

Buner Marble Industry within Environmental Legal Perspective

* Dr. Ilyas Khan, Assistant Professor (Corresponding Author)

** Gohar Ali, Lecturer

*** Dr. Syed Raza Shah Gilani, Assistant Professor

Abstract

This study focuses on environmental issues caused by the marble industry in district Buner. District Buner is home to 247 marble factories, which operate in blatant violation of environmental protection laws. The factories and other projects are required to comply with certain provisions of the Pakistan Environmental Protection Act (PEPA), 1997 and Khyber Pakhtunkhwa Environmental Protection Act (KPEPA), 2014, respectively. By contrast, the marble industry in district Buner follows none of these laws which have led to serious environmental pollution, most characteristically water, air, and noise pollution. This paper exclusively discusses those provisions of KPEPA, 2014 which are being violated by these marble factories that have led to drastic environmental crisis in the area.

Keywords: KP Environmental Protection Act, 2014, Environmental Pollution, Marble Industry

Introduction

District Buner is one of the districts of Khyber Pakhtunkhwa which lies in the Malakand division. It has borders with different districts, such as district Swat lies on its north, district Malakand on the west, and district Mardan on the south, and Hazara division on the east. Environmental issues are one of the prominent issues of the world which need due consideration and attention not only at the national level but also at the global level. Because environmental issues (Aukour, 2008) do not recognize any limits, their impacts spread from local to national level and from regional to global. A very important principle of trial smelter arbitration and the Stockholm declaration of 1972 which declares that state should not use its territory in such a way that it becomes a source for the injury and harm to the people, living in the adjoining state. That is why, it is a fact that the environmental pollution issue is no more a local issue, its impacts and consequences are wider which are drastically affecting the world community.

According to Lahore High Court, in its famous judgment (*Anjum Irfan v. LDA PLD 2002 Lah 555*), the issue of environmental pollution is more disastrous than the hydrogen bomb, and the environmental laws should be implemented in true spirit as human life is unique and precious. So, it is the need of the hour to realize the gravity of the situation by making proper policy for its control and serious implementation (Fitzmaurice, 2010). For these purposes, Pakistan has legislated many environmental laws for the protection of the environment, but it was until 1983 when Pakistan passed the first organized ordinance for the said purpose. Pakistan Environmental Protection Ordinance (PEPO), 1983, is provided for the council and protection agencies for the preservation of the environment. Subsequently, it was in 1997 when Pakistan passed its first organized act from the parliament for the protection of the environment in the shape of PEPA, 1997. But, after the 18th amendment to the constitution, the subject of the environment devolved to the provinces. The government of Khyber Pakhtunkhwa, then in 2014, passed its environmental law in the shape of KPEPA, 2014 which is an amended and modified act of PEPA, 1997. The international community is much more worried about this issue and has taken certain serious measures for tackling it. Although it is not the case with Pakistan, it has not given due consideration and attention to it. Even though the Pakistani issue is a special one as Pakistan is prone to serious environmental degradation, and according to Global Climate Risk Index (GCRI), 2018, Pakistan is the 7th most endangered country to the risk of climate change and its catastrophic consequences (Goldfarb, 1989). However, at the same

* Department of Law, Abdul Wali Khan University Mardan Email: drilyas@awkum.edu.pk

** Government College Daggar Buner Email: goharmeek85@gmail.com

***Department of Law, Abdul Wali Khan University Mardan Email: sgilani@awkum.edu.pk

time, the importance of industry in the development of the state and facilitating the mass cannot be denied as well. Industry is an essential part of the economic development of the state. Hence, the balance of industry and environmental protection also needs of the time. The standard of the life of people should be raised, but it should not be at the cost of future generations. There is an urgent need for the implementation of the principle of sustainable development. Industry is also mainly responsible for one or other forms of environmental pollutions (Rehman, 2021).

District Buner is home to millions of tons of marble reserves which are producing one of the finest marbles in Pakistan. District Buner contributes almost fifty percent of the total marble reserve to the Khyber Pakhtunkhwa. The marble industry in district Buner has its origin in 1980, but the development and progress were made in 2000 after the government's soft stance towards industrial development in the country. These marble factories have their role in adding to the national purse, but the unfortunate and sad state is that these marble factories are functioning in the clear violation of the concerned environmental protection laws which is a great source of different pollutions to the area, such as water pollution, air pollution, noise pollution and land pollution (Gilani, 2019). The marble industry is also one of the major waste producers industry in which 70% of marble is wasted during the production process. If these factories are left unchecked, it could cause an enormous amount of environmental pollutions (Çelik, 2019). The marble factories in district Buner are established without any legal procedure for environmental protection. There is no specific procedure arrangement for the wastewater and waste products. The marble industry needs a huge amount of water during the marble manufacturing process. They are mostly being installed near the river which is discharging the wastewater directly into such rivers. Resultantly, these marble factories have drastically changed the characteristics of the river water from clear crystal water to white powder. The right to a clean environment that is free from all sorts of pollution is a part of the right to life which is guaranteed by the constitution under article 9 of the fundamental right under the 1973 constitution. All the activities, that are likely to cause any environmental harm, are required to fill Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA) (Aung, 2017). Similarly, the environmental law of the province also prohibits discharging anything more than Khyber Pakhtunkhwa Environmental Quality Standard (KPEQS). Sadly, none of the marble factories have filled such requirements so far. The pollution from these marble factories has not only disturbed the natural beauty and grace of the area but also has extreme outcomes on animals and human beings. Kidney problems/kidney stones, skin, and eye diseases are rampant in the area due to the pollution caused by these marble industries. Similarly, it also has negative impacts on the reduction of crop productions, livestock, underwater lives, and species extinctions. Among other pollutions, water pollution from these marble industries is very serious and worth mentioning because most of the marble factories are directly discharging their wastewater into the nearby rivers (Hall, 2018).

The law on the subject is available, but there is a lack of its proper implementation. The purpose of the study is to focus on the harmful effects of the marble industry on people of the area that the violations of environmental laws on the subject have done to the environment of the area. It is also worth mentioning that the law, concerning the establishment and functioning of the marble industry, is not specifically addressed. The study mainly highlights those provisions of environmental laws which are being violated by the marble factories in district Buner, and whether the marble factories in district Buner are established following the law prevalent and now KPEPA 2014 or not (Sand, 2017).

The Extension of Environmental Laws to District Buner

District Buner is a part of the Malakand division which falls in the Provincially Administered Tribal Areas (PATA) category whose status is now being changed after the passage of the 31st constitutional amendment. Previously, all the federal and provincial legislations did not automatically extend to Federally Administered Tribal Areas (FATA) and PATA. Article 247 imposes restrictions on the extension of any federal or provincial executive authority to the areas which lie on it. However, it could be extended to it if the President in case of FATA and governor with consultation with President in case of PATA wanted extension to such areas. While district Buner was also part of former PATA, therefore, the extension of environmental laws was required for compliance with it. For this purpose, PEPA 1997 was extended to such areas in 2001 (Gilani, 2019). Similarly, when the subject of environment was devolved to provinces, and government of KP passed its environmental law. The question of its extension to PATA, once again, surfaced in a case titled *Ali Steel Industry v.*

Govt of KP in which the petitioner claimed that KPEPA, 2014 is not extended to PATA yet, therefore, the environmental law cannot be enforced in the area, but the honorable Peshawar High Court took the stance that non-extension of the law does not give any person the right to threaten the lives of the people. The court also directed the government to extend the environmental law to the area. Subsequently, such law was also extended to PATA on 01 October 2016 (Goldfarb, 1989).

Abuse of Different Provisions of Environmental Laws and Regulations

The following are the different provisions of laws that are not being followed by the marble industry in district Buner which is, consequently, leading towards different pollutions to the area and their harmful effects on the people.

Article 9 of the 1973 Constitution

Article 9 of the 1973 constitution is dealing with the right to life. The article states that every citizen of Pakistan has the right to life and security, and no one can dispossess their lives by following the law. Strictly interpreting this article of the constitution, there is no explicit mention of a clean environment to the people. It was a landmark decision of the Supreme Court of Pakistan that inserted the right to a clean and unpolluted environment in article 9 of the constitution. The Supreme Court in *Shehla Zia v. WAPDA (PLD 2011 SC 619)* declared that the right to a clean environment, that is free from all types of pollutions, is also the fundamental right of every citizen of the state, and it is part of the right to life. There is also a close and deep relation between a clean environment and life. Right to life cannot be enjoyed in an unpolluted and unclean environment (Iqbal, 2018). The marble factories in district Buner are discharging an enormous amount of pollutions, especially water pollution which has endangered the environment of the area. So, due to pollution from the marble industry in district Buner, article 9 of the constitution is being violated (Iqbal, 2018).

Initial Environmental Examination (IEE)

Section 13 of KPEPA, 2014 makes it obligatory that every project or factory that is intended to be established has to fill an IEE. It is the preparatory environmental analysis of the intended activity or project. It has to estimate whether the proposed plan or project would have negative environmental harms or not, and includes potential impact, designing mitigation measures, and environmental mentoring (Fitzmaurice, 2010). Such an IEE will be prepared by such projects which will, then, be scrutinized by the protection agency and which give approval after keeping in view all the possible environmental harms to the locality. The marble industry has been categorized as a small project by the environmental agencies. It is inserted in list C of Schedule-I of NEQSR 2001. The marble factories are required to fill IEE before the initiation of its project, but, none of the marble factories in district Buner has ever filled an IEE before the environmental protection agencies (Hall, 2018).

Violation of Section 11 of KPEPA, 2014

This section of KPEPA, 2014 enumerates certain discharges and emissions which are prohibited by the act. The act envisages that no one is allowed to discharge or emit any liquid, waste, or any air or noise pollution which is in surplus with the standards prescribed by the Khyber Pakhtunkhwa Environmental quality standards or environmental permit and approval. The section, further, declares that the agency or government will impose a pollution charge on the violator. The marble factories are also greatly violating this provision of environmental law (Rehman, 2021). They are discharging waste materials that are more than NEQSR. Some of the marble factories have established water tanks for the wastewater under the direction of the environment department. But once the water tanks got filled, they are rarely emptied. While most of the marble factories do not have water tanks, and they are discharging their wastewater directly into the river.

Environmental Protection Order (EPO)

EPO is a written order which is issued by a competent authority for safeguarding the environment. It is issued to the pollutant and to make him abide by the order which is harming the environment for protecting the environment and human health. Section 17 of KPEPA, 2014 is related to this provision of law. The section says that if any project or factory has discharged any liquid, waste materials or creates any air, water, or noise pollution which is in excess to KP environmental quality standard or environmental license or permit (Hall, 2018), the agency, after giving an opportunity of hearing the person, issues an order against the violator and directs the concerned person to do and take such measures which the agency may deem necessary for the protection of the environment. The sole purpose of the EPO is to protect the environment and prevent the pollutant from further polluting the environment. Like the marble factories in district Buner are concerned, the result of the discharges

made from these marble factories have been compared with NEQSR and found quite below the level of it. The agency also claimed that they have issued different EPOs against the marble factories, but the problem persists and the area is abundant with environmental pollutions. Thus, section 17 of KPEPA, 2014 is also being violated by marble factories in district Buner (Goldfarb, 1989).

Self-Monitoring and Reporting by Industries

The National Environmental Quality Standards (Self-Monitoring and Reporting by Industry) Rule, 2001 is a very important rule which was made by the PEPA, 1997, but as the KP environmental agency is in process of making its own rules and regulations, by that time they are following PEPA, 1997 rules and regulations. Such rules prescribe certain pollution limits for the industries for keeping environmental balance. The rules make it obligatory for every industrial unit to submit on time the environmental monitoring report to the environmental protection agency. It has categorized the industrial units based on level of pollutions discharged by it in category "A", "B", "C". Marble industry indirectly comes within category "C" under schedule I of NEQSR 2001. Category "C" industrial units are required to file such report on a biannual basis, and it is a report which contains test of certified environmental laboratory. It is a very important report for maintaining the balance between the preservation of the environment and economic development. But such reports are also not being filled by the marble industry in district Buner (Rahman, 2017).

Violation of Provisions of KPFA, 2013

Section 14 of Khyber Pakhtunkhwa Factory Act (KPFA), 2013 directs every factory to keep its premises clean from every sort of dirt, drain, or other types of nuisance. The factories are required to be free from all types of pollutions. Similarly, it also steers upon the factories to provide a proper drainage system if the factory becomes wet due to the manufacturing process, and it is not possible to keep it drain. But the marble factories in district Buner have no such facilities or compliance.

Section 15 of KPFA, 2013 has stressed the proper disposal of waste and effluents by the factories. It says that every factory has to arrange channels throwing away waste materials and liquids from the factories. The marble factories have great reliance on water for the manufacturing process. As a result, it is discharging a huge amount of contaminated water which is a big source of water pollution to the area.

Similarly, section 17 of KPFA, 2013 is related to dust, fume, or any sort of impurity. The section makes it obligatory for every factory to make proper arrangement for the emission of any dust and fume which could be harmful to the health of the workers. Also, ensure that it does not give off such sort of things. There is no such arrangement for protecting the health of the workers.

Violation of Certain other Legal Provisions of Different Laws

PEPA, 1997 and after the devolution of the environment subject to the provinces and subsequently the enacting of KPEPA, 2014, are the special statutes. The PEPA, 1997 and KPEPA, 2014 have special and overriding effects on the general statutes. After the passage of environmental protection laws, all the general laws which applied to the protection of the environment got no effect. However, the following were the different provisions that were applicable before the passage of PEPA, 1997 and now KPEPA, 2014 (Khan, 2012).

Public Nuisance

Public nuisance is the action or negligence by any person that mostly leads towards trouble to the people or person who is enjoying and exercising their legal rights as a member of the public. It is a crime which has great impacts on the physical ease and convenience of the member of the society who are within the neighborhood of its working. Whenever there is any unlawful obstruction or nuisance, it should be removed from anyway, river, or channel that is lawfully used by the public at large. When there is any business or any activity which has harmful effects on the health or physical comfort of the people living in the locality. In such a case, the magistrate is empowered to take action in temporary nature to prevent any danger or injury to human beings. The marble industry in district Buner is causing public nuisance in the shape of discharging enormous amounts of water, noise, and air pollution. The marble industries in district Buner have turned clear and drinkable water of the area into a white powder which is a great source of public nuisance.

Fouling Public Water

Corrupting or contaminating public water is a criminal act, and no one is allowed to foul or pollute water that is used by the public generally. Whoever pollutes water in such a way as to make it unsuitable for the purpose for which it was used, is liable to imprisonment of three months or fine or

both? It is also the main responsibility of the government to prevent the people from discharging solid wastes and liquid into the rivers for ensuring clean water to the public. The marble factories in district Buner have turned the sole river of the area into white powder as well as the springs (Khan, 2012).

Making Atmosphere Noxious to Health

No one is allowed to make the atmosphere harmful to the health of human beings, and whoever damages or impairs the surroundings in such a way that as to make it unfit to the lives of the people living or carrying any business or passing a public way in any area. The honorable Supreme Court of Pakistan turned down the appeal of the applicant who failed to keep the waste discharge from his industrial unit within limits prescribed by NEQS and controlling of the pollution. The marble factories are blatantly violating this provision of law as well (Çelik, 2019). It is not only causing different pollutions which are more than limits prescribed by the NEQS, but also making the atmosphere noxious to health and endangering the lives of the people as well.

Pollutions Caused by the Marble Factories

The non-compliance with the environmental laws is not a simple issue, it has very serious consequences. It has very harmful impacts on the future generation and can also become the source of extinction of different species. The following are the different types of pollutions which are caused by the marble factories in district Buner (Gunningham, 2011).

Water Pollution

Marble factories have great reliance on water. It needs a great quantity of water for crushing stones because the blades of the machines need to be kept all the time wet. Cutting the larger stones into smaller slabs is done either on wet or dry cutter machines. Most of the marble factories in district Buner have opted for wet cutter machines which have great reliance on water. Marble factories in district Buner do not have a proper drainage system for the discharge of wastewater, therefore, they are discharging their wastewater which, in the end, contains a great amount of sediment and limestone into the nearby open river. Consequently, it is causing a huge amount of water pollution. The samples of both surface and groundwater of the area have been compared in different physical and chemical parameters with NEQS and found in shocking below standard level. Before the establishment of the marble industry, this river was used by the local people for different purposes such as washing clothes, bathing, watering the animals, and even for drinking as well, and some of them still use it which is playing havoc with their health (Muhammad, 2020).

Air Pollution

The marble industry manufacturing process also involves the dry cutting of big stones into smaller slabs. As a result, it causes a great amount of air pollution and the amount of pollution depends upon the size and operation of equipment and machinery, it is emitting air pollution to the workers of the factory as well as to the people living in the adjoining areas. Similarly, the marble industry needs raw materials which are extracted through the conventional method of blasting and explosion. Such process of extraction of raw material is also a source of adding nicotine moisture in the air which is a great source of chest diseases. The marble factories in district Buner are also a source of air pollution to the area (Sand, 2017).

Noise Pollution

In the marble industry, there is also a great exposure to noise pollution. The marble manufacturing process consists of cutting huge stones into smaller slabs which is done through huge machinery which, consequently, produce huge sound during the process. The machinery used in the marble factories in district Buner is mostly old-fashioned which has become a great source of trouble to the people living in the adjoining areas (Rahman, 2017). Similarly, the raw material extraction for this marble also involves blasting, explosion, wire saw technology, and drill machine which is creating huge noise during the explosion.

Traffic Obstruction

The marble industry in district Buner is also a considerable source of traffic obstruction to the area. The raw materials and the finished goods are transported to different parts of the country through heavy vehicles. These heavy vehicles are carrying load up to 1800 ton while the existing road is suitable only for a maximum of 800 ton, and as these vehicles are moving slowly and during day time, therefore, it has greatly obstructed traffic of the area. The vehicles transporting these materials are diesel vehicles which are also exhausting a great amount of air pollution. These vehicles are emitting

SOX, NOX, CO₂, CO and hydrocarbon which are considered hazardous pollutant which has negative impacts on the general public as well (Hall, 2018).

Conclusion

Environmental degradation is a serious issue that has an existential threat to the lives of the masses. Marble factories in district Buner are the major sources of different pollutions to the area which are due to the non-compliance with environmental protection laws of Pakistan. The area came under the ambit of PEPA, 1997, but after the passage of the 18th amendment, came under KPEPA, 2014. The marble factories in district Buner are causing water, air, noise, and land pollution which is a great source of discomfort to the people of the area. It is causing skin, kidney problems/kidney stones, and eye diseases as well. The marble factories are violating article 9 of the fundamental rights of the 1973 constitution. Similarly, the factories are violating sections 11, 13, and 17 of KPEPA, 2014 and sections 3, 7, and 9(2) of NEQSR, 2001. The Marble factories in district Buner also fail to comply with sections 14, 15, and 17 of KPFA, 2013 (Nawab, 2018). Besides environmental laws, it is also violating sections 133 and 144 of CrPC and section 277 and 278 of PPC. It is the dire need of the time to realize the gravity and seriousness of the issue and proper implementation of the laws available on the subject.

Bibliography

- Aukour, F. J.Q. (2008). Marble Production and Environmental Constrains: Case Study from Zarqa Governorate, Jordan. *Aukour, Fakher J. Al-Qinna, Mohammed I. (2008). Marble Production and Environment Jordan Journal of Earth and Environmental Sciences, Zarqa, Jordan., 67-81.*
- Aung, T. S. (2017). Evaluation of the Environmental Impact Assessment System and Implementation in Myanmar: Its Significance in Oil and Gas Industry. *Aung, T. S. (2017). Evaluation of the Environmental Impact Assessment Environmental Impact Assessment Review, 24-32.*
- Çelik, M. Y. (2019). Recycling of Waste Marble. *Çelik, M. Y. (1996). Recycling of Waste Marble. Natural Science Institute, Department of Mining Engineering, Afyonkarahisar, Turkish, 231-250.*
- Fitzmaurice, M. &. ((2010)). Research Handbook in International Law. United Kingdom. *Edward Elgar Publishing Limited. Northampton, USA. , 79-92.*
- Gilani, S. R. (2019). The Significance of the Doctrine of Proportionality in the Context of Militant Democracy to Protect the Freedom of Expression. *Gilani, S. R. S. (2019). The Significance of the Doctrine of Proportionality in the Doctoral Dissertation, Brunel University London, 21-43.*
- Goldfarb, T. D. (1989). Taking Sides: Clashing Views on Controversial Environmental Issues. *Guildford.CT: Dushkin.Pub , 98-109.*
- Gunningham, N. (2011). Enforcing Environmental Regulation. *Journal of Environmental Law, 254-269.*
- Hall, M. (2018). Victims of Environmental Harm: Rights, Recognition and Redress Under National and International law. *Hall, Mathew. (2013). Victims of Environmental Harm: Rights, Recognition and Redress Under National and International Taylor and Francis Group, 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN London and New York, 79-92.*
- Iqbal, M. A. (2018, July, 27). The Effects of Marble Industries Effluents on Water Quality in Swat, Northern Pakistan. *Iqbal, Muhammad. Akbar, Fazal.Ullah, Sana. Anwar, Imran. Tariq Khan, Muhammad & Nawab, Asim.(2018, July, 27). The Effects of Marble in Journal of Biodiversity and Environmental Sciences, 101-145.*
- Khan, S. F. (2012). Khan, Shahroz.Haq. Pollution Load in Industrial Effluent and Ground Water Due to Marble Industries in District Buner Khyber Pakhtunkhwa, Pakistan. *Khan, Shahroz. Haq, Faizul.Saeed, Kausar. (2012). Pollution Load in Industrial Effluent and Ground Water Due to Marble Industries in DiInternational Journal of Recent Scientific. Vol. 3, Issue, 5, 366-368.*
- Muhammad, S. L. (2020). Muhammad, COVID-19 Pandemic and Environmental Pollution: A Blessing in Disguise? *Science of the Total Environment, 432-449.*
- Nawab, J. (2018). Nawab, J., Khan, S., Xiaoping, W., Rahman, A., Ali, H., Qamar, Z. Spatial Distribution of Toxic Metals in Drinking Water Sources and Their Associated Health Risk in District Buner, Northern Pakistan. *An International Journal, 24(3), 615-626.*

- Rahman, Z. F. (2017). Rahman, Ziaur.Haq, Faizul.Ullah, Rehmat. The Analysis of Water Samples in Different Industrialization Units of District Buner. *Rahman, Ziaur.Haq, Faizul.Ullah, Rehmat & Ullah, Inayat. (2012). The Analysis District Buner, Khyber Pakhtunkhwa, Pakistan. 2(10). 82-85, 98-112.*
- Rehman, M. H. (2021). Rehman, M. H. U., Gilani, S. R. S., & Khan, M. A. S. (2021). Doctrine of a Margin of Appreciation” in the Frameworks of the European Court of Human Rights and the British Legal System. *Rehman, M. H. U., Gilani, S. R. S., & Khan, M. A. S. (2021). Contextual Analyses of “The Doctrine of a Margin of Appreciation” in the Frame Journal of European Studies (JES), Rehman, M. H. U., Gilani, S. R. S., & Khan, M. A. S. (2021). Contextual Analyses of “The Doctrine of a Margin of Appreciation” in the Frameworks o37-51.*
- Sand, P. &. (2017). Principal of International Environmental Law. *Cambridge University Press*, 231-248.