

Implementation of Climate Change Convention in Pakistan

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Abstract

Environment is an exclusive subject of the Provinces to legislate on and the Federal Government is responsible to execute and ratify conventions under the Constitution of Pakistan, 1973. Climate Change is one of the items related to environment. This article gives description of the existing literature on environment which includes the Constitution of Islamic Republic of Pakistan, 1973, the United Nations Framework Convention on Climate Change, 1992, and all the relevant laws of the Government of Pakistan on environment. The article has identified legal issues related to the implementation of international climate change law in Pakistan, particularly, after Eighteenth Amendment to the Constitution of Islamic Republic of Pakistan. It suggests certain recommendations for removal of legal issues in order to effectively implement international climate change law.

Keywords: Climate Change Convention, Eighteenth Amendment, Climate Law

Introduction

Pakistan is Federal Republic under the Constitution of Islamic Republic of Pakistan, 1973, where powers are divided between the Federal Government and the Governments of the Provinces. The division of power is carried through distribution of legislative and administrative jurisdictions. The Federal Government is empowered to make laws contained in the Federal Legislative List given in Fourth Schedule of the Constitution of Islamic Republic of Pakistan, 1973, which consist of two parts and contains seventy seven items in total.¹ The items relevant to environment includes implementation of treaties and agreements, museums financed by the Federal Government, nuclear energy, minerals necessary for generation of nuclear energy, ionizing radiations, maritime shipping and navigation, aircraft and air navigation, sale for export

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of opium, import and export, international treaties, conventions and agreements and international arbitration, national highways, fishing and fisheries beyond territorial waters, land and buildings in control of Federal Government, railways, mineral oil and natural gas, substances dangerously inflammable, development of industries, electricity, and inter-provincial coordination.²The Provincial Governments are enabled to legislate on all items not included in the Federal Legislative List.³

Climate Change

Before, analyzing by comparing the legal measures taken by the government of Pakistan with the international commitments on climate change, important provisions of the international law on climate change has been given in following lines in a summarized manner. As mentioned above, the Federal Government is empowered to ratify and implement international conventions. The United Nations Framework Convention on Climate Change, 1992, is an important and most debated document on the issue of climate change. Pakistan ratified the United Framework Convention on Climate Change in June 1994.⁴ The United Framework Convention on Climate Change is an umbrella document setting out long terms objectives, general principles, commitments basic structure for governance.⁵ The objective of the Convention includes stabilization of greenhouse gas concentrations in the atmosphere, prevention of human interference with climate system, time frame to allow ecosystem to adapt naturally climate change etc.⁶ The principles adopted to achieve objectives set out in the Convention contains protection of climate for benefit of present and future generations, full consideration of the specific need and special circumstances of developing countries, taking precautionary measures to anticipate, prevent or minimize causes of climate change and to mitigate its adverse effects etc.⁷

Commitments of the state parties to the Framework Convention on Climate Change include publishing of inventories of emissions and removal by sinks, reduction of greenhouse gases, and inclusion of climate change in policy making.⁸

The United Framework Convention on Climate Change is a fundamental and umbrella document on climate change where broad objectives, principles, commitments and organizational structure are provided. Climate change is a complex issue involving many factors and details such as economy of states, industrial and other activities, vulnerability of states, technologies, training and education and specific circumstances of different

states. Some of the countries are involved with emissions of greenhouse gas for centuries, particularly, the industrialized and developed countries which may not be compared in terms of commitments with countries where industrial activities has recently been started. Measures suggested by the Convention may not readily be accepted by the countries as the measures affect their economies as lesser emission means lesser economic activity. These facts are recognized by the Convention and, therefore, common but differentiated concept of commitments has been introduced.

The Convention is supplemented by a protocol, famously called the Kyoto Protocol 1997, which has set targets for its member states to minimize greenhouse gases to 18 percent below 1990 bench mark till 2020.⁹ It is asking member states to come up with annual reports showing the emissions and measures taken to reduce such emissions.¹⁰ Some agreements have also been reached by the Conference of Parties from time to time under the umbrella of the Framework Convention on Climate Change which includes the Cancun Agreements and the Paris Agreements. The Cancun Agreements has asked for formal recognition of existing pollution targets by both developed and developing states, and has established a Climate Green Fund to support low pollution economic developments, protection of tropical forests and to help people vulnerable to climate change effects.¹¹ The Cancun agreements also ask for measures to improve transparency of domestic efforts to reduce pollution and international review of countries actions by technical experts.¹² The Paris Agreements are focused on to convince state parties to take measures to bring down the temperature increase from 2 degree Celsius to 1.5 degree Celsius within the stipulated time period.¹³ It asks developed and developing states to regularly report its nationally binding contributions towards pollution control.¹⁴

The Federal Government has come up with some policies on different subjects relevant to environment. These policies are assessed to see the measures taken towards climate change. The Federal Government through the Ministry of Climate Change has given a policy on climate change. The National Climate Change Policy, 2012, has mentioned that Pakistan has little contribution towards greenhouse gases in comparison to other Parties to the Convention on Climate Change, however, Pakistan will pursue efforts towards reduction of greenhouse gases as responsible member of the international community in addressing climate change challenges.¹⁵ The objectives of the Climate Change Policy,

2012, has mentioned that climate change will be integrated into all national policies and economic growth will be pursued keeping for climate change challenges. Pakistan will make efforts to minimize risks arising from climate change such as floods and droughts. The Federal Government will strengthen interprovincial decision making relating to climate change.¹⁶ It is to mention that the Policy has not yet been translated into law. The Federal Government of Pakistan has suggested certain measures for improvement of environment in the Environmental Protection Act, 1997, where steps towards greenhouses gases are not that effective though the Act has recognized that Pakistan will be bound by the United Framework Convention, 1992. It is to mention that the subject of environment for purposes of legislation has been transferred from the Federal Government to the Provinces by the Eighteenth Amendment which is discussed in detail in the pages to follow. The Provincial Governments have come up with their own laws on environmental protection mainly based on the aforementioned Federal Act. The Federal Government is empowered under the Constitution to ratify and implement international conventions including conventions, protocols and agreements on environment, however, there is no constitutional mechanism to make the Provinces bound to come up with legislation falling within their legislative competence relating to environment.

The National Climate Change Policy, 2012, has recognized the threats posed to Pakistan from climate change and has noted considerable increase in frequency and intensity of extreme weathers, erratic monsoon rains, floods, droughts, silting of dams and melting of important glaciers.¹⁷ The Policy has identified areas and has provided measures for its protection which mentions water management and conservation, forest protection, conservation and development, protection of wetlands, mountain areas, the development of agriculture and livestock and adoption of mechanism and technologies of efficient and environmental friendly energy, and has also devised measures on vehicular emissions as well.¹⁸ However, laws on above subject are not been modified in accordance with commitments mentioned in the Policy, and as mentioned above, all these items are for the Provinces and there is no Constitutional arrangement to cater for implementation of international environmental obligations in Provincial domains.

Pakistan has ratified the Convention and its supplementary Protocol but has no responsibilities under the Convention except to provide a report about its intended efforts to challenges of the

climate change for 2020-2030.¹⁹ Pakistan is estimated to be contributing 0.8 percent total greenhouse gas emissions to the world environment, which will be double by 2020.²⁰ Though Pakistan has no responsibilities under the Convention so far, however, there is growing pressure internationally and domestically to take steps towards reduction of greenhouse gases and protection of sinks.

In Pakistan the major contribution towards greenhouse gas is coming from transport, energy, power generation, industry, agriculture, and deforestation.²¹ Matters relating to transport, agriculture and forest are, exclusively, Provincial matters, and the Provinces are competent to legislate on these items, however, railway, electricity and aviation are Federal subjects but before legislation by the Federal Government consent of Provinces are needed to be obtained through Council of Common Interest.²² The laws, on above referred items, has not mentioned proper provisions which encompass spirit of the United Nations Framework Conventions. The Policy on Climate Change without it being legislated on will serve no purpose.

Environmental Legislation in Pakistan

It is first time in the constitutional history of Pakistan that an item on environmental pollution and ecology was given in the Concurrent Legislative List, attached to the Constitution of Islamic Republic of Pakistan, 1973, and some other items relevant to environment such as drugs and medicines, poisons and dangerous drugs, electricity, ancient and historical monuments, archaeological sites and monuments etc. were also part of such List.²³

The Federal Government legislated on the subject of environment and ecology and came up with the Pakistan Environmental Protection Ordinance 1983, however, the said Ordinance was never implemented, and was repealed by the Pakistan Environmental Protection Act, 1997.²⁴

Under the above referred Act, the Federal Government has established Pakistan Environmental Protection Council to approve national environmental policies, national environmental quality standards, and reviewing national environmental reports etc.²⁵

The Council is the highest executive body where representation has been given to both the Federal and the Provincial Governments, and such representation is helpful in coming up with common and uniform measures on the protection of environment across the country. Such composition of bodies

help in ownership of decisions, and by reposing trust the Federation get strengthen, and at the same time, where environmental issues require common remedial steps, are properly addressed.

The Federal Government has also established Pakistan Environmental Protection Agency which shall be governed by a Director General, and shall have administrative, legal and technical staff.²⁶ The Agency has been entrusted with function to prepare environmental policies, national environmental standards and national environmental reports for approval by the Council.²⁷

The Federal Agency has the actual authority and role in respect of environment, and its functions, as given above, is numerous, however, its composition is not clear like the Council, where the Provincial Governments was given representation. The Federal Agency will not have the advantages which the Council had for reason of inclusion of representatives of the Provincial Governments.

The Pakistan Environmental Protection Act, 1997, has empowered to establish Provincial Environmental Protection Agency (hereinafter the Provincial Agency) which shall be headed by a Director General to be appointed by the Provincial Government.²⁸ Powers of the Provincial Agency are not enumerated in the Pakistan Environmental Protection Act, 1997, however, the Provincial Government may give it any functions and authority to be performed under the said Act.²⁹

Eighteenth Amendment

The Eighteenth Amendment to the Constitution of Islamic Republic of Pakistan, 1973, was passed by the Parliament in 2010, which brought major changes to the said Constitution, including the abolition of the Concurrent Legislative List.³⁰ The effect of the abolition resulted into giving the subject of environment for purposes of legislation and administration to the Provinces, as it is mentioned in the Constitution of Islamic Republic of Pakistan, 1973, that items not listed in the Federal Legislative List shall be the exclusive domain of the Provinces.³¹

The item of environment, pollution and ecology were items of the Concurrent Legislative List, and since, the Eighteenth Amendment has done away with the said List, therefore, such items of legislation transferred to the Provinces alone.³² The legal status of the Pakistan Environmental Protection Act, 1997, is now open for the Provinces to determine whether to make new

legislation on environment or to adopt the said Act with or without amendments.

In the context of environment where, after Eighteenth Amendment, subjects of environment, pollution and ecology have been transferred to Provincial Legislatures, and in situation where Pakistan ratify any international convention on environment, how such convention will be implemented by the Federal Government as the Federal Government has no authority to make law on environment. This is the main gap which may stop the Federal Government to fulfill its environmental obligations. The executive authority of the Federal Government extends to such matters whereon the Federal Government has the authority to make laws.³³ It means that the Federal Government will be dependent on the Provincial Governments to make compliance of its obligations under the international environmental conventions.

The Ministry of Environment was established for the first time in 1975³⁴ which was mandated to deal with matters pertaining to environmental pollution, ecology and international environmental agreements.³⁵ After passing Eighteenth Amendment, the Ministry of Environment was abolished and the affairs relating to environment was brought under the control of the Ministry of Planning.³⁶ The Federal Government constituted the Ministry of Disaster Management in October, 2011, and was given the authority to deal with environmental issues.³⁷

It was, finally, in April, 2012, the Ministry of Climate Change was created and the Ministry of Disaster Management was abolished and its portfolio was given to the Ministry of Climate Change.³⁸ The Ministry of Climate Change is authorized to take care of the following matters:³⁹

- i). Fulfillment of obligations under various multi-lateral environmental agreements, conventions, protocols and treaties,
- ii). Determination of National Environmental Quality Standards
- iii). Facilitation of environmental standards, laws and policies at national level,
- iv). Undertaking surveys and provide data base on environment in response to Multi-lateral Environmental Agreements,
- v). Covering matters under the Pakistan Environmental Protection Act, 1997,
- vi). Monitoring, coordination and implementation of the environmental and climate change agreements, and

- vii). Development of national strategies and actions plans to meet international environmental obligations.

Climate change is one of the components of environment, and it is not understandable as why the nomenclature of the Federal Ministry of Climate Change is restricted to climate change only. Further, as mentioned in the above lines, the said Ministry is empowered to implement international environmental conventions, however, at the governance level, there appears a void, as the subject of environment, exclusively, belong to Provinces, how the Federal Government can come up with administrative setup by creating the Ministry of Climate Change where once the Ministry of Environment is transferred to Provinces, and climate change is part of environment. There is no legal relationship established in both the Federal Rules of Business and the Provincial Rules of Business between the said Ministries. It is a gap which could be detrimental to implementation of commitments arising from international environmental agreements.

The Climate Change Bill, 2016

The Ministry of Climate Change has come up with draft bill on climate change and has approved it from the Federal Cabinet.⁴⁰ The Climate Change Act has provided for Pakistan Climate Change Council which shall be headed by the Prime Minister as Chairperson,⁴¹ and it is empowered to approve adaptation and mitigation policies, strategies and plans, approve guidelines for protection of biodiversity and consider National Climate Change Report.⁴² It is to reiterate that the Federal Government has no authority to legislate on environment or any of its component as the environment including climate change is subject of Provincial Legislation.

The above referred Bill has asked for the establishment of Pakistan Climate Change Authority.⁴³ The Authority has been mandated to formulate adaptation and mitigation policies, strategies and plans for addressing effects of climate change for approval by the Council including Climate Change Report.⁴⁴

The Act has established a Climate Change Fund which will consist of donations, endowments, grants from sources designated for the Fund.⁴⁵ The sources are not yet been designated. The Fund will be utilized for carrying functions for the Climate Change Authority, financial assistance of adaptation and mitigation projects, measures to be taken to combat adverse effects of climate

change, development of resources, and research in climate change related issues.⁴⁶

The Act has empowered the Federal Government to make rules to give effect to the provisions of this Act, and the international agreements which include the United Framework Convention on Climate Change, 1992, Kyoto Protocol, 1997, the Paris Agreements, 2015, and any other agreement relevant to climate change.⁴⁷

The Federal Government, as mentioned above, is competent to ratify and implement international agreements and conventions including conventions and agreements on environment, however, the said Government is incapacitated to make laws on environment, as after Eighteenth Amendment, environment is the sole jurisdiction of the Provinces.

The Federal Government, as mentioned above, has come up with the Pakistan Climate Change Act, 2016, and has approved from the Cabinet, though, it has not yet been passed from the Federal Legislature. The Pakistan Climate Change Act, 2016, if passed by the Federal Legislature, will become law on climate change, however, its constitutional position will be the same as that of the Pakistan Environmental Protection Act, 1997. The Pakistan Climate Change Act, 2016, has established some institutions which are comparable with the institutions established under the Pakistan Environmental Protection Act, 1997. The composition and functions of the Pakistan Climate Change Council and the Pakistan Environmental Protection Council, as referred above, are similar to large extent, and, similarly, the functions of the Pakistan Climate Authority and the Pakistan Environmental Protection Agency are also comparable with each. It fitness of circumstances, and keeping legislative principles in view, the Pakistan Environmental Protection Act, 1997, should have been amended and the provisions of the Pakistan Climate Change Act, 2016, been inserted therein. The Climate Change Act, 2016, as mentioned above, has committed the Federal Government to make rules to give effect to agreements and conventions related to climate change, which is a good gesture towards realization of international concerns to climate change, however, there should have been insertion of some provisions derived from the conventions and agreements relevant to climate change.

The Provincial Governments, after Eighteenth Amendment, have legislated on environment. The Province of Balochistan legislated on environment in 2012, which to a great extent is reproduction of the Pakistan Environmental Act with

slight difference. The Balochistan Environmental Act, 2012, has come up with new provisions on protection of birds and animals specific to Balochistan, protection of coastal zones, management of electronic wastes etc.,⁴⁸ such provision cannot be found in the Pakistan Environmental Protection Act. The Province of Khyber Pakhtunkhwa and Sind also legislated on environment in 2014, and both the legislation like the Balochistan Act has reproduced the Pakistan Environmental Protection Act, 1997. These Acts have introduced the procedure of strategic environmental impact assessment which is not given in the Pakistan Environmental Protection Act, 1997.⁴⁹ It is, however, to mention that the Khyber Pakhtunkhwa Environmental Protection Act, 2014 has mentioned that the Government will make rules for the implementation of the Law of the Convention, which in fact appears to be problem of copy paste as the said Province has no adjacent area to any sea. The Province of Punjab has reproduced the Federal Act in verbatim without any change except nomenclature, and it has also did the mistake like Khyber Pakhtunkhwa by committing itself to the Law of the Sea Convention while Punjab has no coastal area.⁵⁰ The provincial governments, as mentioned above, have legislation of their own on environment after Eighteenth Amendment, however, it is observed that there is no mechanism both constitutional and otherwise amongst the provinces to develop uniform laws on environmental protection, where in the context of international law on environment such uniformity is important. It is also been observed that the provincial governments has not given role to district governments relating to environmental management and policy making while district or local governments are stakeholders.

Conclusion

The Government of Pakistan is, constitutionally, empowered to ratify and implement international environmental conventions including the United Nations Framework Convention on Climate Change, 1992, Kyoto Protocol, 1997, the Paris Agreements, 2015, however, the Federal Government is unable to legislate on environment, and is, therefore, the said Government would be dependent on the Provinces to give effect to the provisions of the international environmental conventions and agreements, if such conventions and agreements require legislative and administrative measures for domestic implementation in Pakistan.

There is constitutional gap in relation to implementation of international environmental conventions at domestic level in

Pakistan, and there is no constitutional mechanism which could streamline relation of the Federal Government with the Provincial Governments, as far as, the implementation of the said conventions is concerned. All provinces are competent to legislate on environmental protection, however, the legal mechanism to come with uniform measures on such environmental protection is missing.

The provincial legislations have failed to appreciate the role of local governments in the protection of environment, and local governments are not represented in decision making pertaining to environment. The provincial legislations are supposed to be umbrella legislation on environment, but such legislations have ignored areas important to environment, particularly, laws on sector such as forest, irrigation, water uses, land management etc. There is no specific law on climate change.

The Constitution of Islamic Republic of Pakistan, 1973, will need amendment to resolve the issue of implementation of international environmental conventions, and in this connection, the scope of the Council of Common Interest, through constitutional amendment, be extended to cover issues pertaining to implementation of international law on environment. The Council of Common Interest is a constitutional body which resolves issues between Provinces and the Federal Government which are outstanding between them.⁵¹ It is recommended that the Council of Common Interest shall be given role in relation to environment which will enable the Federal Government along with consent of the provinces to implement international commitments arising from ratification, and will help in coming up with uniform policies and laws across all provinces. It is also recommended that the rules of business of relevant Federal and provincial governments may be amended to create scope for the respective ministries of intern provincial coordination to deal with environmental issues for purpose of uniformity.

Each provincial government are recommended to legislate on sectors relevant to environment and climate change in their respective domains such as forest, water, industries, motor vehicles for effective protection of environment and climate. It is also recommended to trickle down powers to local governments for protection of environment.

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