

Khyber Pakhtunkhwa is a province situated in the northwest Pakistan, previously known as (North West Frontier Province) with a huge area of about 28,773-mile square. The province is known for its beauty and eye-catching natural sights, tourists from all around the world visit this region to feel the freshness of nature. Peshawar is its capital city and the province was divided into 26 districts previously and now after merger of "Federally Administered Tribal Areas" (FATA) the territorial limits of the province are extended.

### **Water Scarcity in Pakistan and Importance of Khyber Pakhtunkhwa in Water Resources**

Water crisis is one of the main problems and threat to Pakistani nation which can have dreadful effects in future if serious and effective steps are not taken immediately. Water is one of the blessings of ALLAH and humans are directly dependant on it. Supreme Court of Pakistan has taken steps to overcome the future shrinkage of water and drought situation in the country by starting work on new Dams.

Rivers, streams and canals are the sources of water in the country and agricultural benefits could not be taken without them because they provide the main component (water) for the nourishment of healthy crops. Secondly the economy of Pakistan is directly based on the agricultural gains as most of the population in Punjab and rural areas of the country are related to the field of agriculture. In this situation not only pure drinking water is a basic need but water needed for irrigation purposes is also very important and its shortage can not only affect the production of agriculture which would lead to end of export in agriculture sector but also the need for country itself would not be fulfilled. Kabul, Swat, Chitral, Kunar, Siran, Panjgora, Bara, Kurram, Dor, Haroo, Gomal and Zhob rivers flow through different zones of Khyber Pakhtunkhwa which provide drinking and irrigation water throughout the province. Flow of these rivers from the province increases its importance and needs more strict policies to protect water pollution.

### **Environmental Protection Law**

Khyber Pakhtunkhwa Environmental Protection Act, 2014 is not the first enacted law in Pakistan for the protection of environment, there are many other laws which are related to the protection of nature and environment and their penalties are given in Pakistan Penal Code 1860 in sections about environment, Forest Act 1927, The Cutting Trees Act 1992, the Code of Criminal Procedure (environmental protection as public nuisance) for which some preventive measure have been adopted but these laws are in scattered form and do not provide better cover to the environment. Before "Khyber Pakhtunkhwa Environmental Protection Act, 2014" the subject of environmental protection was a federal matter and was dealt under the "Pakistan Environmental Protection Act 1997" regarding environment and the tribunal was situated at the central government. The subject of environmental studies and its protection is very vast and it may not be possible to cover it under a single act, a team of experts in the relevant field should be constituted to deliver annual report and new arising hazards to the environment in the light of which addition or alteration in the law can be made. The scattered form of laws related to environmental protection in the country should be combined and powers or Environmental Protection Tribunal shall be enhanced to better counter the high rate of environmental

violations. The "Pakistan Environmental Protection Act 1997" provided protection, conservation, rehabilitation and improvement of the environment, for prevention and control of pollution. After 18<sup>th</sup> amendment the subject of environment was declared provincial subject and six years later the "KP environmental protection Act 2014" was passed by KP assembly. This Act also devolves the same powers on the Environmental Protection Tribunal but on provincial level to protect, conserve, rehabilitate and improve the environment and to monitor, prevent and control pollution and the promote sustainable development in the province of Khyber Pakhtunkhwa and all other connected matters.

### **Role of Khyber Pakhtunkhwa Environmental Protection Tribunal**

The basic purpose of this article is to find out the role of newly established "Khyber Pakhtunkhwa Environmental Protection Tribunal" going through the case laws and judgments passed by the tribunal. By virtue of "Khyber Pakhtunkhwa Environmental Protection Act, 2014" environmental protection agency and environmental protection council is also established and bestowed with certain powers. Before proceeding towards the orders passed by the tribunal, I would shed some light on the process of registering complaints regarding environmental violations. Environmental Protection Agency (EPA) is the authority which is given the ground / field work to find out the violations taking place in the province and bring them to tribunal for further action. Agency itself can register complaints in case of violation of the act and on receiving complaints from any local / individual which means the tribunal is dependent on EPA to bring the culprits before it. Now giving examples of a few case laws I would discuss the penalties awarded by the tribunal and their effects. In a case titled "Director General EPA Vs Khurshaid Khan" the accused had built settling tanks in his marble factory but kept them non-operational and was polluting the vicinity by dumping the wastes without processing them. The tribunal imposed fine of rupees 100,000/- which is not much effective because a person having 3 settling tanks is definitely running a huge factory and a fine of one lac would mean nothing to him. In "Director North EPA Vs Syed Qasim Shah" the accused was running a 20-room hotel at a posh tourist spot and the sewerage line was dumped directly in the kunhar river causing pollution and harm to the water life. The tribunal imposed fine of 50,000/- rupee on the owner which in my opinion is not satisfactory although the owner is directed to divert the sewerage line in one week but the judgments of environmental tribunal should be of such nature that other people when hear about them, they become conscious and take precautionary measures to avoid destruction of environment. Another main point here which needs to be noticed is that "Khyber Pakhtunkhwa Environmental Protection Act, 2014" gives pecuniary penalties on violations of the rules which is considered a lenient punishment and the tribunal has to visit other areas for deciding issues arising in that territory which cause waste of time and pendency of suits is increased.

### **Literature Review**

The structure of system does not give us the same that is expected by us but in fact it has variations of its own in it. According to Kaufmann's theory, the rights of first-generation have been noticed as strict and political and are much feasible to form a foundation than the rights of second generation which forms less political and more focused on economy and society. There is very less evidential support to this view but it cannot be ignored.

Focusing on both political and civil rights can put negative effects and could become a cause to discourage social and economic development of rights. ([Bassiouni, 2002](#)).

Also, non-contentious rights of humans don't mean that they are accepted all around the world by everyone. Leonardi observed that the tension or unease found between the law present in Southern Sudan and the international human rights is because people view the human rights as the bases of the problems found in the society like criminal behavior leading to juvenile, the traditional and cultural rights of parents and elders are undermined and not given any importance by youngsters therefore their increased rebelling, among such others. There has been very little research done on the positive impact that human rights set by international common authorities has on alliances themselves compared to the plenty done on the fact that they are initially implemented to protect and establish rights of humans. Researches that show success which are rights-based approaches to developmental of humans in a society among resulted in not high but only moderate achievement of success. Many institutions regardless of this fact show favor towards pressing more of these rights, prioritizing them more ([Banda, 2008](#)).

The available researches in history provide not a firm conclusion but rather a very superficial and unreliable analysis and therefore a conclusion along with rudimentary examples. For example, according

to some researches by 2011, 187 out of 195 countries all around the world approved the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). But the World Development Report of 2012 says something else, and that is that according to the result concluded of CEDAW's impact on the discrimination towards women is found to be very little. Countries with a low-income economy are where the number of discriminations found against women as well as the violence faced by both girls and women (VAWG) is very high. An example that comes under this is of South East Asia, where their national laws meant to protect women and girls against such issues have been lifted like trafficking women and girls and VAWG. And although many of the lawyers and judges have received high training and are skilled to face and solve gender sensitivity issues the basic foundation and basic, foundational data is missing and therefore the impact of implanting such measures cannot be studied ([Bassu, 2008](#)).

The article published on 8 November-2013 written by Intikhab Amir which was published in Dawn Newspaper: "environmental protection body lack presence in most of KP" in which he said that the environmental protection agency (EPA), the monitoring and regulatory body set up under EPA does not exist in 24 District of Province of KP and due to its absence of its physical presence outside Peshawar the agency acts against the environmental laws violator only if it receives information from the general public, through media. But my research is about judicial implementation of law and they deal with executive and administrative implementation of Environmental Protection Act 2014. Furthermore, in my research I will find out the quality of environmental tribunal in KP, the cases pending before it, the cases decided, how they are decided and what is its effect on the implementation of Act. ([AMIR, 2013](#))

Published in Express Tribune on April 13 2016 written by Fawad Ali 'cannot breath: KP fail to form environmental protection tribunal' which says that KP passed its own Environmental Protection Act in December 2014 under which it was supposed to form the EPT, the federal tribunal dissolved by the federal Govt. however there is no one who knows about the establishment of KP Environmental protection Tribunal and absence of this entity the Environmental Protection Agency completely depend on district administration but here my research is about the establishment of Environmental Protection Tribunal, what is the progress of Environmental Protection Tribunal and its effect on the judicial implementation of KP Environmental Protection Act 2014. ([FAWAD ALI, 2016](#))

The article published in the news dated 15 January 2018 written by Irshad Ahmad "crushed to death" that KP Environmental Protection Act is the sole body and having many power and functions related to environment, in this article the writer talked about the executive implementation of the Act and says till now the authorities have taken no action against the crushing units and only in SawaDherMardan there are 40 to 50 crushing units while the unit owners have asked the locals to vacate the area if they have problem with the pollution but the writer only focus on executive implementation of Act and my research is regarding the judicial implementation of the KP Environmental Protection Act 2014. ([AHMED, 2018](#))

Inayatullah Khan "Central Asia Journal No. 76, summer 2015 "comparative review of provincial environmental legislation" which is comparison of the provincial and federal environmental laws and had discussed the KP Environmental Protection Act 2014 its mentioned powers and functions which means executive implementation of law but did not talk about the environmental tribunal and judicial implementation of KP Environmental Protection Act and also not compared the federal and provincial tribunal. In my research I will find the KP Environmental Protection Act 2014 judicial implementation and the progress and quality of Environmental Protection Tribunal from its establishment. ([KHAN, SUMMER 2015](#))

Mujahida Naureen "Development of environmental legislation and laws in Pakistan publish in Pakistan journal of history and culture in 2009. The writer in this article discussed history of environmental laws and environmental institution and say that this article gives a historical overview of institution and environmental laws in this regard but here they do not talk about the environmental tribunal and involvement of judicial institution regarding environment through which to find out the judicial implementation of environmental laws and in my research I will discuss the judicial implementation of KP Environmental protection Act 2014 and also the progress of judicial institutions under the KP Environmental Protection Act since its establishment. ([NAUREEN, 2009](#))

The definition of the rule of law needs to be studied and reconsidered and to know that human rights, implantation of rule of law and liberal democracy are factors that influence one another and therefore need to consider altogether. According to Preen Boom, rule of law, human rights and democracy altogether are mixed in a feedback loop only because it is rule of law is taken as only to be present in those states with no democracy and those of which that are non-liberal. If we study its reverse impact

than that is also found to be true as some democratic states are incapable to enforcing or implementing the rule of law in their so-called democratic states. But overall, very little research and therefore its evidence is found on the result of human rights on entire societal development or the specificity of the impact of human rights on alliances or treaties. But evidence can also be found on the impact of the implementation of social and economic rights on the overall development ([Berglof, 2006](#)).

Kim and Sikkink concluded from the data and all the information collected on the human rights prosecutions (domestic and international) was surveyed from 100 countries that had undergone some recent experiences involving political changes that protection of human rights can be improved with criminal trials. Apart from this Olsen and others also concluded using the data gained from the Transitional Justice Data Base (TJD), that when justice is served against persons that have caused a threat and terror amongst people and their human rights has a huge impact but when they are carried out in a particular sequence but of course the context also matters here. Criminal trials although have a positive impact on the perception of people of the accountability that the law provides, however sometimes pardon is also very much needed to maintain the stability among the society. Analysis conducted has concluded that the International Criminal Tribunal for Rwanda (ICTR) along with the International Criminal Tribunal for Former Yugoslavia (ICTY) have made large impact on initiating peace by marginalizing national leaders and forced that are associated with genocide or war. This has also reduced attacked made by certain groups acting as vigilantes because of the fact that the judicial system is doing its work properly. Results taken from a survey that was conducted in five Bosnian cities of the soldiers that were present their support to the argument that the contribution of the ICTY has helped greatly in building and developing peace by showing people the way to debate and communicate through dialogue (Beck, 2010).

### **Environmental Protection Tribunal**

Environmental Protection Tribunal was established under the provisions of "Khyber Pakhtunkhwa Environmental Protection Act, 2014" which started its functions in the province and implementation of law but keeping in view the extension in territorial limits of the province, increase in the number of marble factories and absence of permanent Tribunals in other parts of the province makes it important to study and analyze the judgments and decisions of KPEPT to find out the needful improvements in the relevant field and effective working of KPEPT.

I have collected data of the previously decided and pending cases of Khyber Pakhtunkhwa Environmental Protection Tribunal and analyzed the judgments passed by the Tribunal after deeply studying the powers and functions of "Environmental Protection Agency", "Environmental Protection Council" and "Khyber Pakhtunkhwa Environmental Protection Tribunal".

When a special court is established to deal with some specific matter, it is very important that it achieves its object. Khyber Pakhtunkhwa Environmental Protection Tribunal is established to keep a strict check on violations and penalize the culprits to stop further destruction and harm to the beauty of the province and nature.

### **Main Reasons for Violations of Environmental Laws**

Studying the area, geography and culture of Khyber Pakhtunkhwa and the case law data collected from the Khyber Pakhtunkhwa Environmental Protection Tribunal, we can easily point out what are the reasons behind the numerous violations of environmental law.

#### **Illiteracy**

Illiteracy is an important factor behind the violations taking place in the province because the people in rural areas are mostly uneducated and does not know the effects of their acts and are unaware of the law.

#### **Unawareness**

When new laws and policies are adopted regarding some special matter in issue, it is the duty of government to provide basic education and spread awareness between the citizens by running awareness campaigns etc. Khyber Pakhtunkhwa government needs to educate people and spread awareness regarding hazards of pollution.

#### **Unregistered Marble Factories**

Khyber Pakhtunkhwa is surrounded by hills and people living there are mostly related to the field of

extracting different kinds of stones including marble and chips therefore there are large number of marble and chips factories in the province which are the source of earning bread for many families who work there as labor. By studying the judgments and number of complaints registered in the past few years it is very clear that mostly violations take place when the factories are unregistered therefore it is needful to keep strict check and start survey in the province to compel registration of these unlawfully working units causing pollution by not installing necessary equipment.

### **Conclusion and Recommendations**

There is always a room open for suggestions and recommendations on newly adopted policies and laws. Environmental Protection is a subject which needs high attention and strict policies because it can put the country like Pakistan in drastic situation if not dealt seriously. On provincial level Environmental Tribunal is working effectively but due to lack of permanent bench in remote areas it provides loopholes to the violators to take advantage and makes it difficult to implement the environmental laws. Awareness campaigns will also put a positive impact and will definitely reduce the number of violations. It is very clear that environment is a complicated phenomenon and new problems are arising day by day although basic issues are the same but the environmental laws need to be altered in accordance with the new arising problems for the better mechanism and judicial implementation of law. When the Khyber Pakhtunkhwa Environmental Protection Tribunal was enacted, FATA was not merged with the province and the territorial jurisdiction was limited now after the Khyber Pakhtunkhwa merger with FATA the territorial jurisdiction of the province is much extended which would definitely need more Tribunals and environmental issues of FATA are not very much known to the administrative authorities. The provincial government needs to form teams of well-trained staff in the field of environmental sciences and collect data of the newly added areas. There should be an annual report of field staff which should be submitted in the principle Tribunal of the province which should further proceed towards alterations and addition in the law.

The newly added territory is mostly illiterate and belongs to a backward region which strongly requires the awareness campaigns regarding environmental issues so that the individuals living in the vicinity can get better knowledge of law and illegal activities taking place around them.

As there are different kinds of pollution, therefore there should be separate environmental magistrates who should be given specific jurisdiction regarding violations taking place to a specific kind of pollution to exercise their powers in accordance with the jurisdiction of that very kind of pollution. This division will make the field work more precise and the judicial procedure will become simpler and more effective.

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