

## **FOREST LAWS OF KHYBER PAKHTUNKHWA AND THE ENVIRONMENT**

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### **Abstract**

*Forest laws of the Khyber Pakhtunkhwa are identified and analyzed on the touchstone of national policies related to environmental protection with reference to certain international environmental conventions. Gaps and overlaps are located in the Khyber Pakhtunkhwa laws and recommendations are given for better protection of environment vis-à-vis forest as both are closely related to each other.*

**Keywords:** Khyber Pakhtunkhwa forest laws, environment, and national policies.

### **Introduction**

Forest covered area is around seventeen percent of the total area of the Province of Khyber Pakhtunkhwa, which is mainly located in the mountainous areas of Swat, Malakand, Dir and Hazara districts.<sup>1</sup> Forest is an important sector to environment which is recognized in a number of national policies and international conventions discussed in this article. However, there are numerous factors which are depleting forest such as domestic use, illegal timber trade, and some natural calamities etc.<sup>2</sup> The forest laws of Khyber Pakhtunkhwa has been discussed and the issues are identified which needs assessment in the context of environment.

The Constitution of Islamic Republic of Pakistan has empowered the Provincial Governments alone to make laws for the protection, conservation, management and development of forest, and the Federal Government has no authority to make legislation in relation to forest.<sup>3</sup> Description of the main laws of Khyber Pukhtunkhwa is mentioned in the following lines.

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### **The Khyber Pakhtunkhwa Forest Ordinance**

The Khyber Pakhtunkhwa Forest Ordinance was legislated in 2002, and it is the basic law which provides for the protection, management and sustainable development of forest in the Province, and the colonial Forest Act, 1927, along with the Hazara Forest Act, 1936, the Kohat *Mazri* Control Act, 1953, and the North-West Frontier Province (Sale and Sawing of Timber) Act, 1996 are abolished.<sup>4</sup> This law was made for the following objectives.<sup>5</sup>

1. Development, protection, management and sustainable development of forests,
2. Economic wellbeing of local population and the people of the Province,
3. Promotion and incorporation of participatory approach towards forest management,
4. Timely resolution of the conflicts related to forest, and
5. Development of a comprehensive law on forest which fulfill environmental needs.

Forest has classified into reserved forest, protected forest and *Guzara* under the Khyber Pakhtunkhwa Forest Ordinance, 2002, and such classification is made on base of rights of the local population, Provincial Government.<sup>6</sup>

The Provincial Government is competent to notify forest land or wasteland as reserved forest, where such forest or wasteland is the property of the Provincial Government.<sup>7</sup> Forest Settlement Board may give some limited rights to the local population upon certain terms and conditions before declaring a forest land or wasteland as reserved forest.<sup>8</sup> The Provincial Government remains the sole owner of reserved forest.<sup>9</sup> The Provincial Government may declare any forest land or waste land which is not included in reserved forest as protected forest.<sup>10</sup> Protected forest are those where the Government and local community both have proprietary interests while in reserved forest the entire property belongs to the Provincial Government but the Provincial Government may give some concessions to the local community. The purpose of declaring a forest land or waste land as protected forest is to provide for better protection, conservation and management of forest where local communities have proprietary interests alongside the Provincial Government. The proceeds of timber or other forest produce of the

reserved forest is vested in the Provincial Government and a portion agreed upon is paid to those whose rights or claims are admitted by the Forest Settlement Board, while in case of protected forest the proceeds of timber and other produce is divided between the Government and the local community who have proprietary interests in the forest.<sup>11</sup>

There is another set of forest which is constitute to be the property of the local people, however, the Provincial Government for the purpose of protection, conservation and management declares such forest, and the local people are entitle to get sale proceeds of timber or other forest produce after the Provincial Government deduct its management charges.<sup>12</sup>The owner of the Guzara Forest have been given the right to exploit forest for their domestic and agricultural needs, however, they have no right to sell timber or forest produce except with permission of the Government.<sup>13</sup>

The Provincial Government has the power to declare any wasteland as to be protected wasteland for reasons of protection of soil against floods and landslides, conservation of forest, maintenance of rivers etc.<sup>14</sup>

The Khyber Pakhtunkhwa Forest Ordinance, 2002, has declared certain acts as offense, where some of them are included in the following lines.<sup>15</sup>

- Encroachment, cultivation, occupation or clearing or breaking up for cultivation;
- Construction of any building, shed, road, enclosure, infrastructure;
- Trespass, grazing, pasturing or driving cattle, trespassing of cattle, gross cutting;
- Setting fire or candling fire in reserved forest;
- Damaging, cutting, felling, of any tree or cutting or dragging any timber;
- Cutting, felling, girdling, lopping, tapping, burning, any tree or brushwood, stripping off bark or leaves, collecting or extracting any torch wood or any other forest produce or otherwise damage the same;
- Quarrying stone, burning lime or charcoal, or collection or removal of any forest produce;

- Pollution of soil or water by sewerage, domestic or industrial waste or through any other pollutants or means; and
- Hunting, shooting, fishing, or poisoning, or setting snares or trapping.

The Khyber Pakhtunkhwa Forest Ordinance, 2002, has encompassed matters related to sale of timber its transit and sawing.<sup>16</sup> It has established a Forest Force to take measures regarding prevention of offenses and conduct investigation in forest related cases.<sup>17</sup> The Ordinance has provided for Forest Magistrate to try cases related to forest offences, and has provided for appeal procedures as well.<sup>18</sup>

#### **The Khyber Pakhtunkhwa Forestry Commission**

A forestry Commission has been constituted under the Khyber Pakhtunkhwa Forestry Commission Act, 1999, which has been given following powers in relation to protection and sustainable development of forest.<sup>19</sup>

1. Giving of framework and vision for sustainable development of forest,
2. Guiding legislative reforms in forest laws, and
3. Development of policies for sustainable development of forest and implementation of such policies,
4. Identification of issues and its resolution, and
5. Promotion of participatory approach in forest management.

#### **The Khyber Pakhtunkhwa Forest Development Corporation**

The Khyber Pakhtunkhwa Forest Development Corporation Ordinance, 1980, has provisioned a Corporation.<sup>20</sup> The Corporation has been given authority to perform towards economic and scientific exploitation of forest, sale of forest produce, and establishment of primary wood processing units in the Province.<sup>21</sup>

#### **The Khyber Pakhtunkhwa Timber Market**

The Khyber Pakhtunkhwa Timber Market (Peshawar) Ordinance, 1972, is a small piece of legislation which asks for the establishment of timber markets in Peshawar, and it will be illegal to carry trade in timber outside the designated timber markets.<sup>22</sup>

#### **The Khyber Pakhtunkhwa Protection of Trees and Brushwood Act, 1949**

The Khyber Pakhtunkhwa Protection of Trees and Brushwood Act, 1949, provides for the protection of trees outside forests land belonging to the

Provincial Government. <sup>23</sup>It is prohibited to fell or girdle a tree or brushwood, lop, strip off the barks or leaves, set fire, kindle fire, or leave fire burning in vicinity of tree or brushwood, permit cattle to damage a tree or brushwood or remove fallen tree or brushwood.<sup>24</sup>

**The West Pakistan Firewood and Charcoal Restriction Act, 1964**

The West Pakistan Firewood and Charcoal Restriction Act, 1964, prohibit the use of firewood or charcoal in factories, brick kiln and lime kiln.<sup>25</sup> The Forest Officer authorized by the Government shall make arrest in such cases.<sup>26</sup>

**Forest Laws and Environment**

Protection of forest is important for economic development of local populations. It fulfill basic needs of the local population. Forests have a role other than its tradition roles, and are considered important for balancing and improving environment. Relevance of forest to environment has been mentioned in various international conventions and national policies. The provisions of different laws on forest of Khyber Pakhtunkhwa, as are mentioned above, has failed to appreciate environmental aspects of forest, and no reference to any international conventions on environment or national policies has been incorporated in forest laws.

Provisions related to forest of the international conventions and national policies on environment are mentioned in the following lines.

The Convention on Biological Diversity, 1992, has made obligatory for the state parties to establish a system of protected areas, promote protection of ecosystem, natural habitat and maintenance of viable populations of species in natural surroundings, and to promote environmentally sound development in areas adjacent to protected areas, and integrate cross-sectors for conservation and sustainable development of biological diversity.<sup>27</sup> Protected areas include forest areas.

The Pakistan National Action Plan on Biodiversity, 1999, consider forest as one of the potential area which need attention for protection of biodiversity, and has identified that forest laws are not developed towards protection of biological diversity.<sup>28</sup> The Biodiversity Action Plan recognizes that the concept of biological diversity do not find expression in laws related to forests, wildlife and fisheries which are significant for biodiversity protection.<sup>29</sup>

The Khyber Pakhtunkhwa Forest Ordinance, 2002, has mentioned environment and ecology in the definition clause, however, there are no provisions which asks for the protection of environment or ecology or the importance of environment in relation to forest. The forest law is more specific regarding commercial considerations, and balancing demand and supply of forest resources. The Khyber Pakhtunkhwa Forest Commission Act, 1999, has defined the word biodiversity; however, no further explanation has been made.

Khyber Pakhtunkhwa Forest Policy, 1999, recognizes that natural resources have an overwhelming importance in environmental rehabilitation and improvement, and therefore, suggests integrated resource management, whereby forest, rangelands, watershed, biodiversity, animals and fisheries to be managed in an integrated manner as part of the overall ecological system.<sup>30</sup> The National Forest Policy (Draft), 2010, has recognized and emphasized the role of forest in mitigation of climate change and conservation of biological diversity.<sup>31</sup> The National Rangeland Policy, 2010, asks for revision of natural resource laws, including forest laws, for protection of biodiversity in rangelands of Khyber Pakhtunkhwa.<sup>32</sup> The Pakistan National Forest Policy, 2015, the latest of all policy documents, recommends incorporation of obligations contained in international conventions on environment, and has included in its objectives the facilitation of implementation of international commitments related to forestry, biodiversity and climate change.<sup>33</sup> The Policy has identified the Convention on Biological Diversity, 1992, the United Nations Convention to Combat Desertification, 1994, and the United Nations Framework Convention on Climate Change, 1992, are relevant to forest.<sup>34</sup>

The various policies and international convention on environment has identified forest as an important sector for environmental protection, laws on forest of Khyber Pakhtunkhwa, have not recognized relevance of forest to environment.

The United Nations Framework Convention on Climate Convention, 1992, has made it obligatory for state parties to promote, and enhance sinks (sinks means process or practice which removes greenhouse gases) and reservoirs of all greenhouse gases, and it has been made

responsibility of state parties to promote practices and processes to control and reduce emission of greenhouse gases in all relevant sectors including the energy, transport, industry, agriculture, and forestry.<sup>35</sup>

The National Climate Change Policy, 2012, while recognizing effects of climate change on forest, has come up with following measures.<sup>36</sup>

1. Awareness amongst local population regarding environment and forest,
2. Conducting research related to adaptation of forest, biodiversity, and climate change,
3. Promotion and inclusion of climate change in forest education,
4. Plantation programs to relevant to climate change,
5. Promotion of research,
6. Protection and promotion of indigenous knowledge related to forest in the background of climate change, and
7. Promotion of sustainable development of forest in line with national and international principles.

Forest play vital role in reduction of greenhouse gases reduction, and sequester carbon dioxide through a forestation. The Climate Change Policy, 2012, suggested measures some of which are given in the following lines.<sup>37</sup>

1. Prohibition of illegal forest cutting,
2. Use of wasteland as carbon sink,
3. Incentive for local communities to protect forest and use alternate fuel,
4. Promotion of farm forestry,
5. Support of forestry mitigation projects, and
6. Benefitting from international financial support such as World Bank's Forest Carbon Facility, United Nations Reduced Emissions from Deforestation and Forest Degradation (REDD) programs, and

The Pakistan Forest Policy, 2015, has suggested initiation of programs on reduction of carbon footprints, and has recommended that the advantages of the REDD be ensured to be given to the local population through controlling deforestation.<sup>38</sup>

The United Nations Framework Convention on Climate Change, 1992, and the policy documents have recognized the significance, importance,

and relation of forest with climate change, however, the forest laws, as referred above, have not recognized the interdependence and significance of forest to climate change.

Pakistan is under obligations contained in the International Convention to Combat Desertification, and has, therefore, adopted the National Action Program to Combat Desertification in Pakistan, 2002. The Action Program has reported some factors responsible for desertification in Pakistan which include water erosion, wind erosion, depletion of soil fertility, deforestation, grazing pressure of livestock, water logging, salinity and floods.<sup>39</sup> Forest perform important part in prevention of desertification, however, indiscriminate cutting, overgrazing, poor management and man-made ecological changes prevented forests to perform such part.<sup>40</sup> Rangeland and watershed require special attention.<sup>41</sup> The Province of Khyber Pakhtunkhwa has suffered due to desertification, specially, the southern parts of the Province, and reasons of such desertification include poor farming, overgrazing, salinity, deforestation, conversion of land and land tenure dispute.<sup>42</sup> The forest laws have not appreciated relevance of forest in prevention of desertification, though, such relevance has been has been recognized in Convention to Combat Desertification and the National Action Program.

### **Conclusion**

There exist gaps between the obligations contained in the international environmental conventions relevant to forests, the various national policies and the forest laws of Khyber Pakhtunkhwa. The recommendations given in the national policies relevant to forest and environment is ignored in the forest laws.

Forest laws have mentioned the role of the local community in variety of ways, however, the local government, which is representative of local population, has not been given any role in forest management and administration.

It is recommended that forest laws be amended and new laws be developed to respond to international environmental conventions, national policies and programs for ensuring the vital role which forest can play towards protection of environment.

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