KHYBER PAKHTUNKHWA INDUSTRIAL LAWS AND ENVIRONMENTAL PROTECTION

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Abstract

The article has identified various industrial laws of the Province of Khyber Pakhtunkhwa and have analyzed such laws with reference to international environmental conventions and national policies of the government through comparison and contrast, and gaps and overlaps are identified which are needed to be addressed legislation for effective protection of environment relevant to industrial sector.

Keywords: Khyber Pakhtunkwa industrials laws, environment, and national policies.

Introduction

Both, the Federal Government and the Provincial Governments have the competence to legislate on the subject of industries in defined spheres. The Federal Government have authority to make legislation related to corporations and inter provincial trade which are not owned by the Provinces, and, subject to approval by the Council of Common Interest, the Federal Government may legislate on any matter related to industries which is in the economic interest of the country. Both, the Federal and the Provincial Governments were competent to legislate on industrial disputes, trade unions, labor disputes, safety of worker in factories, labor and workers welfare, and boiler. After the Eighteenth Amendment to the Constitution of Pakistan, the Provincial Government alone has been enabled to legislate on the aforementioned subject.

Some of the laws of Khyber Pakhtunkhwa are identified on industries and factories, and short summaries of such relevant laws are given in the following lines.

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The Khyber Pakhtunkhwa Workers’ Compensation Act, 2013, deals with affairs of compensation in cases of death and injuries sustained during work in factories and industries. It is the responsibility of the Employer to compensate worker or his family if a worker get injured or died during the course of business, however, such responsibility will be exonerated if death or injury occurred due to failure of not observing safety rules, or under the influence of some drug or alcohol. The employer will compensate the worker for disease caused during employment, provided such disease is common to such employment. The Khyber Minimum Wages Act, 2013, has provide for a Board to regulate and determine amount of wages and allowances to be paid to workers in industries and commercial establishments, and the said Board, while computing amount of wages shall take into account age and skills of workers, duration of work and nature of industry.

The Khyber Pakhtunkhwa Payment of Wages Act, 2013, deals with affairs of payment of wages to the workers in industries and factories, and workers are to be paid for duration of work, however, the wage period shall not exceed thirty days, and payment is required to be made in current currency through a schedule bank.

The Khyber Pakhtunkhwa Industrial Statistic Act, 2013, is related to collection of statistical data from certain industries and factories, and such data is required to be related to prices of commodities, water supply, living conditions, house rents, working hours, industrial disputes, provident fund and other benefits for worker.

The Khyber Pakhtunkhwa Industrial and Commercial Employment (Standing Orders) Act, 2013, has given certain orders to industries and commercial establishment which include giving of identity tickets, specification of terms and conditions of work and duration of work, wage rates, group insurance, payment of bonus, provisions of safety payment of wages to workers in emergencies.

The Khyber Pakhtunkhwa Factories Act, 2013, aims at the safety of labors and requires factories to be registered in a prescribed manner. The Provincial Government is authorized appoint Inspectors for purpose of inspection of factories. The Act has prescribed some
mandatory steps to followed by all factories which include, appointment of doctors for checking fitness of workers, maintenance of cleanliness of factories, secure working environment, proviso of light and other essential items, prohibition on employment of women and children in factories, safety of measures for worker, specification of working hours and holidays etc.\textsuperscript{13}

The Khyber Pakhtunkhwa Industrial Relations Act, 2010, primarily, deals regulation of relations between employers and employees, and also asks for trade union in industries.\textsuperscript{14} The Act recognizes right of workers have their own associations or to be of existing associations.\textsuperscript{15} All worker associations are required to register their own constitution in accordance with this Act and other relevant laws of the country.\textsuperscript{16} There could be federation of associations or associations could register themselves with existing federations, and may join international organizations of workers.\textsuperscript{17} Workers are free in their decision making of joining association of their choice and the employer will not force or influence to join a specific association.\textsuperscript{18} The Act has provided a Work Council for resolution of disputes between employees and employers in factories through arbitration or reconciliation, and if such disputes are not so resolved then they are placed before Labor Court.\textsuperscript{19}

The Khyber Pakhtunkhwa Small Industries Development Board Act, 1972, is related to the established Small Industries Development Board, and the Board is authorized to deal with the following maters.\textsuperscript{20}
1. Establishment of small industries, and making facilitation of loans in this regard,
2. Provision for machinery, building, and raw materials,
3. Preparation of industrial development projects,
4. Establishment of cooperative societies, and
5. Provision of facilitation and display centers.

The West Pakistan Industries (Control on Establishment and Enlargement) Ordinance, 1963, has made obligatory that enlargement of existing industries and establishment of new industries are allowed only with permission of the Government.\textsuperscript{21}
The Khyber Pakhtunkhwa Sugar Factories Act, 1950, regulate the supply of sugar canes to sugar mills only.\textsuperscript{22}

The Khyber Pakhtunkhwa Investment Facilitation Agency Ordinance, 2002, has established Investment Facilitation Agency after abolishing the Khyber Pakhtunkhwa Development Authority, and has empowered the said Agency to do the following functions.\textsuperscript{23}

1. Regulation of the existing industrial estate,
2. Promotion of public and private partnership investments, and foreign investments,
3. Preparation of feasibilities for investment and identification of new industries for such investments, and
4. Establishment of new markets.

The Khyber Pakhtunkhwa Taking Over of The Industrial Estates or Economic Zones Ordinance, 2016, requires that the assets and liabilities of the Khyber Pakhtunkhwa Development Authority shall be taken over by a company established under the Company Ordinance, 1984, after its repeal.\textsuperscript{24}

The Khyber Pakhtunkhwa Power Crusher (Licensing) Ordinance, 1980, regulate production of sugar through use of power crushers in agriculture communities, and require such producers to get license for such production from the Government.\textsuperscript{25}

The Khyber Pakhtunkhwa Board of Investment and Trade Act, 2015, for encouragement of investment, has established Board of Investment which is required to come up with studies and concept papers for prospecting investors for generation and growth of employment in the Province.\textsuperscript{26}

The West Pakistan Undesirable Companies Ordinance, 1959, has authorized the Government to done away with companies which are not registered or operating in suppression of any law of the country.\textsuperscript{27}
Industries and Environment
The laws which are identified in the above lines have not mentioned a single provision on the protection of environment. The relationship of industries with environment has clearly been established under various national policies and environmental conventions which Pakistan has ratified from time to time. Some of the national policies and conventions are given in the following lines.

The National Climate Change Policy, 2012, has identified cement, steel, textile, sugar and petro chemicals industries alone contribute around six percent to the total greenhouse gases in the country, and the said Policy has recommended the following measures which aid to environmental concerns:

1. Introduction and promotion of economic incentives for reduction of emissions through use of modern technologies,
2. Promotion of cleaner production strategy in industries,
3. Facilitation of transfer of technology,
4. Promotion of corporate sector to assist in carbon reduction in industries,
5. Introduction of periodic efficiency audit, and
6. Facilitation of estimation and control mechanism in industries.

Like, the Climate Change Policy, the National Environmental Policy, 2005, has also proposed measures related to industrial pollution, some of which are given in the following lines:

1. Introduction of a regulatory system for emission reduction in industries,
2. Promotion of licensing system in industries related discharges,
3. Encouragement of cleaner production technologies in industries,
4. Promotion of reuse and recycle of wastes,
5. Facilitation of master plans to manage industrial waste, and

The Khyber Pakhtunkhwa Industrial Policy, 2016, has mentioned that Peshawar in one of the most polluted cities, and has recognized that industries are the main contributor of such pollution. The Government
is trying to facilitate the use of cleaner technologies in industrial estates to reduce carbon emissions, and monitoring. The Policy criticized Khyber Pakhtunkhwa Environmental Protection Act, 2014, for it has been failing to address industrial pollution, and has asked for implementation of the provisions of Environmental Impact Assessment and Initial Environmental Examination, and has asked that all developmental projects including industrial activities shall be subject to the afore mentioned Examination by the Government.

The National Industrial Policy, 2011, has recognized industrial pollution is a major issue, and the Government, in order to address the issue, promotes transfer of cleaner technologies, mechanisms for treatment plants for industrial wastes.

Conclusion
The industrial laws of Khyber Pakhtunkhwa, as referred above, has failed to appreciate environmental protection of environment, and these laws are silent on the negative effects of industries on environment. International conventions on protection of environment such as which refers to the adverse effects of industrial activities such as the Vienna Convention for the Protection of the Ozone Layer, 1985, the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, the United Nations Framework Convention on Climate Change, 1992, the Stockholm Convention on Persistent Organic Pollutants, 2001, and the Basel Convention on the Control of Trans boundary Moments of Hazardous Wastes, 1989, have included industrial pollution as one of the major threat to environment and have suggested measures to adopted by state parties. However, measures suggested in above said conventions are not been incorporated in the industrial laws, despite that fact that the national polices have recommended concrete steps for tackling industrial pollution. There are some overlaps in the laws, particularly, the provisions of the Khyber Pakhtunkhwa Industrial Statistic Act, 2013, the Khyber Pakhtunkhwa Industrial and Commercial Employment (Standing Orders) Act, 2013, and the Khyber Pakhtunkhwa Factories Act, 2013, are closely similar both in meaning and in words to a large extent, and such overlaps may create problems in industrial management.
It is recommended that above referred laws of the Khyber Pakhtunkhwa in industries and factories are to be amended to address environmental obligations and to this end cleaner technologies are to be made mandatory by the Government. The industrial units shall be made responsible to make payments for disposal of their wastes, and strict measures shall be introduced for complete observance of the environmental quality standards. The older industrial units using old technologies shall be replaced. The industrial establishment shall not be allowed to function close to residential areas, protected areas and agriculture land. The government shall introduce a system of environmental audit system and such audit shall be made mandatory through legal cover.

Notes and References:

2 Ibid, p 259
3 Ibid, p 102
5 Ibid, p. 877
6 Ibid, p 878
7 Gazette of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Minimum Wages Act, 2013, Act No. XII of 2013, p 902
8 Gazette of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Payment of Wages Act, 2013, Act No. IX of 2013, p 3
10 Gazette of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Industrial and Commercial Employment, 2013, Act No. XI of 2013, pp 914, and 916 to 918
11 Gazette of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Factories Act, 2013, Act No. XVI of 2013, pp 820 and 824
12 Ibid, pp 825 and 826
13 Ibid, pp 826 to 856
15 Ibid, p 390
16 Ibid, p 391
17 Ibid, pp 394 and 395
18 Page p 401
19 Ibid, p 437
21 Gazette of West Pakistan, The West Pakistan Industries (Control on Establishment and Enlargement) Ordinance, 1963, Ordinance No. IV of 1963, p 3 and 4
24 Gazette of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Taking Over of the Industrial Estates or Economic Zones Ordinance, 2016, Ordinance No. IX of 2016, pp 7 and 9
26 Gazette of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Board of Investment and Trade Act, 2015, Act No. XL of 2015, pp 314 and 315
27 Gazette of West Pakistan, The West Pakistan Undesirable Companies Ordinance, 1959, Ordinance No. XXII of 1959, p 4
31 Ibid, p 32
32 Ibid,
33 Ministry of Industries and Production, National Industrial Policy, 2011, Islamabad, 2011, p 16