

**LAWS AND LEGAL SAFEGUARDS GOVERNING THE HANDLING OF AIR
POLLUTION IN INDUSTRIAL CITY OF ARAK IN IRAN, AND ITS COMPARISON
WITH INTERNATIONAL NORMS**

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ABSTRACT

Air pollution is one of the most important aspect of environmental degradation and one of the problems of large industrial cities, which, in addition to imposing costs on society, endanger the health of present and future generations, strongly. Air pollution leaves harmful effects on human and natural environment at three levels of domestic, national, and international. In recent years, in Iran particularly in big cities, the pollution has increased and In turn, has caused damages to the health of individuals and the quality of properties. In this regard, in this paper we first discuss all current laws and regulations governing the handling of air pollution in legal system, and then we study Laws and legal safeguards governing the control of air pollution in industrial city of Arak in Iran, and compare them with international norms. Data collection method was on the basis of a library method, and data analysis was analytical /qualitative. The obtained results revealed the reasons for the weakness of the legal system of air pollution handling in Iran regardless of various geographical, economic, and social problems with the protection of the environment, and Fragmentation and chaos rules, are: lack of adopting an integrated strategy to control air pollution factors, lack of attention to preventive and remedial approaches, absence of strong inspection mechanisms and executive guarantees as well as weak administrative and judicial mechanisms in management.

Keywords: Air Pollution, Legal System, International Law, Legal Safeguards, Iran.

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1. INTRODUCTION

Today, benefitting from a healthy and pollution free environment has been viewed as a human right for citizens as stressed in international and domestic documents. According to the first declaration of Stockholm, “man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being”. Accordingly, the right to a safe and clean air, free from pollutions for citizens in accordance with the “right to a healthy environment” is one of the basic rights of every citizen.

The right to clean air is a subset of the right to a healthy environment as ‘the right to breathe clean air’ was upheld in some regulations. According to the right, every citizen has the right to breathe clean and healthy air as governments are obliged to take necessary measures to ensure it. Meanwhile, the air of Arak falls into the most polluted metropolitans of Iran. Factors such as population growth followed by increase in automobiles as well as industrialization trend and presence of different plant construction have brought the city into one of eight polluted metropolis in the country. Penetration of a huge amount of pollution into the city suggests that high percentage of pollution has been concentrated in a city with small area. Such pollution size is highly detrimental to both human and environment. Thus, the Iranian government passed a bill named “a comprehensive plan to reduce air pollution in Arak city” in order to reduce the amount of pollution in the city. According to the Environment Agency of the country, “Arak air-pollution-reduction comprehensive plan” has up to now grown 40%. Meanwhile, only 10 percent of promised funds have been so far allocated to the Arak air-pollution-reduction comprehensive plan. Although, some governmental sources have found the process of the project implementation in Arak promising, some organizations have failed to implement some provisions of this plan including lack of urban green space, failure to take account of air polluting industries and eliminate pollution source, lack of funds necessary for the plan, rendering the process of implementation sluggish. In this regard, Araki citizens’ health is subject to hazards. Air pollution as one of the most important contributing factors in the urban environment caused a host of anomalies, problems, and losses for many citizens, in the sense that ecologists’ estimates indicate that a great deal of morbidity and incidence of respiratory and coronary diseases in Arak has ensued from air pollution.

2. AIR POLLUTION IN IRANIAN LEGAL SYSTEM

A dramatic increase in the emission of various pollutants in the atmosphere through a variety of industrial, agricultural, service and construction pollutant units in the last twenty years has led national legislator to pass necessary regulations to prevent and control the trend from unnecessarily increasing, ensuring human health and the environment. With a wide variety of pollutant emissions, exorbitant rate of their emission and their devastating consequences are such that legislator was desperate to pass a variety of laws for different sectors during the last two decades. Such development in legislation which is almost rare in this context falls into few number of environmental contexts. With the enactment of the laws in such quantity, the development is undoubtedly because of public awareness; however, the costs put by failure to control air pollution are much greater, worse, and more irreparable than the costs of restricting economic boom and being industrialized, which is put by failure to control manufacturing units on complying with clean air standards. The costs of various diseases pertaining to air pollution are not analogous with those required to be paid in order to restrict the emission of air pollutants due to putting human lives and other living creatures in danger and destroying the environment in an unrepeatable way as well as various economic costs put by the pollution. It is because the foremost goal of every legal system is to ensure the survival of human life and the one accompanied by health and well-being as economic and social welfare has to be subsequently included in Iranian regulations. The protection of human health and environment against air pollution and application of sustainable development principle are viewed as two main objectives of every legal system in order to deal with air pollution, which is required to be stipulated in the text of laws and regulations as well as being incorporated into organizational objectives of active agencies working in this regard. Given the extreme air pollution and its conceivable adverse consequences, building a legal framework to control this problem has been appealed to legislators, for which considerable regulations have been made in this respect. Standing by the side of legislator is the government that is expected to establish certain institutions and develop some programs in order to control and reduce air pollution. Mechanisms operating in fighting against air pollution are categorized into two classes in Iranian legal system; the one provided to act on the Iranian government's international obligations arising from the accession to the International Conventions on combating air pollution, and the other is national mechanisms suggested upon the initiative of the Parliament and the Government.

In general, countries have endeavored to fulfill their contractual commitments and match their domestic legal system to the international system of climate protection, and aim or are aiming for empowerment concerning developing and implementing a national strategy” (Michel, 2003) Considering the fact that a battle against air pollution is a far-reaching discussion, adoption of a comprehensive national strategy for coordination and a joint action is considered to be an undeniable necessity.

With the adoption of the *Law of Islamic Republic of Iran’s accession to the Vienna Convention for the Protection of the Ozone Layer* (1989), *Law of the Islamic Republic of Iran’s accession to the Montreal Protocol* (1989), *Law of the Islamic Republic of Iran’s accession to the UN Framework Convention on Climate Change* (1996), and finally *Law of the Islamic Republic of Iran’s accession to the Kyoto Protocol* (2005), Iran have become a member of two major international conventions and protocols on a fight against air pollution.

2.1. Basic rules

2.1.1. Law on the Protection and Improvement of the Environment (1992)

Article 9 of this law is the most general one that prohibits the pollution of the environment, and defined as follows: “Environment pollution includes the release or mixing of external substances into water or air, soil or ground to the extent that their physical, chemical or biological quality are changed as it is harmful to humans, other living creatures, plants, or monuments and edifices”. According to Article 11, Iranian Environmental Protection Agency (IEPA) is required to identify polluting units in accordance with provisions set forth in the bylaw and issue a warning to stop the spread of pollution. However, as mentioned earlier, the provisions have not been codified in the bylaw of the Article. According to Article 12, officials, pollutant unit administrators who had received a warning notice by IEPA are bound to stop their polluting activities, or else if they refuse to do so they will be sentenced to imprisonment or a fine. Technical and administrative regulations on how to determine the amount of the pollution emission of polluting units’ activities and monitoring the activities have not been specified in this Act.

2.1.2. Law On Air Pollution Prevention (1995)

The law is the most comprehensive current law which specifies the rules of dealing with air pollution, definition of the pollution, factors and how to control it. Article 2 of the Act defines and prohibits air pollution in the same way as Article 9 does concerning the protection and improvement of the environment. Article 4 proscribes the use of motor vehicles emitting

pollution beyond the permissible limit and entrusts determining of the permissible emission limit of the vehicles to the High Council of Environmental Protection. The council subsequently decided on a permissible emission limit from the exhaust of travelling “gasoline cars” under an Act No. 161 in 1998 in conjunction with the implementation of the Article.

According to Article 12, construction of new factories and workshops require compliance with IEPA's criteria. The activities of new factories and workshops that do not comply with the provisions and standards of the article are prohibited as per Article 14. The Article just holds new factories and workshops liable for the mentioned requirement as older units which emit pollutants naturally more are excluded from the requirements of construction.

Article 15 of the Act holds the IEPA responsible for determining “clean air standards and factory-induced pollutant standards” as workshops are admonished for taking account of regional crisis.

2.1.3. Bylaw Of Preventing Air Pollution (2000)

This Bylaw gives detailed accounts of necessary measures to bring Air Pollution Prevention Act into force. Article 1 of the Bylaw defined the essential terms of the text as it mentions a number of related instances; “any type of gas, vapor, liquid, solid or a combination of them which can be emitted into open air and cause air pollution or trigger extreme pollution”.

Article 2 has classified the Bylaw on air pollution sources into two categories-- motor vehicles category and other sources category, and it excludes factories and workshops as well as agricultural resources from these categories as its reason has not been known to us. Given the fact that most pollutants mentioned in Paragraph “c” of Article 1, and emitted through factories, the exclusion of the crucial source of pollution from air pollution sources seems paradoxical in this Bylaw.

In Article 8, the agency is required to identify and classify commercial, household and other sources, and decide on a permissible pollution limit as there has been no statement by the agency in this respect until now. Therefore, the legal framework governing how the category of sources is monitored is totally equivocal. With respect to controlling air pollutants, Article 3 binds the agency to take an action to recognize the type and size of air pollutants through appropriate measures including gleaning information, necessary documents, and conducting visit and inspection if necessary. Therefore, in Article 3 it is unknown whether the IEPA is bound to take an action to identify from where source pollutant comes, and by whom information should be collected.

Articles 4 to 6 of the Bylaw gives an account of how motor vehicles should be controlled; Article 4 holds the agency responsible for laying down conditions for setting up a technical examination center for the category of vehicles. According to Articles 5 and 6, drivers of the vehicles are required to present the certification; otherwise, the vehicle's traffic is prohibited if they refuse to have their cars examined. However, the requirement, pursuant to Article 6 of the Bylaw, just include travelling vehicles in 8 big cities, as the inclusion to other cities, according to note "2", is subject to approval by the Supreme Council of Environment. In Article 8 of the Bylaw, the IEPA is required to recognize commercial, household, and other pollutants and determine level of pollution caused by them, as well as appealing to them to combat pollution, which has not been in force yet.

2.1.4. The Fourth Development Plan of the Islamic Republic of Iran (2004)

In accordance with paragraph "a" in Article 61 of the Act, the government is required to start up Self Declaration Project in order to monitor pollution sources. That is to say, "all manufacturing, service-providing, and infrastructure units should act upon the instructions of the IEPA in order to conduct sampling, measurement of pollution, and the demolition carried out by them, reporting the result to the respective agency". A valuable measure is about to be accomplished on the verge of pollution emission control, especially in the field of air pollution, if it is brought into force by the government. Paragraph "a" of Article 62 of this Act requires the government to reduce the air pollution of 8 major cities at a standard level approved by the Supreme Council of Environment, the executive regulation of which should be drafted and approved by the Council of Ministers.

2.2. Air pollution in the city of Arak

Arak City, due to climatic characteristics and being surrounded by high mountains in the presence of desert (*Mighan* wetland) in 5 kilometers from northeast, is full of dust in summer and the full of mist in winter. Likewise, temperature inversion phenomenon in the autumn and winter and lack of influential atmospheric airflow because of the emission of pollutants are naturally favorable to the stabilization of air pollution, as the city has become known as one of the eight polluted cities in the country due to its uneven urban development, population growth in recent decades, presence of large economic enterprises such as the establishment and operation of heavy industry on the outskirts of the city, as well as its transportation and traffic volume.

Weather in Arak constitutes the characteristics of the central plateau of Iran, as the city has wet and cold winter and dry and hot summer. Air pollution is seen frequently and inversion occurs a

lot in the autumn and winter, inasmuch as the region stays at a steady state in 45-77 percent of the time over these seasons. Arak City is known as one of the industrial hubs in Iran. Since industries emit a large amount of pollutants into the air, the unsuited establishment of the industries has triggered air pollution phenomena in the city. The presence of heavy industries, including Aluminum Plant, Machine Manufacturing, HEPCO, *Azar Ab*, Pars Wagon, *Avangan*, as well as pollutant units such as brickyard, and casting sites which are operating as the residential neighbors of Arak, are significantly precipitating air pollution in Arak.

In the last decade, more than 80% of industries have been shaped in the province and aimed for industrial towns as their distribution has been prevented in agricultural lands and/or other parts. The chimney outflow of power plant, petrochemical plant, and thermal plant in the vicinity of Arak diffuse different combinations of hydrocarbons as well as main pollutants across the city. A large number of vehicles traveling in the narrow streets of Arak, numerous intersections, traffic congestion in the central part of the city are incorporating into the air pollution of Arak, which is why the city is known as one of the eight polluted cities in the country.

Therefore, it can be asserted that the pollution of Arak differs from other cities in the country. The pollution of other cities is mostly because of transportation, though industries in Arak are ahead in causing pollution, in that some harmful gases and compounds are only found in Arak Air. Fluorine gas given out from aluminum manufacturing companies and brick kilns as well as sulfur from the fuel oil of power plant are among others incorporated to the pollution. Additionally, *Shazand* Plant has a compound cycle, for which fuel oil is the worst energy supply ever.

Geographical location, proximity to *Mighan* Wetland and fine dust storm, being surrounded in three sides, drought, wind switching in cold and warm seasons, and reduced green space are among the causes triggering air pollution in Arak. Arak was full of gardens since a long time ago as its people lived in a city garden; however, the number of gardens has been diminished due to mismanagement as buildings and towers took their places. Moreover, old cars, narrow streets, lack of implementing traffic-control plan are among the major themes of transport sector. Another causes of air pollution in Arak, is the surge of trans-regional fine dust from western countries as well as that of *Mighan* Wetland.

2.3. Air Pollution Crime In Iran's Jurisprudence

Iran's jurisprudence bears a remarkable resemblance to France concerning air pollution issue. In Article 2 of Iran's *Air Pollution Prevention Law*, while banning any act to provide air pollution, air pollution has been simply defined, and in other Articles, only the implementation of this crime have been spoken (Ghasemi, 2001; Amir Arjmand, 2010)). However, according to the title of Article 2 of *Air Pollution Prevention Law*, we can find a concise definition of the crime: "air pollution crime includes any action that would cause air pollution". This interpretation of Article 2 of *Air Pollution Prevention Law* cannot be considered as a comprehensive definition of air pollution crime, because first, any attempt to cause air pollution can not simply include financial actions, but "Avoidance" like not having permit or license, not eliminating pollution by emissions unit, and failure to provide information and the like can be conceived as its examples. Secondly, a penalty has been specified for the action or omission in the thematic law. Accordingly, given the all of the Articles in this regard, we can define air pollution as " air pollution crime include any attempt or action or avoidance that causes air pollution in accordance with the definition of Article 2 of *Pollution Prevention Law* For which the penalty is prescribed by law".

3. THE SIGNIFICANCE OF CRIMINALIZATION OF AIR POLLUTION

Given that overall policy of modern penal system and advanced criminal law seeks to achieve decriminalization and move toward a recovery punitive justice rather than deterrent and degrading punitive justice. Today, how would it be possible to talk about "environmental crime" and "punitive environmental protection guarantee" in a new context namely environmental issue? It seems that discussion about the necessity to adopt punitive measures to combat air pollution in particular and destruct the environment in general seems contrary to the policies considering the new approaches to criminal law. Moreover, the inclusion of different crimes in various environmental contexts such as air, water, soil pollution and the like in the criminal list is quite opposite to the new approaches to criminal law, because the approaches attempts to utilize other alternative instruments in place of punitive measures so that the foundations for nullifying the offences (prevention) is provided. Therefore, considering the principles of adopted punitive policies with reference to the criminal policy of the Islamic Republic of Iran, it seems that the entire objectives of the punitive executive guarantee with respect to the environment cannot be

achieved as objectives defined for the crime cannot be accomplished in all respect. For example, the questions was raised “if individuals causing air pollution with their broken-down cars across streets are sent to prison, will we really have educational effects under consideration?” In addition, as for polluting institutions and factories, education of offender problem is abandoned (Shah Malekpour, 2004).

However, with objections lodged in this context (criminalization of air pollution), it has to be maintained that the need for rational and purposeful criminalization, in light of desirable criminal policy, is not only disavowed in this regard, but it is also viewed as a requirement of guaranteeing the subject matter in law. Consequently, it seems that robust controlling regulations (crime and punishment) are necessary to prevent, guarantee, and protect citizens and society when their health and social life are at stake and sovereignty of law is gradually depreciated. As a result, use of criminal-law-based mechanisms in domestic rules of countries has been long ubiquitous in this respect as domestic legal systems viewed them as crime and imposed severe punishments for them for thousand years due to the significance of a number of natural resources (Abdollahi, 2004). In some international documents, the necessity to secure a penal support for the environment has been stressed. In the Eighth United Nations Congress on the Prevention of Crime and Treatment with Offenders, the necessity for the adoption of penal measures is emphasized with respect to the role of criminal law in support of nature and the environment as the significance of the environment is addressed in the initial part of the document; “with deeply held belief some measures should be taken in the field of criminal law as well as measures predicted by administrative law and civil law based responsibilities (Amir Arjmand, 2002). In addition to this, the Economic and Social Council of the United Nations issued a resolution entitled “the role of criminal law in the protection of the environment” at its 6th session in 1997 on the initiative of the Commission on Crime Prevention and Criminal Justice. In the resolution, the significance and role of criminal law in the protection of environmental elements, especially national criminal law, were stressed with respect to regional and bilateral initiatives.

4. CONCLUSION

One of the fundamental objectives in every legal system is to protect health and well-being of mankind and his environment, which is realized by setting and enforcing binding appropriate regulations and mechanisms as well as monitoring how they are observed. Citizens’ and

ecologists' sensitivity to the necessity of making sure they can take advantage of clean air has become a public issue. In this regard, it can be found that systems with civil responsibilities are faced with deficiencies as to making up for losses caused by air pollution. Although, different rules and regulations have been enacted for air pollution control, it seems that the series of measures are not operable enough to decisively confront the problem, in the sense that it both grants people clean air and poses no obstacle to the process of economic development. It is because the regulations generally deal with developing mechanisms for controlling air pollution emitted by vehicles and factories with a mild reactive approach as they disregard other polluting units, and fails to provide accurate and comprehensive standards for air pollution emission and control, and they are stripped of robust supervising and monitoring mechanisms as well as appropriate executive guarantees.

The deficiencies encompass a vast array of civil responsibility issues namely difficulty in proving causality relationship, multiplicity of means causing pollution damage, returning the situation to its former state, gradual and covert status of damages. In addition to damages caused by air pollution, especially to properties, individuals, and other environmental elements, we require a radical change in the foundations of legal liability in this respect and prediction of special safeguards of environmental damages. To this end, a variety of rules and regulations have been enacted to control the environmental pollution. However, air pollution issue is growing in the cities of Iran including the metropolitan Arak. Meanwhile, enormous health, social, and economic costs of the air pollution cease to be considered.

Regardless of various geographical, economic, social and environmental protection problems, weakness in Iran's air pollution control legal system is due to numerous unorganized and inconsistent rules and regulations, failure to adopt a consistent approach to controlling all set of air pollution agents, failure to take account of remedial and preventive approaches, failure to apply robust monitoring and supervising mechanisms, and necessary binding executive safeguards, and weakness in administrative and judiciary mechanisms for management.

Although approval of the regulations and various executive programs by the government significantly contributed to controlling air polluting units in order to keep air clean and human and the environment healthy and safe. However, developing and implementing some regulative and executive mechanisms accompanied by enhancing and intensifying monitoring and criminal mechanisms necessary for complete air pollution control are suggested. In the course of a

comprehensive and complete scheduled national program that can be institutionalized with respect to new strategies to air pollution control such as remedial preventive and consistent approaches as well as benefiting from international experiences, it is hoped that a comprehensive and complete strict legal system to be established in order to combat air pollution.

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