

## **ANALYSES OF ENVIRONMENT GOVERNANCE IN KHYBER PAKHTUNKHWA**

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### **Abstract**

*This article analyzes governance structure in the field of environmental management and administration in the Province of Khyber Pakhtunkhwa. Identification and description of laws related to environmental governance are mentioned along with gaps and overlaps. The laws which are discussed include the Rules of Business of the Federal Government and Government of Khyber Pakhtunkhwa and main stream laws of Khyber Pakhtunkhwa related to environment including local government law.*

**Keywords:** Rules of Business of the Federal and Provincial Government, Environment, and Local Government

### **Introduction**

The Constitution of Islamic Republic of Pakistan, 1973, is the main source of overall governance for the Federal, Provincial and local governments.<sup>1</sup> In the Federal Government, the executive authority is exercised in the name of the President by Prime Minister and the Federal Ministers as Cabinet.<sup>2</sup> The executive authority of the Federal Government extends to all matters on which the Federal Legislature has authority to make laws.<sup>3</sup>

### **The Federal Rules of Business, 1973**

Affairs of the Federal Government are carried by the Cabinet in accordance with the Federal Rules of Business, 1973, which is provisioned in the Constitution.<sup>4</sup> The Federal Rules of Business defines Cabinet as the Prime Minister and the Federal Ministers, and Prime Minister allocate business to them.<sup>5</sup> Division is a self-contained administrative unit which conducts business of the Federal Government

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in a defined sphere, and each Division is headed by a Secretary.<sup>6</sup> Ministries and Divisions of the Federal Government relevant to environment are given in the following lines.

The Ministry of Environment was created for the first time in 1975<sup>7</sup> which was authorized to masters of national polices related to environment and ecology, international environmental conventions and implementation of national laws on environment.<sup>8</sup>

In accordance with the Eighteenth Amendment, which was passed in 2010, the Ministry of Environment was done away with and the affairs environment was given to the Ministry of Planning.<sup>9</sup> However, the Federal Government constituted the Ministry of Disaster Management in October, 2011; the subject of environment was given to the said Ministry.<sup>10</sup> In April, 2012, the Ministry of Climate Change was introduced with mandate to deal environment and climate change.

In 2010, the Eighteenth Amendment to the Constitution of Islamic Republic of Pakistan took the power of legislation on environment and ecology from the Federal Government and gave such power to the Provinces.<sup>11</sup> The Khyber Pakhtunkhwa came up with law on environment and the Federal law was abolished. The competence of the Federal Ministry of Climate Change to deal environmental issue can be questioned in touchstone of Eighteenth Amendment, however, it can deal international environmental conventions.

There is the Ministry of Planning and Development of the Federal Government which also have role related to environment, which is mandated to look after affairs related to formulation, monitoring and review of national plans on economy and social development in the country.<sup>12</sup>

The Ministry of Planning and Development may address concerns relating to environmental aspects of development, and may incorporate environmental concerns in the economic planning.

The are other Federal Ministries which may play role in addressing different environmental aspects, and such ministries include the Ministry of Petroleum and Natural Resources, the Ministry of Science and

Technology, the Ministry of Textile Industry, the Ministry of Finance and Revenue, the Ministry of Law, Justice and Human Rights, the Ministry of Ports and Shipping, the Ministry of National Heritage and Integration. It to mention, that the above referred ministries have not considered environmental protection in their respective affairs.<sup>13</sup>

**The Khyber Pakhtunkhwa Government Rules of Business, 1985**

The Khyber Pakhtunkhwa Government Rules of Business, 1985, are framed under the Constitution of Islamic Republic of the Pakistan, 1973, for running affairs of the Provincial Government.<sup>14</sup>

The Khyber Pakhtunkhwa Government Rules of Business, 1985, consisted of rules in accordance to which business of the Provincial government shall be carried.<sup>15</sup> The Chief Minister has authority to apportion Departments to Ministers, Department means a self-contained administrative unit to perform a distinct function which is headed by a Secretary.<sup>16</sup> In case, a business pertains to more than one Department, then all such Departments shall decide the business after consultation with each other, the consultation is, usually, made with the Finance, Law and Establishment Departments of the Government of Khyber Pakhtunkhwa.<sup>17</sup>

The Departments relevant to environment includes, Environment Department, Agriculture, Livestock and Cooperation Department, Energy and Power Department, Industries, Commerce and Technical Education Department, Food Department, Election and Rural Development Department, Mineral Development Department, Revenue Department, Planning and Development Department, Public Health Engineering Department, Irrigation Department, Health Department, Housing Department, Information, Public Relations and Culture Department, Inter-Provincial Coordination Department, Labor Department, Tourism and Museums Department, the Transport Department, and Local Government Department.<sup>18</sup>

The Environment Department deals matter of environmental pollution, forest, ecology, and wildlife in the Province of Khyber Pakhtunkhwa.<sup>19</sup> The Ministry of Climate Change of the Federal Government, as given above is authorized to deal with environmental matters, but on the other side environment is a Provincial subject,

Khyber Pakhtunkhwa has its own Ministry for the protection of environment. There is no legal provision which streamlines such overlap between the two ministries as far as both the Rules of Business of the Federal Government and the Khyber Pakhtunkhwa are related.

The Climate Change Ministry of the Federal Government is responsible for implement of international environmental conventions, and the said Ministry has come up with various national policies related to commitments given in such environmental conventions. However, no procedure, either in the Constitution of Islamic Republic of Pakistan, 1973, nor in the Rules of Business of the Federal Government and the Provincial Government of Khyber Pakhtunkhwa, is available which has create a working relationship between the Federal and the Provincial Government for facilitating to implement international environmental obligations. This gap will negatively affect environmental protection in light of the guidelines given in the international environmental agreements.

#### **The Local Government**

Khyber Pakhtunkhwa has its own local government system in the Province which includes City District Government for district of Peshawar, District Government for a district, Tehsil Municipal Administration for a Town in City District, Village Council for a village in the rural areas and Neighborhood Council for a neighborhood in urban areas.<sup>20</sup> The local government is responsible for providing development vision, formulation of annual development plan, master plans, land use plans, matter related to housing, market, environment, public transport, drainage, municipal services etc.<sup>21</sup>

The Khyber Pakhtunkhwa Local Government Act, 2013, has delegated some functions to the local government, which are performed through Departments devolved to such local government. It is worth noting the Department of Environment has not been devolved to the local government and it is a question as how such local government will work for protection of environment without having support of the Environmental Department of the Provincial Government. There is lack of coherence between the Provincial Government and the local Government in the context of environment. The administrative affairs, from view point of environment, between the Provincial Government

and the Local Government are not reflected in the Khyber Pakhtunkhwa Rules of Business, 1985, and the Khyber Pakhtunkhwa Local Government, 2013.

### **Governance Structures in Environmental Laws**

There are certain governing bodies which deals environmental matters provided in the Pakistan Environmental Protection Act, 1997, which include the Pakistan Environmental Protection Council, the Pakistan Environmental Protection Agency and Provincial Environmental Protection Agency has been given to the Provinces.<sup>22</sup>The Environmental Protection Council is empowered to approve environmental policies and national environmental quality standards, while the Pakistan Environmental Protection Agency make environmental policies and set environmental quality standards for approval of the said Council.<sup>23</sup> The Provincial Government is given power to establish the Provincial Environmental Protection Agency, and may authorize to perform certain functions in relation to environmental protection.<sup>24</sup>

The Khyber Pukhtunkhwa Environmental Protection Act, 2014, has also provided for some administrative bodies such as Khyber Pakhtunkhwa Environmental Protection Council, which is empowered to approve environmental policies and environmental quality standards.<sup>25</sup>Unlike the Pakistan Environmental Council the composition of the Provincial Environmental Protection Council has not included any representative of the Federal Government. This situation may likely cause imbalance in development of measures for protection of environment in accordance with the spirit of international environmental conventions.

The Khyber Pukhtunkhwa Forest Ordinance, 2002, has authorized the Department of Forest to perform certain functions related to protection of forest.<sup>26</sup>It established a Forest Settlement Board performs functions related to settlement of rights and claims in reserved forest.<sup>27</sup>The Khyber Pakhtunkhwa Forestry Commission Act, 1999, has envisioned a Commission which is to give vision for development of forest in the Province.<sup>28</sup>It has provided for the Forestry Roundtable with responsibility to work as think tank for the Commission.<sup>29</sup>The Khyber Pakhtunkhwa Forest Development Corporation Ordinance, 1980, has constituted a Corporation which is to perform functions regarding

economic uses of forest, sale of forest produce and establishment of wood processing units in the Province.<sup>30</sup>

The forest laws recognize importance of community participation in the management of forest, however, local government has not been given any role in all forest laws despite the fact that local government is representative of local community. The subject of forest and environment are not given to local government.

Administrative matters of wildlife have been given to the Department of Environment; the Conservator of wildlife is responsible for dealing with such administrative matters.<sup>31</sup>The Department of Environment is not trickled down to local government, though; participation of local community in protection of wildlife has been mentioned in objectives of the Khyber Pakhtunkhwa Wildlife and Biodiversity (Protection, Preservation, Conservation and Management) Act, 2015.<sup>32</sup>This gap between the local and provincial administrative level is detrimental to protection of wildlife and environment.

Fisheries, Forest, Agriculture and Livestock, Environment and Wildlife, under the concept of integrated management should be brought under a single administrative unit, however, administration of fisheries matters are given to the Department of Agriculture and administration of forest, wildlife and environment have been given to the Department of Environment. Local government has been given role in fisheries but administrative matters of environment are not given to such local government, and this gap may amount to mismanagement of natural resources and the environment.

The Government of Khyber Pakhtunkhwa have legislated a number of laws related to different aspect of water, and administrative control of water related matters are given the Department of Irrigation, Local Government Department and the Department of Public Health Engineering.<sup>33</sup>

Integrated Water Resources Management Board has been established under the Khyber Pakhtunkhwa Integrated Water Resources Management Board, 2002, and it has been entrusted functions related to protection and allocation of water for its various uses, however, the

Department of Environment is not been represented in the said Board,<sup>34</sup> which is an example of poor management in terms of relation of water to environment.

Khyber Pakhtunkhwa Irrigation and Drainage Authority has been provided under the Khyber Pakhtunkhwa Irrigation and Drainage Authority Act, 1997, which has to perform for effective operation and maintenance of irrigation and drainage systems, however, the such Authority has not given to representation to the Department of Environment as to be its member, which another example of ignoring the relation of environment and water management.<sup>35</sup>

Under the Khyber Pakhtunkhwa Rules of Business, 1985, the Housing Department, the Local Government Department, and the Planning and Development Department are established to deal with administrative affairs in rural and urban development.<sup>36</sup> The Departments of Housing and Planning and Development Department are not given representation in the Khyber Pakhtunkhwa Environmental Protection Council<sup>37</sup>, though, these Departments would have been beneficial for development of better environment as these Department perform functions which are relevant to environment.

The laws on agriculture have established some governing bodies, for example the Khyber Pakhtunkhwa Agriculture and Livestock Produce Markets Act, 2007, has provide committees to conduct market activities.<sup>38</sup> A Milk Board is given under the West Pakistan Milk Board Ordinance, 1963,<sup>39</sup> similarly, the Seed Act, 1976, has established National Seed Council, Provincial Seed Council, and Federal Seed Certification Agency, which perform different administrative roles.<sup>40</sup> It is to mention that Department of Agricultural and Livestock is not given representation in the Khyber Pakhtunkhwa Environmental Protection Council, despite the fact, environment and agriculture are closely linked with each other,

The Department of Industries, Commerce and Technical Education, the Department of Mineral Development, and the Department of Labor, are responsible for administrative affairs of industries and its related matters. The Khyber Pakhtunkhwa Government Rules of Business, 1985, has made provisions with respect to the establishment of the Department of

Minerals Development falling under the Ministry of Minerals Development, and is governed by a Director General.<sup>41</sup> The Department of Minerals has not been reflected in the Environmental Protection Council, though, minerals are related to environment which has been discussed in Chapter 4 in detail.

The Department of Minerals Development has not been devolved to the Local Government, and such exclusion of administrative functions in relation to minerals development has ruled out the participation of local community in the protection, management and proper utilization of mineral resources and mineral resource development.

The Khyber Pakhtunkhwa Minimum Wages Act, 2013, has constituted a Minimum Wages Board to deal with the determination of wages to be paid to the workers.<sup>42</sup> Small Industries Development Board is constituted under the Khyber Pakhtunkhwa Small Industries Development Board Act, 1972<sup>43</sup>, the administrative relation of the Board with the Industries Departments is not been mentioned anywhere in any of the laws amounting to administrative overlap.

There are two Departments perform administrative role in connection to cultural heritage, the Department of Information and Culture, and the Department of Sports and Archaeology. There is no self-contained administrative department of cultural and natural heritage in the Province. It is interesting to note that the Khyber Pakhtunkhwa Environmental Protection Council has given membership to the Department of Sports and Archaeology, and has left out the Department of Information and Culture. It is a clear example of ignorance about cultural and natural heritage and its relation with environment. The local government have administrative role regarding culture but has no such role related to natural heritage protection.

### **Conclusion**

There exist overlaps and gaps in laws on governance relevant to environment. Both the Rules of Business, 1973, of the Federal Government and the Khyber Pakhtunkhwa Government Rules of Business, 1985, have provisioned Ministries on Environmental, and both of the Ministries are not related to each other in their respective laws.



Both the Pakistan Environmental Protection Council and the Khyber Pakhtunkhwa Environmental Protection Council perform for environmental, and no administrative relation is found in their respective laws under which they are constituted.

It is identified that there is lack of understanding of environmental management, and coherence and coordination amongst various administrative units performing in respective sphere which are relevant to environment. The Provincial government and the local government, in the context of environment, are in disharmony with other.

Various laws, as shown above, have constituted its own administrative bodies, and it is identified that such bodies are not connected with local government and administrative bodies given in the Khyber Pakhtunkhwa Rules of Business, 1985, and such gaps are very likely to affect protection of environment.

It is recommended that the above mentioned gaps and overlaps shall be remedied through prompt legislation, and relations be developed between various administrative structures given in various laws. Particularly, laws related to local government, environment and provincial administration shall be linked, and coordination amongst them shall be ensured through appropriate amendments in respective laws for effective management of environmental protection.

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